

INDEXED

FILED

JUL 19 1991

Julie Baker
DEPUTY CLERK

LAW OFFICES OF
MICHAEL B. ALLEN
A PROFESSIONAL CORPORATION
330 PRIMROSE, SUITE 400
BURLINGAME, CALIFORNIA 94010
(415) 375-0200

Attorneys for Plaintiff
EDGEWATER ISLE SOUTH OWNERS'
ASSOCIATION, A California Non-Profit
Corporation

Summons Issued

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

18118

EDGEWATER ISLE SOUTH OWNERS')
ASSOCIATION, A California Non-)
Profit Corporation,)
)
Plaintiff,)
)
v.)
)
THE ANDEN GROUP, A California)
General Partnership, MIDEN)
CORPORATION; A California)
Corporation, THE KLINGBEIL)
GROUP, INC., An Ohio)
Corporation, DENNIS O'BRIEN,)
LEROY PETERS, O'BRIEN & HICKS,)
and DOES 1 through 170,)
inclusive,)
)
Defendants.)

NO. 368629

COMPLAINT FOR NEGLIGENCE,
NEGLIGENT MISREPRESENTATION
STRICT LIABILITY, BREACH
OF WARRANTY, PROMOTER
LIABILITY, DIRECTOR BREACH
OF FIDUCIARY DUTY, DIRECTOR
DECEIT, DIRECTOR
CONSTRUCTIVE FRAUD,
DIRECTOR NEGLIGENCE, AND
FRAUD AND DECEIT,

COMES NOW plaintiff, EDGEWATER ISLE SOUTH OWNERS'
ASSOCIATION (hereafter "EDGEWATER ISLE SOUTH") and alleges as
follows:

GENERAL ALLEGATIONS

1. EDGEWATER ISLE SOUTH is a 100 unit condominium

FILED 7/19/91 10:00 AM

1 project, a common interest subdivision (hereafter, "Project")
2 located in the City of San Mateo, County of San Mateo,
3 California, and more specifically described or depicted as set
4 forth in Exhibit "A" attached hereto and incorporated herein by
5 this reference.

6 2. Plaintiff herein, EDGEWATER ISLE SOUTH, is, and at all
7 relevant times was, a California Non-Profit Mutual Benefit
8 Corporation located in the City of San Mateo and obligated to
9 repair, maintain and preserve its own property and all common
10 areas of the Project and as set forth in the Covenants,
11 Conditions and Restrictions recorded in the Office of the San
12 Mateo County Recorder, on November 27, 1985, as Document No.
13 85127921, as otherwise amended, revised or supplemented
14 (hereinafter "CC&Rs") and as provided for in the Davis-Stirling
15 Common Interest Development Act (Civil Code Section 1350 et
16 seq.). As such, EDGEWATER ISLE SOUTH has standing to bring this
17 action on its own behalf and is the real party in interest
18 pursuant to Code of Civil Procedure Section 374.

19 3. "Condominium", "unit" and "common area" shall be used
20 herein as defined in the CC&Rs and the Davis-Stirling Act.
21 "Project" shall mean the common areas in all portions of the
22 condominiums that EDGEWATER ISLE SOUTH is obligated to maintain
23 or repair.

24 4. All defendants, whether individual, corporate,
25 partnership, joint venture, association or other entities, were
26 at all relevant times herein doing business in the County of San

MICHAEL D. ALLEN
A PROFESSIONAL CORPORATION
330 PRIMROSE, SUITE 400
BURBANK, CALIFORNIA 91010
(415) 375-0200

1 Mateo, State of California.

2 5. Defendants, THE ANDEN GROUP, MIDEN CORPORATION, THE
3 KLINGBEIL GROUP, INC., DENNIS O'BRIEN, LEROY PETERS and DOES 1
4 through 30, inclusive, and each of them, developed, built,
5 completed, promoted and sold the condominiums which constitute
6 the Project. Said defendants may hereinafter be referred to
7 collectively and individually as DEVELOPER DEFENDANTS.

8 6. Defendants DOES 31 through 51, inclusive, and each of
9 them, were architects, engineers, designers and planners, who
10 provided professional design, planning, specification,
11 inspection and related services in the development and
12 construction of the Project. Said defendants may hereafter be
13 referred to collectively and individually as DESIGN DEFENDANTS.

14 7. Defendants O'BRIEN & HICKS and DOES 51 through 71,
15 inclusive, and each of them, were the general contractors,
16 responsible managing officers and/or construction managers, who
17 built, constructed, inspected, improved and completed the
18 Project. Said defendants may hereinafter be referred to
19 collectively and individually as BUILDER DEFENDANTS.

20 8. Defendants DENNIS O'BRIEN, LEROY PETERS and DOES 71
21 through 91, inclusive, and each of them, were directors and
22 officers of the association nominated and serving at the behest
23 of the DEVELOPER DEFENDANTS and who were the agents, employees
24 and representatives of the DEVELOPER DEFENDANTS. Said
25 defendants may hereinafter be referred to collectively and
26 individually as DIRECTOR-DEVELOPER DEFENDANTS.

1 9. Defendants DOES 91 through 110, inclusive, and each of
2 them, were the general contractor, subcontractors and/or
3 construction managers who built, constructed, inspected,
4 improved and completed the Project and who were also directors
5 of the association nominated and serving at the behest of the
6 DEVELOPER DEFENDANTS, or who were otherwise elected and served
7 as directors of the association. Said defendants may
8 hereinafter be referred to collectively and individually as
9 DIRECTOR-BUILDER DEFENDANTS.

10 10. EDGEWATER ISLE SOUTH condominiums were completed on,
11 about or subsequent to August, 1986 and the DEVELOPER
12 DEFENDANTS, acting directly themselves and indirectly through
13 DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS,
14 maintained effective control and direction of EDGEWATER ISLE
15 SOUTH until on or about April 14, 1987.

16 11. EDGEWATER ISLE SOUTH believes and therefore alleges
17 that DEVELOPER DEFENDANTS may have been a corporation and that
18 at all times herein mentioned there existed a unity of interest
19 and ownership between DEVELOPER DEFENDANTS and DOES 111 through
20 131 (hereinafter "DEVELOPER ALTER EGO DEFENDANTS") such that an
21 individuality and separateness between DEVELOPER DEFENDANTS and
22 DEVELOPER ALTER EGO DEFENDANTS has never existed or been
23 established and DEVELOPER ALTER EGO DEFENDANTS are the alter ego
24 of each of the DEVELOPER DEFENDANTS and at all times mentioned
25 herein were so inadequately capitalized that compared with the
26 business and other activities undertaken by them and the risk of

1 loss attendant thereto, the capitalization of DEVELOPER
2 DEFENDANTS was trifling and illusory.

3 12. Adherence to the fiction of the separate existence of
4 DEVELOPER DEFENDANTS as an entity distinct from DEVELOPER ALTER
5 EGO DEFENDANTS would permit an abuse of the corporate privilege
6 and would promote injustice in that the corporation's activities
7 as alleged herein were done without adequate financing solely
8 with the desire and purpose to avoid liability for the
9 obligations and tortious conduct of DEVELOPER DEFENDANTS.
10 EDGEWATER ISLE SOUTH therefore requests that the corporate
11 fiction be disregarded for purposes of this lawsuit.

12 13. EDGEWATER ISLE SOUTH believes and thereon alleges that
13 DESIGN DEFENDANTS may have been a corporation and that at all
14 times herein mentioned there existed a unity of interest and
15 ownership between DESIGN DEFENDANTS and DOES 131 through 151
16 (hereinafter "DESIGN ALTER EGO DEFENDANTS"), such that an
17 individuality and separateness between DESIGN DEFENDANTS and
18 DESIGN ALTER EGO DEFENDANTS has never existed or been
19 established and DESIGN ALTER EGO DEFENDANTS are the alter ego of
20 each of the DESIGN DEFENDANTS and at all times mentioned herein
21 were so inadequately capitalized that, compared with the
22 business and other activities undertaken by them and the risk of
23 loss attendant thereto, the capitalization of DESIGN DEFENDANTS
24 was trifling and illusory.

25 14. Adherence to the fiction of the separate existence of
26 DESIGN DEFENDANTS as an entity distinct from DESIGN ALTER EGO

1 DEFENDANTS would permit an abuse of the corporate privilege and
2 would promote injustice in that the corporation's activities as
3 alleged herein were done without adequate financing solely with
4 the desire and purpose to avoid liability for the obligations
5 and tortious conduct of DESIGN DEFENDANTS. EDGEWATER ISLE SOUTH
6 therefore requests that the corporate fiction be disregarded for
7 purposes of this lawsuit.

8 15. EDGEWATER ISLE SOUTH believes and thereon alleges that
9 the BUILDER DEFENDANTS may have been a corporation and that at
10 all times herein mentioned there existed a unity of interest and
11 ownership between BUILDER DEFENDANTS and DOES 151 through 170
12 (hereinafter "BUILDER ALTER EGO DEFENDANTS"), such that an
13 individuality and separateness between BUILDER DEFENDANTS and
14 builder alter ego defendants has never existed or been
15 established and builder alter ego defendants are the alter ego
16 of each of the BUILDER DEFENDANTS and at all times mentioned
17 herein were so inadequately capitalized that, compared with the
18 business and other activities undertaken by them and the risk of
19 loss attendant thereto, the capitalization of BUILDER DEFENDANTS
20 was trifling and illusory.

21 16. Adherence to the fiction of the separate existence of
22 BUILDER DEFENDANTS as an entity distinct from BUILDER ALTER EGO
23 DEFENDANTS would permit an abuse of the corporate privilege and
24 would promote injustice in that the corporation's activities as
25 alleged herein were done without adequate financing solely with
26 the desire and purpose to avoid liability for the obligations

1 and tortious conduct of BUILDER DEFENDANTS. EDGEWATER ISLE
2 SOUTH therefore requests that the corporate fiction be
3 disregarded for purposes of this lawsuit.

4 17. EDGEWATER ISLE SOUTH is ignorant of the true names and
5 capacities of those defendants sued herein as DOES 1 through
6 170, inclusive, and each of them, whether they be individuals,
7 corporations, partnerships, joint ventures, associations or
8 other entities. EDGEWATER ISLE SOUTH sues these defendants by
9 such fictitious names and will amend this complaint to allege
10 their true names and capacities when ascertained.

11 18. At all times herein mentioned, defendants, whether
12 individual, corporate, partnership, joint venture, association
13 or otherwise, and each of them, were the partners, joint
14 venturers, agents and/or employees of their co-defendants, and
15 in doing the things herein alleged, were acting within the
16 course and scope of such partnership, joint venture, agency
17 and/or employment and under the direction of, and with the
18 consent and permission, advance knowledge, and/or subsequent
19 ratification of their co-defendants.

20 **FIRST CAUSE OF ACTION**
21 **(Negligence)**

22 19. Plaintiff EDGEWATER ISLE SOUTH repeats and
23 incorporates herein by this reference as if fully set forth,
24 Paragraphs 1 through 18, inclusive.

25 20. At all times mentioned herein, DEVELOPER DEFENDANTS,
26 BUILDER DEFENDANTS, DESIGN DEFENDANTS, DIRECTOR-BUILDER
DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS, and each of them, had

1 a duty to properly develop, supervise, design, engineer,
2 construct, inspect, complete, promote, advertise, market and
3 sell this Project.

4 21. At all times herein mentioned, said defendants, and
5 each of them, knew, or in the exercise of reasonable care should
6 have known, that these condominiums were residential buildings
7 of such a nature that if not properly developed, supervised,
8 designed, engineered, constructed, inspected, completed,
9 promoted, advertised, marketed and sold for the use and purpose
10 for which they were intended, they were likely to injure persons
11 and property in or about them, and to physically damage said
12 property and other property.

13 22. Said defendants, and each of them, so inadequately and
14 carelessly developed, supervised, designed, engineered,
15 constructed, inspected, completed, promoted, advertised,
16 marketed and sold this Project that the common areas are, and
17 continue to be, latently defective, dangerous and illegal, in
18 that inter alia: they contain the following deficiencies:

- 19 a) Water seepage through walls and ceilings;
20 b) Water accumulation on decks, walkways, and
21 stairs;
22 c) Water leakage through stucco walls;
23 d) Inadequate, improper or missing drains,
24 downspouts, scuppers, runoff systems and flashings;
25 e) Wood stair stringers contact with earth and are
26 generally deteriorated;

- 1 f) Interior sheetrock/taping cracking;
- 2 g) Buried and rusting metal site light standards;
- 3 h) Improperly hung interior and exterior doors,
- 4 including, but not limited to, sliding glass doors;
- 5 i) Roofing defects; and,
- 6 j) Slab foundation curling causing damage to wood
- 7 framing and other structural defects.

8 23. The above-mentioned defects are not all inclusive.
9 EDGEWATER ISLE SOUTH is continuing its investigation into
10 latently defective construction and will amend this complaint,
11 or make disclosure of additional defects and damages when such
12 become known or on proof thereof at trial.

13 24. DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-
14 BUILDER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS, DESIGN
15 DEFENDANTS, and each of them, did not complete construction in
16 accordance with plans and specifications that were approved and
17 filed with the City of San Mateo. Further, even if construction
18 was completed in accordance with the above-referred to plans and
19 specifications, said plans and specifications were improperly
20 prepared, or were defectively designed by the DEVELOPER
21 DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-BUILDER DEFENDANTS,
22 DIRECTOR-DEVELOPER DEFENDANTS and DESIGN DEFENDANTS. The
23 construction fails to comply with applicable building codes.

24 25. At all times herein mentioned, plaintiff EDGEWATER
25 ISLE SOUTH and its members have used and continue to use said
26 Project and common areas for the ordinary and usual purposes for

1 which they were intended to be used, namely for habitation and
2 recreation by members of EDGEWATER ISLE SOUTH and their tenants,
3 families and guests.

4 26. EDGEWATER ISLE SOUTH did not begin to discover the
5 detrimental scope and extent of the latent construction defects
6 until after January 1990 and believe some or all of said defects
7 were deliberately concealed by said BUILDER DEFENDANTS and
8 DESIGN DEFENDANTS. Moreover, because of the latent nature of
9 the defects, plaintiff could not have earlier discovered the
10 defects themselves.

11 27. As a proximate result of the negligence of DEVELOPER
12 DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-BUILDER DEFENDANTS,
13 DIRECTOR-DEVELOPER DEFENDANTS, DESIGN DEFENDANTS, and each of
14 them, plaintiff has sustained and continues to sustain physical
15 damage to the Project, has suffered loss of use of certain
16 Project areas, has incurred and will continue to incur
17 accounting, architectural, engineering, construction and related
18 expenses to repair and reconstruct the common areas as well as
19 to properly establish and fund operating and reserve budgets.
20 The full nature, extent and amount of damages is not yet fully
21 ascertained and leave is requested to amend this complaint when
22 ascertained or to conform to proof at time of trial.

23 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
24 against said DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-
25 BUILDER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS, and DESIGN
26 DEFENDANTS, and each of them, as hereinafter set forth.

MICHAEL D. ALLEN
A PROFESSIONAL CORPORATION
330 PRIMROSE, SUITE 400
BURLINGAME, CALIFORNIA 94010
(415) 375-0200

SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

1
2 28. Plaintiff EDGEWATER ISLE SOUTH repeats and
3 incorporates herein by this reference as if fully set forth
4 Paragraphs 1 through 27, inclusive.

5 29. The DEVELOPER DEFENDANTS, BUILDER DEFENDANTS,
6 DIRECTOR-BUILDER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS, and
7 DESIGN DEFENDANTS, and each of them, in the development,
8 supervision, design, engineering, construction, inspection,
9 promotion, advertisement, marketing and/or selling of this
10 Project, made statements of fact regarding the code compliance,
11 habitability, integrity and maintainability of the Project which
12 were not true. Further, said defendants had no reasonable
13 grounds for believing such representations to be true.

14 30. As to the DESIGN DEFENDANTS, these statements
15 included, among others, representations that:

16 a) The Project fully complied with all applicable
17 building codes;

18 b) The Project would last the life of conventional
19 mortgages without the need for extraordinary repairs and
20 rehabilitation; and,

21 c) The actual construction of the Project was in
22 accordance with plans and specifications approved by
23 governmental entities.

24 31. As to the DEVELOPER DEFENDANTS, these statements
25 included, among others, representations that:

26 a) The Project fully complied with all applicable

1 building codes;

2 b) The actual construction of the Project was in
3 accordance with plans and specifications approved by
4 governmental entities;

5 c) The Project was maintainable with the
6 reasonable expectation of the average purchaser;

7 d) There would be adequate reserves to perform
8 periodic repairs and extraordinary maintenance;

9 e) All routine and foreseeable expenses were
10 provided for in the operations portion of the budget and
11 assessment levels;

12 f) The Project would last the life of conventional
13 mortgages without the need for significant unreserved for
14 expenditures to repair and rehabilitate the Project;

15 g) Said defendants would provide EDGEWATER ISLE
16 SOUTH with accurate building plans of the areas of EDGEWATER
17 ISLE SOUTH'S responsibility, including diagrams of location of
18 major components, utilities and related data;

19 h) EDGEWATER ISLE SOUTH assessment levels, budgets
20 and projected reserves would be sufficient for EDGEWATER ISLE
21 SOUTH to maintain, repair, replace, operate and manage all of
22 the common area and all facilities, improvements, furnishings,
23 equipment and landscaping thereon, including (without
24 limitation) painting and refinishing, repairing and replacing of
25 exterior building surfaces, balconies, decks and deck railings,
26 parking areas and recreational facilities;

1 i) EDGEWATER ISLE SOUTH'S Board of Directors,
2 although composed of agents of the developer, would cause to be
3 kept a complete record of all of its acts and corporate affairs
4 and that those records would be conveyed to the independent
5 directors upon transfer of control from the developer to the
6 individual owners; and,

7 j) EDGEWATER ISLE SOUTH'S Board of Directors,
8 although composed of agents of the developer, would cause all
9 business of EDGEWATER ISLE SOUTH to be conducted in accordance
10 with the Articles of Incorporation, the Bylaws and the CC&Rs.

11 32. As to the BUILDER DEFENDANTS, DIRECTOR-DEVELOPER
12 DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS, these statements
13 included, among others, representations that:

14 a) The Project fully complied with all applicable
15 building codes;

16 b) The actual construction of the Project was in
17 accordance with plans and specifications approved by
18 governmental entities; and,

19 c) The Project was maintainable with the
20 reasonable expectation of the average purchaser.

21 33. Said defendants had no reasonable basis for believing
22 said statements of fact to be true but intended plaintiff
23 EDGEWATER ISLE SOUTH, its independent directors and its members
24 to rely on the representations.

25 34. Plaintiff EDGEWATER ISLE SOUTH, its independent
26 directors and its members were not aware that the

1 representations were untrue.

2 35. Plaintiff EDGEWATER ISLE SOUTH, its independent
3 directors and its members reasonably relied on these statements,
4 were induced to purchase condominiums in the Project, conducted
5 the business of the association in accordance with the
6 assumption that said representations were true and have been
7 damaged by that reliance, the defective condition of the Project
8 and the related misrepresentations.

9 36. As a proximate result of the misrepresentations of the
10 DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-DEVELOPER
11 DEFENDANTS, DIRECTOR-BUILDER DEFENDANTS and DESIGN DEFENDANTS,
12 plaintiff EDGEWATER ISLE SOUTH, its independent directors and
13 its members have sustained and continue to sustain losses and
14 damages, have suffered loss of use of certain Project areas,
15 have incurred and continue to incur architectural, engineering,
16 construction and related expenses to repair and reconstruct the
17 common area. The full nature and extent and amount of damages
18 is not yet fully known but EDGEWATER ISLE SOUTH will amend this
19 complaint, or make disclosure of additional defects and damages
20 when such become known, or on proof thereof at trial.

21 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH, prays judgment
22 against said DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, DIRECTOR-
23 DEVELOPER DEFENDANTS, DIRECTOR-BUILDER DEFENDANTS and DESIGN
24 DEFENDANTS, and each of them, as hereinafter set forth.

25 THIRD CAUSE OF ACTION
26 (Strict Liability)

37. Plaintiff EDGEWATER ISLE SOUTH repeats and

1 incorporates herein by this reference as if fully set forth
2 herein, Paragraphs 1 through 36, inclusive.

3 38. DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, and each of
4 them, were at all times herein mentioned, engaged in the
5 business of manufacturing, developing, promoting, marketing,
6 selling, and otherwise placing in the stream of commerce
7 residential condominium projects such as the Project, and
8 selling condominiums and projects to members of the general
9 public.

10 39. Said defendants, and each of them, knew and intended
11 that the subject condominiums would be sold and used for the
12 ordinary and usual purposes of habitation and recreation by
13 members of the general public, including the members of the
14 association, their tenants, families, and guests, and that
15 purchasers would buy said units without inspecting for defects.
16 Said defendants, and each of them, also knew that if the work
17 they did was defective, it would cause damage to the purchasers.

18 40. At all times mentioned herein the members of EDGEWATER
19 ISLE SOUTH, their tenants, families and guests have used and
20 continue to use the common areas of this Project for the
21 ordinary and usual purposes for which they were intended.

22 41. EDGEWATER ISLE SOUTH members purchased common areas
23 and units without inspection for defects.

24 42. At the time of completion and sale of said
25 condominiums, the common areas were defective and unsafe for
26

1 their intended purposes as alleged herein, and said deficiencies
2 were not apparent by reasonable inspection.

3 43. Said defendants, and each of them, knew or should have
4 known of the aforementioned defects. Said defendants, and each
5 of them, placed the condominiums on the market for sale to the
6 general public when they knew or should have known that:

7 a) The structures were defective in material
8 respects as hereinabove mentioned;

9 b) They would be sold to members of the general
10 public from models without inspection for defects by purchasers;
11 that even if inspected, serious defects would remain unknown to
12 lay purchasers;

13 c) The condominium structures were not fit for the
14 purpose for which they were intended;

15 d) The condominium structures were improperly
16 designed, inspected, constructed and completed; and,

17 e) Construction supervision by qualified personnel
18 was inadequate.

19 44. Said defendants, and each of them, by the very acts of
20 selling said condominiums to unsuspecting purchasers, acted
21 knowingly, wrongfully and willfully in complete disregard of the
22 rights of purchasers who, by their very purchases, became
23 members of EDGEWATER ISLE SOUTH; said members implicitly relied
24 on said defendants's representations that the condominiums would
25 be habitable and adequate for the purposes for which they were
26 purchased.

1 45. As a proximate result of defendants' actions,
2 plaintiff has sustained and continues to sustain physical damage
3 to the Project, has suffered loss of use of certain Project
4 areas, has incurred and will continue to incur architectural,
5 engineering, construction and related expenses to repair and
6 reconstruct the common areas. The full nature and extent and
7 amount of damages are not yet fully ascertained and leave is
8 requested to amend this complaint when ascertained or to conform
9 to proof at time of trial.

10 46. DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, and each of
11 them, acted with a conscious disregard of the rights and safety
12 of EDGEWATER ISLE SOUTH and its members and in a wanton and
13 reckless manner in constructing and selling such extremely
14 dangerous common areas to be used by members of the general
15 public.

16 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
17 against the DEVELOPER DEFENDANTS, BUILDER DEFENDANTS, and each
18 of them, as hereinafter set forth.

19 **FOURTH CAUSE OF ACTION**
20 **(Breach of Warranty)**

21 47. Plaintiff EDGEWATER ISLE SOUTH repeats and
22 incorporates herein by reference as if fully set forth herein,
23 Paragraphs 1 through 46, inclusive.

24 48. DEVELOPER DEFENDANTS, and each of them, at all times
25 mentioned herein, were merchants with respect to these
26 condominiums and said defendants impliedly and expressly
warranted that the common area was of merchantable quality, was

1 fit for the particular purpose for which it was intended, and
2 was erected in a reasonably workmanlike manner.

3 49. In fact, the common area of the property and
4 buildings, and in particular, but not limited to, the defects
5 set forth in paragraphs above, are not of merchantable quality,
6 are in fact defective, not fit for the purpose for which they
7 were intended, and have resulted in damage to the common areas,
8 unit areas, and personal property within the condominiums.

9 50. Subsequent to January 1990, and at various times,
10 plaintiff EDGEWATER ISLE SOUTH became aware of facts which, upon
11 investigation, resulted in plaintiff EDGEWATER ISLE SOUTH
12 learning that the Project had been inadequately developed,
13 supervised, designed, engineered, constructed, inspected,
14 promoted, advertised, and marketed so that the above-described
15 defective conditions existed then and do now exist and the
16 Project is not of merchantable quality and is not fit for its
17 particular purpose.

18 51. Plaintiff, EDGEWATER ISLE SOUTH, has timely notified
19 DEVELOPER DEFENDANTS, and each of them, that the Project was not
20 of merchantable quality but said defendants have declined and
21 failed to acknowledge responsibility or otherwise cause
22 appropriate restoration and repairs to be made.

23 52. The above-described defects and related damages were
24 attributable to and are directly and proximately caused by the
25 latent deficiencies in the development, supervision, designing,
26 engineering, constructing, inspecting, promoting, advertising,

1 and marketing of the Project. Prior to the time said latent
2 defects were discovered by EDGEWATER ISLE SOUTH as set forth
3 herein, the same could not have been discovered earlier by
4 plaintiff with the exercise of reasonable diligence.

5 53. As a proximate result of defendants' actions,
6 plaintiff has sustained and continues to sustain physical damage
7 to the Project, has suffered loss of use of certain Project
8 areas, has incurred and will continue to incur architectural,
9 engineering, construction and related expenses to repair and
10 reconstruct the common areas. The full nature and extent and
11 amount of damages is not yet fully ascertained and leave is
12 requested to amend this complaint when ascertained or to conform
13 to proof at time of trial.

14 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
15 against said DEVELOPER DEFENDANTS, and each of them, as
16 hereinafter set forth.

17 **FIFTH CAUSE OF ACTION**
18 **(Promoter Liability)**

19 54. Plaintiff EDGEWATER ISLE SOUTH repeats and
20 incorporates by reference as if fully set forth herein,
21 Paragraphs 1 through 53, inclusive.

22 55. DEVELOPER DEFENDANTS, and each of them, also acted in
23 the capacity of promoters of the plaintiff corporation and said
24 defendants owed a fiduciary duty to plaintiff EDGEWATER ISLE
25 SOUTH corporation and its future members/owners by virtue of
26 acting as its promoters.

56. Said DEVELOPER DEFENDANTS breached their fiduciary

1 duty to plaintiff EDGEWATER ISLE SOUTH corporation by failing to
2 deal with the corporation in good faith, misrepresenting and
3 failing
4 to disclose to an independent Board of Directors material facts
5 as to the defective condition of the Project that were known or
6 should have been known by DEVELOPER DEFENDANTS. The facts
7 either misrepresented or not disclosed materially affected the
8 value of the property sold to EDGEWATER ISLE SOUTH members.
9 Further, the above-mentioned DEVELOPER DEFENDANTS misrepresented
10 the costs of maintaining the Project, and misrepresented the
11 amount of prudent reserves and assessments which would be
12 necessary to maintain the Project.

13 57. Further, said DEVELOPER DEFENDANTS generally failed to
14 create and run EDGEWATER ISLE SOUTH in a businesslike manner and
15 served their own interests to the detriment of EDGEWATER ISLE
16 SOUTH and its members. Said negligence includes, inter alia, a
17 failure to exercise reasonable care in the appointment of
18 directors for the plaintiff, EDGEWATER ISLE SOUTH corporation;
19 DEVELOPER DEFENDANTS had a duty to appoint persons with
20 reasonable levels of skill, experience, and trustworthiness, and
21 who would thus be able to forward the goals of the EDGEWATER
22 ISLE SOUTH corporation and act on behalf of, and in the best
23 interest of EDGEWATER ISLE SOUTH.

24 58. Said defendants, and each of them, had constructive or
25 actual knowledge of the unfitness of the DIRECTOR-DEVELOPER
26 DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS, and nevertheless

1 employed them to be directors of EDGEWATER ISLE SOUTH or
2 encouraged their services as directors of EDGEWATER ISLE SOUTH
3 in conscious disregard of the rights of members and the well-
4 being of the corporation. The DEVELOPER DEFENDANTS authorized
5 and ratified the wrongful conduct by the initial Board of
6 Directors, DIRECTOR-DEVELOPER DEFENDANTS, and later by DIRECTOR-
7 BUILDER DEFENDANTS.

8 59. DEVELOPER DEFENDANTS, and each of them, knew that the
9 DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS
10 they selected were biased in favor of said DEVELOPER DEFENDANTS
11 and that they could not and would not represent the best
12 interests of EDGEWATER ISLE SOUTH.

13 60. By virtue of said DEVELOPER DEFENDANTS' aforementioned
14 breach of their duties, EDGEWATER ISLE SOUTH and its members
15 have been damaged by accelerated deterioration due to the latent
16 deficiencies which were known to or should have been known to
17 said DEVELOPER DEFENDANTS. EDGEWATER ISLE SOUTH did not
18 discover said wrongful conduct until after January 1990, and
19 believes it was deliberately concealed by DEVELOPER DEFENDANTS,
20 DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS.

21 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
22 against said DEVELOPER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS
23 and DIRECTOR-BUILDER DEFENDANTS, and each of them, as
24 hereinafter set forth.

25 **SIXTH CAUSE OF ACTION**
26 **(Director Breach of Fiduciary Duty)**

61. Plaintiff EDGEWATER ISLE SOUTH repeats and

1 incorporates by reference as if fully set forth herein,
2 Paragraphs 1 through 60, inclusive.

3 62. Plaintiff is informed and believes that DIRECTOR-
4 DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS were
5 directors and/or officers of EDGEWATER ISLE SOUTH. As directors
6 and/or officers, said defendants owed a fiduciary duty to
7 EDGEWATER ISLE SOUTH.

8 63. Said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-
9 BUILDER DEFENDANTS failed to deal with EDGEWATER ISLE SOUTH
10 corporation in good faith as was their fiduciary duty. Among
11 other things, these defendants, and each of them, failed to make
12 reasonable inquiries, misrepresented and failed to disclose
13 material facts which materially affected the value of the
14 property sold to plaintiff's members, misrepresented the costs
15 of maintaining said Project, failed to establish appropriate
16 maintenance schedules, failed to convey warranty information,
17 misrepresented the amount of prudent reserves and assessments
18 which would be necessary to maintain the Project, engaged in
19 self dealing between themselves and the DEVELOPER DEFENDANTS,
20 failed to act in the best interests of EDGEWATER ISLE SOUTH
21 corporation and favored the interests of the DEVELOPER
22 DEFENDANTS and themselves. Said DIRECTOR-DEVELOPER DEFENDANTS
23 and DIRECTOR-BUILDER DEFENDANTS generally mismanaged the
24 EDGEWATER ISLE SOUTH corporation and the project and served
25 their own interests, or other corporate interests, all to the
26 detriment of EDGEWATER ISLE SOUTH and its members. EDGEWATER

1 ISLE SOUTH did not discover this wrongful conduct until
2 subsequent to January 1990, and believes said conduct was
3 deliberately concealed.

4 64. By virtue of said defendants' breach of their
5 fiduciary duties, EDGEWATER ISLE SOUTH and its members have been
6 damaged by accelerated deterioration resulting from systematic
7 construction defects built into the Project. These defects were
8 latent deficiencies which were known to or should have been
9 known to DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER
10 DEFENDANTS, and by their failure to diagnose and repair said
11 defects, plaintiff EDGEWATER ISLE SOUTH has suffered the loss of
12 use of certain Project areas, costs of reimbursements to damaged
13 units, the loss of personal property and lost revenues, interest
14 and assessments. Investigation into these defects is
15 continuing.

16 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
17 against said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER
18 DEFENDANTS, and each of them, as hereinafter set forth.

19 SEVENTH CAUSE OF ACTION
20 (Director Deceit)

21 65. Plaintiff EDGEWATER ISLE SOUTH repeats and
22 incorporates by reference as if fully set forth herein
23 Paragraphs 1 through 64, inclusive.

24 66. Plaintiff is informed and believes that DIRECTOR-
25 DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS were
26 directors and/or officers of EDGEWATER ISLE SOUTH and as such
had a fiduciary duty to EDGEWATER ISLE SOUTH and all owners and

1 future owners who would comprise the membership of EDGEWATER
2 ISLE SOUTH.

3 67. Said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-
4 BUILDER DEFENDANTS by virtue of their specialized knowledge and
5 expertise in the construction industry generally, and their
6 direct participation in the actual construction of the Project
7 specifically, knew or should have known about the various
8 aforementioned construction deficiencies. During the
9 construction phase and thereafter, and during such time as they
10 had a duty as directors of EDGEWATER ISLE SOUTH to disclose such
11 deficiencies, said defendants suppressed the facts of the
12 deficiencies, and further failed to initiate and did not take
13 any appropriate remedial action to correct the deficiencies.
14 Said defendants knew or should have known that such suppression
15 was likely to mislead for lack of communication and did in fact
16 mislead EDGEWATER ISLE SOUTH, its members and future
17 owners/members. Defendants' suppression inured to the benefit
18 of said defendants as developers and builders of the Project but
19 abrogated the defendants' obligations to EDGEWATER ISLE SOUTH.
20 EDGEWATER ISLE SOUTH did not discover the suppressed facts until
21 subsequent to January 1990.

22 68. By virtue of said defendants' suppression of facts,
23 EDGEWATER ISLE SOUTH and its members have been damaged by
24 accelerated deterioration resulting from systematic construction
25 defects built into the Project. These defects were latent
26 deficiencies which were known to, or should have been known by

1 DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS,
2 and by their failure to disclose and repair said defects,
3 plaintiff EDGEWATER ISLE SOUTH has suffered the loss of use of
4 certain Project areas, costs of reimbursements to damaged units,
5 the loss of personal property and lost revenues, interest and
6 assessments.

7 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
8 against said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER
9 DEFENDANTS, and each of them, as hereinafter set forth.

10 **EIGHTH CAUSE OF ACTION**
11 **(Director Constructive Fraud)**

12 69. Plaintiff EDGEWATER ISLE SOUTH repeats and
13 incorporates by reference as if fully set forth herein
14 Paragraphs 1 through 68, inclusive.

15 70. Plaintiff is informed and believes that DIRECTOR-
16 DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS were
17 directors and/or officers of EDGEWATER ISLE SOUTH and as such
18 had a fiduciary duty to EDGEWATER ISLE SOUTH.

19 71. Said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-
20 BUILDER DEFENDANTS by virtue of their specialized knowledge and
21 expertise in the construction industry generally, and their
22 direct participation in the actual construction of the Project
23 specifically, knew or should have known about the various
24 aforementioned construction deficiencies. During the
25 construction phase and thereafter, and during such time as they
26 were under a fiduciary duty as directors to EDGEWATER ISLE
SOUTH, said defendants failed to disclose such deficiencies and

1 further failed to initiate and did not take any appropriate
2 remedial action to correct the deficiencies. Such failure to
3 disclose inured to the benefit of said defendants as builders of
4 the Project but abrogated the defendants' obligations to
5 EDGEWATER ISLE SOUTH. EDGEWATER ISLE SOUTH did not discover
6 this failure to disclose until subsequent to January 1990.

7 72. By virtue of said defendants' failure to disclose,
8 EDGEWATER ISLE SOUTH and its members have been damaged by
9 accelerated deterioration resulting from systematic construction
10 defects built into the Project. These defects were latent
11 deficiencies which were known to, or should have been known by
12 DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER DEFENDANTS,
13 and by their failure to disclose and repair said defects,
14 plaintiff EDGEWATER ISLE SOUTH has suffered the loss of use of
15 certain Project areas, costs of reimbursements to damaged units,
16 the loss of personal property and lost revenues, interest and
17 assessments.

18 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
19 against said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER
20 DEFENDANTS, and each of them, as hereinafter set forth.

21 **NINTH CAUSE OF ACTION**
22 **(Director Negligence)**

23 73. Plaintiff EDGEWATER ISLE SOUTH repeats and
24 incorporates by reference as if fully set forth herein,
25 Paragraphs 1 through 72, inclusive.

26 74. DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER
DEFENDANTS were officers and/or directors of EDGEWATER ISLE

1 SOUTH. As officers and/or directors, said defendants owed a
2 duty to use reasonable care and exercise reasonable business
3 judgment in all actions taken on behalf of the EDGEWATER ISLE
4 SOUTH corporation.

5 75. Said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-
6 BUILDER DEFENDANTS breached this duty by failing to exercise
7 good faith judgment and reasonable care in, among other things,
8 contracting, assessing, maintaining records and bookkeeping,
9 insuring, disclosing material facts, and enforcing the relevant
10 CC&Rs and Bylaws. The representations and business decisions
11 made by said defendants were below the standard of care and not
12 in the best interest of EDGEWATER ISLE SOUTH corporation and its
13 members and were known or should have been known by said
14 defendants to be so. EDGEWATER ISLE SOUTH did not discover the
15 wrongful conduct until subsequent to January 1990.

16 76. By virtue of said DIRECTOR-DEVELOPER DEFENDANTS' and
17 DIRECTOR-BUILDER DEFENDANTS' failure to exercise good faith
18 judgment in accordance with the prevailing standard of care, the
19 plaintiff EDGEWATER ISLE SOUTH and its members have been damaged
20 by accelerated deterioration due to latent deficiencies which
21 were known or should have been known to said defendants, and by
22 costs to diagnose and repair defects, loss of use of certain
23 areas, and cost of reimbursements to damaged units and personal
24 property.

25 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
26 against said DIRECTOR-DEVELOPER DEFENDANTS and DIRECTOR-BUILDER

1 DEFENDANTS, and each of them, as hereinafter set forth.

2 TENTH CAUSE OF ACTION
3 (Fraud and Deceit)

4 77. Plaintiff EDGEWATER ISLE SOUTH repeats and
5 incorporates by reference as if fully set forth herein,
6 Paragraphs 1 through 76, inclusive.

7 78. DEVELOPER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS
8 and DIRECTOR-BUILDER DEFENDANTS, acting in concert and with a
9 common purpose, created, managed and controlled EDGEWATER ISLE
10 SOUTH.

11 79. Said defendants misrepresented and failed to disclose
12 material facts as to the defective condition of the Project that
13 were known or should have been known by defendants, which facts
14 materially affected the value of the property sold to
15 plaintiff's members. Further, the above-mentioned defendants
16 knowingly misrepresented the costs of maintaining said Project,
17 and misrepresented the amount of prudent reserves and
18 assessments which would be necessary to maintain the Project,
19 and did so with the intention that members of plaintiff
20 EDGEWATER ISLE SOUTH would rely on those misrepresentations in
21 their purchase of real property interests in the Project.

22 80. At the time of the representations made by these
23 defendants, and each of them, to EDGEWATER ISLE SOUTH and its
24 members, a fiduciary relationship existed between EDGEWATER ISLE
25 SOUTH and its members and the defendants, who were promoters,
26 developers, builders and directors of EDGEWATER ISLE SOUTH; and
plaintiff's members, as a result of the representations and

1 misrepresentations made by defendants, justifiably relied on
2 said representations and became owners of real property
3 interests in the Project and members of plaintiff EDGEWATER ISLE
4 SOUTH.


5 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
6 against said DEVELOPER DEFENDANTS, DIRECTOR-DEVELOPER DEFENDANTS
7 and DIRECTOR-BUILDER DEFENDANTS, and each of them, as
8 hereinafter set forth.

9 PRAYER

10 WHEREFORE, plaintiff EDGEWATER ISLE SOUTH prays judgment
11 against defendants, and each of them, as follows:

- 12 1. For damages in the First through Tenth Causes of
13 Action according to proof;
- 14 2. For pre-judgment interest at the legal rate;
- 15 3. For punitive and exemplary damages in the Seventh and
16 Tenth Causes of Action;
- 17 4. For attorneys fees and costs of suit herein incurred;
18 and,
- 19 5. For such other and further relief as this Court may
20 deem just and equitable.

21 Dated: December 6, 1991 LAW OFFICES OF MICHAEL B. ALLEN
22 A Professional Corporation

23 By 
24 MICHAEL B. ALLEN
25 Attorneys for Plaintiff
26 EDGEWATER ISLE SOUTH OWNERS'
ASSOCIATION