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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NANCY SCHULTZ, TRISHA
BAKER, TERI PITECK,
PRISCILLA KLEIN, KATHY
RAMA, KELLY FLYE, and
LEANNE LINDENBACH,

Plaintiffs,

v.

GARY KIRKLAND, JUDY L.
O'CONNOR, BRADLEY
EAGLESTON, DAVID B.
ANDERSON, WALLY MEHRENS,
BOB WILLIAMS, JOY COHRS,
MICHAEL RICHARDS, STACY L.
BLAND, KIRK D. STANDFORD,
SCOTT KNOLL, FRANCES LEE,
LANCE MEIER, RON FORTUNE,
ED BARNES, PETER FINDLAY,
GENE PRONOVOST, ED CLAY,
GEORGE PAYNE, and JACK
HORNER,

Defendants/Third Party Trustee
Plaintiffs

v.

CAPITAL CONSULTANTS, LLC,
CAPITAL CONSULTANTS, INC.,
JEFFREY L. GRAYSON,
BARCLAY L. GRAYSON, BLAKE
GRAYSON, ANDREW
WIEDERHORN, TIFFANY
WIEDERHORN, TED

Civil No. 00-1377 HA

NOTICE OF PENDENCY OF
CLASS ACTION, PROPOSED
SETTLEMENT OF CLASS
ACTION, AND SETTLEMENT
HEARING

Date : May 21, 2002
Time : 1:30 pm
Place : Courtroom 13A
U.S. District Court
1000 SW Third Ave.
Portland, OR 97204

FILED 02 APR 19 15:10 USC-098

1 **WIEDERHORN, SPECIALTY**
2 **FINANCE INVESTORS LLC,**
3 **LAWRENCE A. MENDELSON,**
4 **JOYCE MENDELSON,**
5 **WILSHIRE CREDIT**
6 **CORPORATION, WCC INC.,**
7 **WILSHIRE REAL ESTATE**
8 **PARTNERSHIP, L.P., THE**
9 **WILSHIRE REAL ESTATE**
10 **INVESTMENT TRUST, INC.,**
11 **WILSHIRE SERVICING**
12 **CORPORATION, WILSHIRE**
13 **INTERNATIONAL FUNDING**
14 **GROUP, INC., WILSHIRE**
15 **FINANCIAL SERVICES GROUP,**
16 **INC., WILSHIRE ACQUISITION**
17 **CORPORATION, WILSHIRE**
18 **FUNDING CORPORATION, CCI**
19 **HOLDING COMPANY, FIRST**
20 **BANK OF BEVERLY HILLS,**
21 **PORTLAND SERVICING**
22 **CORPORATION, CAPITAL**
23 **WILSHIRE HOLDINGS INC.,**
24 **STERLING CAPITAL , LLC, CF**
25 **CREDIT, LLC, C.B. COLEMAN,**
26 **AND DAVID FREY,**

Third Party Defendants.

16 **TO: ALL PERSONS WHO WERE PARTICIPANTS IN OR**
17 **BENEFICIARIES OF THE 401(K) RETIREMENT FUND OF**
18 **THE OFFICE AND PROFESSIONAL EMPLOYEES**
19 **INTERNATIONAL UNION, LOCAL NO. 11, AND/OR THE**
20 **WESTERN STATES LOCAL UNION TRUST FUND OF THE**
21 **OFFICE AND PROFESSIONAL EMPLOYEES**
22 **INTERNATIONAL UNION AS OF SEPTEMBER 21, 2000 OR**
23 **THE BENEFICIARIES, EXECUTORS, SUCCESSORS,**
24 **REPRESENTATIVES, HEIRS OR ASSIGNS OF SAID**
25 **PARTICIPANTS AND BENEFICIARIES OTHER THAN THE**
26 **DEFENDANT TRUSTEES, OR THE BENEFICIARIES,**
EXECUTORS, SUCCESSORS, REPRESENTATIVES, HEIRS OR
ASSIGNS OF SAID DEFENDANT TRUSTEES.

24 **PLEASE TAKE NOTICE** that on May 21, 2002, at 1:30 p.m., a hearing
25 will be held before United States District Court Judge Ancer Haggerty, in
26 Courtroom 13A, 13th Floor of the U.S. District Courthouse, 1000 SW Third
Avenue, Portland, Oregon, to determine whether a proposed settlement of claims
against the defendant Trustees in the above-titled class action (the

1 "Settlement"), including the payment of Class Counsel's attorney fees, is fair,
2 reasonable and adequate and should be approved by the Court, whether class
3 action claims against the defendant Trustees should be dismissed with prejudice
4 pursuant to the terms of the Settlement, and any other matters which the Court
5 may deem appropriate. The defendant trustees are: Gary Kirkland, Judy L.
6 O'Connor, Bradley Egelston, David B. Andersen, Wally Mehrens, Bob
7 Williams, Joy Cohrs, Michael Richards, Stacy Bland, Kirk Stanford, Scott
8 Knoll, Frances Lee, Lance Meier, Ron Fortune, Ed Barnes, Peter Findlay, Gene
9 Pronovost, Ed Clay, George Payne, and Jack Horner.

10 This Notice is given pursuant to an Order of the Court and pursuant to
11 Rule 23 of the Federal Rules of Civil Procedure. The purpose of this Notice is
12 to inform you of your rights with respect to the proposed settlement.

13 As a Class Member defined herein, your rights will be affected by this
14 Settlement. If given final approval by the Court, the Settlement will result in a
15 payment of \$ 475,000.00 to the Local 11 401(k) Retirement Fund and \$478,000
16 to the Western States Health and Welfare Trust Fund ("Trust Funds") which,
17 after payment of litigation costs and attorney's fees, shall be used by the Trust
18 Funds to pay benefits as described herein for all members of the class defined
19 above ("Class Members") as described herein. Moreover, the Settlement would
20 foreclose future claims by Class Members against the Defendant Trustees for
21 damages or any other relief based on the facts underlying the present action.

22 Please take note: the portion of the Settlement paid to the Health and
23 Welfare Fund shall be for the benefit of all Plan participants and beneficiaries,
24 and shall not result in any additional individual payments. The portion of the
25 Settlement paid to the 401(k) Plan shall be allocated on a pro rata basis to the
26 individual accounts of the Class Member participants of the 401(k) Plan to make
up for part of the losses that these participants have suffered in their individual
accounts. If you are a Class Member who is a participant in the 401(k) Plan,
you will have money restored to your individual account in the 401(k) Plan, but
you will not receive a cash distribution or roll-over unless you have received a
distribution or roll-over of your individual account between September 21, 2000
and the date the Settlement receives final approval from the Court.

The portion of the Settlement paid to the 401(k) Plan shall be allocated
among the individual accounts of the Class Members based upon the records of
the Plan Administrator. However, you may also complete the claim form
attached to this notice if you have received a distribution or roll-over of your
individual account in the 401(k) Plan at any time from September 21, 2000 to
the present. In order to ensure that your claim receives consideration, you must
complete the claim form and return it by mail, postmarked on or before thirty
(30) days from the date this notice is mailed to you. No claims will be
considered unless postmarked by May 1, 2002.

1 Please take note: You are not necessarily entitled to any individual
2 payment or allocation to your individual account in the 401(k) Plan.

3 **I. SUMMARY OF THE LITIGATION**

4 A lawsuit is pending before this Court in which the plaintiffs seek to
5 recover the Trust Funds' losses arising out of investments managed by Capital
6 Consultants, LLC ("CCL"). The plaintiffs, who are participants in the Trust
7 Funds, have filed suit against the Trust Funds' trustees. The trustees have
8 alleged claims against CCL and other parties in this and other lawsuits. The
9 Settlement does not involve the claims asserted by the Trustees against third
10 parties.

11 The plaintiffs claim that the Trust Funds' losses were caused in part by
12 the Trustees' breaches of fiduciary duty in violation of the Employee Retirement
13 Income Security Act of 1974 ("ERISA"). The plaintiffs allege that the Trustees
14 violated their duty of prudence in monitoring CCL and ignored "red flags" that
15 should have warned them that CCL was mishandling the Trust Funds'
16 investments in private loans and equities. The plaintiffs further allege that one
17 of the Trustees, defendant Gary Kirkland, accepted gifts and other consideration
18 from CCL which caused the Trustees to favor CCL in violation of their duty of
19 loyalty to the Trust Funds' participants and beneficiaries.

20 The plaintiffs claim that Trust Funds have lost in excess of \$9 million as a
21 result of the private loans and equities managed by CCL; however, the Trust
22 Funds will recover a portion of these losses from the Receiver's liquidation of
23 CCL, settlements negotiated in the Trustees' lawsuit against CCL and related
24 parties, and other sources.

25 The defendant Trustees deny that they violated their fiduciary duties to
26 the Trust Funds.

27 **II. THE CLASS INVOLVED IN THE SETTLEMENT**

28 On March 19, 2002, the Court, pursuant to the Settlement
29 Agreement, certified this action to proceed as a class action under FRCP
30 23(b)(1) & (2) for purposes of settlement. The Class definition is set forth
31 above. The Court also appointed Nancy Schultz, Trisha Baker, Teri Piteck,
32 Priscilla Klein, Kathy Rama, Kelly Flye, and Leanne Lindenbach (the "Named
33 Plaintiffs") as representatives of the Class.

34 Counsel for class plaintiffs are as follows:

35 Daniel Feinberg (Calif. Bar No. 135983)
36 SIGMAN, LEWIS & FEINBERG, P.C.
436 - 14th Street, Suite 1505
Oakland, CA 94612

1 Phone: (510) 839-6824
Fax: (510) 839-7839
2 E-mail: dfeinberg@sl-f.com

3 James M. Finberg (Calif. Bar No. 114850)
LIEFF CABRASER, HEIMANN & BERNSTEIN, LLP
4 275 Battery Street, 30th Floor
5 San Francisco, CA 94111
Phone: (415) 956-1000
6 Fax: (415) 956-1008
E-mail: ifinberg@lchb.com

7 James S. Coon (OSB 77145)
8 SWANSON, THOMAS & COON
The American Bank Building, 9th Floor
9 621 S.W. Morrison Street
10 Portland, OR 97205-3892
Phone: (503) 228-5222
11 Fax: (503) 273-9175
E-mail: jcoon@stc-law.com

12 Counsel for trustee defendants are as follows:

13 Chrys A. Martin (OSB 81305)
14 Bullivant Houser Bailey
15 300 Pioneer Tower
888 SW Fifth Avenue
16 Portland, OR 97204
Phone: (503) 228-6351
17 Fax: (503) 295-0915

18 Michael Monaco
Song Mondress PLLC
19 720 Third Avenue, Suite 1500
Seattle, WA 98104
20 Phone: (206) 398-1501
21 Fax: (206) 398-1500

22 David Bacon
Thelen Reid & Priest, LLP
23 333 South Grand Avenue, 34th Floor
Los Angeles, CA 90071-3193
24 Phone: (213) 623-4742
25 Fax: (213) 576-8078

26 John Wilson
Wilson Smith Cochran Dickerson

1 1215 4th Avenue, #1700
Seattle, Washington 98161
2 Phone: (206) 623-9273
3 Fax: (206) 623-4100
4

5 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

6 This Agreement embodies a compromise settlement of disputed claims,
7 and nothing in this Agreement, including the furnishing of consideration for this
8 Agreement, constitutes any finding of wrongdoing by the defendants, or creates
9 any inference of wrongdoing or admission of wrongdoing or any liability in this
10 or any other proceeding.

11 The parties reached their proposed Settlement with the assistance of Judge
12 Edward Leavy of the U.S. Court of Appeals for the Ninth Circuit, who
13 conducted Settlement negotiations at the request of the trial judge, the
14 Honorable Ancer Haggerty. The following is only a general summary of the
15 proposed Settlement: for its complete terms, interested persons are referred to
16 the Class Action Settlement Agreement and Release on file with the Clerk of the
17 Court.

18 In summary, the Settlement provides that the defendant trustees will pay
19 the following amounts to settle plaintiffs' claims against them, plus interest
20 accrued on the fund, less costs of this notice and the attorney's fees and expense
21 reimbursements awarded to Class Counsel:

22 401(k) Retirement Fund of the Office and Professional Employees International
23 Union, Local No. 11 - \$475,000

24 Western States Local Union Trust Fund of the Office and Professional
25 Employees International Union, Health and Welfare Fund- \$478,000

26 The trustees of each Plan were insured by a \$1,000,000 fiduciary liability
insurance policy, providing a total of \$2,000,000 in insurance coverage. Both
policies provide that the costs of defending the Trustees are deducted from the
liability coverage limit. The settlement payment represents the remaining
balance of the insurance coverage, after allowances for defense costs. Any
Funds set aside for defense costs which are not used, will be returned to the
Plans.

The Settlement payment allocated to the Western States H&W Trust Fund
shall be used by the plan to pay benefits to the plan's participants and
beneficiaries. The Settlement payment allocated to the Local 11 401(k)
Retirement Fund shall be allocated on a pro rata basis the individual accounts of
the Class Members. The defendant Trustees for the 401(k) Plan will not benefit

1 from the Settlement payments made to the 401(k) Plan. A Class Member who
2 was a participant in the 401(k) Plan as of September 21, 2000, but has since
3 received a distribution or roll-over of his or her individual account, or a
4 beneficiary who has received a distribution after September 21, 2000, will
5 receive a pro rata share of the Settlement payment to the 401(k) Plan as a
6 distribution or roll-over.

7
8 The Settlement also provides that an independent party will investigate
9 the Trustees' alleged receipt of gratuities and that any Trustee determined to
10 have received such gratuities will make payment to the Receiver.

11
12 As their fee for services rendered on behalf of the Class Members, Class
13 Counsel will ask to be awarded a portion of the Settlement. Class Counsel will
14 seek attorney's fees of no more than \$ 100,000. Class Counsel will also request
15 reimbursement for reasonable expenses they have advanced on behalf of the
16 Class in amount less than \$ 10,000. The eight Class Representatives have
17 decided not to request any compensation for their service as Class
18 Representatives in order to maximize the amount of money received by the
19 Plans. The amount of an award of attorney's fees and costs must be approved
20 by the Court.

21
22 Under the terms of the Settlement, the expenses of administering the
23 Settlement, such as providing this notice, will be deducted from the Settlement
24 payments paid to the Trust Funds.

25
26 As part of the Settlement, the Class will release all claims against the
defendant Trustees and the Board of Trustees arising out of the Trust Funds'
investments managed by Capital Consultants. The Class will also acknowledge
that it is in privity with the Trustee Defendants with regard to related actions
against third parties with respect to these investments, and may not relitigate
claims on behalf of the Plans against these third parties.

20 IV. HEARING ON SETTLEMENT

21 On May 21, 2002, at 1:30 p.m., or as soon thereafter as practicable,
22 the Honorable Ancer Haggerty of the United States District Court for the
23 District of Oregon, will hold a hearing in Courtroom No. 13A, 13th Floor of
24 the U.S. Courthouse, 1000 SW Third Avenue, Portland, Oregon, for the
25 purpose of determining whether the proposed Settlement, including the
26 payment of Class Counsel's attorney's fees and costs, is fair, reasonable, and
adequate and should be finally approved. The time and date of this hearing
may be continued or adjourned so please contact Class Counsel three or
four days prior to the date of the hearing if you wish to attend.

Any Class Member or the attorney or other representative for any

1 such person may appear at the hearing to show cause why the settlement
2 should not be approved as fair, reasonable and adequate, or to enter an
3 appearance for any other reason. However, no person will be heard unless
4 his or her objection and notice of intention to appear, together with all
5 supporting papers stating the basis for the objections and a statement under
6 penalty of perjury that he or she is a member of the settlement class, is
7 made in writing and filed with the Clerk of the Court by certified or
8 registered mail, and served by first class mail upon counsel for Named
9 Plaintiffs and Defendant Trustees at the addresses listed above. To be
10 considered, the notice and papers must be received by the court and
11 delivered or post-marked to all counsel *no later than May 1, 2002*. If you do
12 not file an objection, your interest will continue to be represented by Class
13 Counsel.

9 **V. EXAMINATION OF PLEADINGS AND PAPERS**

10 This Notice does not contain all of the terms of the proposed Settlement
11 or all of the details of these proceedings. For more detailed information, you
12 should refer to the underlying documents and papers on file with the Court.
13 This file may be inspected during the hours of each Court business day at the
14 Office of the Clerk of the Court, Mark O. Hatfield U.S. Courthouse, 1000 SW
15 Third Avenue, Portland, Oregon. **PLEASE DO NOT CALL OR WRITE THE
16 COURT OR THE COURT CLERK'S OFFICE.**

14 You also may make an appointment to examine during reasonable
15 business hours the underlying documents and papers relating to the
16 litigation at the office of Class Counsel. Call them at the telephone numbers
17 listed above in order to make an appointment.

17 **VI. LEGAL ADVICE**

18 Any questions you may have about this Notice should be raised with your
19 own attorney or advisor, and/or directed in writing to Class Counsel at the
20 address listed above. **DO NOT CALL OR WRITE THE COURT OR THE
21 COURT CLERK'S OFFICE.**

22 Dated: *March 19, 2002*

Ancer L. Haggerty
23 Hon. Ancer L. Haggerty
24 U.S. District Court Judge
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CLAIM FORM

**401(K) RETIREMENT FUND OF THE OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11**

**Complete this form ONLY if you are/were a participant in the Local 11 401(k) Plan and
have received (or will receive) a distribution or roll-over between September 21, 2000
and May 15, 2002.**

Name: _____

Social Security No. _____

Date of Rollover/Distribution: _____

Amount of Rollover/Distribution: _____

**Please return this form to class counsel at the address listed below. Your claim
will not be considered unless it is postmarked by May 1, 2002.**

**Daniel Feinberg
SIGMAN, LEWIS & FEINBERG,
P.C.
436 - 14th Street, Suite 1505
Oakland, CA 94612
(510) 839-6824
(510) 839-7839 (fax)
dfeinberg@sl-f.com**