

1988

John P. Sampson and Milton R. Goff, individually and as Trustee of Milton R. Goff Trust, an unincorporated association v. Paul H. Richins; Richtron Inc., a Utah corporation; Richtron Financial corporation, a Utah corporation; Richtron General, a Utah corporation, and Fronteir Investments, a Utah corporation : Unknown

Utah Supreme Court

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UTAH COURT OF APPEALS
BRIEF

UTAH
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IN THE SUPREME COURT OF THE STATE OF UTAH

DOCKET NO. 880257C

JOHN P. SAMPSON and MILTON R.
GOFF, individually and as
Trustee of Milton R. Goff Trust,
an unincorporated association,

Plaintiffs, Appellants,
and Cross-Respondents,

vs.

No. 860565
& 860570

PAUL H. RICHINS; RICHTRON INC.,
a Utah corporation; RICHTRON
FINANCIAL CORPORATION, a Utah
corporation; RICHTRON GENERAL,
a Utah corporation, and FRONTIER
INVESTMENTS, a Utah corporation,

Defendants, Respondents,
and Cross-Appellants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND VERDICTS

APPENDIX II

FILED
DEC 29 1987

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN P. SAMPSON and MILTON I.
GOFF, individually and as
Trustee of Milton R. Goff Trust,
an unincorporated association,

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INVESTMENTS, a Utah corporation,

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND VERDICTS

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APPENDIX II

FILED IN CLERK'S OFFICE

Salt Lake County Utah

SEP 19 1986

H. Dixon Hindley, Clerk 3rd Dist Court

By _____ Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

IN AND FOR WEBER COUNTY, STATE OF UTAH

JOHN P. SAMPSON, MILTON	:	FINDINGS OF FACT AND
R. GOFF, Trustee for Virgil	:	CONCLUSIONS OF LAW
R. Condon, PAUL D. HUBER,	:	AND VERDICTS
O & M PLUMBING & HEATING,	:	
EARL V. GRITTON, PHILIP O.	:	CIVIL NO. 29552
BOYER, TOFFIE SAWAYA and	:	
RUSSELL SMUIN,	:	
Plaintiffs,	:	
vs.	:	
PAUL H. RICHINS, RICHTRON,	:	
INC., RICHTRON FINANCIAL	:	
CORPORATION, RICHTRON GENERAL,	:	
FRONTIER INVESTMENTS,	:	
Defendants.	:	

The Court has prepared a supplemental document entitled "Memorandum and Summation" as a part of its decision herein and based thereon, now submits these Findings of Fact and Conclusions of Law which contain its rulings on the issues involved. Each bit of relevant, admissible evidence may establish a fact that exists in this case. I have by my summation of the evidence endeavored to set forth the relevant content of all exhibits and oral testimony. Some of necessity contain opinion, hearsay and evidence for which no necessary foundation exists. I have tried to disregard such information in making the summation, yet I am aware that upon occasion such information may have been included in writing the summation.

Upon completion of the summary I began writing a commentary of the issues of fact and law and a discussion of the evidence with respect thereto. After so writing extensively, I reached a point where I came to believe that directing counsel on either side to undertake the preparation of findings and conclusions based thereon seemed a monstrous assignment. I had not undertaken my summation of the evidence as an exercise in writing, but rather to produce a source of factual data gleaned from the mass of exhibits and testimony to which all concerned might turn to as a help in reaching a better understanding of what we have in this case.

The more I wrote on my commentary of the issues and evidence, the more I became convinced that reason suggested that I rewrite what I had written and stated in the commentary in the form of findings of fact and conclusions of law, and thus avoid passing such an assignment to counsel. I have done so, but in commencing this undertaking and reflecting thereon, I deemed it necessary to include in the findings and conclusions commentary on my views of the evidence as it related to the various claims and defenses raised in the pleadings and the law with respect thereto. Thus, of necessity, many findings and conclusions will be extensive, but hopefully the content thereof will help others to understand what I see in the evidence as to each point in issue and my reasons for ruling as I do. There will be times when matters

will be mentioned on more than one occasion, but bear in mind that I do so, not in a period of forgetfulness, but because such repetition seems important and necessary on a particular point under discussion.

GENERAL FINDINGS OF FACT AS TO PLAINTIFFS' COMPLAINT

This case involves a claim set forth in plaintiffs' Amended Complaint against defendants Richins, Richtron, Inc., and Richtron Financial Corporation (RFC) based upon a judgment entered against said defendants in the state of Oregon in favor of one Robert Osborn (hereinafter frequently referred to as the Osborn judgment). Osborn was a well driller and had been employed by defendant Richtron, Inc. to drill some water wells on farm property in the state of Oregon referred to as the Catlow Valley Farms. Richtron, Inc. was the sole general partner in seven Catlow Valley limited partnerships which defendant, Paul Richins, had created and set up. Defendant RFC was another Richtron corporation which Richins had organized. Richins individually and RFC had executed a guaranty agreement with Osborn as guarantors of Richtron, Inc.'s obligation for drilling the wells on the Catlow Valley Farm property. Osborn drilled the wells, was not paid for his work, and so filed suit against these defendants on the obligation owed, seeking also general damages and attorney's fees. Defendants were represented by Idaho counsel who, with defendants' approval, settled the action on May 13, 1980, the day set for trial, stipu-

lating to the entry of a judgment for \$27,683.16 (including all accrued interest to May 20, 1980 at 12%), \$30,000 general (plus interest thereon at 9% from May 20, 1980) and for all costs and disbursements including a reasonable attorney's fee of \$18,000 (with interest thereon at the legal rate from May 20, 1980). The total of the judgment was \$75,683.16.

John P. Sampson, an Ogden, Utah attorney, got involved in controversies leading to this lawsuit on or about May 20, 1980, one week after the entry of the Osborn judgment. In the months that followed many events occurred, with respect to which Sampson was sued by defendants on a counterclaim filed in this action. The major portion of this lawsuit centers around the Counterclaim and most of the evidence presented and the Findings of Fact hereinafter to be set forth relate to the Counterclaim, but some also have relevance to the issues raised on plaintiffs' Complaint. Likewise, evidence and Findings of Fact which deal primarily with the claim asserted against defendants in the Complaint also have relevancy to the claims asserted under the Counterclaim. While I will first deal with the Complaint and make findings particularly relevant thereto, it should be remembered, as stated, that findings relating primarily to the Counterclaim may have relevance to the issues on the Complaint and should not be overlooked in considering the sufficiency of the findings of fact to support the conclusions and rulings on the issues

raised by the pleadings relating to the claim set forth in the Complaint. Otherwise, many findings would have to be restated with respect to both sides of this lawsuit.

The Complaint commencing this lawsuit was filed on February 11, 1981. On March 11, 1981 an Amended Complaint was filed. By stipulation of counsel time to answer was extended and no Answer to the Complaint was filed until July 20, 1982 which included the Counterclaim. On September 11, 1982 another Answer and an Amended Counterclaim were filed. The defendants filed a further Amended Answer and a Second Amended Counterclaim on September 6, 1985, which together with the Amended Complaint filed March 11, 1981 formed the pleadings upon which this case was tried.

The plaintiffs' Complaint was simply a claim upon the Osborn judgment entered against defendants in the state of Oregon. In answer, defendants admitted the entry of the Osborn judgment against them, but asserted as affirmative defenses that (1) the judgment was fully paid and satisfied; (2) the judgment was subject to a constructive trust or equitable lien; (3) offset; (4) estoppel based upon improper dealing, misrepresentation and deceit in satisfaction of the obligation which gave rise to the judgment, including improper conduct and unfair advantage in connection with obtaining an interest in the judgment.

As to these issues raised by these pleadings, the following are:

FINDINGS OF FACT ON PLAINTIFFS' COMPLAINT

1. In May, 1980, and for years prior thereto, Richins was president of Richtron, Inc., which company was the general partner of each of seven limited partnerships known as Catlow Valley Farms 1 through 7, which Richins had organized on April 1, 1977 (5) and January 1, 1978 (2).

2. Under the limited partnership agreements and the laws of the state of Utah, Richtron, Inc. as general ^aprtner had full management control and Richins as its president contracted with Osborn to drill wells for water on the Catlow Valley Farms.

3. Osborn was not paid for the well drilling work he did on these farms, but did not record a mechanic's lien on the property.

4. He instituted his lawsuit against the three defendants and on May 13, 1980, he obtained and had entered a stipulated judgment for \$75,683.16, the details of which are set forth supra under the General Findings of Fact. By agreeing to the stipulated judgment defendants were benefited because Osborn reduced the total amount he was seeking in his Complaint.

5. Satisfaction of the obligation which gave rise to the judgment was the responsibility and under the control of Richtron, Inc. Sampson did not get involved until May 20, 1980,

and neither he nor other plaintiffs (identified supra) were involved in any improper dealing, misrepresentation or deceit with respect to satisfaction of the obligation upon which the judgment was based.

6. On or about May 20, 1980, Sampson was retained by two Catlow Valley limited partners, Milt Goff and Rex Kohler, to make inquiry concerning reported difficulties that had arisen with respect to the Catlow Valley partnerships and Sampson contacted Richins and learned of the entry of the Osborn judgment and also concerning the entry of another judgment in favor of Minter-Wilson on April 30, 1980, who had also done drilling work on the Catlow Valley property, and who by May 20 had a sheriff's sale scheduled for June 6, 1980 to execute on its judgment.

7. Richins had a telephone discussion with Osborn, who agreed to settle the judgment upon payment of \$26,000.00 and \$9,000.00 attorney's fees, but nothing was then paid.

8. On May 29, 1980, Richins held a meeting of Catlow Valley limited partners and advised them, among other existing difficulties, of the existence of the Osborn judgment and of the fact that Osborn would settle it upon payment of the sums mentioned in Finding 7.

9. As a consequence of the May 29, 1980 meeting, those present, acting upon Sampson's recommendation, voted to have RFC immediately file a Chapter 11 bankruptcy proceeding to stay

the Minter-Wilson sale. At the first meeting of creditors on July 1, 1980, with regard to that bankruptcy, Richins and Sampson jointly had a discussion with Osborn about settling the judgment, as previously discussed, at which time Osborn said he had not filed a mechanic's lien on the Catlow Valley property and thus his judgment was not a lien upon it, and in view of RFC's bankruptcy and Minter-Wilson's judgment lien, he did not think he would then settle for anything less than the face amount of his judgment. Richins claimed Sampson's participation with him in holding this discussion with Osborn placed Sampson in a position of having undertaken in some degree, of representing Richins and his companies as counsel, concerning which other findings will be set forth relating to that contention.

10. At a meeting of limited partners having large partnership holdings held on June 26, 1980, Sampson, acting as counsel for certain limited partners, reached an agreement with Richins to buy out all of his and his corporations' interests for \$700,000.00. A settlement and compromise agreement was drafted in the months that followed, but when certain limited partners refused to accept and sign it, the settlement failed.

11. At a meeting of Catlow Valley limited partners, held on August 5, 1980, it was determined that \$150,000 in capital contributions would be assessed and paid, part of which would be used to pay off the Osborn judgment. This was not achieved,

but at this time funds were being paid to Sampson by the limited partners with the understanding and agreement that he would transfer funds to Richins as needed for use by the general partners.

12. When the settlement negotiations failed, Sampson began a vigorous effort to take over control of all of the limited partnerships, some of which activities will be covered later in these findings, but one of the things Sampson did was to contact Osborn and his attorney and reached an agreement whereby for \$40,000 Osborn would assign his judgment to Sampson, \$20,000 to be paid immediately and the balance on stated dates in the near future. To obtain control, Sampson had solicited voting powers of attorney from all limited partners, together with funds, doing so with the intent and purpose of using such voting powers to elect his newly created professional corporation (PC) new substitute general partner of each limited partnership. Before any such goal was achieved, Sampson received several thousand dollars from various limited partners, including funds from those who were not Catlow Valley partners. Using these funds Sampson sent Osborn's attorney a \$20,000 check as the down payment on their agreement. The attorney, Cramer, acknowledged receipt of it, confirming that \$10,000 more was to be paid in two weeks and the remaining \$10,000 in three months. On January 23, 1981 Cramer wrote Sampson enclosing copies of the summons on the Oregon lawsuit, the answers filed by the three defendants,

the judgment and cost bill, an Assignment of Judgment which stated that in consideration of \$40,000 Osborn thereby assigned and transferred to Sampson personally all of his right, title and interest in and to the Osborn judgment of May 13, 1980. Sampson did not advise Richins he had done so.

13. Armed with this assignment of judgment, Sampson retained attorney Blackburn to commence an action against the three defendants upon the Oregon judgment. The Complaint was filed on February 11, 1981 with Osborn being named as plaintiff, the action being on the Oregon judgment with no mention being made of its assignment.

14. As set forth in the Conclusions of Law that follow, such action by Sampson constituted a violation of state law, but none of the penalties provided for therein were pursued. After the Complaint was filed in Osborn's name Richins contacted Osborn, who did not know the action had been filed in his name, and learned of the assignment of the judgment to Sampson. Upon filing a Motion to Dismiss because Osborn was not the real party in interest, Blackburn as counsel of record, moved to amend the Complaint and did so by showing Sampson as the plaintiff in an Amended Complaint filed March 11, 1981. The Oregon judgment remained as the claim for relief for which a judgment was sought. Blackburn's stated reason to amend was that Sampson was in fact the assignee of the judgment.

15. Sampson failed to pay the remaining \$20,000 due Osborn for the assignment and Osborn's attorney wrote Sampson saying if the money was not paid by April 23, the assignment would be rescinded and the judgment taken back. Sampson responded, saying they were then in the middle of a compromise settlement which he hoped would go through, as he would then have his money supply reopened and would take care of the obligation. On June 9, 1981 Cramer sent Sampson a Revocation of Assignment of Judgment, reciting that the \$40,000 had not been paid and so the assignment was void for failure of consideration and the judgment was reinstated in Osborn's name. On June 17, 1981 Sampson replied, saying he was still working with Richins to resolve the matter and if not successful, they would have to work out some kind of arrangement.

16. On December 31, 1981 Cramer wrote Sampson, confirming his telephone report, that Osborn had had a sheriff's sale foreclosing on his judgment on defendants' interests in the Catlow Valley property, and as the only bidder, Osborn had bid \$50,000 at that sale. Cramer confirmed that Osborn would sell the judgment to Sampson for \$45,000, plus the \$20,000 payment made one year before, if payment were made by January 7, 1982. Sampson sent a check for \$45,000 on January 29, 1982, drawn on Sampson's PC Trust Account and directed that the assignment be made to Milt Goff, Trustee.

17. The property sold to Osborn at the sheriff's sale was RFC's interest in its purchase of the Catlow Valley property from the Glenns and its resale to the partnerships, as well as any interest Richins and Richtron, Inc. had in the property. On December 28, 1981 the county sheriff of Harvey County, Oregon, executed a certificate of sale on all the interests the defendants had in the land described therein, which description was the legal description of the Catlow Valley farms property for which Osborn was shown as having bid \$50,000. The court confirmed the sale and on January 4, 1982, Osborn executed a warranty deed conveying said property interests to Milton R. Goff, Trustee, (c/o John Sampson) for a stated consideration of \$65,000, subject to defendants' statutory rights of redemption. On March 2, 1982, Cramer, as attorney for Osborn, executed an assignment of Osborn's judgment (as originally entered) to Goff as trustee (c/o Sampson) in consideration of \$65,000. The \$65,000 consisted of the \$20,000 originally paid in January, 1981 and the \$45,000 sent by Sampson in January, 1982.

The \$45,000 was furnished by the following limited partners for the amounts shown and are the persons for whom Goff is trustee:

Sawaya	\$ 2,646
Boyer	2,969
Simmons	914
Condon	3,050
Huber	5,569
Gritton	2,959
O & M	28,882 (Goff & Kohler)
E. F. Hutton	2,000 (for several partners)

Although the assignment was executed on March 2, 1982, the status of this case was not changed until December, 1982, when Blackburn withdrew as counsel. Attorney Handy, who officed with Sampson, filed an appearance and requested the court to substitute Goff, in his role as trustee, as party plaintiff. The court so ordered, but no Amended Complaint was ever filed reflecting the change in circumstances or for what amount Goff was seeking in the complaint. On February 23, 1983 Sampson filed an appearance as co-counsel with Handy in this case.

No mention was made in the assignment that Goff had been given a warranty deed from Osborn conveying all interests Osborn had acquired at the sheriff's sale of whatever interests Richins, Richtron, Inc. and/or RFC had in the Catlow Valley property.

18. During the trial plaintiffs asserted that Osborn acquired at the sale RFC's right to receive money from the partnerships on the purchase of the farm properties from RFC and also whatever right RFC had in the buyer's role in the purchase of that property from the Glenns. I find that these were among the rights Osborn purchased at the sale and that they were also included in the rights which Osborn conveyed to Goff by the warranty deed.

Also, during the trial plaintiffs contend the purpose of this transaction was to preserve the property and protect the investment. But Osborn had no judgment against the partnership nor a judgment lien against the partnership's interests in the

property. Any right Osborn acquired (and then conveyed to Goff by deed) to collect RFC's payments due from the partnerships had to take into consideration the Glenns' right to be paid on their contract of sale to RFC or to repossess the property if not paid. If the plaintiffs' concern was to preserve and protect the property, they could during 1981 have paid another \$20,000 to Osborn and his judgment would have been paid off as agreed, and would have offered no threat to the property. That not having occurred, under Osborn's deed to Goff, Goff could have asserted the right to receive the contract payments from the partnerships and make certain they were used to pay what was owed to the Glenns under their contract. There was no evidence that this was done by Goff. During 1981 and 1982 only \$6,000 were paid to Glenn on a \$400,000 contract balance. I thus find that the main purpose in paying Osborn \$45,000 was not to protect the property, but to acquire an assignment of the judgment in the belief that the balance due thereon would be sufficient to help persuade Richins to agree to a settlement that was more favorable to Sampson and his group. By then Sampson was asserting control over the partnerships -- the legality of which will be considered elsewhere in the findings and conclusions -- and a judgment against Richins and his companies would have enhanced Sampson's advantage in his adversary role against them.

19. Also, with respect to the Osborn judgment controversy, defendants asserted that since Sampson had represented them as counsel in various matters after June, 1980, including negotiations with Osborn -- findings with respect to which will be set out elsewhere -- he had violated legal ethics standards, creating a constructive trust situation when he obtained the first assignment of the Osborn judgment as well as the second. As to the first assignment, I find that any trust created would have become moot when Osborn rescinded the assignment and re-entered his judgment. Defendants contend that the sums paid to obtain the \$45,000 were recorded by Sampson as capital contributions to those advancing the money and that Sampson also listed the Osborn judgment as a partnership asset. Defendants contend the money used to pay Osborn did in fact belong to the partnership entities, and that the Osborn judgment, when assigned, became an obligation owed only by the partnerships and this was an obligation upon which only the partnerships could sue. But -- as will appear elsewhere in these findings -- neither Sampson, nor his PC, nor his Ag Management were ever legal general partner for any Catlow Valley (or other) partnerships and thus had no legal authority to make such decisions concerning partnership assets. The legal effect of illegal and invalid acts are determined by law and not by the wrongful assumption of control over partnership assets by one who, though he may have believed he was acting

properly, was doing things he had no authority under the law to do. While Sampson's efforts on obtaining the assignment to Goff as trustee placed Sampson in violation of Section 78-51-27, he was not the assignee. Goff was, and Goff was not under that statutory prohibition, which applied only to lawyers, and the fact that Goff was acting under the illegal advice of counsel did not, in my opinion, create a constructive trust in favor of defendants and I so find. While Goff is named as a trustee as plaintiff, the fact is that he and Kohler owned O & M, and together put up the \$28,000 out of company assets. These two were Sampson's original two clients in May, 1980, and had taken an active role in settlement negotiations. Under partnership agreements capital contributions were to be assessed upon a pro rata basis when assessed by a valid general partner, and I do not find the collections made to obtain the \$45,000 constituted capital contributions.

The provisions of Article VII (3) of the partnership agreement gives general and limited partners rights to possess an interest in other business ventures of every nature and description independently or with others, and owning an interest in a judgment against at least Richins or RFC would not appear to be in conflict with this provision.

20. When Osborn received a certificate of sale from the sheriff following his bid of \$50,000 for the property offered, he received compensation on his judgment of the amount of his bid. His bid was a payment on the judgment. As noted in the other document, under Oregon law a deficiency judgment need not be obtained if a judgment is not fully satisfied on execution sale.

21. Another fact to be considered with respect to the Osborn judgment is how the first \$20,000 paid to Osborn should be considered and treated. On the 13th and 20th of October, 1981, Sampson and Richins discussed the Osborn judgment at which time Sampson told Richins Osborn's attorney, Cramer, had stated the \$20,000 would be applied on the judgment. As already found, the assignment to Sampson upon payment of the \$20,000 was illegal and contrary to law. The money paid was not Sampson's money, nor are any of the partners whose money was so used parties to this lawsuit asserting a claim thereto. It came from Catlow Valley limited partners and others, the payment of which would normally be entered in the partnership books as capital contributions. As such, it was funds over which the general partner should have had complete control. Osborn was willing to accept the \$40,000 in full satisfaction of his \$75,000 judgment. The \$20,000 was given to Osborn because of the judgment. Sampson, in engineering the matter as he did, was seeking satisfaction

of the Osborn judgment and to rid the Catlow Valley partners of the problem created thereby, but he was trying to do so in a manner which he thought would satisfy Osborn, but preserve a claim against defendants for the face amount of the judgment. Sampson, in fact, admitted such intent. Had Osborn rescinded the assignment as he did for failure to pay the remaining \$20,000 and then sued on his judgment in the Utah court, he would, in my opinion, have been required to acknowledge that he had been paid \$20,000 on his judgment and would have had his claim reduced by that amount. Are not defendants entitled to have the \$20,000 payment considered as a credit on the judgment, further reducing the deficiency by that amount? The capital contributions of partners used to make that payment were at that time partnership assets subject to the complete control of the general partner, Richtron, Inc., payment by whom would have been a credit on the judgment. I find that under the facts and circumstances of this case, the \$20,000 was a credit that should be applied towards the total due on the judgment which, together with the \$50,000 credit, provides a \$70,000 offset on the Osborn judgment. I find no reason why Goff and the beneficiaries of his trust should benefit from the \$20,000 illegally paid by Sampson one year before. The judgment provided that interest on the judgment ran from May 20, 1980 at the rate of 12% on \$27,683.17, 9% on the \$30,000, and the legal rate on the attorney's fee of \$18,000.

I find the \$20,000 payment mailed January 23, 1981, should be credited on the amount bearing the highest interest rate. Using a 10% legal rate, I compute interest to May 30, 1986 to total \$13,257.13, plus \$1.557 per day on a deficiency of \$5,683.13, or a total still owing as of May 30, 1986 of \$18,875.26, should judgment be granted to plaintiffs.

22. Goff and the limited partners for whom he serves as trustee in this case put up \$45,000 to acquire something from Osborn. What did they get? First they got a warranty deed from Osborn transferring all of the defendants' assets in the Catlow Valley Farm Properties for which Osborn obviously was willing to bid at the sheriff's sale. They also got an assignment of the Osborn judgment. The partners putting up the \$45,000 did not owe anything to Osborn. They had no obligation to pay any part of it. But they had a statutory right to lend money to and transact other business with the partnership, so advancing the \$45,000 was not per se an illegal act (Section 48-2-13). The inferences are clear that Osborn wanted to be paid off on his judgment with money and would not have otherwise assigned the judgment over. Plaintiffs knew they had to pay off the judgment to obtain an assignment thereof. They were following Sampson's advice -- albeit given contrary to law -- intending to utilize the judgment so assigned to get their own judgment against the defendants to use, no doubt, as a weapon in Sampson's

ongoing conflicts with Richins. The issues do not leave us with a concern as to whether the \$45,000 was paid to get the warranty deed or the assignment. No evidence was presented to show what use plaintiffs made of the interests conveyed by the warranty deed. Osborn's bid at the sheriff's sale fixed the legal consequences of that action, and defendants themselves made no effort to bid at the sheriff's sale.

I do not see that the evidence establishes any unfair advantage to plaintiffs in connection with their obtaining an interest in the judgment insofar as Richins and RFC are concerned as they allege in their affirmative defense. Nor do I see that the plaintiffs acting upon the advice of counsel in obtaining an interest in the judgment as constituting improper conduct where the statutory law did not bar lay persons from acquiring such an assignment. So I find that the defense of estoppel on the grounds asserted by defendants in their Answer has not been proven by any preponderance of the evidence.

23. In asserting various defenses commonly used in pleadings, such as estoppel, counsel frequently allege phraseology of one sort or another and suggest it constitutes such defense. This appears to have been done in this case. In Conclusion of law 16 is set forth a statement of our Supreme Court as to the circumstances under which the doctrine of estoppel has application. In the evidence presented in this case I find none that could

be said to show by a preponderance thereof that Goff or those for whom he took as trustee did any act, made any misrepresentation, or engaged in any conduct, or remained silent when there was a duty to speak, that induced Richins to believe that certain facts existed on which Richins relied to his detriment.

Richins individually, and as president of RFC, knew the legal consequences of the guaranty by them of the general partners' obligation to pay Osborn for his well drilling activities. They raise no defense that liability as to them did not arise under any guaranty agreement and indeed no evidence with respect to that agreement was ever tendered into evidence. Richins knew long before May 13, 1980 that the obligation to Osborn had not been paid, knew an action thereon had been filed, and knew that judgment had been entered on that date, and yet had in fact kept hidden from the Catlow Valley partners that such troubles confronted them.

Richins knew of the assignment of the judgment to Sampson shortly after the action was filed under Osborn's name on February 11, 1981, and yet, through stipulation, did not file an Answer to the Complaint until July 20, 1982. Richins learned of Goff's role as assignee by December, 1982, and of his substitution as plaintiff, but did not require Goff to file an Amended Complaint and did not raise as an estoppel defense any such conduct by

Goff when he filed his last amended pleading in this case on September 6, 1985.

Also, Richins has raised no defense that his and RFC's liability for any deficiency was subject to exhausting of any collateral which came to Goff by Osborn's warranty deed. Indeed, the absence of any information as to the content of the guaranty agreement, precludes speculation that any such defense might have been available to them.

Thus, I find that neither Richins, nor RFC have proven any facts that constitute an estoppel of plaintiffs' claim against them for the remaining deficiency found to be due under the judgment.

24. Another element of defense as far as Richtron, Inc. as general partner is concerned comes to mind although not specifically alleged in the pleadings, but so evident in the evidence as to justify amending the pleadings to conform to the evidence if need be. I see an element of defense arising from the fact that as to the Complaint the limited partners are suing their general partner because they obtained an assignment of the Osborn judgment after it had been entered against their general partner. The partnership agreements bar limited partners from suing the general partner for losses resulting from errors in judgment or any acts or omissions not based upon willful misconduct or gross negligence. The entry of the Osborn judgment may not

have been a loss to the limited partners under the circumstances because it did not give rise to a judgment lien against partnership property, nor did it create a personal liability against limited partners. The work out of which the obligation arose conferred a benefit upon the partnership property, for what farm is worth anything without water, and it was the general partner who engaged Osborn to do the work. Had the limited partners of Catlow Valley all paid all capital assessments made upon them by their general partner, the Osborn obligation may long before have been paid. But Richtron, Inc. omitted paying the Osborn obligation and the Osborn judgment was a significant factor that the limited partners found disturbing in May, 1980. But from my review of all of the evidence the obligation went unpaid because funds that should have been available did not become so. Such evidence does not lend support to any finding that any loss to the limited partners, if one existed, was caused by reason of gross negligence or willful misconduct of the general partner and I so find that there was none.

The partnership agreements state the general partner shall have full charge of the management, conduct and operation of the partnership affairs in all respects and in all matters. This certainly includes the control of lawsuits. In addition to precluding liability of the general partner to a limited partner as elsewhere noted, the partnership agreement also provides

that if the general partner shall be made a party to any action or proceeding by reason of the fact that it was a general partner of the partnership, the partnership shall and agrees to indemnify and hold harmless the general partner against any and all judgments, liabilities, fines, amounts paid in settlement and reasonable expenses including a reasonable attorney's fee actually and necessarily incurred by it as a result of such action or proceeding if the general partner acted in good faith for a purpose for which it believed to be in the best interest of the partnership. (Article V (4)). But, again, a partnership is not a party to this action, and thus in this case the general partner is not entitled to such relief in this action. Partners, both general and limited, are members of a partnership, they are not the limited partnership which exists as a separate legal entity, but a limited partner suing a general partner about a partnership matter or obligation is committing an act contrary to the spirit and letter of the partnership agreement and I so find.

25. With respect to the Osborn judgment transaction Sampson by letter of March 17, 1982 advised the Catlow Valley investors that by so using the \$45,000, \$28,000 of which he said was paid by Goff and Kohler, the Richtron interests in their property were purchased from Osborn for that amount and defendants had until December 17, 1982 to redeem it for \$50,000. He did not say that if the property was not so redeemed, the sale became

final and the bid and resulting transfer of property interests entitled the defendants to a \$50,000 credit upon the judgment liability. Counsel for defendants suggested at trial that the RFC equity in its purchase contract with Glenn was \$190,000; that in RFC's sale of the Glenn property to the partnerships it had an income flow of \$175,000 (as set out in Richins' memo of May 30, 1980) and that based upon Richins valuation schedule as of June, 1980, the fair market value of the Catlow Valley Farms was at least two million dollars (although such value was set at \$360,327 in the bankruptcy schedule with total debts as fixed by Richins reaching \$995,633). Thus, says defense counsel, the property had an equity of at least \$385,000, that Osborn got such a bargain for his \$50,000 bid that the conscience of the court should be so shocked as to render the sale invalid. One wonders how much mark-up is in the alleged \$190,000 and how much of the alleged income flow was flowing in, and how much is the equity figure inflated. The judgments; the unpaid debts, particularly on the sprinkler system equipment; the unpaid assessments concerning which Richins did nothing over an extended period of time; the unsuccessful operation of the property as farms; the serious discontent of the investors; the failure to submit reports required in the agreement; Richins' expressed willingness at the May 29, 1980 meeting to step out as general partner of Catlow Valley partnerships so the partners could

put someone in as general partner in whom they had more confidence; his failure to press for settlement of the Osborn judgment for \$26,000 and attorney's fees as first offered by Osborn; his failure to bid at the sheriff's sale; or to redeem the property from sale during the year following the sale; all add up to a sufficient easing of the Court's conscience to make a finding that the sale should not be invalidated for the suggested reasons.

26. In his letter of March 17, 1982, in which Sampson set forth the details of the acquisition of defendants' property at the sheriff sale, he advised Catlow Valley investors that \$110,000 was owed in bills, \$400,000 was owed to the Glenns, \$700,000 was owed to Valmont, but it had agreed to accept \$450,000, and that Sampson thought the property could be sold for \$1-1/2 million. Sampson said that a new partnership was to be formed and that any investor could come in by paying past assessments in full and come in pro-rata on current cash contributions currently paid and their existing capital contributions in former Catlow Valley partnerships. Sampson said 33 investors owed \$135,182 and that a meeting had been set for March 20, 1982, and those not in attendance would lose all, from which the Court finds that Sampson was continuing to exercise control over the various partnerships with an increasing assertion of authority.

27. In summary from the foregoing findings, I find that a deficiency exists on the Osborn judgment in the amounts set

forth in Finding of Fact 21 in favor of plaintiffs and against Richins individually and RFC, but for the reasons set forth in Finding of Fact 24 I find the issues on plaintiffs' Complaint in favor of Richtron, Inc. and against the plaintiffs of no cause of action. But entry of judgment against Richins and RFC must await a ruling in this decision on the counterclaim asserted by Richins and RFC against Goff and the named limited partners for whom he is trustee.

GENERAL FINDINGS OF FACT AS TO DEFENDANTS' COUNTERCLAIM

As I have previously noted the defendants' claims for relief are set forth in their Second Amended Counterclaim which was not filed until September 6, 1985. Two prior Counterclaims had been filed, the first on July 20, 1982 when defendants first filed a responsive pleading to plaintiffs' Complaint, which had been filed on February 11, 1981. Defendants filed an Amended Counterclaim on September 1, 1982. This trial began January 27, 1986 and thus it can be seen that defendants' claims for relief set forth in their Second Amended Counterclaim were asserted less than five months before trial. Counsel for plaintiffs raised no objection to such late amendment of the pleadings, promptly filed a responsive pleading and were ready for trial when the trial date arrived. As with the findings and conclusions on the plaintiffs' Complaint, so here, because of the extensive

nature of the record, I believe it necessary to include in the findings and conclusions comments which, while they may appear as comments on the evidence or facts and circumstances related to the particular finding or conclusion under consideration, may also nevertheless explain or clarify the facts or conclusions reached which, in turn, hopefully will justify the extended comments on those findings and conclusions.

The defendants set forth general averments relating to the parties which were previously identified at the beginning and will not be related here, except as such may be helpful. The names of 25 limited partnerships are set out as mentioned many times in the Summation, before which partnerships were created at various dates between October 15, 1973, and March 1, 1980 in which Richtron, Inc. or its then subsidiary, Richtron General, acted as the sole general partner of each respective limited partnership.

Limited partnership agreements were prepared for each separate entity, provided in general terms for the purchase by various properties of the various partnerships for development and/or resale for the benefit of each limited partnership and the particular investors therein. The terms of the 25 partnership agreements were substantially identical.

In my Memorandum and Summation submitted as a separate document herewith, I have set forth under separate headings information contained in the limited partnership agreement which

I believed would have a bearing on the relevant facts and circumstances of this case, the contents of which I will incorporate herein by this reference to avoid needless repetition. However, some of the provisions of the agreement set forth therein may be repeated in my comments, findings or conclusions on the counterclaim issues, and I will do so because of the relevancy thereof to the matter being considered.

Also in that document I have included a section discussing what I considered to be sections of the State Limited Partnership Statutes which I believed would have relevant use and application to the issues of this case. Here, also, I incorporate that section as a part hereof by this reference with the same caveat that I may further discuss them in my comments.

The Counterclaim sets forth six claims for relief which I will try to briefly summarize with the expectation that more details thereof will be considered when I consider the findings and conclusions that may have a bearing thereon. While this may be repetitious to my summary of the pleadings set forth in the other document, I believe it will state and help to keep in mind the issues that were to be tried.

The first claim alleges that from about June 11, 1980 until about October 7, 1981 Sampson acted as legal counsel for defendants, who in the first claim are identified as Richins, Richtron, Inc., Richtron General and RFC, in various stated matters but

also undertook to represent partners and partnerships in matters adverse to defendants; endeavored to obtain interests in various enumerated judgments or debts owed by defendants for the purpose of using them to defendants' detriment; utilized confidential information received while representing defendants to their detriment; alleging that all such conduct constituted conflicts of interests, fraudulent attempts to injure defendants, breach of fiduciary duty and trust on which the attorney/client relation is based, and gross overreaching. It is in this first claim that defendants assert a claim for relief against Goff and the beneficiaries of his trust, asserting that Goff's acquisition of an interest in the Osborn judgment and their manifest intent to acquire an interest against the general partner to whom they as limited partners allegedly owed a fiduciary duty constituted a conflict of interest, a fraudulent attempt to injure defendants, gross overreaching and a breach of fiduciary duty. Defendants allege that as a direct and proximate result of plaintiffs' conduct, including Sampson's, defendants had suffered damages and injury of a character and amount to be ascertained at trial. They also allege malice and bad faith for which they seek \$1,000,000 in punitive damages.

Defendants in their second claim for relief allege Sampson, in addition to the allegations made under the first claim, while legally representing defendants and after, failed to timely

or in any manner prepare or file responsive pleadings on defendants' behalf with respect to certain civil complaints filed by third parties against them and certain limited partnerships, and thereby breached his duty to them with respect to an attorney/client relation in that he failed to exercise that degree of reasonable care or skill ordinarily possessed and exercised by members of the legal profession; that he acted far beyond the scope of his expressly and impliedly delegated duties; and that he utilized confidential information acquired during his course of representation of defendants to his own unfair personal advantage, for which they seek damages of a character and in an amount to be ascertained at trial. (At trial defendants abandoned their third claim for relief).

In their fourth claim for relief defendants incorporated prior allegations and asserted that by reason thereof and by reason of conduct included in this claim, Sampson, knowingly, intentionally and maliciously interfered with and invaded Richins' right to earn a livelihood as a syndicator of limited partnership interests; and with Richtron's ability to effectively discharge the general partner duties and functions imposed upon it by the limited partnership agreements and by law; and further interfered with defendants' existing contractual relationships, anticipated opportunities for employment and/or beneficial economic expectancies. The additional alleged wrongful conduct of Sampson which

defendants assert as grounds for this claim involve Sampson's wrongful endorsement of two Blackfoot Farms checks and delivery thereof to Clark Wangsgard and the fact that between June, 1980, and November, 1981, Sampson solicited and received capital contributions, assessments and other monies in an amount of at least \$702,000 from numerous limited partners of various partnerships, the specific details as to name, partnership, date and amounts of which are all set forth. Defendants allege Sampson converted at least \$670,000 of these monies to his own use and benefit. Defendants further allege that since November, 1982, Sampson has solicited and received from partners additional monies rightfully belonging to defendants and assert they are entitled to have a constructive trust or equitable lien against such monies on the products or proceeds thereof. Other than two or three specific items, defendants do not set forth in this claim what uses Sampson allegedly made of such funds, asserting generally their claim of damages of a character and in an amount to be determined at trial, together with \$1,000,000 in punitive damages.

In the fifth claim for relief defendants allege that between June 14, 1980 and January 15, 1981, the general partners withdrew as general partners of 24 named limited partnerships, thereby causing a dissolution of each partnership in accordance with Section 48-2-20 of our Code, and placing defendants under an obligation to wind up and terminate each partnership and settle

their accounts. They allege that notwithstanding these statutory obligations, Sampson had unlawfully continued to manage and operate the limited partnerships by purporting to act as successor general manager, and has deliberately interfered with the rights of defendants to properly wind up partnership affairs, and have substantially damaged limited partnership assets by inducing limited partners to transfer the assets to a newly formed entity known as Western Farms, whose sole purpose is to receive all such assets; have commingled crop proceeds and assets of all the partnerships; have purchased and attempted to purchase judgments and debts of third parties against the limited partnerships and defendants; and have converted partnership assets to their own use and excluded defendants therefrom for winding up and termination; for which defendants seek an accounting with respect to all dealings with such assets and damages as may be established by such accounting.

In their sixth claim for relief defendants assert by reason of all conduct alleged in the other claims they have received irreparable injury for which there is no adequate legal remedy and thus seek injunctive relief.

In their response to defendants' claims as set forth in their Second Amended Counterclaim plaintiffs generally deny each and every allegation and assert as affirmative defenses: (1) failure to state a claim upon which relief can be granted

which I summarily rule upon as having no merit; (2) barred by illegal, inequitable and malicious conduct; (3) (goes to defamation claim which was abandoned); (4) laches; (5) waiver; (6) estoppel; (7) breaches of duty and trust; (8) a combination and conspiracy to defraud the limited partners; and (9) unjust enrichment from the limited partners for which defendants are barred from seeking relief from plaintiffs.

As I have stated elsewhere, the Counterclaim is almost completely an assertion of claims against Sampson. Neither the limited partners of the partnerships nor the partnerships are parties to this action, and I view it beyond the scope of this case for me to consider issues involving the partners and partnerships or any rights or obligations they may have against or to the general partners or other defendants. A discussion of relationships and duties and obligations existing between the general and limited partners and the partnerships may be a basis of comment in my summary of findings and conclusions on the Counterclaim issues, but in no way are my rulings in here intended to determine rights or obligations of those not parties to this action. In his opening statement counsel for defendants stated the evidence would show what happened to each partnership. I note a paucity of evidence with respect to what happened to the partnerships, their investors, the farm properties, and debts and obligations owed by them or the general partners.

Of necessity, specific findings of fact relevant to the issues involved will require comments of evidence leading to a basis for facts as found. Hopefully, such comments can be minimized and I can only endeavor to do so as my ability may allow. It should be remembered that in my prior comments regarding plaintiffs' Complaint that I said that findings as to one side may have application to the other. If that occurs, I hope to do so without unnecessary repetition. My consideration of the issues raised in the various claims for relief will not necessarily be treated in the same order in which they are alleged in the Counterclaim. Numerical numbering of findings will continue on from those numbers in the findings on the Complaint.

FINDINGS OF FACT RE: COUNTERCLAIM

28. In the general findings set forth at the outset, the dates upon which the respective pleadings were filed are set out. Notwithstanding the fact, as shown by the evidence, that Sampson's activities with respect to partnership affairs began immediately after the May 29, 1980 meeting with Catlow Valley partners, defendants pleading seeking permanent injunctive relief, as requested in their sixth claim, was not filed until July 20, 1982, almost 18 months after this action was filed. Thereafter, other than continuing asking for injunctive relief in the Counterclaim, the record does not reflect any affirmative action in the Court seeking a restraining order or preliminary injunctive

relief against Sampson up to the time of trial at which no evidence of any need for present injunctive relief was presented. Generally, it can be said that at trial neither side produced any evidence as to what finally happened with respect to the partnerships or their properties other than Richins' schedule showing foreclosure dates. Upon closing argument defense counsel stated that Sampson and twelve people ended up with all the Richtron assets, but I have carefully searched the record in vain for evidence to support that statement. I have no evidence before the Court that shows any partnership activities upon which any injunctive relief can be based.

29. Defendants' allegations under their first claim relate to a claim that for a period of about 16 months beginning in June, 1980, Sampson represented defendants as counsel in various cases affecting partnership matters, and nevertheless undertook to represent interests adverse to defendants to their injury. Sampson claims to have only represented individual limited partners. He first got involved in the partnership affairs in May, 1980, when he, as counsel for Goff and Kohler, first questioned Richins about Catlow Valley partnerships in which those two had an interest, and then appeared with them as their counsel at a meeting of Catlow Valley partners held on May 29, 1980. His actions there were a bit more than just privately counseling his two clients, for he not only orally recommended to those at the meeting and

got started the movement to have RFC file for bankruptcy under Chapter 11 proceedings, but he also expressed the legal opinion to all present that he did not think RFC could keep the mark-up equity arising from RFC's resale of the farm property to the Catlow Valley partnerships for an amount in excess of what it paid for it, which was a theme which Sampson repeatedly expressed in the months and years ahead. While these comments are not found as constituting a representation of defendants as counsel at this time, it began a series of negotiations to carry out a scheme he had suggested to Richins the very next day -- that of Sampson and his clients buying out all of the Richtron interests in the 25 partnerships.

During the month of June, 1980, Sampson pressed this matter up to and at a meeting held on June 26, 1980, of limited partners with substantial interests at which both Richins and Sampson were in attendance. Prior to the meeting Sampson called Richins, said he desired to attend the meeting, stating he would rally support for Richins, but not unless Richins agreed to sell out to him and his group on their terms and allow him to take full control. Although Sampson's right to be at the meeting was questioned by one investor, Sampson said he was there to advise Goff and Kohler about their investment, and speaking further at Kohler's request, Sampson stated that in his opinion the basic problem was mismanagement; said that the investors would

be very angry about Richins claiming a return for advances; that if given a list of 40 of the largest investors, he would contact them and get \$60,000; that he wanted a power of attorney to vote the Richtron stock; and that he thought \$650,000 at 12% interest was a fair price to buy out the Richtron interests. Richins requested a recess to think it over during which time Sampson and Kohler intruded upon Richins, and after a heated discussion, Sampson said the settlement would be \$650,000 at 13% or nothing. Richins told Sampson it was none of his business, as he was not a limited partner. Kohler then convinced Sampson the offer should be \$700,000 which was agreed upon when the meeting reconvened. Richins said he wanted David Day, his attorney, to draft the settlement agreement. These facts to this point do not establish the allegations of defendants under their first claim, but are important facts because what occurred at the meeting constituted a basic foundation and understanding of events that followed in the months and years ahead, as well as leading up to facts concerning an attorney/client relation between Sampson, Richins and his companions. For at that meeting Richins said he anticipated that during the drafting time on the agreement a couple of creditors may file a lawsuit, to which Sampson told Richins to send him the complaints and he would answer and stall them off. Sampson then further stated that once the settlement agreement was consummated, he would like

to take over as legal counsel for Richtron, for which expressed desire he obtained the support of the investors at the meeting over Richins' objections.

30. Shortly after the June 26, 1980 meeting the first meeting of creditors on the RFC bankruptcy proceedings was held. Sampson and Richins were there and together they had separate discussions with Glenn, the original owner of the Catlow Valley Farms property, the payments on which were in substantial default; with Osborn about his judgment; and with attorney Knowles, who represented Valmont, who had a very large contract balance owing for sprinkling equipment purchased for the Catlow Valley Farms payments on which were delinquent, who stated Valmont and its Chicago bank were pressing for payment.

31. While the certainty of the existence of an attorney/client relation between Sampson and Richins during discussions with Glenn, Osborn and Knowles was by no means clear, Sampson soon became involved in handling certain legal matters for Richins and his company. Attorney George Mangan of Roosevelt, Utah wrote concerning payments for farm property due his clients, the Feltons, then in default by one of the partnerships, and also concerning the release of a portion of Young Farms sold to Mangan's clients, the Macks. Sampson got involved with Mangan in handling these claims for Richins and his companies.

32. Sampson became further involved in Richtron legal problems when Knowles wrote Sampson saying if a payment were not made to Valmont by July 15, 1980, an action would be filed. Such action was filed by Valmont on July 25, 1980, against Richtron, Inc. and Richins and his wife, Shari. Sampson obtained time from Knowles for answering, but did not file any responsive pleading thereto, so that on December 31, 1980 Valmont obtained a default judgment in its case for \$714,370, although there was suggestion in the evidence that Valmont later stipulated to a vacating of this default judgment.

33. Another action was filed in the Second Judicial District Court by Davis Schools Credit Union against Richtron, Inc. and Richins over office space and equipment, which action was settled by a written stipulation which Sampson signed as attorney for those defendants.

34. On July 16, 1980 attorney David Gillette, himself an investor who had been requested by the Catlow Valley partners attending the May 29, 1980 meeting to investigate legal problems confronting those partnerships, wrote a report regarding the Minter-Wilson judgment entered April 30, 1980 for about \$137,000 on which Catlow Valley property had been sold at a sheriff's sale on June 6, 1980 to the Millers for \$150,000, but which was redeemed by the Glenns a few weeks later. Gillette sent a copy of the report to Sampson requesting Sampson to call a

Catlow Valley meeting on August 5, 1980, saying he anticipated all partnership monies contributed by partners and paid to Gillette (less his fee) would be turned over to Sampson for partnership purposes. Sampson sent a letter of July 30, 1980, to Catlow Valley investors requesting their presence at the August 5 meeting and stated they needed to raise \$150,000, \$25,000 of which was needed immediately.

At the August 5, 1980 meeting the Valmont action was mentioned and was turned over to Sampson who told Richins that if he received any other complaints to turn them over to him so he could get them answered as he did not want any Richtron partnership litigation to be given to outside lawyers.

35. On August 18, 1980 Richins, complying with Sampson's direction, gave Sampson five new lawsuits entitled Ag Services against Young Farms, Ag v. Randlett, Interlake Thrift v. Richtron, Inc., Idaho Grange v. Shoshone Farms, and Wangsgard v. Richtron, Inc. Sampson said he would answer all the Utah actions and would negotiate with Wangsgard's attorney in Idaho and try to get him to accept a \$15,000 payment then sitting in escrow in the Bank of Utah. All five cases went to default judgments. As to the Wangsgard case, defendants complain that Sampson obtained two checks made payable to Blackfoot Farms and Wangsgard, one on or about December 5, 1980 for \$12,660, and one on April 14, 1981 for \$2,000, which Sampson endorsed "Blackfoot Farms" and

delivered them to Wangsgard, without the knowledge or consent of Richtron, the general partner. The evidence shows that Sampson did so, thus exercising powers of a general partner of Blackfoot Farms as early as December 5, 1980.

36. On August 27, 1980 Gillette sent Sampson a check for \$10,713.18 payable to John P. Sampson for the account of Catlow Valley Farms, stating such funds were to be used exclusively for said farms and were to be released to the general partner of Catlow Valley Farms only after Sampson and Richins had finalized their arrangements to work together. Sampson promptly endorsed the check "payable to Keith Blanch" and sent it off to him.

37. On July 18, 1980, Sampson went to Roosevelt, Utah on a trustee's sale by Murray First Thrift on Pleasant Valley in which Richtron, Inc. held the seller's interest. Sampson gave Kay Lewis, attorney for Murray, a \$40,000 check from the Bank of Utah on the obligation, saying it was investors' money to protect their interest. Lewis gave a deed of reconveyance to Richtron, Inc., stamped the note on which Richtron, Inc. appeared as maker as cancelled, and gave them to Sampson, which documents Sampson kept and refused to turn them over to Richins though requested to do so at various times. \$30,000 had been put up by two investors and Sampson had utilized \$10,000 belonging to another partnership to make up the balance. In this Sampson may deny he represented Richtron, but he certainly acted as

counsel for someone in paying off a Richtron, Inc. \$40,000 obligation.

38. On September 11, 1980 Sampson went with Richins to contact a representative of Borg Warner regarding Richtron, Inc.'s delinquency on an equipment contract. They told him the compromise agreement called for payment of the Borg Warner contract and with a \$5,000 payment at this time bought themselves some more time on this obligation.

39. In September, 1980 attorney Jim Brown wrote Sampson regarding a Richtron obligation on the Randlett-PCA contract. Sampson was to get six loan agreements and notes signed by six partners and their wives. Sampson sent a check for \$10,000, as a Richtron payment on Randlett, made payable to PCA and signed on Sampson's attorney at law trust account.

40. On oral testimony Gillette said he surrendered representation of Richtron to Sampson. Witness Smolka confirmed Gillette's testimony and witness Fisher testified it was his recollection Sampson was retained by the Richtron companies to help in litigation.

41. Some of the facts already set forth and many of those that will follow do and will support defendants' contentions that notwithstanding such attorney/client relationship Sampson did in fact undertake to represent partners and partnerships in matters adverse to defendants, utilized confidential information

obtained through such relationship to their detriment, and obtained interests adverse to defendants, such as the Osborn judgment and used it against them. The allegations that Sampson endeavored to obtain other judgments, claims, or debts against defendants does not give grounds for relief when such efforts were not successful and defendants have proven no injury by reason thereof.

Based upon the foregoing, I find that for a period of time in 1980 and in various matters and cases cited, Sampson did represent the defendants in an attorney/client relation and that his subsequent actions in opposing defendants, and in some respects utilizing the information he had obtained from such relationship against defendants, Sampson breached the standard of ethics which guide and control the conduct of counsel. But such a breach when alleged as a claim for relief requires proof by a preponderance of the evidence of injuries and damages caused thereby. It is noted that in the first claim for relief defendants alleged that all such conduct constituted conflicts of interests, fraudulent attempts to injure defendants (not set forth with particularity) breach of fiduciary duty and trust on which the attorney/client relation is based, and gross overreaching. Whatever phrase is attached to a claim for relief, the requirement of proof of injury and damages remains ever present. While such matters as allowing default judgments to be entered may constitute injury, particularly if there was a valid defense

against any such claims, damages for such conduct by Sampson would more properly arise under defendants' second claim for relief against him. As to the Osborn judgment, Richins, Richtron, Inc. and RFC are here defending against Goff and his associates, not Sampson. Thus, the showing of an attorney/client relation and some breach thereof, standing alone, does not give the Court specific evidence upon which an award of monetary damages may be made against Sampson.

However, such conduct does constitute in part the type of conduct upon which defendants are asserting a claim for relief under their fourth claim, and since the first claim is restated as a part of the fourth claim, the conduct of Sampson mentioned in this finding is subject to further examination and consideration of the fourth claim.

42. It is in the first claim of the Counterclaim that defendants assert their claim for relief against Goff and those limited partners named in the title for whom Goff was trustee. The claim is that by those plaintiffs' acquisition by assignment of the Osborn judgment, they showed a manifest intent to acquire an interest against their general partner, Richtron, Inc. to whom they, as limited partners, owed a fiduciary duty, and that such action constituted a conflict of interest, a fraudulent attempt to injure defendants and a breach of fiduciary duty. As to these plaintiffs and Sampson, defendants allege that as a direct and proximate result of the alleged fraudulent and

unethical conduct, defendants have suffered injury and damages of a character and in an amount to be ascertained at trial. Defendants also assert a punitive damage claim of \$1,000,000 against plaintiffs for what defendants allege was conduct actuated by malice and bad faith.

The Osborn judgment was against Richins, Richtron, Inc. and RFC and its acquisition could not and did not constitute any injury to Richtron General or Frontier upon which any claim for relief can be asserted and I so find.

43. As set forth in Finding of Fact 24, plaintiffs' relationship with their general partner, Richtron, Inc. was not identical to or the same as their relationship to Richins or to RFC, for although Richins was president of these two Richtron companies, his office gave him no special rights or claims to, or duties from, the limited partners. The latter's rights, duties and obligations arise from statutory law and from agreements in the partnership certificate not in conflict with law. RFC's contract on the sale of the farm property was with the partnership, not the limited partners, and Section 48-2-1 states the limited partners, as such, shall not be bound by the obligations of the partnership. Wherein lies Richins' and RFC's claim for relief against these plaintiffs? The evidence established no fiduciary duty as to the Osborn judgment between plaintiffs and Richins or RFC. Acquisition of the judgment does not show

a conflict of interest, breach of fiduciary duty nor a fraudulent attempt by these plaintiffs to injure those defendants. There was no pleading of such alleged fraud with particularity, nor is the burden of proving fraud by clear and convincing evidence met by the evidence. What character of injury by Goff was established by the evidence? Other than defending against the Goff claim I find none. Neither Richins nor RFC produced any evidence that they were injured by the assignment of the judgment to Goff, which carried only the deficiency owing therein. They both had liability as guarantors on the judgment and the assignment to Goff did not increase their liability above the deficiency that remained. Osborn proceeded according to law and when his judgment against Richins, Richtron, Inc. and RFC remained unsatisfied, he was entitled to levy upon and sell at sheriff's sale whatever interests those three defendants had in the Catlow Valley partnership properties. The sale was not a sale of the farm real estate, but only of whatever interests the defendants had therein.

RFC had an interest in the real property because it had sold the Catlow Valley property to those respective partnerships under an installment sale contract. Furthermore, RFC was a limited partner in three partnerships - Catlow Valley Farms #2 (\$7911) and #6 (\$2301) and Richfield Farms (\$20,960.50). In September, 1982, Marilyn Brown sent incomplete partnership

returns for 1980 to the IRS and the state tax commission showing Ag Management as general partner for each of the seven Catlow Valley partnerships. Attached were forms containing the name and capital interest of each limited partner. The return for #2 showed RFC was a limited partner with a capital account of \$7,911 and that for #6 showed RFC's capital account in it as \$2,301. Section 42-2-18 states that a limited partner's interest in the partnership is personal property. Thus, I find that RFC's limited partnership interests were not affected by the sale. The real property is the asset of the partnership entity, not that of the limited partners. RFC's contract interest as seller of the real property would have been included in its interests sold in the sheriff's sale.

Richtron Inc.'s interest was that of a general partner. It also had a limited partnership interest in Pleasant Valley Farms in the amount of \$4222.50. On July 23, 1981, Marilyn Brown telephonically advised Richins that while assessing other limited partners in Pleasant Valley, she had not sent an assessment to Richtron for its portion as a limited partner because she believed Richtron would not have paid it, and that she had pro-rated Richtron's portion to the other limited partners. Its right to continue on as general partner was not affected by the sale, for it existed by reason of Richtron's partnership agreements with the partnerships. The Osborn judgment was a money judgment. The assignment to Goff on March 2, 1982, assigned only the judgment.

The Certificate of Sale executed by the sheriff on December 28, 1981, stated the judgment and decree of foreclosure commanded him to sell all the interests which the defendant had on May 13, 1980, and all the interest which the defendants had thereafter, in the real property therein described, setting forth the legal description in all the Catlow Valley properties. The Certificate recited the sale thereof to Osborn for \$50,000 subject to the statutory right of redemption. The seven Catlow Valley partnerships each had purchased 1/7th of said land from RFC. The court's "order confirming sale of real property," dated January 10, 1982, confirmed the sheriff's sale of "all of the defendants' interest in the real property." Osborn's warranty deed to Goff as trustee executed January 4, 1982, conveyed only Osborn's interest in the real property. Thus, I do not believe that the sale included Richtron, Inc.'s right it had under the partnership agreement, such as its right to 10% of profits remaining after final sale, nor in Richtron Inc.'s limited partnership interest in Pleasant valley Farms of \$4222.50. Nor did the sale include the respective partnerships' obligation to repay to the general partner any and all advances made to any particular partnership which was a debt of the partnership repayable as provided in the partnership agreements.

Richins, as president of the general partner, Richtron, Inc. and of RFC had no individual interests in the Catlow Valley real estate.

Osborn's bid of \$50,000 at the sale for defendant's interests in the real property reduced Richins' and RFC's liability on the judgment by that amount. No doubt Osborn gave both the deed and assignment to Goff as trustee because of the \$45,000 payment they made to him in 1982 over and above the \$20,000 he had received in 1981.

This action is based upon the judgment so assigned to Goff and his associates, and defendants assert their claim in their Counterclaim against Goff and his associates upon the assignment, not the deed, asserting that it was wrong for them to sue their general partner, Richtron, Inc., and such is the basis of defendants' claim against said plaintiffs. I have elsewhere resolved the claim as to Richtron, Inc., but I find no compensable injury to Richins or RFC by reason of the assignment, nor proof of any valid claim for relief against Goff and those for whom he sues as trustee, nor proof of damages therefrom, and thus no offset to those plaintiffs' claims against Richins or RFC.

44. Remaining for determination is Richtron, Inc.'s Counterclaim against the plaintiffs upon the grounds asserted as set forth in finding 42. I have already determined that plaintiffs had no claim for damages against their own general partner, Richtron, Inc. The fact that plaintiffs asserted a claim against Richtron, Inc. on the assigned Osborn judgment does not constitute a fraud against Richtron, Inc., nor an actionable breach of fiduciary duty. Such action may constitute an actionable conflict

of interest because I have found supra that the partnership agreement precludes an action by limited partners against the general partner under facts and circumstances found to exist here. The only injury I can find support for in the evidence is that arising out of the need to defend against this case and the damages arising from costs and attorney's fees for having had to do so. But the fact that a party has a legal defense to a claim for relief does not necessarily give that party a right to recover for attorney's fees spent in asserting the defense. Defending an action on a foreign judgment does not normally include an allowance for attorney's fees, and I find no conduct upon the part of Goff and his associates as to justify an award of attorney's fees under Section 78-27-56.

45. Plaintiffs filed this action upon the advice of counsel with respect to a judgment already entered against the defendants. I find no evidence that this action was actuated by plaintiffs by malice or bad faith such as would support any claim against them for punitive damages under this claim for relief. This finding relates to the limited partners for whom Goff is trustee, and is not intended as a finding at this time as to Sampson with respect to any such claim.

46. As to the Counterclaim against Sampson, each claim for relief incorporates by reference the allegations set forth in the prior claims. The purpose of such pleading seems to be that if one's prior allegations are not sufficient to assert

a claim upon which relief may be granted, adding a bit more fuel to the fire may enhance the claim for relief.

By the second claim defendants assert that Sampson's breach of the attorney/client relationship in failing to timely prepare or file responsive pleadings on defendants' behalf with respect to certain civil complaints filed by third parties against them (as identified in prior findings) constituted negligence in that he failed to exercise that degree of reasonable care or skill ordinarily possessed and exercised by members of the legal profession; that Sampson acted far beyond the scope of his expressly and impliedly delegated duties; and that he utilized confidential information, etc. as alleged in the first claim. This second claim is, in effect, another way of setting forth a claim for relief as was done under the first claim. As previously noted, Sampson did fail to respond in those cases on defendants' behalf. Such handling of lawsuits constitutes a failure to exercise the reasonable care required of the legal profession. The fact that such failures may have occurred after it became apparent that the Settlement and Compromise Agreement, then acceptable to both Sampson and Richins, failed of confirmation or consummation may have been a reason for Sampson's negligence in these matters, but it was not a justification therefore. He did not, but should have, advised Richins and the opposing counsel in those cases with whom he had been dealing that he could not or would not further be representing the defendants therein and arranged for time for defendants to obtain new counsel and respond.

However, with respect to the default judgments so entered, defendants offered evidence only with respect to damages incurred in the cases of Valmont v. Richtron, Inc. and Richins and Interlake Thrift v. Richtron, Inc. With respect thereto defendants' evidence showed that attorney Gary Kennedy was employed to set aside the default judgments entered against the named defendants in those cases. Exhibit 236 shows Kennedy's firm charged Richtron, Inc. \$161.30 for legal fees on the Interlake case and charged Richins and Richtron, Inc. \$2,027.40 for legal fees on the Valmont case. Said defendants were thus damaged in these amounts by Sampson's allowance of default judgments to be entered against them. Richins thus established proof of damages by Richins for \$2,027.40 and Richtron, Inc. did so for the total of the two amounts under their second claim for relief.

As set forth in my general findings on the Counterclaim, the fourth claim for relief includes a claim by Richins that Sampson's conduct interfered with and invaded Richins' right to earn a livelihood as a syndicator of limited partnership interests; a claim for the Richtron General partners that Sampson's conduct interfered with their ability to effectively discharge the general partner's duties and functions imposed upon it by the limited partnership agreements and by law; and a claim for the defendants generally that his conduct interfered with the defendants' existing contractual relationships, anticipated opportunities for employment and/or beneficial economic expectan-

cies. The allegations thereof are broad enough to cover and include the basics of the claims for relief set forth in the fifth claim for relief in which defendants assert a right to and request an accounting from Sampson.

The fourth claim for relief will require a broad and extended consideration of facts established by the evidence that should be sufficient to cover Sampson's conduct with respect to all claims for relief.

The main thrust of this claim can be found in language contained in paragraph 25 of the claim to the effect that Sampson interfered with defendants' existing contractual relations, anticipated opportunities for employment and/or beneficial economic expectancies.

48. Discussions between Richins and Sampson concerning the limited partnerships began about May 20, 1980, but that date did not mark the beginning of Richins' problems relating to the partnerships. The evidence clearly established that long before that date Richins was confronted with substantial problems in the overall operations. Indeed, I think that as of May, 1980, the evidence suggested a bleak outlook for the future. I see, among others, two major developments that had created the problems then existing in May, 1980. One was the failure of many limited partners to pay their assessed capital contributions which they had agreed to do in their respective partnership agreements. Section 48-2-2(1)(a) (7th) of the Code

states that the certificate of the parties forming a limited partnership shall sign and swear to must state, "The additional contributions, if any, agreed to be made by each limited partner and the times at which, or events on the happening of which, they shall be made." The Certificate of Limited Partnership contained various provisions with respect to what each limited partner would contribute as his pro rata share (based upon his capital interest) of the necessary funds determined by the general partner to pay the annual expenses of the partnerships. Plaintiffs contended that in his efforts to finance the purchase of farm equipment Richins had altered the language of Section 2 of Schedule B of certain limited partnership agreements to change the purposes and maximum amounts for which assessments could be made by the general partner from the limited partners, and did so without the knowledge and consent of the limited partners affected thereby. Plaintiffs' main contention is that the words "irrigation equipment" was added to the enumerated purposes for which assessments could be made. To support such contention plaintiffs pointed to three Catlow Valley partnership agreements, copies of which were placed into evidence by plaintiffs' exhibits 153 (#6), 328 (#1) and 329 (#4).

An analysis of all the partnership agreements reflect that the following language of Section 2 reading "Each limited partner agrees to contribute his pro rata share (based upon his capital interest) of the funds determined by the general partner to

be necessary to pay the annual expenses of the partnership, including without limitation payments on the purchase price of the property, irrigation equipment and any lease payments, annual property taxes, accounting expenses ... as may be incurred by the partnership. The estimated maximum annual amount ... that a limited partner shall be required to contribute shall be ..." is contained in the agreements for the following partnerships:

Springfield Properties dated 4/1/78

Catlow Valley #1 dated 4/1/77

Catlow Valley #2 dated 4/1/77

Catlow Valley #3 dated 4/1/77

Catlow Valley #4 dated 4/1/77

Catlow Valley #7 dated 1/1/78

Moreland dated 5/15/78

*East Taber dated 3/1/78

*North Taber dated 1/1/79

+West Taber dated 10/15/78

+Taber dated 10/15/78

+Shosone dated 11/8/76

Wixom dated 5/1/79

(* these two agreements also include the word "advances". + these three agreements omit the word "maximum").

In the partnership agreements for the following limited partners the language of Section 2 reads "Each limited partner agrees to contribute his pro rata share (based upon his capital

interest) of the funds determined by the general partner to be necessary to pay the annual expenses of the partnership, including without limitation payments on the purchase price of the property, annual taxes, accounting expenses (and reasonable reserves for premiums and all other such out of pocket expenses) as may be incurred by the partnership. The maximum amount that ... shall be required to contribute ...".

Catlow Valley #4 dated 4/1/77

Blackfoot dated 4/15/76

Burley dated 8/20/76

Kanosh dated 7/30/76

North Bear Lake dated 5/15/75

Randlett dated 7/18/74

Pleasant Valley dated 4/8/76

Richfield dated 1/1/77

Richtron A-13 dated 10/15/73

Also falling into this group are the three Catlow Valley partnership agreements for #6 (Ex. 153), #1 (Ex. 328), and #5 (Ex. 115) which three also contain different language than that set forth above for either group in that for those three the second sentence of the quoted language reads "the maximum annual amount that ... may, under certain circumstances, be required to contribute, shall be ...". The foregoing sets forth language differences in two partnership agreements for Catlow Valley #1 and #4. While the two partnership agreements for #1 and

the two for #4 reflect the indicated differences, the significance of such evidence is lacking. A copy of the agreement for Catlow Valley #3 was sent to one Kelly of Rainier Bank Leasing Company of Seattle, Washington, by letter dated February 10, 1978, but no evidence was presented that it achieved any result. I note that prior to the Catlow Valley partnership agreements of April 1, 1977, the only agreement including the words "irrigation equipment" is the Richfield agreement of November 8, 1976, and that said words are included in all agreements executed after April 1, 1977, and none others before.

Richins denied generally that he altered any partnership agreements and gave no explanation for the language differences noted above. However, no evidence was presented as to how such alterations, if made, affected the issues in this case, and the only relevance thereof goes to the credibility of Richins, as did many other exhibits, and I do find.

By statute, limited partners as such shall not be bound by the obligations of the partnership (Section 48-2-1) and Article VI, Section 1 states no limited partner shall be personally liable for any debts of the partnership or any of the losses thereof. But Section 2 of Schedule B of the agreement provides that in the event that a limited partner fails to pay his percentage share of subsequent installments of cash contributions to the capital of the partnership, the general partner shall have the right to cancel the portion of the defaulting limited partner's

interest in the partnership for which payment was not made, and also as agreed, as liquidating damages to reduce the portion of the defaulter's investment for which payment was made by 20% of the total dollar amount contributed to the partnership by the limited partner. Further guidelines as to distribution and disposition follow in said Section 2.

49. The frequent and repeated failures of many limited partners to pay such needed funds resulted in the general partner, who was under no obligation to make any capital contributions to the partnership (Schedule B, Section 3) lacking the necessary

funds to meet the partnership obligations such as installment payments on partnership property, irrigation equipment and well drilling expenses. Thus, such failure to pay was an important factor leading up to the judgments obtained in the spring of 1980 such as the Minter-Wilson and Osborn judgments.

50. Such failure to pay such assessments also led to the necessity of Richins making advances of funds to various partnerships to meet such necessary payments or expenses, which such advances had by June, 1980, exceeded \$300,000. While the general partner was under no obligation to make any capital contributions to the partnerships and could not have capital interests therein, Article V of the agreement specifically provided that the general partner, acting for itself or with others, had the discretion to advance monies to the partnerships for use in the operations, the aggregate amount of such advances becoming an obligation of the partnerships to the general partner to be repaid in accordance with the loan instrument out of gross receipts of the partnerships. The agreement further provided that such advances were not to be deemed a capital contribution, but that any and all advances, together with interest, should become immediately due and payable upon sale of the property or the termination and dissolution of the partnership unless otherwise agreed upon.

Notwithstanding these express provisions Sampson, as early as June 9, 1980, told the limited partners at a Blackfoot Farms

meeting that the general partner was not entitled to the repayment of any advances. He thereafter frequently and repeatedly made such statement regarding advances to other limited partners, as well as to Richins, both orally in meetings and through letters sent to all investors.

51. The evidence clearly shows that the second development which led to problems confronting Richins, his companies, and the partnerships by May, 1980, was Richins' own failure as president of the general partners of each partnership to fulfill the duties and responsibilities he had to the limited partners under the partnership agreements. He of all people knew having made the advances just mentioned, that many limited partners had not and were not paying the assessments made by the general partners of each partnership pursuant to the partnership agreements. He also knew that under the express provisions of the agreements, upon failure of any limited partner to pay his pro-rata share of subsequent assessments of cash contributions to capital, the general partner had the right to cancel that portion of the defaulting limited partner's interest in the partnership for which payment was not made, and to forfeit as liquidated damages up to 50% of capital contributions already made. He further knew that the resulting consequence would be a reversion to the partnership of the cancelled interest with the general partner having the authority under the agreement to buy that

forfeited interest or to sell it to any eligible purchaser who would then become a limited partner. This Richins did not do, stating he did not wish to offend defaulting investors, and his failure to do so, as it became known and spread among the limited partners, became a source of irritation to those limited partners who had faithfully paid their assessments. It appears Richins was reluctant to stir up trouble with such defaulting investors, hoping time would take care of the problem, and that the advances made by the general partners, though unknown to have been made by the limited partners until the bubbles began bursting about May, 1980, would take care of the debts and expenses until better times evolved.

52. Under the agreements the general partner had a duty to keep the limited partners informed of partnership operations through written reports at such intervals as the general partner deemed appropriate; to deliver to each limited partner on or before March 15 of each year a statement or audit prepared by a CPA of all income and expenses of each partnership; and, beginning in the third year of operation following formation, to annually obtain an independent appraisal of partnership properties and report to each limited partner the value of his net share based upon such appraisal. These things Richins did not do, although he wrote numerous and lengthy letters to the limited partners, but without such specific details and generally assuring them

that all was well. The result was that as the existing problems began to surface in May, 1980, ^{some Billo} ~~the~~ limited partners began to lose trust and confidence in Richins to the point that those limited partners who were still actively concerned about their investments refused to pay over to Richins any further funds either on past or current assessments and began to consider the need to seek the advice of counsel with respect to their various partnership interests.

Such attitude surfaced at the May 29, 1980 meeting of the Catlow Valley partnerships at which Sampson appeared as counsel for Goff and Kohler and there began to assert his influence in the future courses of action that were taken. It was through his suggestion at that meeting that the decision to file a Chapter 11 petition in the bankruptcy court for RFC, the immediate purpose of which was to try to delay an execution sale on the Catlow Valley properties scheduled to take place on June 6, 1980, by Minter-Wilson. The Minter-Wilson problem had had an early start. A construction lien had been recorded on May 25, 1978 for \$199,143 for well drilling work at Catlow Valley. A foreclosure action was filed August 22, 1978 by which it obtained its \$137,000 judgment, entered on April 30, 1980, for well drilling work on the Catlow Valley farm properties. The judgment was reduced to \$57,519 on appeal and Richins was eliminated as a judgment debtor. Thereafter Sampson's role as counsel for various limited

partners and partnerships began to grow. Also, it appears from the evidence that the partnerships through the limited partners began to more affirmatively assert themselves in the courses to be followed, although the partnership agreements expressly provided that no limited partner shall take part in the conduct or control of the affairs of the partnership and no limited partner shall have power to sign for or to bind the partnership. (Article VI).

53. The evidence established other problems Richins and the partnerships were experiencing prior to May, 1980, some of which will be set forth here. They were as follows:

a. On June 22, 1979 Richins was advised by attorney Baker for Agricultural Services that notice of nonpayment on installment contracts due on irrigation contracts for Shoshone, Randlett and Young at the Idaho State Bank had been issued and that if the bank returned them under its recourse rights, Ag intended to immediately initiate its claims for possessory rights to the equipment, regardless of the condition of the crops. On August 29, 1979 Richins advised the bank it would be receiving a check for \$12,847 on the three agreements, but it had not had cash on hand to make the total payments and must await crop funds.

b. On September 12, 1979 notice was given that a \$300,000 loan by Utah Mortgage to RFC and assigned to Northwest National Life and guaranteed by Paul and Shari Richins, was in default and if payments were not made in full by September 25, a foreclosure proceeding would be started.

c. On November 20, 1979 two lien claims were filed by the Sages against Shoshone, RFC and Richins for over \$30,000 which had gone to judgments later.

d. On January 4, 1980 an Idaho Bank reported payments due on Randlett and Shoshone totaled about \$62,000 and if not paid by January 10, 1980, the balance in full would be demanded which totaled \$278,000 on the two properties.

e. Loans from Shari Richins (\$32,000) and the Richins Family Trust (\$50,000) were made in January and February, 1980, made necessary because RFC had no funds to meet its current obligations.

f. On March 18, 1980 Richins sent attorney David Day a list of addresses for the Catlow Valley limited partners as requested by the state securities commission, but suggested it would be wise to delay giving it as long as possible.

g. At a Taber partnership meeting on April 3, 1980, it was reported that some RFC checks to PCA had been returned for insufficient funds.

h. On April 18, 1980 the state of Oregon issued a Certificate of Revocation of RFC's Certificate of Authority to do business in Oregon because of its failure to file statements and pay fees due for 1978 and 1979, which totaled only \$219, with Richins saying he never told the Catlow Valley partnerships of the revocation and didn't know if its certificate had ever been reissued.

i. On April 29, 1980 Richins told Jerry Hayes he had not told his partnership about the RFC contract going into default because he did not want to create a panic situation and his main concern was to get the contract reinstated.

j. I mention here the summaries of problems set forth in the Hurd memoranda summarized in the summation of evidence, but will not restate them.

k. Two judgment liens were made of record, one on August 17, 1979 by Rex Clemmons for \$2,340 and one on October 5, 1979 by Lemmon White Drilling for \$3,264.

54. As previously found, May 29, 1980, was a significant date in the history of the conflicts, some of which we are trying to resolve in this case. The findings of fact with respect to the plaintiffs' Complaint on the Osborn judgment substantially covers most of the important facts disclosed by the evidence from the May 29, 1980 meeting up through all of the factual matters relating to the controversy over the Osborn judgment. Many of the facts found with respect thereto have a bearing on the issues raised by defendants' Counterclaim. Mention was made of that fact earlier in these documents, so that the findings of fact set forth supra on plaintiffs' complaint become by this reference and my prior comments findings to be considered on the Counterclaim. Some matters with respect thereto that had little to do with the Osborn judgment controversy should now be considered in some further detail and hopefully without much repetition.

At the May 29, 1980 meeting the evidence established that mention was made that the \$17,600 payment due Glenn in September, 1979 had not been paid; that from \$30,000 to \$50,000 would be needed to complete the Minter-Wilson wells; that a total of \$240,000 was needed to meet current Catlow Valley obligations and that as Richins did not have such money, the limited partners were the only source for it; that if the limited partners contributed the \$240,000, RFC would eliminate its \$190,000 mark up on its

resale of the property to the Catlow Valley partnerships; and Richins said he would step out if the limited partners wanted that.

At the meeting it was also disclosed that the contract of June, 1978 with Valmont Credit for a sprinkler system at a cost of \$932,580 required annual payments of \$118,338.70 beginning June 25, 1979 which installment had not been paid.

55. The limited partners present at that meeting agreed that \$17,000 be raised for attorney's fees and expenses, but voted that such funds would be placed in the custody of Ken Hanson (suggested by Richins). We thus see here for the first time as far as this case goes, the limited partners exercising some control over partnership funds and affairs contrary to Article VI (2) of the Certificate of Limited Partnership. On May 30, 1980, Sampson called Richins and stated he and his group wanted to buy out the interests of the Richtron companies but Richins said he was not interested.

Also on May 30, 1980 the Snowville investors met, decided they wanted an audit, wanted to employ Sampson as legal counsel for the partnership and to have him take the necessary steps to relieve Richtron, Inc. as general partner and to liquidate in an orderly manner. They also decided they would not pay contributions requested by Richins until after an audit but

would make contributions to meet the July 1 payment if Sampson advised them to do so.

56. On June 2 and 5, 1980 Richins, acting on his own and without advising any investor or partnerships, executed as president of the Richtron general partner quit-claim deeds which purported to convey to RFC all partnership properties held by Catlow Valley Farms 1-7, Springfield, Kanosh, Pleasant Valley, Randlett, Richfield, Shoshone and Taber. Such deeds were not recorded until December, 1980 and January, 1981. One deed purported to transfer property to the Leo H. Richins Family Trust that Richins stated had advanced \$100,000 toward payment of partnership expenses and another to Shari Richins for a \$32,000 advance she allegedly had made for a similar reason. The apparent bases for such deeds was the failure of such partnerships to keep current the payments due RFC on the real estate contracts by which said partnerships had purchased their farm lands from RFC.

57. On June 5, 1980 Richins prepared and signed as president of Richtron, Inc., the general partner, 18 promissory notes which obligated the limited partnership of the note issued to pay Richtron, Inc., Richtron General, or RFC, or their respective successors or assigns, the greater amount of the principal sum named therein or the total of the aggregate advances made to the partnership by the holders as defined in an agreement of even date therewith and as shown as due and payable to the holders

at any time in the financial records and accounting books of the maker. The specific amount listed for each partnership was as follows: Blackfoot \$25,000; Burley \$20,000; Kanosh \$22,000; Moreland \$6,000; Pleasant Valley \$105,000; Randlett \$85,000; Richfield \$90,000; Snowville \$32,000; Taber \$29,000; West Taber \$5,000; and for Shoshone and each of the seven Catlow Valley partnerships \$100 or the total of the advances as reflected on the books.

58. Other documents executed were formal minutes by the three Richtron companies authorizing in separate minutes for each document the execution of the notes and quit claim deeds.

59. On June 5, 1980, the board of directors of Richtron, Inc. authorized its officers to execute any necessary papers or documents to effect the withdrawal of Richtron, Inc. as general partner for Blackfoot, Kanosh and Snowville.

60. On June 9, 1980 the Blackfoot directors had a meeting attended by both Richins and Sampson. Again Sampson stated his position that the mark-up on the property purchase was a breach of fiduciary duty and that Richtron was not entitled to the repayment of advances made to Blackfoot. Dee Hanson took the lead in voicing dissatisfaction of Richins' performance, so Richins stated that if they were not satisfied therewith, they could repay the advances, agree to pay in full for the personal property and could elect a new, more compatible general

partner to take Richtron, Inc.'s place, but that if they refused, he might withdraw Richtron, Inc. as general partner and effect a dissolution and liquidation and force settlement of accounts and would not consent to the election of a new general partner. On June 10, 1980 Richins sent a letter to the limited partners of Blackfoot which stated he was filing notice of Richtron, Inc.'s withdrawal as general partner; that the limited partners repay the advances (\$25,000); that they "now elect" a new general partner to fill the vacancy, but also stated that the partnership was then terminated, that its affairs were to be wound up, the debts paid, its assets distributed and when done the partnership would be dissolved.

61. The Snowville partners had a meeting on June 11, 1980 at which Ralph Wright showed a telegram he had from Richtron, Inc. resigning as general partner. Richins wrote a similar letter to Snowville partners as he had to the Blackfoot partners, stating the advances totaled \$30,000.

62. On June 12, 1980 the Kanosh partners held a meeting with Richins and Sampson both there. Sampson restated his views about the partnership not being liable to repay Richtron's advances (\$22,000), and about Richins' mismanagement and breach of fiduciary duty. The limited partners decided they would not repay the advances. Richins told them they were obligated to pay and he would assess them for their pro-rata share.

63. Following the service of notice of withdrawal of the general partner as such upon the Blackfoot, Snowville and Kanosh partners, the meeting of June 26, 1980 took place and findings with respect to developments at that meeting have elsewhere been set out. With the probability of an amicable settlement existing following that meeting, at the insistence of active limited partners and with Richins' consent, Sampson became the recipient of partnership funds paid by some limited partners for assessments, past and present, primarily for the purpose of maintaining some control over how such funds were to be spent, with such initial arrangements including an agreement for Sampson to pass the funds through to Richins for payment on pressing obligations.

64. On October 2, 1980 Sampson sent to all investors for signing a copy of the then completed Compromise and Settlement Agreement, urging them to sign it and return it immediately to Richins. This agreement as drafted had received the approval of both Richins and Sampson and afforded the gateway through which the controversies could be resolved. However, although many limited partners signed it, others did not and so this agreement was never consummated. A major stumbling block was the insistence of a few partners that nothing should be paid to Richins which factor, I believe, and so find, was based in part upon Sampson's early and repeated statements that the partner-

ships were not obligated to repay advances. However, I note here that prior to the June 26, 1980 meeting Sampson had suggested to his clients that the best solution to the controversy was to work with Richins and agree upon a settlement rather than to take a course that promised extended litigation.

65. Following failure of having the settlement agreement consummated, Richins, on November 13, 1980, drafted and executed a Notice of Withdrawal of the General Partner which he then sent to the limited partners of six partnerships, three of which were to Blackfoot, Snowville and Kanosh which set forth dates in June, 1980 as being the effective dates of such withdrawals, as noted supra. On January 6, 1981 identical notices were mailed to the limited partners of eighteen other partnerships. Copies of all such notices were recorded in clerk's offices, some in November, 1980, and some in January, 1981. By separate letter Richins advised the limited partners that the general partner had withdrawn, the partnerships were terminated, and affairs would be wound up as indicated in the partnership agreements. It is noted that in the withdrawals sent to the three partnerships in June, 1980, Richins told the limited partners to elect a new general partner. This suggestion was not followed, nor restated in the subsequent notices of withdrawal in late 1980 which had been immediately followed up with notices that the partnership affairs would be wound up.

What steps Richins took, if any, to so "wind up" the affairs of each partnership does not clearly appear in the evidence. There was evidence that Richins' attorney, David Day, had prepared complaints to file in court to effect such wind up, and testimony that they were never filed upon Richins' instructions not to do so. Richins wrote volumes to all the investors, but we search in vain for evidence of any affirmative action by Richins to have the general partners undertake the promised wind up of partnership affairs. Richins' course of action, or lack thereof, may have been influenced because further settlement negotiations were in the wind. Further settlement negotiations during 1981 were mentioned periodically and it is recalled that although this lawsuit was filed on February 11, 1981, by written stipulation defendants filed no responsive pleading thereto until July, 1982. But Sampson's actions were more than passive at the time and no doubt his activities were a stumbling block to Richins as to such wind up actions, but the courts were always open for him to get judicial assistance in bringing the "wind up" to a head.

Article V of the partnership agreement sets forth the rights and obligations of the general partners. In paragraph 5 thereof we find the statement that the general partner may at any time withdraw from the partnership, sell, or assign all or any part of its interest as a general partner to a qualified party, by

giving notice to all the limited partners, and such action shall be effective upon the receipt of the last partner of such notice of withdrawal, sale, or assignment. Nothing is said in this article about a withdrawal dissolving the partnership. In fact, the provisions with respect to sale or assignment suggests either, coupled with the withdrawal, does not bring partnership affairs to a halt.

Section 48-2-9(2) of the Code states that a general partner of a limited partnership cannot, without the written consent or ratification of all limited partners "do any act which would make it impossible to carry on the ordinary business of a partnership." This statutory provision may preclude a general partner from withdrawing in an effort to terminate the partnership if such act would make it impossible to carry on the ordinary business of the partnership.

Article VII (a) provides that the partnership shall terminate upon the prior occurrence of any of the following, which include the withdrawal of the general partner or the affirmative vote of not less than a majority in interest of the limited partners, a right specifically granted to them by Article VI (6) (b), which also provides that the limited partners have the right, by vote of a majority in interest, to remove the present general partner and elect a new general partner (which shall not affect

the removed general partner's right to share in partnership profits).

The requirement that notice of withdrawal must be given to all limited partners and their right to remove the general partner and elect a new one, coupled with the statutory restriction against a general partner doing any act that would bring partnership affairs to a halt, gives a degree of control over termination of partnership affairs to limited partners and does not give the general partner an unlimited right, as Richins always seemed to have thought, to bring the partnership to a termination and cessation of operations by a chosen act of "withdrawal" under Section 48-2-20, and I so find.

The provision in the agreement giving limited partners a right to remove the general partner and elect a new one compulsively brings to mind the thought that as to this case, at any time each partnership could have met, voted to remove the Richtron general partner, elected a new general partner, prepared, signed, sworn to and filed an amendment to the Certificate reflecting that change, all in short order. Dissatisfaction of Richins' handling of partnership affairs was voiced in May, 1980. This, coupled with other problems extant in 1980, including a lack of meaningful information from the general ^apartner, the existence of judgments, troublesome tax problems, the state securities commission's investigations, the revocation of RFC's Certificate

of Authority in Oregon, the failure of many limited partners to pay their assessments and Richins' failure to do anything about it, and Richins' invitation to the Catlow Valley partners at the May 29, 1980 meeting to replace him, all added up to a compelling reason for partnerships to so act as provided in the agreement. But there is no evidence in the record that any partnership ever followed that provision and exercised the clear authority granted to the partners in the Certificate, or unitedly considered doing so, or were ever advised by counsel to do so. To have done so would have avoided the expenditure of great time and expense by Sampson and Richins to effect that result. Such a valid replacement of the general partner would not have resulted in a dissolution and termination of the partnerships or the severance of friendships, or the bitterness and the conflicts so evident in the record and trial of this case.

If termination of the partnership either by the withdrawal of the general partner or the affirmative vote of the majority in interest of the limited partners takes place, Article VII provides the partnership's affairs shall be wound up, its liabilities and obligations to creditors shall be paid (or adequately provided for), all remaining assets shall be distributed in the manner provided in Article IV, and the partnership shall then be dissolved. Dissolution of the partnership does not take place until the requirements to be met, as stated, are met. Both the general

and limited partners also had the statutory right to have dissolution and winding up by a decree of court. (Section 48-2-10).

As mentioned, Richins sent out notices of withdrawal of the general partner as to all partnerships, stating the withdrawal would become effective when written notice was received by the last limited partner, as the agreement so requires. There was an absence of evidence as to when and whether any limited partner received such notice of withdrawal and particularly that all limited partners in each or any partnership did so, and if so, when the last notice was received as to any partnership. Thus, we are left to speculate as to whether any such withdrawal did in fact ever become effective.

66. Under the partnership agreement the general partner had full charge of the management, conduct and operation of partnership affairs in all respects and in all matters (Article V(1)). The agreement further provided that no limited partner shall take part in the control or conduct of the affairs of the partnership and no limited partner had the power to sign for or to bind the partnership. (Article VI) Under Section 48-2-7 a limited partner is granted immunity from liability as a general partner unless the limited partner takes part in the control of the business. In Harline v. Davies, 567 P.2d 1120, our Supreme Court stated that until a general partner is ousted, it alone has the right and power to conduct the business

of a limited partnership. In Harline the limited partnership brought an action against the two general partners, had them ousted, and their interest in the partnership terminated. But to effect the ouster it took court action and until that proceeding was begun and concluded, the general partners remained in full control. In the case before the court, there is no indication that any partnership brought an action into court to oust the general partner.

67. Notwithstanding the statutory and partnership agreement provisions just cited, Richins was faced with the rebellion of many limited partners who still cared enough about their investment to want something done. So they refused to pay funds directly to Richins with no strings attached and with Sampson appearing in the action, Richins appeared to have become cornered. The fact that settlement of the controversies through negotiations was a reasonable way to go, and, as already noted, so did Sampson. However, if not earlier, certainly after the settlement agreement failed to reach fruition in October and November, 1980, Sampson began a significant effort to obtain control of all the partnerships and to exclude Richins therefrom.

68. The first of Sampson's major efforts to obtain control occurred when he sent out forms for granting him the voting rights by a power of attorney to all limited partners telling them that settlement had failed and requested each to sign and

return it to him. There was a dispute as to how many limited partners executed the form and whether they represented a majority in interest in any partnership, but a substantial number, if not a large majority, did so.

The power of attorney prepared by Sampson stated in substance that the partner did make, constitute and appoint Sampson the true and lawful attorney for the undersigning partner, to act in the undersigned's name, place and stead for the limited purpose of unconditionally voting all interest the undersigned may have with regard to the named partnership as that right was outlined in the limited partnership agreement. The powers stated they were to be irrevocable for six months and to continue on until otherwise notified. In sending out this form Sampson wrote that such was necessary to remove Richins and his companies as general partners and to thereafter commence legal action against him and his companies to retain the properties and preserve their legal remedies against him. This activity marks the beginning of Sampson's concerted efforts to interfere in each partnership business and to seize and take control thereof to the exclusion of Richins and his companies. His asserted legal authority for doing so raises one of the main legal issues in this case.

69. About this time Sampson incorporated the John P. Sampson Professional Corporation (P.C.) and, using the powers of attorney received back by him, undertook to vote the Richtron companies

out as general partners and voting his own professional corporation as the new substitute general partner of each partnership. In doing so he, on December 29, 1980, signed a document both individually and as president of his PC reciting that the limited partners representing a majority of the limited partners of each partnership did, pursuant to the partnership agreement, vote, sustain and ratify Sampson's PC as the successor and substitute general partner, stating the same was subscribed and acknowledged by their powers of attorney placed with Sampson. Only Sampson signed this document.

On January 28, 1981 Sampson recorded Notices of Substitution of his PC as general partner for each and all of the partnerships. Again only his signature appeared on this notice, and if it was intended as an amendment to the Certificate of Partnership Agreement, it did not comply with laws as set out in Sections 48-2-25 and 48-2-1(1)(a). He thereafter prepared another document dated March 9, 1981, which he again alone signed individually and as president of his PC which stated that by virtue of his powers of attorney for all limited partners, which he did not in fact have, he did ratify and vote his PC the new substitute general partner and elected to continue the partnerships activities pursuant to Section 48-2-20 of the Utah Code. This document also stated that it was a unanimous vote of all partners, was effective January 31, 1981, and this amendment was made pursuant

to Sections 48-2-24 and 25 of the Code. This document appears to have been intended as an amendment to the certificate and still was not executed as required by law nor did Section 48-2-20 apply to it. On March 13, 1981, Sampson purported to hold under his powers of attorney a meeting of all the limited partners for each partnership at which meetings he purported to ratify and confirm the substitution of his PC as the new general partner. Sampson alone signed the minutes of each said meeting which minutes did not reflect the attendance thereat of any limited partner.

70. At this time the RFC bankruptcy proceedings were still alive and Sampson was notified by the bankruptcy court that a professional legal corporation was not authorized to become a general partner in an agricultural enterprise. On March 23, 1981 Sampson incorporated Ag Management, Inc. of which he was one of its incorporators, directors and the president thereof. After doing so Sampson took steps to substitute Ag Management for his PC as general partner of each partnership. To do so Sampson sent an authorization form to all investors on November 12, 1981, which substituted Ag Management as general partner. On January 7, 1982 Sampson signed as president of Ag Management documents entitled "Notices of Substitution of General Partner," stating Ag was the new general partner effective as of March 26, 1981, and that such substitution was in accordance with

the limited partnership agreements and Certificates on file. The acknowledgments on these notices stated they were executed by authority of Ag's board of directors and pursuant to "proper authority of the limited partners," none of whom had personally signed such document for any partnership as required by law for any amendment to a Certificate as repeatedly stated above. As to this effort to make Ag Management the general partner, the evidence indicates that no amended Certificate was filed with any clerk's office.

71. At the end of 1980 and into 1981 when Sampson's efforts to obtain control was begun by his attempts to take over as new substitute general partners as well as to acquire the Osborn judgment, he had begun to repeatedly solicit funds from the limited partners, directing that such be sent to him and not to Richins, and determined the manner in which such funds were used, and that he thereafter did so in the months and years ahead. As set forth in the summary of evidence, it appears that from the end of June, 1980 through November, 1982 he received and disbursed at least \$645,000 from and for the limited partners and their partnerships.

72. The evidence showed that Sampson kept detailed records of his receipts and disbursements, so that when the court ordered Sampson to make his records available to Richins in the discovery process, Richins was able to prepare rather detailed summaries

as to the specific source of all funds and disbursements that had been made therefrom. Based upon all of the evidence, I find to my satisfaction that Sampson honestly believed that the powers of attorney authorized him to exercise the vote of each partner that signed the power and returned it to him and to thereby authorize him by majority vote to remove the Richtron general partners and to substitute first his own PC and then his Ag Management as general partners. Richins and Sampson debated this issue in meetings with each other, with investors and in the many written letters which each wrote to the various limited partners and to each other. What Sampson did he, in my opinion, did believing in the validity of his own stand. The fact that it seems so clear to me that the statutes required the signature and oath of each limited partner to amend a certificate as to show a change of a general partner, or otherwise, does not stamp Sampson's legal opinions and the advice he gave his clients as knowledgeable fraud. Certainly, such was not proven by clear and convincing evidence. There was no direct proof that Sampson was aware of the provisions of Section 78-51-27, which rendered his acquisitions of the Osborn judgment, as a lawyer, a serious violation of law.

73. In a case filed in the District Court in Davis County, entitled "Blackfoot Farms, et al v. Paul H. Richins, Richtron, Inc., RFC, et al.," (Case #2-30994), Judge J. Duffy Palmer after

a hearing held on November 19, 1982, entered Findings of Fact and Conclusions of Law on November 24, 1982 wherein he ruled that Ag Management was not the general partner of any of the partnerships; that either Richtron, Inc. or Richtron General were the liquidating general partners, that notwithstanding their withdrawals they were still in control of the partnerships; and that the partnership certificates were never amended to admit Ag as general partner. It appears that Judge Palmer's ruling was an embarrassment to Sampson after two years of control of the partnerships with either Sampson's PC or Ag Management purporting to be the general partner, and particularly when Richins had during that two year period contended continuously that their assumption of that role was illegal and contrary to law. In so ruling Judge Palmer also ruled that attorney James Brown, counsel for plaintiffs therein, was without any authority whatsoever to prosecute and file such action on behalf of any limited partnership. However, this Court is without knowledge as to what additional action Richins ever took, if any, to proceed with the winding up of the affairs of the limited partnerships.

74. Any such action was probably affected by the fact that prior to Judge Palmer's ruling, Sampson, as counsel for Goff and certain limited partners, attended an IRS tax sale held on October 29, 1982, relating to Richins and Richtron interests,

and as the only bidder, bid in for \$40,400 the interests being sold and paid that amount to the IRS. By that sale the IRS purported to sell all of Richins' claims in the partnerships, the Richtron entities, the purchase and resale contracts, claims for repayment of advances, and stock in the Richtron companies. These assets the IRS had purportedly taken by some 35 IRS seizures and levies. Thus, notwithstanding Sampson's set back in the face of Judge Palmer's ruling, Sampson continued to lay claim to and hold for his clients all of the Richins and Richtron rights and interests in the partnerships and their properties, including, as noted, all stock in the Richtron companies, doing so by reason of the procedural consequences of the IRS tax sale.

75. Emphasis was added to the legality of Sampson's claims by two subsequent court rulings made by Judge Cornaby in the District Court of Davis County, one on December 27, 1982, and the second on July 21, 1983, in both of which Judge Cornaby ruled that the IRS sale was valid, that Goff, as trustee under the IRS sale, was the purchaser of all Richins and Richtron property interests, as evidenced and described by the IRS's Certificates of Sale, and that such sale covered all property interests, all causes of action, and all rights to wind up the affairs of the limited partners of which the Richtron companies had been general partners. Riding the saddle of the tax sale and these two legal rulings, Sampson continued to exercise his

control over the partnership entities and properties, advising all investors by letter of December 27, 1982 that since Judge Cornaby had ruled the IRS sale valid, Goff as trustee for the investors who had put up the \$40,400 owned all of the Richtron assets and that he, Brown and Blanch had been elected directors and officers of the Richtron companies. Sampson further expressed the opinion that any efforts to challenge the IRS tax sale in the federal court would be fruitless. Nevertheless, Richins continued to maintain that the IRS sale was invalid and urged the investors to turn to him instead of Sampson.

This debate continued until May 16, 1984 when, contrary to Sampson's prior prediction Judge David Winder of the United States District Court for Utah entered an Order which fully and unequivocally voided the IRS tax sale, declaring that Goff had no interest in the capital stock of the Richtron companies, nor in the right of those companies to wind up partnership affairs; nor the right to institute causes of action, nor in any of the specifically described real estate contracts and partnership interests (which could not have excluded Goff from his own limited partnership interests acquired by purchase prior to and exclusive of the tax sale).

Based upon Judge Winder's decision, Judge Cornaby on February 15, 1985 made a ruling vacating his prior two orders because they had been based upon his assumption that the IRS sale was

valid, noting the federal court had ruled otherwise. I note here that the record of this case reflects that prior to his first ruling, Judge Cornaby had in fact expressed some doubt that he had jurisdiction to pass upon the validity of the IRS sale. Also, it is noted that although Judge Winder's ruling was made on May 16, 1984, Richins took no action to vacate Judge Cornaby's prior orders until January 3, 1985, when he finally filed a motion to do so. I note that Judge Winder's ruling stated, among other things that Goff had no interest in the right of the Richtron companies to wind up partnership affairs. Defendants' counsel may have assumed that the federal court ruling vacated any authority given Goff, as trustee, under Judge Cornaby's prior orders. Reference is made to Finding of Fact 118 wherein, while considering the matter of punitive damages, I make further comment concerning this delay.

76. Richins prepared and placed into evidence a schedule of property foreclosures in which he states, without showing any foundation therefor, that the properties had all been foreclosed on the following dates:

Burley	12/18/81
Catlow Valley 1-7	5/7/82
Kanosh	8/21/81
Moreland	10/5/82
North Bear Lake	12/12/82
Randlett	3/9/83
Richfield	1/29/82
Shoshone	4/27/84
Springfield	12/21/82
Taber	12/7/83

North Taber	11/7/83
East Taber	8/8/84
West Taber	11/7/83
Wixom	6/25/82

Blackfoot, Pleasant Valley and Young Farms are also mentioned as having been foreclosed, but no dates are shown. No other details appeared on this exhibit. Richins stresses that all foreclosures occurred while under Sampson's management, but that as to the Richtron B-10, A-11 and A-13, partnerships, they were sold or liquidated after December 2, 1980 by him and that in those cases the limited partners received liquidating cash distributions in excess of their capital contributions.

On August 28, 1984 Sampson wrote a letter to Richins acknowledging receipt of Richins' letter of August 21, 1984, in which Richins had stated that Sampson's organization had no interest in the partnership farms. The foregoing list indicates all farms had been foreclosed upon by the dates of this letter exchange. Sampson termed Richins' statement as crazy and false, stating the farms were foreclosed on and they had made purchases directly from the individual sellers after the individual owners had taken them back, that he and his group had every right therein, and for Richins to please not interfere.

No evidence was presented on the specifics of any foreclosure, and the identities of any properties on which such repurchases had been made was not disclosed. Nor was any evidence presented

as to whether any necessary steps were taken to wind up the affairs of any partnership including the payment of debts, liquidation of assets, distribution of profits, if any, and to bring about the final dissolution and termination of any partnership. After trial and the Court's review of all the exhibits and testimony, I found myself left to wonder what had become of the partnerships, their properties, and the investments of the limited partners, although during the trial Richins, in response to the court's question, testified that none of the limited partners had to his knowledge ever received any return on their investments.

77. It is a reasonable inference that payments due to the original owners as sellers were not made; that those contracts fell into default; that a substantial reason therefore was that no money was available to meet such payments, and that the probable reason was the failure of many limited partners to pay the assessments necessary to obtain the funds to meet those payments, and that foreclosure was thus inevitable. As set forth in the summary of evidence, of the sum of \$645,101.38 shown as having been received and disbursed by Sampson between June 27, 1980 and November 30, 1982, \$185,668 was shown as spent for payments on real property and sprinkling systems. It was noted, too, that one exhibit dated June 20, 1980, showed that on real estate contracts some \$3,462,010 was carried as a liability.

78. Judge Cornaby's Order of July 21, 1983 contained a provision that stated that neither attorney John T. Anderson, nor any other counsel were entitled to represent Richtron entities in legal proceedings. The case file suggests that this particular provision was related to a hearing before Judge Cornaby on December 27, 1982 regarding the effect of the tax sale. After an order on such hearing was drawn, attorney John T. Anderson as counsel for defendants filed objections to the wording of the proposed Order. A hearing was held on February 1, 1983 following which the Court stated it did not find its position any different than at the prior hearing, directed that the ruling remain as before and that the Order be set out exactly as on the IRS Certificates. Judge Cornaby then signed the Order of February 2, 1983, the details of which were set forth in Finding of Fact 75.

On February 2, 1983 Anderson addressed a letter to Judge Cornaby advising him that several hours after the hearings before him on February 1, 1983, John Sampson, counsel for the consortium of investors who had made the purchase at the tax sale, called Anderson for the purpose of "warning" him that unless he ceased all representation of the various Richtron entities, including prosecution of his recently filed federal court case, further prosecution of motions and direct appeal to obtain modification or reversal of Cornaby's recent rulings, Sampson would seek

"sanctions" and "other" relief against him, suggesting that Sampson had been laboring under the assumption that Judge Cornaby's recent rulings had that effect. Anderson requested an opportunity to file objections to the proposed order under Local Rule 2.9, and was using the letter as the only means he knew of to advise the Court of Sampson's bizarre interpretation.

A reason is not apparent from the case file, but on February 3, 1983, Anderson filed a Notice of Withdrawal as counsel for defendants and Richins entered his Notice of Pro Se Appearance. Thereafter, a flood of subpoenas and requests for discovery were issued by Richins, leading attorney Handy, then counsel for plaintiffs, to file a motion on April 21, 1983 requesting the court to enter an order directing Richins to obtain competent counsel to represent him in various cases pending in the Second District Court. The motion was granted and Richins filed a petition for an interlocutory appeal from the Court's Order to that affect. The Supreme Court accepted the petition which related to six separate cases, one being 29552, the case at bar. The other cases were 28349, the Valmont Credit Corp. suit against Richins and his wife, Richtron, Inc., and RFC, into which Sampson, Marilyn Brown, Blanch and Sampson's corporations were brought in as third party defendants; 33526 which was an action by Richins as trustee of the Leo H. Richins Family Trust, against 23 limited partners seeking declaratory judgment relief

respecting the family trust's right, title and interest in certain assets in which those 23 named defendants, as limited partners, claimed ownership rights; 33527 which was an action by the Richins Family Trust against nine named limited partners, Sampson's PC and Ag Management to enforce terms of a promissory note evidencing an obligation for \$22,067.46; 33528, a similar family trust obligation for \$16,533.37 against five limited partners and Grandview Properties; and 29700 involving a suit by Young Farms against Richins, Richtron, Inc., the Allreds and the Bank of Utah, in which Richins filed a Counterclaim seeking dissolution, winding up and termination of the partnership.

The Supreme Court reversed the District Court's rulings which had granted Handy's Motion on these cases, but only 29552 is before this Court in this lawsuit, and while the Supreme Court's ruling also extended to the other cases, I have no information as to the disposition of those other cases or their present status and I want to make it clear that in my decision herein I do not purport to make any rulings with respect to those other cases. The fact that John T. Anderson later re-entered his appearance as counsel for defendants took care of that problem and rendered it moot as far as this case is concerned.

79. As I have earlier indicated the main thrust of defendants' Counterclaim lies primarily within their fourth claim for relief which among other things asserts a claim for relief based upon

Sampson's intention and alleged malicious interference with Richins right to earn a livelihood, with Richtron's ability to effectively discharge the duties and functions as general partners and with existing economic relations, anticipated opportunities for employment and/or beneficial economic opportunities. Other than the fact that this case has taken up so much of Richins' time during the past five years, I am not impressed that Richins has by a preponderance of the evidence shown an interference with Richins' right to earn a livelihood or with anticipated opportunities for employment and I so find. At closing argument defense counsel cited the Utah Supreme Court decision of Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (1982) as legal authority in support of defendants' claims against Sampson, particularly as asserted in the fourth claim for relief. Statements made by the Supreme Court in that case are relevant and while rulings of law might more properly be considered as relating to Conclusions of Law, it relates to facts about which we are concerned and so will be placed herein.

80. In Leigh the Supreme Court said:

"We recognize a common-law cause of action for intentional interference with prospective economic relations and adopt the Oregon definition of this tort. Under this definition, in order to recover damages, the plaintiff must prove (1) that the defendant intentionally interferred with the plaintiffs' existing or potential economic relations; (2) for an improper purpose or by improper means; (3) causing injury to the plaintiff.

Privilege is an affirmative defense (case cited) which does not become an issue unless 'the acts charged would be tortious on the part of an unprivileged defendant.'" (case cited)

In considering whether evidence in the Leigh case of intentional interference and causation was sufficient to sustain the jury's verdict against Leigh, the court, in saying there was, noted that there was ample evidence that Isom had business relationships with various customers, suppliers, and potential business associates, and that Leigh, the former owner of the business, understood the value of those relationships. (I note here that in the Harline case (1977), cited supra, which involved similar limited farm partnerships as here involved, Sampson was counsel for appellants therein which decision was affirmed. It is thus apparent that Sampson was no novice in limited partnership controversies.) There was also substantial competent evidence that Leigh, his wife and his bookkeeper, intentionally interfered with and caused a termination of some of those relationships. Noting their frequent visits to the store and interruption of sales activity, the court said: "Driving away an individual's existing or potential customers is the archetypical injury this cause of action was devised to remedy."

The court further noted other actions by which Leigh imposed demands on Isom's time and financial resources to the detriment of his ability to attract and retain customers and conduct the

other activities of his business included such things as numerous letters of complaint, continued threats to cancel the contract and sell the building, his refusal to pay the contracted share of bills, and his suit for repossession, termination and injunction.

The Court noted that taking "in isolation" each named activity, such activity might be justified as an overzealous attempt to protect its interests under the contract of sale, but as such no isolated activity would establish the intentional interference element of this tort, though some might give rise to a cause of action for breach of specific contract provisions, or of the duty of good faith performance which inheres in every contractual relation. But, said the court, in total and cumulative effect, as a course of action extending over a period of three and one-half years and culminating in the failure of Isom's business, Leigh's acts "cross the threshold beyond what is incidental and justifiable to what is tortious." The court noted Leigh's argument that Isom's lossess resulted from his inadequate working capital, or from his unilateral decision to close the store after being immediately served with Leigh's complaint and taking out bankruptcy, and responded that there was substantial evidence of causation to support the jury verdict, and suggested the jury could have found that the initiation of this lawsuit was but another instance of Leigh's ongoing pattern of harassment.

81. In the case at bar the plaintiff Sampson is indeed the defendant on the Counterclaim, and thus the Supreme Court's use of those terms in its Leigh decision becomes easily recognizable in its application to the parties in this case. While we are not here involved with a contract between Sampson and Richins or his companies, as Leigh and Isom were, we are involved with a claim of Sampson's alleged tortious interference with economic relations between the defendants and the limited partnerships in which a Richtron company was the general partner. Some of the significant facts noted by the Supreme Court in the Leigh case reminds one of many facts seen in the voluminous summary of the facts established by the evidence in this case.

82. We come to the question as to whether Sampson intentionally interfered with the defendants' existing and potential economic relationships with each of the limited partnerships under their respective partnership agreements. It is my opinion, and I so find, that the preponderance of the evidence, indeed overwhelmingly so, answers that question in the affirmative. I think the summary of the evidence and the Findings of Fact support that finding. It is not my desire nor my intent to try to again summarize all of the evidence that brings me to that determination. But some significant facts stand out that in summary demonstrate that over a period of at least four and one-half years, culminating in the end, if not the destruction, of defendants' businesses,

Sampson's acts "cross the threshold beyond what is incidental and justified to what is tortious." Some such facts I will attempt to summarize as briefly as possible.

83. However, before doing so and because such summary may have relevance to the second element our Supreme Court put into its definition of this tort, I think it would be well to first further note that court's comments about the required elements of "improper purpose" or "improper means."

As to the former the court said:

The alternative of improper purpose (or motive, intent, or objective) will support a cause of action for intentional interference with prospective economic relations even where the defendant's means were proper.

The court goes on to note a statement by Prosser that there has developed a general agreement that a purely malicious motive, in the sense of spite and a desire to do harm to the plaintiff for its own sake will make the defendant liable for interference with a contract. Prosser's comment as referred to by the court concludes with the suggestion that the court may well look to the "predominant purpose" underlying the defendant's conduct.

Our court goes on to say that because it requires that the improper purpose "dominate," this alternative takes the long view of the defendant's conduct, allowing objectionable short-run purposes to be eclipsed by legitimate long-range economic motivation. Further, that problems inherent in proving motivation

or purpose make it prudent for commercial conduct to be regulated for the most part by the improper means alternative, which typically requires only a showing of particular conduct. The court then said:

The alternative of improper purpose will be satisfied where it can be shown that the actor's predominant purpose was to injure the plaintiff.

and goes on to quote the Alaska Supreme Court as saying (604 P.2d 1090) that "If one does not act in a good faith attempt to protect his own interest, or that of another but, rather, is motivated by a desire to injure the contract party, he forfeits the immunity affordable by the privilege" which in that case was to compete.

As to the alternative requirement of "improper means," our Supreme Court said this requirement.

. . . is satisfied where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations, or recognized common-law rules. Such acts are illegal or tortious in themselves and hence are clearly 'improper' means of interference.

The court goes on to say that the means may also be improper because it violates an established standard of trade or profession.

A further explanation appears from our court's statement that:

A deliberate breach of contract even where employed to secure economic advantage, is not, by itself, an 'improper means.' Because the law remedies breaches of contract with damages calculated to give the aggrieved party the benefit of the bargain, there is no need for an additional remedy in tort (unless the defendant's conduct would constitute a tort independent of the contract).

Neither a deliberate breach of contract nor an immediate purpose to inflict injury which does not predominate over a legitimate economic end will, by itself, satisfy this element of the tort. However, they may do so in combination. This is so because contract damages provide an insufficient remedy for a breach prompted by an immediate purpose to injure, and that purpose does not enjoy the same legal immunity in the context of contract relations as it does in the competitive marketplace. As a result, a breach of contract committed for the immediate purpose of injuring the other contracting party is an improper means that will satisfy this element of the cause of action for intentional interference with economic relations.

I mention one other point our court discusses in reference to a California case (145 P.2d 305) which sustained a verdict for damages for tortious interference with the plaintiff's business wherein the California court said a breach of contract is a wrong and itself actionable and that, "It is also wrongful when intentionally utilized as a means of depriving plaintiff of his employees."

83. Throughout the Memorandum and Summation and these Findings and Conclusions I have frequently had the occasion to mention the names of Marilyn Brown and Keith Blanch as working

with Sampson on matters involving the partnership affairs. The evidence reflects and I so find that in May, 1980, Marilyn Brown was working for Richins and his companies but quit upon two weeks notice to go to work for Sampson for whom she did a substantial amount of bookkeeping and letter writing concerning partnership matters. When Richins' CPA - Hurd - wrote his memo of resignation he offered an apology for giving such short notice particularly where Brown had already given notice of her intent to quit.

As to Keith Blanch he had worked as a field manager for Richins and his companies on partnership matters, but he was hired by Sampson almost immediately after Sampson got involved in controlling partnership matters.

Richins had been involved in establishing the limited partnerships since about 1973 and in the years that followed he established the 25 we have herein so often referred to. As to each, a Richtron corporation was the general partner, RFC (but sometimes Richtron, Inc.) was usually the Richtron company that purchased a farm property under contract and resold it to the partnership at a mark-up, and the partnership agreements were substantially identical. About 130 investors had become limited partners in one or more of the limited partnerships. As stated in prior findings, by May, 1980, Richins and his companies had become confronted with substantial financial problems, as well as others

likewise mentioned elsewhere, which were of such magnitude that success in overcoming them seemed doubtful. But important at this point are Sampson's activities and their affect upon defendants then existing or potential economic relations with respect to those partnerships.

84. Sampson was never an investor in any of these limited partnerships, but began his activities in this case in May, 1980 as counsel for just two limited partners, Milton Goff and Rex Kohler, who had a right to seek legal advice as investors in some partnerships. Their concerns were real and based upon the problem facts and circumstances then confronting Richins and his companies for which Richins, not Sampson, was responsible.

As counsel for Goff and Kohler, Sampson attended the May 29, 1980, meeting of the Catlow Valley limited partners. His actions there were a bit more than just privately counseling his two client investors, for he not only recommended and got started the movement to have RFC file for Chapter 11 bankruptcy proceedings because of an impending foreclosure sale then set for June 6, 1980, but he also expressed the legal opinion to all present that he did not think RFC could claim and retain its mark-up equity arising from RFC's resale of the Catlow Valley property to the partnerships for an amount in excess of what it had paid for it, which Sampson stamped as a breach of fiduciary duty, a theme which Sampson repeatedly expressed in the months

and years ahead. Nowhere in the record do I find a statement by Sampson as to what fiduciary duty was thus breached. RFC purchased land and resold it to a limited partnership under a real estate contract which created no fiduciary duty regarding price. Also, at this meeting the idea of possibly employing Sampson as counsel occurred to others and spread to investors in other partnerships not involved in the May 29, 1980 meeting.

On May 30, 1980, the very next day following the Catlow Valley meeting, Sampson told Richins he and a group of investors, whom he refused to identify, were interested in buying out the Richtron interests in all the partnerships and taking over the whole operation.

On or about June 1, 1980, the bankruptcy of RFC under Chapter 11 as recommended by Sampson was begun by attorney Leta, as counsel for Richins. However, at the first meeting of creditors on this bankruptcy Sampson was there and, along with Richins, had individual discussions with Glenn, the original owner and seller of the Catlow Valley property; with Osborn about his judgment; and with Knowles as attorney for Valmont. As elsewhere noted, in the months that followed Sampson represented Richins and his companies in other lawsuits as counsel, many of which went to default judgment. The RFC bankruptcy did not stop the foreclosure sale and in due time was dismissed.

During June, 1980 Sampson pressed his discussions about taking over the Richtron interests in the partnership and a meeting was called for and held on June 26, 1980, of limited partners considered to be substantial investors from various partnerships, the number or identity of whom Sampson was then representing had not been fully made known. The major point of discussion at this meeting was the purchase of the Richtron interests in which Sampson played a leading role. An offer of \$650,000 was made and Richins requested a recess to think it over. However, his thinking time was intruded upon by Sampson and Kohler and a heated discussion followed. Sampson told Richins the settlement would be \$650,000 at 13% or nothing. Richins told Sampson it was none of his business as he was not a limited partner. Kohler convinced Sampson to meet Richins' suggested figure of \$700,000, so when the meeting continued, that amount was agreed upon as the sum for which the Richtron interests would all be sold. Richins said he wanted David Day, his attorney, to draft the settlement agreement. Richins also said that during the time it would take to complete drafting of the agreement, a couple of creditors may file lawsuits. Sampson said to send him the complaints and he would answer them and stall them off. Sampson further stated at the time that when the settlement agreement was consummated, he would like to take over as legal counsel for Richtron and exclude outside counsel, but Richins

objected, notwithstanding which the investors supported Sampson's request and voted for it, and this, notwithstanding the partnership agreement gave the general partner full, and the limited partners no, control over management and control of partnership affairs.

One continuing contention and conflict that surfaced quickly and remained in the forefront in negotiations, as well as in the numerous writings Richins and Sampson each sent to investors, as well as to each other, was Richins' claim that his companies, and indeed his wife and his father's family trust, had continually over the years made advances of monies to the various partnerships to help pay obligations and land purchase contract payments. Richins claimed such advances were made necessary by the failure of many of the limited partners to pay their pro rata shares of the assessments that were made by the general partners periodically in accordance with the express authority granted to the general partner in Article V(1)(c) and the probable necessity for which is mentioned in Article VII (13).

Richins prepared a schedule dated April 30, 1981 (Ex. 158) which contained a column entitled "Net Advances" for each named partnership, the total of which was \$585,036 with interest due thereon of \$151,678, which Richins testified was prepared about that date for the purpose of being an exhibit upon a settlement agreement which they were at that time endeavoring to reach. However, the original settlement agreement drafted by Attorney

Day pursuant to the June 26, 1980 meeting contained an exhibit summarizing the "overall equity position" of the Richtron companies which included in column III thereof the net advances "to or from" the respective limited partnerships, which reflected a "net" indebtedness to defendants of \$393,840 (without interest). The information contained in that column reflected that 12 partnerships were indebted to the Richtron companies on advances made to them and that the Richtron companies were indebted to eight partnerships for "advances" made to the Richtron companies by said eight partnerships, it being noted that Article VII (13) provides that not only could the general partner make advances to the partnerships as needed, but that the general partner would be entitled to receive advances from a partnership in return. Article V (1)(c), which discusses in more detail advances made by the general partner to a partnership, states such advances shall be repaid in accordance with the terms of the loan instruments out of gross receipts, and that any and all unpaid advances, together with accrued and unpaid interest, shall become immediately due and payable upon the sale of the property or the termination and dissolution of the partnership unless otherwise agreed upon. The evidence did not contain anything about loan instruments having been prepared when such advances were made or repayments being made out of gross receipts in accordance with the "terms of the loan instruments," it being noted here and I so find

that the promissory notes which Richins prepared on or about June 5, 1980 and signed for the partnerships as president of the general partner, did not constitute the "loan instruments" as that term was used in the partnership agreement. Nor was there any evidence that there was a sale of a property or the termination or dissolution of a partnership that made any advance immediately due and payable.

However, since this lawsuit does not constitute a claim for such advances against any partnership, the partnerships "to whom" and "from whom" such advances were made and the amounts thereof are irrelevant here, and the net figure of \$393,840 mentioned above only has relevance as it relates to whether or not such net advances should be an item or measure of damages as to the claims asserted against Sampson by reason of his conduct, which included his oft repeated assertions to the limited partners and to Richins that any such advances were not valid obligations owed to defendants.

Sampson almost from the beginning expressed the view that the advances claimed were not valid and did not constitute partnership obligations. In letters to the investors, to Richins, and in oral discussions Sampson repeatedly reiterated that view. There was evidence the Leo H. Richins Family Trust furnished \$100,000 toward such advances and that Shari Richins contributed \$32,000. There was some evidence that some of the limited partners

refused to sign the settlement agreement because it purported to acknowledge indebtedness for such advances. Throughout all the documentary evidence when advances were being discussed, Richins' position that they should be repaid remained adamant, while Sampson's position that advances were not valid debts to be repaid to defendants by the partnership seemed just as adamant, and he repeatedly told limited partners either orally or in letters that such was his opinion and advice. However, other than a suggestion that such claims were self-serving, Sampson never told the Court why advances so made did not become partnership debts under the partnership agreements that were repayable as provided therein. I find that such advances were made under the partnership agreement and were repayable as provided therein.

I stress that my finding here is limited to just that. The limited partnerships are not parties to this action and I need not, and do not, make any ruling that any partnership is indebted to a general partner in any amount. Those advances were made before May, 1980, when Sampson first became involved. But the advances so made become of concern to the Court in this lawsuit because one of the facts that became a part of Sampson's conduct was his very early and oft repeated statements to all limited partners, both orally and in writing and over an extended

period of time, that such advances were not partnership obligations that were subject to repayment to the defendants.

My finding set out above with respect to the advances is, in reality, a finding that Sampson was wrong in so stating and is a part of Sampson's overall tortious conduct which I have found caused injury to defendants. As I have repeatedly stated, the burden of proving damages and the amount thereof is upon the defendants and to do so by a preponderance of the evidence. I do not find that the evidence preponderates in proving that, but for Sampson's statements to the investors that such advances were not debts owed to the partners, the partnerships would have in fact repaid the amount of such advances in full as shown in the partnership books and records, or indeed any part thereof. The evidence does not preponderate in showing that any of the circumstances mentioned in the partnership agreements as triggering the repayment requirement was proven to have occurred. The total amount of advances owed, whatever they may be, does not herein give us a yardstick for determining damages, but Sampson's conduct with respect thereto would be a factor to consider with respect to the damage issue.

85. One of the problems Richins faced in May, 1980, was the distrust of ^{some DHC} limited partners, as mentioned in detail elsewhere, and the payment of capital contributions assessed by Richins became a matter of controversy and one over which limited partners

active in the negotiations were not willing to further place under Richins' exclusive control as in the past. Since an agreement for settlement had been agreed upon on June 26, 1980, relations between Richins and Sampson were then generally amicable, so Sampson became involved in the collection of funds from the limited partners who refused to deliver them to Richins. Sampson was then to pass them on to Richins for distribution as needed to meet debts and expenses. That plan was not followed to the letter and Sampson began placing and retaining partner contributions in his trust accounts at his bank, and particularly so when the settlement agreement was not approved.

As early as July 18, 1980, when Murray First Thrift had scheduled its foreclosure sale on the Pleasant Valley property at Roosevelt, Utah, Sampson took it upon himself to attend the sale and work something out. He obtained \$30,000 from Olsen, a partner in Pleasant Valley and took \$10,000 from the funds of another partnership he already had in his trust account, went to Roosevelt where he talked to Kay Lewis, attorney for Murray, who was handling the sale, told him it was investor's money and paid the \$40,000 to Lewis, about \$1,800 of which was in excess of what was owed which Murray later returned to Sampson. Lewis gave Sampson a reconveyance deed for the general partner, who was of course the obligor to Murray, stamped the note paid, and gave them to Sampson who thereafter refused to deliver those

documents to Richins though requested several times to do so.

86. When attorney Day finished drafting the settlement agreement Sampson sent copies to all the investors with a request that they sign it and return it directly to Richins. Many did so but several did not, so the settlement agreed upon was not thereafter consummated.

Although Richins had stated at the May 29, meeting he would withdraw his company as general partner and let the Catlow Valley partnerships elect someone else; and although during June, 1980, Richins gave formal notice of withdrawal of the Richtron general partner to three partnerships (Blackfoot, Snowville and Kanosh); and although the partnership agreement expressly provided that a majority of the limited partners in interest of any partnership could by such majority vote, remove the general partner and elect a new one, it appears that Sampson never suggested to his clients, whoever they were, to follow that simple course.

87. Instead, as previously noted, when it became apparent that the settlement agreement had failed, Sampson sent out a letter to all limited partners, together with a power of attorney form, requesting each to sign, which form when signed gave Sampson a total irrevocable right to vote their interests in the various partnerships, which he said, would enable him to remove Richins as general partner, rather than noting that it was a Richtron corporation that held that position. In his letter Sampson

told the investors that since settlement was not possible, they must remove Richins and his organizations as general partner and thereafter commence legal actions against them to retain the properties, roll back the contract prices and pursue other legal remedies. Sampson further stated they had to raise \$400,000 for payment on the properties and present litigation costs; and that to get some consensus and order along with a united front, he was forming a management corporation and it would become the general partner of all partnerships. He requested all contributions be sent to him, it being noted here that he was then neither a limited or general partner and had never established that he was counsel for all limited partners. Sampson said that each would be given proper credit for the money sent and he would vacate Richins' forfeitures of the capital investments of those limited partners who had failed to pay their assessments.

A substantial number of the powers of attorney were signed and returned to him and using them and relying thereon, he elected his own professional corporation, which he had by then formed, the general manager of each limited partnership and prepared and filed amended partnership certificates which he alone signed -- individually and as president of his PC -- allegedly doing so under authority of the powers of attorney. Even if it be assumed that a valid voting right was transferred to Sampson by each limited partner so signing, enabling him to vote the

Richtron general partner out and his own PC in, the law required that an amended certificate be filed and that it be signed and sworn to by each member of the limited partnership. Such amended certificate was not so signed and sworn to by even one limited partner, and thus constituted a complete failure to comply with the explicit requirements of state law and was not valid.

88. In January, 1981 Sampson obtained an assignment of the Osborn judgment (\$75,683.73) from Osborn, under an agreement to pay Osborn \$20,000 immediately, \$10,000 more in two weeks and another \$10,000 in three months. Sampson sent the \$20,000 using partnership funds then deposited in his trust account. Upon the \$20,000 payment Sampson obtained an assignment of the judgment from Osborn to himself in his own name, which act was a direct violation of Section 78-51-27 of the Utah Code. Within three weeks after receiving the assignment, Sampson had another attorney file this lawsuit on the Oregon judgment showing Osborn as plaintiff. Why Sampson took the assignment in his own name but filed the Complaint in Osborn's name was never explained, but when the assignment came to light and a motion filed, Sampson was substituted as party plaintiff.

The Osborn judgment assignment ran into further complications, triggered by the failure of Sampson to pay the remaining \$20,000 as agreed. Osborn rescinded the assignment for failure of consideration, had it reinstated in the Oregon court, and near the

end of 1981 levied execution on his judgment through a sheriff's sale purporting to cover all of the defendants' property interests, whatever they were, in the Catlow Valley Farms. Osborn bid \$50,000 at the sheriff's sale, obtained a Certificate of Sale, and consummated a further deal with Sampson pursuant to which Sampson collected \$45,000 from Goff and the other plaintiffs, paid it to Osborn, obtained a warranty deed from Osborn conveying to Goff as trustee for those who put up the \$45,000 all the property interests Osborn had acquired through the sheriff's sale, reciting a \$65,000 consideration in the deed. Sampson thereafter also obtained, in Goff's name as trustee, an assignment of the Osborn judgment which also recited \$65,000 as the consideration. Sampson had Handy come in as new counsel for plaintiff who then got a court ruling substituting Goff, trustee, as plaintiff in the case. Such action by Sampson as an attorney was another violation of Section 78-51-27. This case thus remained alive with Goff as plaintiff, but with no amended complaint being filed to allege these new facts or what relief Goff was seeking.

89. It also became known that it was contrary to law for a professional legal corporation to serve as a general partner in a limited farming partnership, so Sampson then incorporated Ag Management and proceeded by use of the powers of attorney previously obtained to substitute Ag Management for the Sampson PC as general partner of each limited partnership. Although

Sampson prepared documents giving notice of such change to all investors, no amendment to the Certificate reflecting such change was ever filed as required by law, not even one with Sampson as the lone signator thereon as had been done for the change to Sampson's PC as general partner. Sampson advised all limited partners that such change in the general partner had been made, directed that all payments were to be made to Ag Management through him and he thereby continued to control the operation of each partnership.

90. By this time Richins had sent a written notice to all limited partners in all partnerships that the Richtron general partner had withdrawn and would proceed to wind up the partnership affairs and terminate the partnerships. Again, notwithstanding such notice, no action was taken by the partnerships, as provided in the agreement, to meet and by majority vote remove Richtron as general partner and elect a new one. Instead they, together with Sampson, were all apparently willing to let Sampson use the powers of attorney as he saw fit to achieve such a change. Also, it appeared that no action was taken by Richins to further wind up the affairs, notwithstanding his written notice that he would do so.

91. Meanwhile, things went along on that state of affairs until Judge Duffy Palmer (as detailed in Findings of Fact 73, 74, and 75) entered an Order in the District Court on November

24, 1982 declaring that Ag Management was not the general partner of any of the partnerships; that the Richtron general partners although having withdrawn, remained in control as such to wind up the partnership affairs; and stated that partnership certificates had never been amended to show Ag Management as general partner.

92. Notwithstanding this unexpected set back, Sampson contended that he and his clients were still in control of all partnerships and owned all Richtron interests by reason of the fact that Sampson had about three weeks before, on behalf of Goff as trustee, purchased all the Richtron interests at the tax sale held by the IRS on October 29, 1982, for the sum of \$40,400.

Although the IRS had been investigating the partnership affairs for several months and held such tax sale to collect taxes allegedly owed by Richins and his wife and his companies, Richins had repeatedly contended that what the IRS had done was contrary to law. When the sale was held with Sampson appearing as the only bidder for Goff as trustee, Richins wrote to the investors stating the sale was illegal and they should think about coming back to him in the conflict with Sampson. Sampson responded by letter to all investors dated December 28, 1983, advising them of Judge Cornaby's first ruling that the IRS sale was valid, and of the significance of the IRS sale, stating

that Richins' contentions had no substance and no federal court was going to void that sale.

93. Sampson's prediction lost to Richins' contentions when, on May 16, 1984, Judge David Winder of the United States District Court entered an Order as previously noted, which unequivocally voided the IRS Tax Sale of October 29, 1982, stating Goff had no interest in the capital stock of the Richtron companies nor in the rights of these companies to wind up the partnership affairs, nor the right to institute causes of action, nor in any of the real estate contracts and partnership interests. (See Conclusion of Law 44)

Notwithstanding this ruling Sampson by letter to Richins dated August 28, 1984, advised Richins his contentions that Sampson's organization had no interest in the partnership properties was "crazy and false" because after the original land owners, who had originally sold the farm land to the various partnerships, had foreclosed on the defaulted contracts, his clients had repurchased lands from these owners directly and for Richins to not interfere. From Richins' schedule setting forth the dates on which each property had been foreclosed, it appears that all foreclosures had occurred prior to the date Sampson wrote Richins this letter. It also appears therefrom that all foreclosures had occurred, except East Taber (August 8, 1984) prior to the date of Judge Winder's Order invalidating the tax sale, and

all had been foreclosed after Sampson took over control of the partnerships by the maneuver of voting, by use of the powers of attorney, to replace his PC as general partner in place of the Richtron general partners.

At Finding of Fact 83, I began a summary of Sampson's conduct for the purpose of setting forth why I thought, and so found in Finding of Fact 82, that Sampson's conduct over the years had in fact "crossed the threshold beyond what is incidental and justified to what is tortious." I recognize and regret that what followed Finding 83 was repetitious in many things, but I believe the summary sustains my referenced Finding.

94. The record in summary thus shows that in May, 1980, Richins and his companies had control of at least 25 limited farm partnerships with assets and liabilities of such a nature that they had serious financial problems in May, 1980, when Sampson first became involved. It further shows that when Sampson first got involved he had nothing in the 25 partnerships except two clients that wanted advice. By Sampson's acts and conduct by the end of 1980 -- within seven months -- Sampson had taken over and assumed control of the 25 partnerships, that he was receiving all of the funds, disbursing them and using them in whatever way he determined. He continued such control for five years, yet produced no evidence as to what had happened to those 25 partnerships.

95. Sampson suggested from time to time that his sole objective was to salvage the partnership assets for the limited partners to the point of at least getting back their investments. The evidence does not show that all investors joined in retaining Sampson as their attorney or their proxy, but the evidence does make clear that Sampson's main goal and effort soon became one of getting rid of Richins from all partnerships and obtaining control thereof for himself and his clients whom he never fully specifically identified. I think the evidence shows, and so find, that his self-declared benevolent motive soon changed to one of greed and a vendetta to oust Richins and take complete control.

I thus find as facts that in May, 1980 the defendants had existing economic relations with at least 25 limited partnerships; that Sampson quickly and intentionally interfered therewith; that he did so for an improper purpose, including a desire to do harm to defendants for its own sake, a mere officious intermeddling for no other reason than a desire to interfere, and such a showing of facts as to establish by a preponderance of the evidence to a substantial degree that the improper purpose predominated any other purpose; and that he did so by improper means, which included means that were contrary to statutory law relating to limited partnerships and the required means of amending a certificate; and to statutory law controlling

the conduct of attorneys set forth in Section 78-51-27 from which it is clear that Sampson's handling of the Osborn judgment on two separate occasions both constituted a misdemeanor punishable as such or conduct justifying suspension or disbarment. Further improper means are to be found in Sampson's assumption of the role of counsel for defendants in certain cases and then taking serious actions against defendants and making use of facts obtained while involved in an attorney-client relation in violation of the ethical standards adopted as a guide to the conduct of lawyers. The examples I point to as being illustrative of both improper conduct or improper means are not intended to state that no other such conduct pointing to improper purpose or improper means can be found in the record for I believe that many other stated facts as disclosed by the evidence could be looked to as supporting the build up of evidence clearly preponderating in finding the presence of both alternatives of the second element of the tort as defined by our Supreme Court.

96. It is to be remembered that in Leigh v. Isom, supra, our Supreme Court included in its definition of the tort of intentional interference with prospective economic relations as a necessary third element that the tortious conduct "caused injury to the plaintiff." From the evidence the injury seems self-evident. Recognizing some repetition, I again note that in May, 1980, notwithstanding all of the problems heretofore

noted as confronting the general partners, Richins and RFC, either Richtron Inc. or Richtron General was the one general partner in each of the 25 existing limited partnerships, each of which was buying their respective farm properties under contract with RFC or Richtron Inc., each had assets and each had existing obligations. By the end of May, 1980, Sampson was already beginning to throw his weight around and by the end of 1980, through the use of his collected powers of attorney, he had assumed and obtained control contrary to law of most, if not all, of the partnerships; had all assessed funds coming his way; had control thereof; had allowed default judgments to be entered against Richins and/or his companies; and had for all practical purposes reduced Richins control in partnership affairs to a letter writing role. He had in violation of state and penal statutes acquired the Osborn judgment and commenced this lawsuit thereon on February 11, 1981.

Sampson had in effect acquired and asserted control of the limited partnerships by substituting first his own PC and then his Ag Management as purported new partners, but doing so illegally because it was not done in compliance with state law. From the evidence it does not appear that Richins ever again gained actual control over any of the partnerships, although he had successfully reversed Sampson's procedural tactics in the state and federal courts and in the Supreme Court of Utah.

On the other hand Sampson had during part of this time received a favorable ruling in the district court supporting his efforts in the IRS tax sale until the sale was voided in the federal court. Regardless of Sampson's apparent belief that what he did was legally proper, the facts were otherwise, and his violation of express statutory provisions to achieve his results hardly measures up to a standard of performance expected from the legal profession.

97. Thus, I find that Sampson by his tortious conduct caused injury to the defendants.

98. The main problem, here now becomes, from the Court's point of view, having found an actionable tort and injury to the defendants caused thereby, the question as to what damages, if any, the defendants have suffered as a proximate cause thereof. The burden of proving damages and the amount thereof, if any, on the Counterclaim is upon the defendants. The standard of proof is by a preponderance of the evidence. The credibility of evidence and testimony in this case is a matter that the Court must decide.

99. In their Counterclaim defendants allege and seek recovery of millions of dollars in damages, both actual and punitive. As stated in their Counterclaim the prayers for damages in each claim for relief are jointly stated, as a combined claim for all defendants together, as though the defendants, although each in a different status, were each entitled to base their

claims all on the same bases. This they cannot do, as their claims for relief are based upon different rights.

Richins individually had no interest in any of the partnerships. He was president of Richtron, Inc. and Richtron General, one or the other being the lone general partner in the partnerships. He was also president of RFC and Frontier Investments, both corporations organized by him. The office of president of each of these four corporations gives him no additional rights or claims for relief that he does not have as an individual, if any. Richins did assert an individual claim for relief in the third claim of the Counterclaim which claim he abandoned during the trial. The Second Amended Counterclaim identifies Richins as president of Richtron, Inc. and RFC.

The first claim asserts Sampson acted as counsel for Richins as well as the corporate defendants. Thus Richins' individual claim on this count is that as an individual party in any lawsuits in which Sampson is alleged to have done an actionable wrong, he has an individual claim against Sampson. The same is true in the second claim which is, in effect, based upon negligence of Sampson. The fourth claim asserts that Sampson interfered with and invaded Richins' right to earn a livelihood. The fifth and sixth claims do not purport to assert a claim for relief for Richins individually.

100. RFC's role in the partnership matters is centered around the contracts to which it was a party. As to these RFC held dual roles. RFC appears as buyer of farm property from the original owner under a contract that set out a purchase price and terms of payment which involved a down payment, installment payments on the balance and the interest to be paid. After so buying a tract of farm land RFC would then become the seller of that particular tract to an individual limited partnership under a contract which set out the terms thereof. The sale price was always fixed at a higher price than that paid by RFC under its purchase contract from the owner. The difference is referred to frequently as the mark-up. The contract also fixed its own installment payments and usually, if not always, called for a higher interest rate. Details concerning the properties RFC so bought and sold are to be found in its bankruptcy schedules or other exhibits. RFC was a limited partner in Catlow Valley Farms 2 and 6 ^{and in Richfield BFB} but had no other interest, powers or authority therein under the partnership agreements. It was entitled only to receive its payments due from each partnership to which it sold land upon which it had a corresponding obligation to make the contract payments due the original seller under what to RFC was a purchase contract. RFC's rights rested on such contracts and aside from its limited partnership interests, its profits lay in its marked-up selling prices to the partnerships and

higher interest rates and not to any profits from operations or a future resale. Its maximum profit that it could ever expect to achieve under these contracts was based upon a total payoff by the partnership to RFC under their contract less RFC's total payoff to the landowner from whom it had purchased the property. The financial problems RFC experienced at the time it filed its Chapter 11 bankruptcy proceeding all arose before Sampson became involved.

101. The RFC bankruptcy was filed June 5, 1980. Finding of Fact 56 shows the execution on the same day by Richins as president of the general partners of the quit-claim deeds by which the partnerships named therein conveyed the partnership's interest in the land it had purchased from RFC back to RFC. Finding of Fact 57 also shows that on that same day Richins prepared and signed as president of the general partner 18 promissory notes which obligated each limited partnership listed therein for the amounts shown, or the total amount equal to the aggregate advances made to the named partnership as shown by the books and records. Each note made Richtron, Inc., Richtron General and RFC joint payees thereon. By what authority Richins did so was never established. The note provided that it was payable on demand but in no event no later than ten days after various occurrences, including the withdrawal of Richtron, Inc. as general partner.

Section 70A-3-802 of the Code provides that unless otherwise agreed where an instrument is taken for an underlying obligation, the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored, action may be maintained on either the instrument or the obligation. Thus, under this statute the obligations claimed to have been owed on advances were suspended, being in effect replaced by the obligation created on the notes and remained so suspended until the notes (being demand notes) were presented for payment, or until ten days after the withdrawal of the general partner. They are partnership obligations whether asserted on the instrument or the obligation and neither the notes nor the advances are mentioned in the pleadings. They are not Sampson's obligations as such, but whether they fall within the scope of the allegation of each claim for relief as set forth in the Counterclaim of "injury and damages of a character and in an amount to be ascertained at the trial" is a matter to be resolved.

102. I note from the pleadings that Richtron, Inc. was stated to have been organized in part for the purpose of acquiring real property in its own name for management, syndication, and resale to various third party limited partnerships. No such reason was stated in the pleadings as to such being a reason why RFC was incorporated. In any case where Richtron, Inc. occupied

a buyer-seller situation such as RFC occupied, its rights in that capacity would be identical to those described for RFC in Finding 100. However, its main role, and the only role of Richtron General, appearing from the evidence was serving as the general partner of most of the limited partnerships as shown elsewhere in these documents.

As general partners the rights to compensation of Richtron, Inc. and Richtron General in any of the partnerships to which one or the other was the general partner are to be determined from the partnership agreements. Those agreements set forth that the general partners are entitled, first, to a management fee during the first two years of the operation, and, secondly, to a 10% share of the final profits.

The management fee was payable on the date of the agreement equal to 10% of the total consideration given for the property. It appears the management fee was paid immediately off the top of the down payment the limited partnership made on the property. No further management fee was to be paid but the general partner was to be reimbursed currently out of partnership assets for all costs and expenses reasonably incurred by it on behalf of the partnership. Also, the general partner was entitled under the partnership agreement to 10% of any profits realized out of the final disposition of the property and after the limited

partners had received cash or property in value to the amounts of their capital contributions. The other 90% of the profits were to go to the limited partners. Thus, the general partner was entitled to nothing from the partnership after the management fee and current expenses unless a profit remained upon the final disposition of the property. From the evidence it does not appear that defendants established a claim of any entitlement to damages for unreimbursed current expenses. Such is an important factor to be considered in determining what amount of damages, if any, the general partners would be entitled to recover and upon them, as I have stated, rests the burden of proof.

103. Frontier Investment was incorporated and alleged in the Complaint to have been made the assignee and transferee of all right, title and interest of all defendants in any and all monetary proceeds received in this case. The allegation was denied by plaintiffs. It has no claim for relief that it can assert against plaintiffs for damages for no injury to it is attributable to plaintiffs. Because of its unique role for which it was incorporated, it was made a party defendant by Court Order. The record contains no evidence of such alleged assignment to it.

104. Defendants undertook to prove damages by various financial schedules they placed into evidence. Exhibit 223 was a schedule showing that between June 27, 1980 and November 30, 1982, Sampson

received \$645,101.38 from partnership sources and disbursed the whole thereof to various parties, including \$60,182 in legal fees to himself and \$78,184.18 for "general overhead." Richins in preparing this schedule did not show a further breakdown on the overhead expense item. This exhibit gives a complete detailed listing of some \$491,873.82 as having been collected from named limited partners in the individual amounts shown and the dates such amounts were deposited in one of Sampson's bank trust accounts. Also listed are crop sales and rent money totaling \$153,227.56 with a detailed breakdown of the source and amounts of such funds and the dates and bank accounts of Sampson's into which each amount went, with certain exceptions showing how some funds were handled without going through one of Sampson's bank accounts.

The exhibit shows a detailed account of how these funds were spent summarized by Richins as follows:

Payments to Richtron	\$ 32,500.00
Property payments	146,551.03
Sprinkler payments	29,117.15
Legal fees - Joan O'Neil	2,000.00
Purchase Richtron farm equip.	3,500.00
Osborn Judgment purchase	65,000.00
Valmont Credit Judgment purchase	15,000.00
Murray First TD purchase	38,138.21
Utah PCA RE Contract payment	10,000.00
IRS Tax Sale payments	40,400.00
Legal fees - Sampson	60,182.68
Keith Blanch - wages & expenses	96,057.15
Marilyn Brown - salary & expenses	28,470.48
General overhead	<u>78,184.18</u>
	\$645,101.38

The property payments of \$146,551.03 primarily involved payments to the original owner-sellers and did not include payments by the partnerships to RFC as payments on those contracts. The payments to Marilyn Brown included \$600.00 to settle a lawsuit in which she was defendant. The General Overhead remains a mystery as to specifics, but presumably covers Sampson's office expenses. The other expense items have been rather thoroughly considered in other findings. I note that this exhibit covers up to November 30, 1982, which is about one month after the IRS tax sale and a week or so after Judge Palmer put an end to Ag Management's role as general partner.

105. Richins prepared various schedules of receipts and disbursements from various bank accounts that included entries after November 30, 1982. Exhibit 217 contained information relating to the John P. Sampson, Attorney at Law, Trust Account. It reflected receipts between December 20, 1982 to August 30, 1983 totaling \$11,574.50 and no disbursements. \$11,000 were shown as deposits from Ag Management (\$5,000) and Consolidated Farms (\$6,000). Exhibit 218 relating to the John Sampson, PC Trust, purported to cover period from December 4, 1980 to November 30, 1982 but shows one receipt of \$1,517 on July 12, 1983 from Virgil Condon and four disbursements from July 12, 1983 to August 10, 1984, totaling \$1,035.36, three to Ag Management for expenses and one to Consolidated Farms for expenses.

Exhibit 219 related to the Ag Management Account for the period from February 16, 1982 to October 29, 1984. The first entry after November 30, 1982 was December 3, 1982. The last entry was October 29, 1984. During this period 75 deposits were entered to this account, 56 of which came from Consolidated Farms and totaled \$143,000. The remaining deposits totaled \$87,700, \$20,000 from Snowville rent, \$51,974 from Springfield grain and other miscellaneous sources. During this period 260 disbursements were made from this account, the total of which I did not compute, but for the total period covered by this account, as of October 29, 1984, there was a credit balance of \$43,103. For the entire period covered by the schedule, receipts totaled \$352,547 and disbursements totaled \$309,444. One disbursement of \$51,000 was made to Consolidated Farms; \$32,460 was paid to Everingham on the Springfield properties; \$16,119 to Utah Mortgage and Loan as a mortgage payment on Snowville; and \$8,000 to Sampson for attorney's fees. Other disbursements ranged from nominal amounts to disbursements of several hundred or several thousand dollars. Numerous numbered checks were found to be missing so information with respect thereto was unavailable, but there was no evidence that any such checks had cleared the bank.

106. Consolidated Farms, aka Consolidated Western Farms was incorporated by Sampson for the sole purpose to receive

the assets of all the limited partnerships. Exhibit 220 reflects that this account was opened on November 15, 1982 and the summary extended to October 29, 1984. Total receipts were \$778,136 and total disbursements were \$632,539, leaving a balance of \$145,597. An examination of the sources of the receipts disclosed that they were all from contributions of named limited partners with a small part coming from various partnerships. As in the Ag Management account there were numerous missing checks. As to some the date, amount, payee and purpose was obtained from some source so that that information was included, but during 1984 the numbers of 96 checks were listed and shown as missing by Richins. The missing numbers appeared in groups of consecutive numbers. However, there was nothing in the schedule to show whether bank statements were examined or that any of the missing numbered checks had in fact cleared the account. I note that this account was opened four days prior to Judge Palmer's ruling declaring Ag Management was not the general partner in any partnership.

An examination of the listed checks discloses that all but a few of the checks were disbursed either to Ag Management or to Keith Blanch or to one of his bank accounts. On or about October 14, 1983 \$100,000 went to a law firm on "Randlett." Several checks went to Marilyn Brown for salary. \$24,000 was paid to Sampson on legal fees, it appearing that beginning April

1, 1983 Sampson began drawing \$3,000 per month from this account for legal fees. Other checks went for miscellaneous expenses. Activity in the account following the federal court ruling in May, 1984, showed deposits totaled about \$74,320 and disbursements of about \$12,000, all of which went to Ag Management.

107. Keith Blanch maintained two checking accounts upon which Richins submitted a schedule of receipts and disbursements. One was in the First Interstate Bank of Oregon, and Exhibit 221 shows the period covered in this analysis was from November 3, 1980 to May 10, 1983. The analysis of this account reflected receipts of \$159,515 and disbursements of \$219,981 or an excess of \$60,465 of disbursements over receipts. The source of the receipts reflects they were almost totally transfers from the John Sampson PC Trust Account up to March 5, 1982 when the transfer of funds were made from the Ag Management account. It is difficult to distinguish the nature of the disbursements, but they appear to have been used to pay Blanch's personal expenses, as well as business expenses. How the apparent overdraft was handled is not answered by the exhibit but the exhibit does not indicate that the account was opened on November 3, 1980, the date of the first entry on the schedule, and may have had a substantial amount in deposit on that date.

108. The second bank account that Blanch had was at the Idaho Bank & Trust. Richins' summary (Ex. 222) covers the period

of July 8, 1983 to December 31, 1983. Receipts during the period totaled \$108,326 and the disbursements totaled \$107,849, leaving a balance of \$476. About half of the deposits are shown as being transfers from Consolidated Farms while the remaining are identified only by a deposit slip number reflected by the check register. Information concerning disbursements reflect many were personal and many business in nature.

109. From the foregoing it appears that partnership funds and disbursements therefrom were accounted for up to October 29, 1984, that date being the date of the last entries in the Ag Management and the Consolidated Farms accounts with the former leaving a credit balance of \$43,103 and the latter a credit balance of \$145,597, both of which were active at the time the federal court ruled the IRS tax sale of October 29, 1983, invalid in May, 1984.

110. Another exhibit (227) offered by defendants as evidence of damage was a balance sheet for RFC as of April 30, 1981. It listed assets and liabilities which contained both an "Historical" listing, which was based upon the assumption that no partnership real estate contracts had been forfeited, and a "Present Market" listing which was based upon the assumption that all partnership real estate contracts had been forfeited, the land repossessed by RFC and shown at estimated market value. The Springfield and Moreland Properties were indicated as being included as

if they had not been sold and assigned. After listing assets and liabilities Richins included a "Stockholders Equity," which under the "Historical" listing showed an equity of \$1,368,025 which consisted primarily of "retained earnings" of \$1,158,958, and the balance in preferred (\$30,000) and common (\$2,225) stock and additional paid in capital (\$176,842). Under the "Present Market" listing the equity was shown as \$5,638,856.92, the total difference being attributed to an "Equity Adjustment for Land Foreclosure" valued at \$4,270,831.92. The source of market value data was not shown, but under the latter calculation, "Land buildings and irrigation equipment" was assigned a value of \$8,206,000. No oral testimony was given to further explain this exhibit.

111. Another schedule (228) dated July 1, 1981 showing a status report for RFC of real estate contracts payable and equity showed an "Estimated Market Value" for some 20 partnerships of \$9,900,120, real estate contracts payable of \$3,889,864 with an equity of \$5,582,205, it being remembered that one year before, this company had filed for bankruptcy.

112. During the summer of 1980 while settlement negotiations were under consideration, Richins prepared a schedule to "give an idea of values." Richins testified he fixed such values based upon contacts with other realtors, his own experience, the purchase contracts and his records. The schedule showed

the acreage and land values of each partnership, the combined totals of which were \$12,380,400 for 14,374 acres. Again -- it was June, 1980 that RFC filed its bankruptcy.

113. Richins prepared a consolidated balance sheet for Richtron, Inc., dated June 20, 1980 (226) footnoting that it was for management and internal purposes only as all computations were subject to audit. An asset for "real estate contract receivables" was given a value of \$4,831,315 while the liabilities included an item of "real estate contracts payable" which was shown as \$3,462,010.

114. A final accounting was prepared by Richins just before or during the trial of this case. He described it as a "summary of partnership equities" which he testified fixed the values and amounts shown therein as of June 30, 1980. Richins began this schedule by using the same market values he had used in his schedule in the summer of 1980, but excluding Snowville, Grandview and Young Farms. His schedule reflected a total market value of \$11,214,400, total debts of \$4,712,420, and a total equity of \$6,411,980. A comparison of these market values was made to the market values for the same properties listed on the bankruptcy schedules filed in the RFC bankruptcy proceedings on or about July 1, 1980. Snowville, Grandview and Young Farms are not included on either schedule. The bankruptcy schedules

did not include Blackfoot, North Bear lake, Pleasant Valley and Randlett.

With these adjustments Richins estimated market value of the same properties listed in the bankruptcy schedules totaled \$9,539,400, while the market value for the same properties as set out on the bankruptcy schedules was \$3,937,357. Total debts owed on the farms listed on the bankruptcy schedule were shown on Richins' schedule as being \$4,034,300, leaving a claimed net equity of \$5,505,100 on these farms on Richins' schedule. As can be clearly seen, the market values of the farms shown on the bankruptcy schedules was less than the total obligations shown therefor on Richins' schedule. The dates of these comparative values are noted -- they are, in fact, one day apart.

115. The schedules prepared by Richins, as considered in Findings 110 through 114, purport to be documents by which defendants are attempting to show damages in the millions of dollars as alleged in their Counterclaim. In doing so it is obvious that they are based upon the assumption that all partnership properties belonged to defendants, not to the partnerships, and that defendants are endeavoring to recover what Richins estimates their market values to be. Under the partnership agreements the two Richtron general partners got their management fees at the beginning of the partnership existence, and are entitled to nothing more than 10% of the profits, if any, remaining upon final sale of

the properties, with the remaining 90% going to the limited partners. There is in fact, no assurance, even disregarding the problems defendants and the partnerships were confronted with in May, 1980, that in the end after final sale of the properties that there would be profits remaining to be so divided.

As already noted, the defendants have not proven anything owing on the ongoing operating expenses for which they were entitled to reimbursement under the agreement. The only other claim they can assert against the partnerships are the advances about which much has been said, the basis for return of which is likewise set forth in the agreement. The values set forth in the schedule considered in Finding 114 are supposed to be fixed as of June 30, 1980. RFC is by that date already in the bankruptcy with its assets passing to the control of the bankruptcy court. It appears that by drafting and executing the quit-claim deeds on June 5, 1980, for all the partnership properties, Richins intended to ignore the effects of the bankruptcy and take from the partnerships their respective interests in their properties.

The whole scenario presents this unusual picture. Richins is president of RFC and of the two Richtron general partners. As president of RFC, he contracts to buy a farm property, and then contracts to sell it at a marked-up price to a limited partnership whose total affairs fall within the control of the general partner of which, as just stated, Richins is also president.

He thus signs this partnership contract for both the buyer and the seller, fixing the terms thereof as he has chosen. He, as president of the general partner, is responsible for seeing that the partnership pays its annual installment to RFC, and also responsible for fixing the assessments and collecting the funds for making that payment. If he, as president of the general partner, defaults in making such payment for one reason or another, he then decides whether to have RFC declare the contract with the partnership in default and take whatever steps are necessary to foreclose out the partnership interest and have RFC take over the partnership property, subject of course to the annual payment due the original seller. It seems apparent to me that that is what he did when he executed the quit-claim deeds of June 5, 1980.

What the real estate contracts between RFC and the individual partnerships provided is not found in the record and I do not know. Such real estate contracts usually include provisions setting out procedures to be followed to forfeit out a defaulting party. Such procedures would have to be followed and they usually do not allow a forfeiture without any notice. No one knew about these quit-claim deeds except Richins until he chose to make what he had done known, either by the recording of the deed or advising others of the use he intended to put them to. By his actions he had made preparations in his own way, thereby

putting them out of business without the consent of the limited partners in violation of Section 48-2-9. The provisions of Article V (4) of the agreement makes a general partner liable to limited partners for losses caused by the willful misconduct or gross negligence of the general partner. That provision is not an issue in this case.

Richins recorded all the quit-claim deeds by January, 1981, and yet within the same time frame he has given formal written notice of the withdrawal of the general partners and of his intent to wind up the partnership affairs. The notice of such intent did not advise the limited partners that he had, by use of the quit-claim deeds, thereby deprived them of their 90% interests in any final profit realized upon sale. There is no evidence in this record which proves by a preponderance thereof that the quit-claim deeds executed by Richins were obtained by proper, legal procedures or that they were, for any other reason, valid and effective as a means of depriving each partnership of its interest in its property. Since the partnerships are not parties to this action, I need make no finding with respect to how such actions affected them, but I do find that by use of the quit-claim deeds the defendants did not acquire the whole interest in the partnership farms to accord them a valid claim for damages at the market value thereof. Furthermore, I find the valuations Richins used in his schedules lack credibility.

In my opinion no reasonable foundation was laid to justify them. One day he values property at over 9-1/2 million dollars, while he is negotiating a settlement, but the next day values the same properties at \$3,937,357 in his bankruptcy schedules.

116. Another reason for questioning the credibility of his evaluations appears in the Compromise and Settlement Agreement, upon which both Richins and Sampson had agreed, which contained one provision that seems of significant relevance. That provision stated that the original purchase agreements more accurately reflected the present value -- as of August 1, 1980 -- of the raw land because the surplus of farm land on the then existing market. This agreement reflected the total contract equity on all partnership properties -- defined as the original purchase price less the balance due from the partnership -- was \$1,184,065. This agreement was drafted by Richins' attorney, David Day, agreed to by Richins and acceptable to Sampson. Although the agreement was never consummated and settlement negotiations are not generally admissible as evidence on values or damages, it does suggest a depressed farm real estate market existed at that time which would present a problem to any property owner seeking to sell his farm property.

Furthermore, Richins was willing to settle and dispose of his Richtron assets for \$700,000 at a time he now claims they had a net worth exceeding six million dollars. I find

the credibility of such evidence of net worth weighs heavily against such values as being a fair and reasonable measure of values and credible evidence of damages.

117. Richins also undertook to show damages by use of a personal asset and liability statement dated March 15, 1978 showing a net equity of \$1,684,490, \$1,528,464 of which was attributable to an equity in Richtron, Inc. The weight of this bit of evidence is substantially lost when I reflect upon the problems confronting the Richtron companies two years later in May, 1980.

118. As noted at the outset the defendants assert in some of the claims set forth in their Counterclaim that Sampson's conduct had been actuated by malice and bad faith, thereby justifying an imposition of punitive damages for which in the first and fourth claims they assert an award of \$1,000,000 in punitive damages should be granted. For many years our Supreme Court fixed "willful and malicious" conduct as the basis for awarding punitive damages. But in Branch v. Western Petroleum, Inc., 657 P.2d 267, our Supreme Court stated that punitive damages may be awarded in cases where one acts in reckless indifference and disregard of the law and his fellow citizens. In Clayton v. Crossroads Equipment Co., 655 P.2d 1125 (1982) our court cited a ruling by the Tenth Circuit Court of Appeals (439 F.2d 1303) stating its approval of "such gross neglect of duty as

to evince a reckless indifference of the rights of others on the part of the wrongdoer, and an entire want of care so as to raise the presumption that the person at fault is conscious of the consequences of his carelessness."

One wonders how much less proof is required to meet the standard as stated in these words than does "willful and malicious conduct." The easing of the requirements was, in my opinion, brought on by the facts and circumstances in cases where the conduct was considered so wrong as to justify punitive damages even though the long used "willful and malicious conduct" test could not be met. This requires a consideration of the existing facts and circumstances of the case which I have long and meticulously dwelt upon and which I do not propose to repeat here at length. The case is an unusual case and although I have had no trouble in finding liability on claims for relief asserted, particularly on the fourth claim, the burden remains with defendants of proving their entitlement to punitive damages as well as the amount thereof. The claim for punitive damages requires the Court to examine the evidence carefully in the light of the standards set by our Supreme Court for awarding them and to consider the conduct of Sampson in the light of all the existing facts and circumstances.

Sampson enters the picture as counsel for two limited partners who have learned of and become disturbed by the financial problems

confronting Richins and his companies and the partnerships in May, 1980, the details of which have been stated and restated. At the May 29, 1980 meeting Richins offered to step aside and allow the Catlow Valley partnerships to select a new general partner. During June, 1980 Richins formally withdraws his general partner from three partnerships. By January, 1981, he has done so from all of them. He and Sampson agreed upon a settlement at the June 26, 1980 meeting. For the next four or five months they work together with Sampson getting involved in collecting funds from limited partners, some of whom refused to give them directly to Richins. When the settlement agreement fails of fruition, Sampson, by then heavily involved with limited partners in several partnerships, sees a need to get a new general partner.

Sampson, using the powers of attorney he obtained as a voting proxy, votes first his PC and later his Ag Management in as general partner while being confronted continuously with Richins' flood of correspondence with the partners challenging the validity of such action, but not doing much else about it. By the end of 1980 Sampson was pretty much in control of partnership affairs, and remains so for two years until Richins, through a motion for summary judgment (which could have been filed anytime, and brought to a hearing on ten days notice) finally gets a ruling from Judge Palmer invalidating Ag's role as general partner.

Unfortunately for defendants, about two weeks before, the IRS has a tax sale for Richins' failure to file tax returns and pay taxes on partnership property. The IRS certificate of sale gives Sampson's group a color of title, at least, as the tax sale by the IRS is presumed valid. Twice Judge Cornaby rules the tax sale was valid and by court Order gives Sampson's group complete control. The partnership continues on under the sale and court orders until May, 1984 when an Order is issued by the federal court that the tax sale was in fact void. But the scratch of a pen does not undo and obscure from view all that has gone on for four years.

Richins waited until January 5, 1985, before obtaining an order from Judge Cornaby vacating his prior two orders. There is a suggestion in the record that Richins' counsel believed Judge Winder's Order took care of Judge Cornaby's last Order. The record further suggests that at a hearing before federal Judge Aldon Anderson in late 1984 that a suggestion was made that such was not the case, and that Cornaby's Order entered in July, 1983 placing Goff in complete charge of all partnership affairs might still be in effect. I have heretofore set forth the exact content of Judge Winder's Order and what is provided. Its affect on Judge Cornaby's last Order is not relevant to the punitive damage question. If punitive damages are allowable, they would most certainly have to be based on events preceding

Judge Winder's ruling. The status of the 25 limited partnerships at the end of 1984 is not disclosed by the record.

Though the Osborn judgment was acquired by Sampson in violation of statutory law relating specifically to lawyers, the judgment was entered because the defendants here had failed to pay an obligation owing to Osborn. Its acquisition, though in violation of law because Sampson was a lawyer, could have been acquired in the same way by a non-lawyer without violating the law. The Osborn judgment began to effect the Richtron empire when and because it was entered, not when and because this lawsuit got its start therefrom some nine months later. The fact that those who acquired it paid out \$65,000 for it enures to the benefit of defendants by reducing their liability for that amount as heretofore ruled.

One wonders what Richins thought the partnerships were expected to do. The Richtron general partners' withdrawal had left them with an uncertain future. Many limited partners had sought legal advice from Sampson and he gave it to them. The fact that he erred in the advice given them does not render his actions malicious. They, too, could read and write, and a simple sentence in the partnership agreement gave them the authority by simple vote to remove the general partner, elect a new one and carry on the business of the partnerships. Or, they could have petitioned the Court to terminate the partnership

and wind up its affairs. They did neither. They had Sampson. When this case was filed February 11, 1981, Richins could have requested a restraining order against Sampson's interference with partnership affairs. Instead, no doubt influenced by continued settlement negotiations, he entered into a stipulation delaying the filing of any responsive pleading. An Answer and Counterclaim finally made it to the Court in July, 1982.

By my comments in this Finding it is not my intent to point the finger of blame at Richins and exonerate Sampson, for I have already made my findings of his wrongdoing, but I think it necessary to view Richins' role in judging Sampson's conduct, in considering the claim for punitive damages, and in doing so, it is my opinion that as wrong as Sampson was in many of the things he did, I think he believed himself to be right in doing what he did and the way he did them. He should have known the law, but I do not believe he intentionally violated it. For almost six months he worked amicably with Richins on settlement. When that failed, by powers of attorney he got proxies to vote the limited partner's interests. He did so, electing his PC general partner. When that was said to be contrary to law, he voted Ag Management in as general partner and so operated. By the time Judge Palmer ruled that illegal, Sampson was able to carry on under a color of authority by receipt of an IRS Certificate of Sale, followed by two favorable rulings by Judge

Cornaby until the IRS sale was voided in May, 1964, by a federal court order.

The bitterness and contention that developed and existed between the two men was long and drawn out and led to prolonged controversies which had its roots in serious problems already existing before Sampson entered the ring. But I do not believe the evidence preponderates in establishing the type of willful and malicious conduct, nor the lessened type, required by our Supreme Court decisions to justify or support an award of punitive damages and I so find.

119. There yet remains a consideration of any issues of fact raised by the affirmative defenses set forth in plaintiffs' Reply to defendants' Second Amended Counterclaim which have not yet been resolved. Those affirmative defenses were (1) defendants' claims are barred by their illegal, inequitable and malicious conduct; (2) laches; (3) waiver; (4) estoppel; (5) breaches of duty and trust; (6) defendants' combination and conspiracy to defraud the limited partners; (7) defendants have been unjustly enriched by the limited partners.

These defenses have application only to the claims asserted against Sampson in the Counterclaim. Questions as to whether Richins' conduct gave rise to claims for relief by the limited partners or the partnerships against him and/or the defendants are not to be answered in this lawsuit. Sampson represented

many limited partners, but in this case he made no effort to bring his clients in as third parties to assert claims. I have found from the evidence that Sampson intentionally interfered with defendants' existing economic relations with the partnerships for an improper purpose and by improper means causing injury to them. Factual questions yet to be answered relate to whether or not any of the alleged affirmative defenses constitute a defense to Sampson against liability for injury caused by his tortious conduct. There is no doubt that Sampson undertook to help his clients, but his tort of intentional interference with existing economic relations began to manifest itself the first day after the May 29, 1980 meeting when Sampson told Richins he and his clients wanted to buy Richins out and take over the partnerships.

120. The affirmative defense that defendants' claims are barred by their illegal, inequitable and malicious conduct are related to matters counsel for plaintiffs referred to in his opening statement. Counsel noted that Richins, acting for his companies, prepared quit-claim deeds about the first week in June, 1980, improperly conveying partnership properties from the partnership to his companies illegally and without consideration, and later used them by threatening to record them if the partnerships refused his request for help; that Richins hid facts on true conditions from the investors; that he improperly purused acts

to dissolve the partnerships prohibited by the statutes and improperly withdrew the general partner with no intention of winding up affairs; that from June to December, 1980, Richins tried to carve out what he considered to be his share of value in the partnerships which had no value; and that during June, July and August, 1980, a critical time, Richins refused to act or help the partnerships without stating a reason, but withdrew the general partner from three partnerships, completely abandoning them and left them adrift rather than to extend service to them in winding up their affairs.

I have already put my stamp of disapproval upon Richins' execution and use of the quit-claim deeds and set forth in substantial detail Richins' failure to keep the investors informed and report as required in the agreement. I have considered his withdrawals of general partners and ruled that Section 48-2-20 had no application thereto and have noted his failures to take steps to wind up the partnership affairs, but Article V (5) of the agreement states the general partner may at any time withdraw from the partnership so his doing so could not be declared improper. I have also noted the simple, clear cut and conspicuous provision in the agreement that the limited partners by majority vote could remove a general partner and elect a new one. That was probably what Sampson thought he was doing by his proxy votes, but he failed to comply with statutory law. I have considered

Richins' formal withdrawal of the general partner from three partnerships in June, 1980, which counsel says was done without stating a reason and refusing help, leaving them to drift without help. The evidence reflects that two of the withdrawals were sent the day after those partnerships held meetings at which both Sampson and Richins were in attendance and at which Sampson took the occasion to tell the limited partners that the markup was illegal, that the advances need not be repaid, and otherwise took Richins to task. As to the third partnership, the withdrawal followed a telephone call from Sampson reporting the limited partners of Snowville would no longer send contributions to Richins. I think the evidence shows these three partnerships wanted Richins out, not his help, and so showed it very early. If they were left adrift without help, one is left to wonder why Sampson was there at all. I do not view the settlement negotiations as an effort of Richins to try to carve out his share of the value, when it was Sampson who led the troops and put pressure on Richins to agree to the settlement reached.

121. As to the affirmative defenses of waiver, estoppel and laches, these three defenses were considered by our Supreme Court in Angelos v. First Interstate Bank of Utah, 671 P.2d 772 (1983), in which the court said:

To constitute waiver, one's actions or conduct must be distinctively made, must evince in some unequivocal manner an intent to waiver, and must be inconsistent with any other intent.

As to estoppel, the court said:

The doctrine of estoppel has application when one, by his acts, representations or conduct, or by his silence when he ought to speak, induces another to believe certain facts exist and such other relies thereon to his detriment.

As to laches, the court said:

Laches is not merely delay, but delay that works to the disadvantage of another. To constitute laches, two elements must be established: (1) The lack of diligence on the part of the plaintiff; and (2) An injury to defendant owing to such lack of diligence.

As to these defenses plaintiffs' counsel said estoppel was involved because Richins had consented to Sampson coming on board to help Catlow Valley and oversee it and its funds. Such consent was in fact coerced by some Catlow Valley partners who unequivocally stated that they would no longer pay funds to Richins, so right at the May 29, 1980 meeting, Hansen was selected to supervise the funds and at the August 5, 1980 meeting Sampson was given that responsibility by vote of the limited partners who, under the agreement, had no such authority to control partnership affairs. Sampson very quickly became involved in other partnership affairs, such as taking \$40,000 to Roosevelt

on July 18, 1980, to pay the Pleasant Valley indebtedness to Murray First Thrift and did so. Furthermore, the compromise agreement was agreed to at the June 26, 1980 meeting and the fact that the compromise agreement was being drafted during this time, Richins didn't have much choice but to agree to Sampson's involvement with Catlow Valley partnerships funds. These facts, coupled with all other facts and circumstances, did not constitute an act or conduct by Richins which induced Sampson to believe that certain facts existed. Nor did they evince in any unequivocal manner an intent to waive control of the partnerships in favor of Sampson. They were both at that time hoping the compromise settlement agreement would be accepted, but Sampson knew what he wanted and already had a hand on the controls should the agreement fail, as indeed it did.

Counsel for plaintiffs did not press the defense of laches. This controversy turned into a prolonged paper battle between these two men over control of the partnerships. I think there was a lack of action on the part of Richins in not seeking an expeditious wind up of partnership affairs, but that worked to Sampson's advantage, not to his injury. I also think there was some delay on the part of Richins in failing to challenge the alleged appointment of Sampson's corporations as new general partner. It was not until November, 1982, that Richins got before the court on a Motion for Summary Judgment on which he

was successful in getting Judge Palmer to rule on the illegality of Ag Management's role as general partner in a case filed by Blackfoot Farms against defendants herein. But the reason for such delay in the case at bar is not clearly shown. That it was not due to a lack of diligence is apparent from an eight volume record. But, here too, this delay was to Sampson's advantage as it came after the IRS tax sale on October 29, 1982 by which Sampson and his group obtain another basis for claiming control of the partnerships and Richins' holdings. A challenge to the tax sale in federal court and obtaining a ruling thereon within 17 months hardly constitutes laches, particularly where, during a portion of the time and at Sampson's efforts, Richins was precluded by Judge Cornaby's Order from having the help of legal counsel and on his own behalf made a tremendous effort to move the case forward.

122. As to the defense of breach of duty and trust. I recall hearing nothing in counsel's argument that Richins had a duty to Sampson which he breached or any evidence of breach of trust. Both men were at sword's points from the beginning with almost continuous and constant contention. I think the evidence shows there was a genuine effort made by both men to settle the controversies during the summer and fall of 1980, during which time relations eased between the two, but several matters triggered a renewal of the conflicts in the latter part of 1980, although notwithstanding what followed, I think the

evidence showed a renewal of settlement efforts in 1981 that carried on into 1982. The flood of correspondence from both men to the investors usually contained comments of distrust of one for the other. In my opinion each had a duty to the other to act in good faith in their joint efforts to effect a settlement and each endeavored to do so. I find no duty which Richins otherwise owed to Sampson which was breached, nor any obligation of trust that lends support to this alleged affirmative defense.

123. The remaining two affirmative defenses are alike in nature, both alleging a defense based upon allegations as to what defendants did to the limited partners. One was that there was a combination and conspiracy to defraud the limited partners which was not pled with particularity. The other was that the defendants had been unjustly enriched by the limited partners. Fraud requires proof by clear and convincing evidence. But this is not a lawsuit between the partnerships and the defendants. At this point I am only concerned with whether or not either of these alleged affirmative defenses bar liability of Sampson for his tortious conduct. Sampson is sued in this Counterclaim for his individual conduct. He was not a limited partner in any partnership. He was president of two corporations which claimed to be general partners, but neither was legally so. Sampson thus had no rights under the partnership agreements.

What rights or defenses the partnerships may have in a controversy with defendants do not inure to Sampson's benefit.

Up to the meeting of May 29, 1980 with Catlow Valley partners the evidence showed no acts of Richins that were alleged to have been fraudulent. One of the main reasons that the problems arose which confronted Richins in May, 1980, was not misuse of funds, but Richins' failure to press the limited partners to pay their assessments provided for in the agreements. Instead, defendants made advances to various partnerships to meet partnership obligations which probably totaled almost \$400,000. Richins did not want to press the non-payers and "stir up" trouble and said he thought the problems could be worked out. The complaint of the limited partners when the problems surfaced was directed more towards Richins' failures to collect assessments from all partners or treat their capital accounts as provided in the agreements. Richins' failed to make the annual audited reports called for in the agreements, but no evidence was tendered by Sampson that such audit was made or requested by any limited partner during the period prior to May, 1980. It was, however, clear from the evidence that Richins' CPA - Hurd - found his records poorly kept. But such problems, as elsewhere noted, arose before Sampson's involvement.

The execution of the quit-claim deeds, heretofore considered at length, constitute one questionable action on the part of

Richins, but I do not see that it and what followed with respect thereto affords Sampson any defense for his tortious conduct. The probability is that the deeds constituted a means by which to combat the tortious acts of Sampson in taking over control of the partnerships. As to the claim of unjust enrichment from the limited partners, the evidence established that as to each partnership there was a 10% management fee, based upon the selling price of the property, that went to the general partner at the time the partnership agreement was executed. As to several of the partnerships, the 10% management fee represented several years of effort on the part of Richins and his general partners. I believe the management fees were used in part in making advances to various partnerships. No further fee was payable and the agreement provided for the general partner to get 10% of any profits upon final sale. That percentage was never paid on any partnership. There was a mark-up on the resale price of the property to the partnership that would have been profit to defendants had the contracts paid out. None did and default on payments due on the real estate contracts, both buyer and seller, became an early problem. Sampson always maintained that the mark-ups were void but no legal authority was ever cited by Sampson in support of that contention. No specific evidence was offered by Sampson either as to the source or the amount of the alleged unjust enrichment.

124. During the trial evidence was received that tended to show an alteration in one or more partnership agreements which increased the maximum amount of capital assessment limited partners could be required to pay on an annual basis. There was substantial discussion about this alleged alteration during closing argument with plaintiffs' counsel contending that the alteration led to Valmont Corporation changing its mind on a sale of sprinkling equipment and agreeing to a sale which imposed a \$750,000 obligation on the Catlow Valley Farms. Counsel contends that without such alteration the Catlow Valley partnerships would not have been burdened by such an obligation on property worth only \$250,000. Counsel for defendants took exception to such contention, stating Valmont extended \$750,000 credit for its own reasons, that there was no evidence in the record as to what Valmont relied on, and opposing counsel's contentions constituted pure speculation. On December 31, 1980 Valmont took a \$714,000 default judgment, a case Sampson allegedly represented defendants upon, but let go to default judgment. Defense counsel points out that Sampson made a \$15,000 payment to Valmont on the judgment, but Richins employed other counsel and had the default judgment vacated for which Richins paid an attorney's fee. Defense counsel further argued that if such alleged change was made as alleged, "so what," it had no relevance to this case and Sampson's alleged

interference with the Richtron companies trying to wind up partnership affairs.

I agree the Valmont obligation created a very heavy financial obligation to the Catlow Valley partnerships, but it put a sprinkler system on their properties. I agree also with defense counsel's contention that no matter for what reason Valmont extended credit and sold the sprinkler system to those farms, it constitutes no defense to Sampson's liability on the Counterclaim for his own tortious conduct.

125. In his opening statement counsel for plaintiffs stated that a vital issue was who had the rights to run the farms. From the evidence Sampson's asserted right lay in his use of powers of attorney as voting proxies to replace the Richtron general partners with first his PC and then Ag Management. This asserted right prevailed until Judge Palmer declared Sampson's general partner had no legal right to control. But then his asserted right continued by reason of the IRS sale on October 29, 1982 and the two orders of Judge Cornaby confirming the validity of the tax sale. But the sale turned out to be void as determined by Judge Winder in May, 1984. Sampson thus had control and possession for four years, but under circumstances that were determined as lacking in legality.

Richins' right to run the farms lay in his creation of the partnerships, the agreement for which made a Richtron company

general partner from the beginning, gave said general partner complete control, and although withdrawals took place, the law gave them the right to retain possession and control to wind up the affairs and terminate the partnership's existence.

One answer to counsel's stated issue is to be found in the Court's ruling that Sampson's intentional interference with defendants' existing economic relations was tortious.

Based upon the foregoing Findings of Fact, the Court now enters its:

CONCLUSIONS OF LAW ON

PLAINTIFFS' COMPLAINT

1. Richtron, Inc. as general partner upon the Catlow Valley limited partnerships 1-7, was liable to Osborn for the drilling work done by him on those farms.

2. Richins and RFC were liable to Osborn as the guarantors of that obligation for Richtron, Inc., the general partner.

3. None of the limited partners of the Catlow Valley limited partnerships 1-7, nor the limited partnerships had any liability to Osborn for the well drilling work he did on their farms. (Comment: In Evans v. Galardi, 546 P.2d 313 (Calif.) the court said: "A limited partnership can generally be described as a type of partnership comprised of one or more general partners who manage the business and are personally liable for partnership debts, and one or more limited partners who contribute capital

and share in the profits, but who take no part in running the business and incur no liability with respect to partnership obligations beyond their capital contributions.")

4. With Osborn having failed to record a mechanics lien for his unpaid labors, his judgment did not create a judgment lien against the farm property the limited partnerships were then buying.

5. There was no improper dealing, misrepresentation, or deceit in satisfaction of the obligation that gave rise to the judgment as Richins was in full control and allowed the obligation to Osborn to go unpaid and thus the alleged affirmative defense of estoppel as applied to that contention has no merit as against any claimant on the Complaint.

6. Under the partnership agreements capital contributions were added to a partner's capital account and such funds when paid were within the control of the general partner for whatever use the general partner should determine. Sampson had no legal authority to collect and spend such funds including the payment of \$20,000 to Osborn upon the judgment assignment transaction.

7. Furthermore, Sampson's action in obtaining the assignment was void as being contrary to statutory law. Section 78-51-27 of the Utah Code provided that "an attorney shall not: Directly or indirectly, buy, or be in any manner interested in buying or having assigned to him, for the purpose of collection, a

bond, promissory note, bill of exchange, book, debt, or other thing in action, with the intent and for the purpose of bringing an action thereon." This statute further provides that any attorney who violates this statute is guilty of a misdemeanor and shall be punished accordingly, and his license to practice may be revoked or suspended.

8. Sampson's purpose in acquiring the assignment was to bring an action thereon, such being filed on February 11, 1981, and in doing so he violated this statute. (Comment: As shall be set forth later, such action was also alleged to have been a violation of professional ethics)

9. The revocation of the assignment by Osborn for failure of consideration renders moot the illegality of Sampson's action in obtaining the assignment in January, 1981.

10. Sampson's actions in paying the \$45,000 following Osborn's purchase of defendants' property interests at the sheriff's sale and acquiring the new assignment of the judgment was a violation of the second portion of Section 78-51,27 which states that an attorney shall not "(2) by himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person as an inducement to placing, or in consideration of having placed, in his hands or the hands of another person, a demand of any kind for the purpose of bringing

action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof."

11. This statute is a prohibition against actions by an attorney only in obtaining such a claim and provides for punishment of the attorney, but is silent upon the validity of any claim thus acquired. It does not bar non-attorneys from acquiring such claims for the purposes forbidden by the statute to a lawyer. While Sampson was again subject to the penalties or punishments provided in the statute, the limited partners listed in Finding 17 who put up the amounts indicated to make the purchase from Osborn did not violate the statute or otherwise act illegally in doing so.

12. The \$50,000 bid Osborn made at the sheriff's sale gave him all the property rights the three defendants then owned or had an interest in in the Catlow Valley Farms property. He acquired a quid pro quo for his bid and by his doing so he received assets which entitled the judgment debtors to a \$50,000 credit as a payment on the judgment. Osborn passed those assets on to Goff as trustee in the warranty deed Osborn gave Goff and although the assignment recited a \$65,000 consideration was paid therefor, the assignment of the judgment gave to Goff only the deficiency remaining in the judgment after all proper credits were deducted therefrom. The fact that Osborn accepted

\$45,000 more at the time instead of \$50,000 did not reduce the \$50,000 credit on the judgment.

13. The assignment of the Osborn judgment to Goff as trustee after payment of the \$45,000, made as of March 2, 1982, was subject to credits of the \$50,000 Osborn bid and the January, 1981, payment of \$20,000. The recital on the assignment that there was a consideration of \$65,000 paid therefor did not alter the reality of the situation. The assignment gave Goff as trustee what remained as a deficiency on the judgment debt, namely \$5,683.16 plus interest as computed as set forth in the judgment itself. My computation of interest to May 30, 1986 totals \$13,257.13, plus \$1.557 per day on the existing deficiency of \$5,683.13 or a total of \$18,875.26. The affirmative defense that the judgment was fully paid and satisfied is thus not supported by a preponderance of the evidence.

14. Another legal issue needs to be resolved in connection with any such judgment. Article V of the partnership agreements specifically states that the general partner shall not be liable to the limited partners or to the partnership for any loss resulting from errors in judgment or any acts or omissions, whether or not disclosed, unless caused by reason of the willful misconduct or gross negligence of the general partner. Can Goff and the limited partners for whom he was trustee sue Richtron, Inc., the general partner of the Catlow Valley partnerships, under

the facts of this case in light of the agreement provision? The pleadings do not show plaintiffs are suing for a loss. They seek to recover what remains owing on the Osborn judgment. If something remains owing on the judgment for which defendants otherwise have no valid defense under their affirmative defenses, is Richtron, Inc. as general partner, nevertheless immune from liability under the agreement? It is my opinion that to allow this suit against Richtron, Inc. as general partner is to allow a back door approach when the front door is locked against them. I thus conclude that Richtron, Inc. has no liability to plaintiffs upon the claims set forth in their Complaint, and that no willful misconduct or gross negligence of Richins was involved in creating the obligation.

15. I have made findings touching upon the affirmative defense of estoppel which defendants assert is based upon improper dealing, misrepresentation and deceit in satisfaction of the obligation which gave rise to the judgment, including improper conduct and unfair advantage in connection with obtaining an interest in the judgment. The judgment itself was entered on May 13, 1980 which was before Sampson ever contacted Richins and became involved in the matters. All conduct with respect to satisfying the obligation on which the judgment was based was entirely in the control of Richins as president and owner of the general partner which was responsible for the Osborn

obligation. There was no evidence of improper dealing, misrepresentation or deceit by any Catlow Valley limited partner prior to entry of the judgment. A failure to pay assessments would not constitute such conduct and for such failures the general partner had its remedies as set forth in the partnership agreements which it did nothing about before entry of the judgment. Goff, as trustee, for those who put up the \$45,000, did not take unfair advantage of the defendants by taking as trustee, nor did the investors for whom he was trustee do so by advancing those funds.

16. As to the affirmative defense of estoppel, our Supreme Court in Angelos v. First Interstate Bank of Utah, 671 P.2d 772 (1983) said:

The doctrine of estoppel has application when one, by his acts, representations, or conduct, or by his silence when he ought to speak, induces another to believe certain facts exist and such other relies thereon to his detriment.

From my view of the evidence, I conclude that no facts have been proven by defendants that establishes estoppel as a viable defense in this case.

17. Based upon the facts and comments set forth in Finding of Fact 24, it is my opinion, and I so rule, that the plaintiffs who are limited partners and suing as such cannot maintain this action against Richtron, Inc. the general partner of the Catlow Valley partnerships, whose liability under the judgment exists

because of its role as general partner, and as such, was liable to Osborn for a partnership obligation.

18. The sheriff's sale under the Osborn judgment discussed in Finding of Fact 25 was not so unconscionable as to require invalidating that sale.

19. As to the claims asserted in the plaintiffs' Complaint I conclude that a deficiency remains unpaid upon the Osborn judgment in the amounts of principal and interest as set forth in Finding of Fact 21; that based upon the Findings of Fact and Conclusions of Law, plaintiff Goff and the beneficiaries of his trust have no valid claim against Richtron, Inc.; that they do have a valid claim for such deficiency against Richins and RFC, and that since the Findings and Conclusions that follow with respect to defendants' Counterclaim do not support the affirmative defense of an offset against Goff and those for whom he is trustee, said plaintiffs, excluding Sampson, are entitled to a judgment upon their Complaint against Richins and RFC for the stated amounts of the deficiencies remaining on the Osborn judgment in said Finding of Fact.

Such judgment shall be entered accordingly.

CONCLUSIONS OF LAWON COUNTERCLAIM

The issues and evidence in this case relate largely to the claims asserted against Sampson in the Counterclaim. Conclusions of law are usually based upon statutory case law, the language of contractual agreements and established facts as found by the court. Rather than to try to write a summary of what legal conclusions I glean from the law applicable to this case, I have concluded that comments concerning the law may have more meaning if and when made with respect to a conclusion I draw from the legal consequences of facts. Such comments may not in the technical sense be conclusions of law, but rather interpretations of law as I understand it from statutes, contracts and case law. Hopefully, language chosen will establish appropriate conclusions of law as I find them from the facts and evidence in the case. Numerical numbering of paragraphs will continue on as before.

20. Defendants' claim of irreparable injuries for which no adequate legal remedy lies at this time is not supported by any preponderance of the evidence and I thus conclude that injunctive relief should not be granted in this case. From the record in this case there is nothing shown that can be enjoined.

21. Based upon Findings of Fact 30 through 40, inclusive, it is my conclusion that during the summer and fall of 1980,

an attorney/client relationship existed between Sampson, Richins and Richtron companies in which Sampson represented said parties as clients and was not merely acting as counsel for limited partners who, for some reason, may have had an interest in the lawsuits involved.

22. Sampson's conduct in representing interests adverse to those of defendants after once establishing the attorney/client relationship constituted a breach of fiduciary duty by a lawyer to his clients and of trust and in doing so violated ethical standards adopted by the bar association relating to attorney/client relationships, duties and responsibilities. Such conduct is a part of the overall conduct of Sampson concluded to be tortious in the conclusions that follow. But defendants' evidence did not establish by a preponderance thereof that such conduct proximately caused identifiable damages specifically arising out of such conduct.

23. The claims asserted by Richins and RFC against the plaintiffs for whom Goff was trustee have no merit and they are entitled to no damages thereon and thus no offset against the plaintiffs' award of damages as set forth in the findings.

24. Sampson's acceptance of the representation of defendants in various lawsuits as set forth in the findings and his failure to answer or otherwise respond, or to take steps for defendants to obtain other counsel and thereby avoid defaults, constituted

negligence and a failure to measure up to the standard of care to be expected of members of the legal profession. However, as to such negligence defendants proved damages only in the total amount of \$2188.70 which consisted of attorneys fees paid Gary Kennedy for work done to set aside the default judgments in the Valmont and Interlake Thrift cases for which amount defendants are entitled to a judgment against Sampson on their second claim for relief, Richins in the amount of \$2027.40 and Richtron, Inc. in the full amount of \$2188.70.

25. Under the Certificate of Limited Partnership the general partner had the authority to assess, without limitation, the limited partners for partnership obligations such as installment payments due on land purchases, costs of irrigation equipment and other necessary expenses. The general partner did not have authority, upon failure of a limited partner to pay such assessment, to sue the limited partner for the unpaid assessment, but did have authority under the agreement to reduce the limited partners' interest in the partnership as well as to reduce his capital account.

26. The General Partner could not make capital investments in any partnership, but did, under express provisions of the partnership agreements, have the discretion to advance monies to the partnerships for use in the operations. The aggregate amount of such advances to any partnership became an obligation of the partnership to the general partner making those advances

to be repaid in accordance with the loan instrument or the agreement. Any such advances to any partnership established by the evidence was a debt repayable to the general partner. (Article V (1)(c) and Article VII (13)). Sampson's statements to the contrary to the limited partners did not alter such obligations. While as counsel for ~~the~~ ^{some BHC} limited partners, he was free to give them advice and his own legal thinking on all issues, he could not by giving such legal advice alter obligations created under legal relationships, nor can he escape personal responsibility for injuries he may have caused thereby simply because he was a lawyer giving advice to clients. Injuries he may have caused to his own clients by wrongful advice are not relevant to this case.

27. Richins, as president of the general partners, and in complete control along with members of his family, had been the guiding light of each partnership in whom the investors had placed their confidence. He knew as the one drafting the partnership agreements and the person responsible for putting all the partnerships together, that he as president was the agent for each general partner and that such general partners could act only through him. Richins' acts were the acts of the general partners and the general partners were bound by Richins' acts or failures to act, for whatever fell therefrom upon the general partners under the partnership agreements and

the law. Thus his conduct as established by the evidence plays a significant role in examining claimed injuries and damages, if any, allegedly resulting therefrom.

28. The undisclosed execution by Richins as president of the general partner of the quit-claim deeds on or about June 2 and 5, 1980, which deeds purported to convey all partnership properties to RFC of the partnerships named in Finding of Fact 56, was contrary to law and therefore void. While the farm properties were being purchased by the partnerships under a contract with RFC, the legal effect of the quit-claim deeds was to deprive the partnership of its main if not its only, asset which would make it impossible for the partnership to carry on its ordinary business. Section 48-2-9 (2) specifically states that the general partner has no authority to do this without the written consent or ratification of all the limited partners. While a general partner has full charge of the management, conduct and operation of partnership affairs (Article V (1)), Article VII (6) states that in the event the general partner desires to take any action which is subject to the consent of the limited partners, the general partner shall give each limited partner notice of the proposed action. Such notice was not given and precluded limited partners from objecting thereto within the fourteen days allowed in said Article. Section 48-2-10(1)(b) states limited partners shall have a formal account

of partnership affairs whenever circumstances render it just and reasonable. It is difficult to conceive of any circumstance falling more closely into this statutory provision than the secretive conveyance of the partnership farms to a third party. Finally and most importantly, there is a need some place along the line for a winding up of the affairs of the partnership, foremost among which is to provide for payment to the creditors. This could not be successfully done if the general partner has first disposed of the assets of the partnership. Any claim by defendants that the recording of such deeds six or seven months later gave defendants complete ownership interest for which they appear to assert the fair market value thereof as a measure of damages is, in my opinion, without merit and I so conclude.

29. On June 5, 1980 Richins prepared and executed the eighteen promissory notes set out in Finding of Fact 57. The content of the notes shows they were intended to cover the obligations owed by the various partnerships for advances of monies Richins claims were made to the partnership. The content also shows that such notes were not made at the time an advance was made, which Article V(1)(c) seems to imply should be the time when the "terms of the loan instrument" should have been established. However, I do not conclude that delay in executing such loan instrument rendered the obligations for advances void.

Such delay certainly left all concerned without any guidelines for repaying the advances out of gross receipts of a partnership as set forth in that Article. That Article states that such advances shall not be deemed a capital contribution, but also that such advances shall become immediately due and payable upon the sale of the property or the termination or dissolution of the partnership. Article VII (a) stated that the partnership shall "terminate" upon the "withdrawal" of the general partner and that upon termination, the partnership affairs shall be wound up, its liabilities and obligations to creditors paid, all remaining assets shall be distributed as provided in Article IV and the partnership shall then be dissolved. Under these terms of the agreement the "withdrawal" of the general partner effected a termination which would have rendered the advances immediately due and payable. Sampson's repeated admonitions to the investors and his repeated contentions to Richins that the advances did not have to be repaid are factors to be considered in determining the tortiousness of his conduct.

30. As to Findings of Fact 59, 60, 61 and 62, Richins' instructions on one hand to the limited partners of Blackfoot, Snowville and Kanosh in June, 1980, that the Richtron general partner had withdrawn and that they were to go ahead and elect a new general partner, while on the other hand telling them that the partnership was then terminated and its affairs were

to be wound up, debts paid, the assets distributed and the partnership would be dissolved, did in my mind, raise confusion in the minds of the investors in those partnerships as to what they were to do or what they could expect. The suggestion to elect a new general partner implies that the business of the partnerships was to continue. The statement that the partnership was terminated and its affairs would be wound up puts the burden to do so on the Richtron general partner and renders needless the election of a new general partner. He appeared, as did Sampson later on, to place his own erroneous interpretation on what the law allowed him to do. As elsewhere considered, it is my opinion Richins misinterpreted Section 48-2-20.

31. Finding of Fact 63 notes that at the meeting of June 26, 1980, discussions resulted in Sampson first becoming involved in the receipt and disbursement of partnership funds. This function began because investors at the meeting insisted that Richins alone was to no longer handle such funds. While Richins consented, the authority of the limited partners to direct such action without thereby becoming active in partnership affairs did not exist. The partnership agreement placed the full charge of the management, conduct and operation of the partnerships in all respects and in all matters upon the general partner and specifically provided that no limited partner shall take part in the conduct or control of the affairs of the partnership.

The settlement agreement tentatively reached at the meeting undoubtedly influenced this course of action. Article V(1)(b) authorizes the general partner to employ on behalf of the partnerships persons, such as attorneys, to render the type of extraordinary services not generally rendered by owners and operators of property. Collecting partnership funds and disbursing them are not "extraordinary services," but are in fact the services generally rendered by the general partner of a limited partnership. I question Richins' authority to consent to Sampson's role in the collection of funds and I do not believe limited partners can hire a lawyer to represent them and direct him to participate in partnership affairs that are within the exclusive control of the general partner. But what was done, was done -- probably because all concerned believed the settlement agreement would resolve the existing problems and, pending execution thereof, obligations of the partnerships had to be met and funds to do so had to be collected. However, this tentative arrangement pending the drafting and consummation of the settlement agreement is not, in my opinion, a factor to be given much weight in weighing the legality of what Sampson did in the months that followed.

32. As mentioned in Finding of Fact 64, and as elsewhere frequently referred to, Sampson made repeated contentions that the limited partners or the partnerships had no obligation to repay advances made to the partnership by the general partner.

As noted elsewhere, Section 48-2-1 and Article VI(1) clearly provide that limited partners shall not be personally liable for the debts of the partnership or any of the losses thereof. But this freedom from liability extended to the partners does not extend to the partnerships and to pay partnership liabilities, limited partners are subject to assessments at the will of the general partner. In such contentions I believe and so conclude that Sampson as a lawyer had a responsibility to make clear that under the partnership agreements advances were subject to repayment as provided in the agreement and I find nothing in the evidence that suggests Sampson ever fulfilled that responsibility. While Sampson may have believed this opinion he expressed so often, it did not make it so and is a part of his conduct to be examined in determining whether tort liability was proven.

33. With respect to what is stated in Finding of Fact 65, I note that Richins did frequently stress the fact that by his withdrawal of his companies as general partners, such withdrawal legally terminated the partnership under Section 48-2-20 of the Code and set the course for its dissolution. I have reflected upon that contention at considerable length and concluded the section needed consideration. It provides that the "retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners (a) under a right to do so

stated in the certificate, or (b) with the consent of all members." I have concluded that both (a) and (b) are premised upon the existence of more than one general partner in the limited partnership as it then exists.

As I read this statute, if one general partner retires, dies or becomes insane, a surviving general partner, if there be one, can continue the business under this section only if his right to do so is so stated in the certificate, or such surviving general partner obtains the consent of all members to continue the business. Unless the requirements of (a) and (b) are met, a remaining general partner has no authority under the statute to prevent the statutory dissolutionment that is triggered by the prevailing conditions at the time. Where there is no "remaining general partner" to continue the business under Section 48-2-20, the provisions of Section 48-2-24(2)(e) would have no application with respect to amendment of the certificate, nor would the selection of a new general partner cure the defect.

The phrase "retirement, death or insanity," of a general partner also appears in Section 48-2-9 which states that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners shall have no authority to, among other prohibitions, continue the business with partnership property on the death, retirement, or insanity of a general partner unless the right

to do so is given in the certificate. My conclusion is that this statute also supports the conclusion I came to regarding Section 48-2-20 as set forth in the preceding paragraphs.

34. As I have reflected upon the issues of this case and the contentions made therein, I have pondered over the meaning and scope of the word "retirement" as used in the statute. I note that the word "retirement" is not used in the Certificate of Partnership Agreement. The word used in the Certificate that seems to approach it in use and purpose is the word "withdrawal," a word not found in Utahs Limited Partnership Act. The word "retirement" has no applicable definition in the Code.

Upon research I found Dickson v. Hansman, 413 P.2d 378 (Wash.), which case considered a contract using the words "death, permanent disability or retirement of" and discussed the meaning of "retirement." The court noted that both sides cited many definitions bearing upon some phase of the meaning of "retirement." That court determined that the circumstances existing relating to the choice of that word, with no definition being added, were significant and concluded the parties did not intend it to mean resignation, quitting or withdrawal from the business at any time or in any manner. Under the "ejusdem generis" canon of statutory construction where words follow the enumeration of particular classes of things, the general word will be construed as applying only to things of the same general class as those

enumerated. (Black's Law Dictionary - 5th Edition, p. 464). Both death and insanity have application only to persons and not to legal entities and connote a permanent incapacity to perform. Thus, it seems to me, that the legislature intended the language of Section 48-2-20 to apply to general partners who were real people having the capacity of experiencing death, insanity, or retirement, and as to the latter, reaching that stage in life where one by age or physical ailments is unable to continue on in the normal course of events. I do not believe, and so conclude, that the word "retirement" as used in the statute and the word "withdrawal" as used by Richins are synonymous. Neither death, insanity or retirement has any reasonable or literal application to a corporation, yet Richins repeatedly relied upon Section 42-2-20 as including a voluntary withdrawal by his corporations as general partner, at any time, for any reason, and using any means, as a basis for his authority for the dissolution and termination of his partnerships. He should have relied upon the partnership agreements he drafted.

Section 48-1-3 provides that provisions of this chapter (which relates to general partnerships) shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith. Chapter 2 does not define "dissolution." Chapter 1, Section 26, states:

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

Section 48-1-27 provides that "On dissolution a partnership is not terminated, but continues until the winding up of the partnership affairs is completed." Dissolution is thus not termination, but is rather the opening of the door for winding up the affairs of the partnership business that has leads to termination.

35. From the foregoing it is my conclusion and I so rule, that Section 48-2-20 is not applicable to the issues of this case and Richins' repeated referral to that section as a basis for his authority to follow the course he took was an erroneous application of and reliance on the statute in question. Thus, I think we must look to the Certificate of Partnership Agreement and the provisions relating thereto to determine rights and responsibilities arising out of the "withdrawal" of a general partner.

Relevant provisions of the partnership agreements have been noted (Finding 65) and further mention will be made here. Article V (5) provides that the general partner may at any time withdraw from the partnership, sell or assign all or any part of its interest as a general partner to a qualified party, by giving notice to all limited partners, and such notice shall

be effective upon the receipt by the last partner of such notice of withdrawal, sale or assignment. Section VII (2) requires that all notices to be given under the agreement shall be in writing. Another provision (Article VII) states the partnership shall terminate 22 years from the date thereof or upon the prior occurrence of any one of certain listed events, included among which is by the "withdrawal," of the general partner, or by the affirmative vote of not less than a majority in interest of the limited partners as provided in Article VI, paragraph 6(b), which states that the limited partners have the right, by vote of a majority interest to terminate the partnership and order the distribution of assets. Paragraph 6(a) thereof gives to the limited partners the right to remove the present general partner and elect a new one. Since the general partner's "withdrawal" does not become effective until receipt of the written notice by the last partner of the partnership, in that interval of time -- until the effective moment of the notice -- the limited partners could by majority vote remove the general partner and elect a new one. Such action would avoid the termination which the withdrawal of the general partner would otherwise effect. In this case there is no evidence that the limited partners of any partnership did so after Richins sent out his notices of withdrawal, nor was any evidence presented that any limited partner failed to receive such notice of withdrawal.

38. Article VII sets forth the steps to be taken upon termination by such withdrawal to effect a wind up of the partnership affairs -- the payment of the partnership's liabilities and obligations to creditors and the distribution of all remaining assets as provided in Article IV of the agreement, which states that after receipt by the limited partners of payment in value of the amounts of their capital contributions, the remainder is divided 90% to the limited partners and 10% to the general partner.

Again I mention that the agreement makes it clear that all unpaid advances made by the general partner to the partnership are due and payable upon the sale of the property or the termination and dissolution of the partnership. I also note that Section 48-2-23 of our Code sets out the order in which the liabilities of the partnership shall be paid in settling accounts after "dissolution," which as I have noted before, is a proceeding that leads to "termination" under our Code.

39. But the claims for relief in the Counterclaim are not based upon what did not happen, but rather upon the alleged intentional interference of Sampson with respect to partnership affairs; whether injuries occurred; and if so, what injuries and what damages, if any, were proximately caused thereby. This requires a careful examination of what Sampson did or did not do as required by law. Sampson's desire, if not his intent,

to take over control of all the partnerships was manifested by him to Richins the first day after the May 29, 1980 meeting of the Catlow Valley partnerships. Sampson's acts and course of conduct are set out in Finding of Fact 67 through 75. As can be seen therein Sampson endeavored to remove the Richtron general partners and elect first his PC and later his Ag Management corporation as general partners in each partnership by utilizing the voting authority he claimed was granted to him under the powers of attorney. The partnership agreements gave him an easy way to achieve his goal and incredibly he did not use it -- the majority vote by the limited partners when properly used as required by law.

The provisions of our statutes state a limited partnership can be formed by two or more persons, who desire to form a limited partnership, signing and swearing to a certificate, which signing and swearing are both mandatory as to each member under the statute. The statute sets forth what such certificate shall state (Section 48-2-2). Section 48-2-24 provides that a certificate shall be amended when a person is admitted as a general partner, or if a general partner retires, dies or becomes insane and the business is continued under Section 48-2-20, which section I have heretofore considered at length. Section 48-2-25 states the writnig to amend a certificate shall conform to the requirements of Section 48-2-2(1) as far as necessary to set forth clearly

the change in the certificate which it is desired to make and be signed and sworn to by all members. In my opinion these statutory requirements are explicit in requiring each member of a limited partnership to sign and swear to any amended certificate, and in no sense of the word could Sampson's purported voting proxies represented by powers of attorney allow him or the limited partners to ignore the specific requirements of these statutes and allege compliance therewith by use of only his own signature under such powers of attorney.

The partnership agreements mentioned certain voting rights the limited partners had -- to remove the general partner by vote of a majority in interest and elect a new one, or to vote to terminate the partnership and order the distribution of assets. Sampson may have read the agreement so as to lead him to think that all he needed was authority to vote the interest of each limited partner, that such authority could be obtained by use of a power of attorney, and that once having obtained such powers of attorney, he was authorized under the agreement to sit alone in his own office, hold a partnership meeting, and cast the votes to remove the Richtron general partner and vote his own corporation in. But, as stated, Section 48-2-24(d) states that a certificate shall be amended when a person is admitted as a general partner and the statutes cited in the preceding paragraph

require such amended certificate to be signed and sworn to by all the members.

Section 48-2-25 also states that a certificate is amended when there is filed for record in the office of the county clerk where the certificate is recorded a writing in conformity with the provisions of paragraph 1 thereof. Also Article VII (9) touches generally upon amending the agreement by stating it may be amended from time to time with the written consent of the general partner and all of the limited partners.

40. I thus conclude under the facts and circumstances of this case that in attempting to substitute his own corporation (PC) as general partner, the amended certificate reflecting such change was not signed and sworn to by each member of the partnership as required by law, and thus the amended certificate filed as to the substitution of Sampson's PC was invalid ab initio as not being in conformity with law and had no force or effect in removing the Richtron general partners.

41. As to Sampson's effort to substitute Ag Management as general partner wherein no amended certificate was even filed, I conclude that that effort also was invalid as not being in conformity with law and had no force and effect in removing the Richtron general partners. I also conclude that a document entitled "Notice of Substitution" of a new general partner did not constitute an amendment to the certificate, but that if

it could liberally be said that it was, and so intended, it still lacked the required formalities of law.

42. In closing argument counsel for plaintiffs' counsel cited Rond v. Yeamons, et al., 681 P.2d 1240, as holding that the failure to file a certificate of limited partnership did not affect liability thereunder and that the argument raised against Sampson with failure to properly file was a straw man argument and not in conformity with what the Supreme Court said in that case. A reading of that case does not, in my opinion, support counsel's contention. In that case the partnership certificate was signed but not recorded. The plaintiff asserted that the failure to file as required by Section 48-2-2(1)(b) rendered the defendants' statement that it was a limited partnership under the laws of Utah was a false statement and the failure to record was not a substantial compliance with the statute. Our court noted the issue had not been presented in the court before, but that the Supreme Court of New Mexico had directly addressed the problem in Hoefer v. Hall, 411 P.2d 230. There, though the limited partnership agreement had been executed by the parties, it had never been recorded under New Mexico statutes. Our court said: "The Court held that where neither the rights of third parties,....failure to record the certificate cannot affect the existence of a limited partnership insofar as the parties, inter se, are concerned." Our court then stated:

We conclude that the failure to file the certificate of limited partnership does not affect the existence of the limited partnership as an entity, in a controversy between the partners themselves, where...the interests of third parties...." is not involved.

The case at bar is clearly distinguishable on the facts as the interests of third parties are involved and the case is not authority for saying the amended certificates Sampson purported to use and file were valid and binding even though not in compliance with state law.

43. Finding of Fact 73 mentions Judge Palmer's ruling that Ag Management was not the general partner of any partnership, and Finding of Fact 74 sets forth facts concerning an IRS sale of defendants' property interests on October 29, 1982, which preceded Judge Palmer's ruling by about two weeks. The tax sale was made to Goff as trustee and gave him at least a color of title to continue the take over of whatever Richtron interests were sold at the tax sale. The IRS issued a Certificate of Sale and its validity was confirmed by Judge Cornaby's rulings which gave Goff control until Judge Winder's ruling in May, 1984, declared the sale void and set aside all claim of rights asserted by Sampson and his group under that tax sale. From Finding of Fact 76 it is apparent that by the time Judge Winder entered his ruling, all partnership foreclosures had occurred except East Taber, which was foreclosed on August 8, 1984.

The evidence lacks any details as to what the foreclosures involved, whether they resulted in a complete loss of partnership property without any return to the partnership, and what, if anything, was done as far as winding up partnership affairs, including information as to what was done about each partnership's debts, assets, liabilities or profits remaining, if any. From the evidence the only information the court has is that as of the date Judge Winder made his ruling, the Ag Management account had a balance of about \$28,700 which by October 29, 1984 had increased to over \$43,000, while the account balance of Consolidated Farms as of October 29, 1984 was \$245,597, with \$74,320 having been received since Judge Winder's ruling and \$12,000 having been disbursed, all to Ag Management, more details of which accounts are set forth in Conclusions of Law 64 and 65 that follow.

44. Judge Palmer's ruling that Ag Management was not under the law a validly elected general partner of the partnerships brought the Sampson's group's control on that basis to an end, but the prior IRS tax sale of October 29, 1982, followed by Judge Cornaby's two orders, authorized the Sampson group to continue its control of the property interests acquired by that rule until Judge Winder entered his Order on May 16, 1984, which, among other things, ruled as follows:

Ordered that that certain United States Internal Revenue Service public auction conducted on October 29, 1982, in Ogden, Utah, for the purpose of liquidating certain taxliabilities of Plaintiff Richtron, Inc. shall be, and the same hereby is, declared void and of absolutely no force or effect; and it is accordingly

Ordered that any and all Certificates of Sale of Seized Property issued by the United States Internal Revenue Service to Goff or Goff's nominees or agents, shall be, and the same hereby are, declared void and of absolutely no force or effect; and it is further

Ordered that neither Goff nor his nominees or agents have any right, title or interest in and to (1) the capital stock of the plaintiff corporations; (2) the right of the plaintiff corporations to liquidate, wind-up, terminate and render an accounting respecting the affairs of any limited partnership of which they are the liquidating general partners; (3) the right of the plaintiff corporations to institute or maintain causes of action for or on behalf of themselves; and (4) any of the real estate contracts described in the notices of seizure at issue in this proceeding.

From Judge Winder's ruling it is apparent that as of the date thereof neither Goff nor his agents or nominees received any valid rights from the IRS sale of defendants' interests in the partnership; and specifically no right, title or interest in the capital stock of defendants' corporations, the defendants' rights to wind up the affairs of any limited partnership of which they were the liquidating general partners, or in any of the real estate contracts described in the notices of seizure.

In my opinion Judge Winder's Order ended then and there Goff or his agents' or nominees' right to take any further steps in the wind up of any affairs of any partnership in which the Richtron companies remained as general partners, and I so conclude.

From Finding of Fact 76 it appears that notwithstanding Judge Winder's ruling, Sampson by his letter of August 28, 1984 continued to assert rights in the properties, alleging as a reason therefore that he and his group had repurchased some of the farm properties after they had been foreclosed upon, but giving no information as to which properties they had so purchased, or when, or any information as to what partnership interests may have passed back to the control of Richtron general partners by reason of Judge Winder's ruling. Whether defendants should be granted an accounting from Sampson after he took over control of all partnerships at the beginning of 1981 will await completion of further Conclusions of Law.

45. Sampson's telephone call, considered in Finding of Fact 78, to John Anderson, counsel for defendants, "warning" him that unless he ceased all representations of the various Richtron entities, including a federal court case recently filed and appeals to modify recent District Court rulings, he would see "sanctions" and "other relief" against him, was not a limitation put upon Anderson by Judge Cornaby's Order of February 3, 1983. Sampson's action in so stating to Anderson was, in my opinion,

unprofessional conduct and I so conclude as I examine the facts of this case bearing upon Sampson's conduct.

46. From what is stated in the findings up through Finding of Fact 75, I conclude that Richins has not established by a preponderance of the evidence that Sampson's conduct interfered with and invaded, as alleged "his right" to earn a livelihood as a syndicator of limited partnership interests, as distinguished from an alleged intentional interference with existing or potential economic relations, nor with anticipated opportunities for employment as alleged. As to Richins' claims for relief on these two limited, but specific grounds, I conclude that they should be and are denied.

47. In Utah a claim for relief for intentional interference with existing or prospective economic relations states a claim upon which relief can be granted, and imposes upon the claimant the burden of proving the three elements of that tort as set forth in Finding of Fact 80. I conclude that such a claim for relief is set forth in the fourth claim, note that the other claims for relief are realleged as a part of the fourth claim, and so evidence received with respect to other claims has a part in defendants' meeting their burden of proving by a preponderance of the evidence the three essential elements of that tort.

48. As to Finding of Fact 84, I do not believe and so conclude that, as repeatedly contended by Sampson, a markup in the contract price for which RFC or Richtron, Inc. sold farm property to a partnership by contract was a breach of fiduciary duty which rendered such contract, or the mark-up therein contained, illegal and void.

49. Sampson, as also considered in Finding 84, by instructing Richins to send him any complaint and summons served upon him on any lawsuit, and stating that he would answer it, and doing so when such was sent, created a lawyer/client relationship between them, and did so likewise as to cases sent to Sampson in which he failed to answer the Complaint and let a default judgment be entered.

50. The limited partners had no authority to vote Sampson in as attorney for the Richtron companies, when and if the settlement agreement was consummated, as Sampson requested and allowed them to do at the June 26, 1980 meeting.

51. Finding of Fact 84 also considers facts relating to the ongoing conflict between Richins and Sampson over advances made to the partnerships by defendants or members of Richins' family. The partnership agreements recognized that it would probably become necessary for monies to be advanced to a partnership to meet expenses, and specifically provided that the general partner could make such advances periodically which would constitute

loans to the partnership to be repaid by the means provided for therein.

I conclude from the information in Finding 84 that the Richtron general partners made such advances to twelve named partnerships which advances became and were loan obligations of the particular partnership receiving them to be repaid as provided in the partnership agreements. From the same information I find that defendants received advances from eight limited partnerships as set forth and how these advances were handled by the defendants I have not gleaned from the evidence. The advances included money furnished by the Leo H. Richins Family Trust and by Shari Richins.

I further conclude that the oft repeated statements by Sampson that the advances did not have to be repaid which he made to investors, with no explanation as to what the agreements provided with respect thereto, were erroneous, and in my opinion such repeated statements had the effect of convincing some limited partners that the partnerships had no obligation to repay the advances to the general partner and constituted a factor in the failure to have the settlement agreement consummated; and such was an improper means used in his interference with the economic relations existing between the partnerships and the general partners.

52. Sampson had no authority to use partnership funds to pay off Murray First Thrift at a foreclosure sale on July 18, 1980, or to refuse to turn over the reconveyance deed made out to the general partner to Richins. Such act was an intentional interference in partnership affairs.

53. As set out in Finding of Fact 87, the written solicitation of powers of attorney giving Sampson the right to vote for the limited partner, contained the written stated purpose that they must remove Richins and his organizations as general partners and to thereafter commence legal action to retain the properties, roll back the contract prices and pursue other legal means. Such request, together with his written instruction that all contributions to the partnerships were to be sent to him, was an intentional interference with the defendants' existing economic relations and was done for an improper purpose of taking over complete control of the partnerships. Such affirmative actions were certainly more than mere advice of a lawyer to his clients.

54. Sampson's election of his PC as general partner (Finding of Fact 87) for each partnership, voting under the powers of attorney, and his failure to have the amended certificate reflecting such change personally signed and sworn to by each limited partner before filing, but instead signing such amended certificate individually and as president of the PC, was in direct violation of provisions of Utah's Limited Partnership Act and rendered

the amended certificate null and void and negated his PC holding the position of general manager.

55. As to Finding 88, Sampson's obtaining of an assignment of the Osborn judgment to himself for the purpose of commencing an action thereon was a direct violation of Section 78-51-27, which is in a chapter of Title 78 that contains statutes relating only to attorneys, and which section makes such action a misdemeanor, punishable as such as well as subjecting him to a suspension or revocation of his license. A violation of law is an improper means of interfering with existing economic relations and was in this case. His use of partnership funds for such purpose was unauthorized as Richtron, Inc. remained general partner with complete control over partnership affairs.

Sampson's similar action a year later (set forth in Finding 88) in obtaining an assignment of the Osborn judgment to maintain an action thereon was a separate such violation of law and a further use of an improper means.

56. Sampson's attempted substitution of Ag Management as general partner of each partnership in place of Sampson's PC, as set forth in Finding 89, without even filing an amended certificate showing such change, was contrary to law, a nullity and gave Ag Management no authority to act as such. This too constituted an intentional interference with existing economic

relations by an improper means, namely, the violation of state law.

57. From all the Findings of Fact up to and including Finding 95, I conclude that the evidence clearly preponderates in establishing that Sampson intentionally interfered with the existing economic relations defendants had with some 25 limited partnerships, and that he did so for an improper purpose and by improper means.

58. Based upon the summary of facts set forth in Findings of Fact 96 and 97 I conclude that Sampson by his tortious conduct caused injury to the defendants.

59. Defendants are separate parties, different entities and must assert and prove their own claims for relief which are based upon different rights. (See Findings 99 through 103) However, they each assert jointly the same claims for relief, with one or two exceptions, so the pleadings are deemed amended to consider the legal bases on which each claims relief.

Richins appears as an individual with no ^einterest in the partnerships either as a limited or general partner. His office as president of the Richtron companies does not add to his rights or claims for relief. He asserts he and Sampson had an attorney-client relation and in any action in which Sampson was negligent or wrongful in what he did, he individually can and does assert a claim for relief. The evidence supports the contention that

in certain cases Sampson appeared as counsel for Richins named individually as a party therein. But Richins, as do his companies asserting the same claims of attorney/client relationship, has the burden of proving that whatever Sampson did proximately caused injury and damages thereby. While Sampson's conduct in these claims have relevance to the intentional interference claim, and will be considered therein, to prove a right to recover on the first and second claims and the amount of damages recoverable each defendant has its own stated burdens of proof. In this case it was proven that in some actions in which he appeared as counsel for defendants, he allowed default judgments to be taken against them. As to the default judgments entered in the Valmont and Interlake Thrift cases there was evidence to show damages resulting from the injury of said default judgments, as set out in Conclusion #24 for which Richins and Richtron, Inc. are entitled to judgments against Sampson as set out in that Conclusion. Recognizing that the alleged wrong doing of Sampson asserted as claims in the first and second claims for relief is related and relevant to the claim under the fourth count, I conclude as to the first claim the defendants have individually proven the wrongful conduct but each failed to prove by a preponderance of the evidence the amount of damages, if any, they sustained as a proximate result of the alleged wrongful conduct.

60. In this case RFC did not assert a specific claim against Sampson as a limited partner in Richfield Farms and in Catlow Valley #2 and #6, but Sampson totally ignored RFC's role as a limited partner and did nothing to protect RFC's interest as a limited partner in those three partnerships. Sampson by his conduct certainly interfered with RFC's existing economic relations it had in these partnerships, causing the loss of its invested interests as a limited partner therein.

RFC's entitlement to other damages must be determined from ascertaining its losses, if any, in not receiving its share of any payments made by the partnership on the land it was buying. RFC had not been receiving payments from the general partner, whose duty it was to pay, on the partnership's obligation on its land purchase contract, and had thus itself defaulted upon payments owed to the original sellers. As noted, it was in fact confronted with a foreclosure sale on one of its contract properties on June 6, 1980. Upon filing bankruptcy, its rights and obligations passed to the control of the trustee in the bankruptcy court. No evidence was presented to the court as to what, if anything, the bankruptcy court ever did with respect to RFC's interest in the properties. It appears it did not stop or delay the foreclosure sale set for June 6, 1980. Counsel advised the court that someplace along the line the bankruptcy

proceedings were dismissed and the automatic stay in this case as far as RFC was concerned was terminated.

In December, 1980 Sampson purported to elect his PC as general partner replacing the Richtron general partner. He took over and retained control of the partnerships. How RFC's bankruptcy affected his control was not disclosed by any evidence. He retained control until they were reportedly foreclosed upon by the original owner. Evidence with respect to what happened in such foreclosure was not presented to the Court. Apparently Sampson, like Richins, was unable to save the partnerships, or to wind them up or to terminate their existence. From December, 1980, or earlier, Sampson held the purse strings, receiving and disbursing hundreds of thousands of dollars. Sampson as the president of the purported general partner, had the responsibility of seeing that the partnership paid its installments to RFC on the purchase contract. He had no authority to declare a contract between RFC and the partnership terminated or void. He always contended that the mark-up on the resale of the land was a breach of someone's fiduciary duty -- without saying who's -- and was invalid. I do not agree.

If he used money contributed by the partners to make payments on the property directly to the original owner, he omitted paying RFC its share of the installment due. Defendants have undertaken to show how much was paid out as appears with findings beginning

with Finding 104. What use Sampson made of money not already accounted for may indeed require an accounting, but defendants still have the burden of proving by a preponderance of the evidence what amount, if any, they were thus deprived of.

One exhibit defendants presented was 158, which, among other things, set forth a "Net Contract Equity," which the exhibit defined as the equity differences between the Richtron real estate contracts and the partnership real estate contracts, which, as of April 30, 1981, was declared therein to be \$1,306,574.69, most, if not all, of which would probably be mark-up. This amount was not then due RFC and does not afford to us a measure of damages. If adjusted for prior payments made by the partnerships to RFC, it would probably reflect a total mark-up which amount could be used as a measure of damages only if defendants could prove that but for Sampson's conduct, all partnership contracts would have been paid off in full. This they have not done and could not do.

The financial problems which confronted the defendants and partnerships in May, 1980 included defaults in land contract payments by the partnerships to RFC (or Richtron, Inc.) over which partnerships Richins, as president of the general partner, had complete control. Richins also had control over the defaults in RFC's payments to the original sellers as RFC also then was completely controlled by Richins. As previously set forth the

Richtron general partners had formally withdrawn as such from all partnerships by January, 1981, but they still had the obligation to wind up partnership affairs, and although Sampson was a stumbling block, defendants could have but did not seek court assistance in effecting such wind-up responsibilities. As I have elsewhere stated, I think it appropriate here to note that although this lawsuit was filed February 11, 1981, the defendants filed no responsive pleading until July, 1982.

While I have concluded that Sampson by his tortious conduct intentionally interfered with the existing economic relations defendants had with each individual partnership, both for an improper purpose and by improper means, thereby causing injury to defendants, I am at this point ready to state, and so conclude, that each general partner has failed to prove damages, or any amount thereof, with respect to the general partner being deprived by such conduct of unpaid current expenses -- which phrase does not include "advances" -- nor of its 10% of profits for any partnership allowable to the general partner by the certificate of limited partnerships upon termination if such profits then existed. Whether any partnership, if wound up as provided by law and the agreement, would have had profits is pure speculation based upon the evidentiary record in this case.

61. Paragraph 3 of the General Averments of the defendants' Second Amended Counterclaim states that Frontier Investments

is the assignee and transferee of all right, title and interest of all defendants in any and all monetary proceeds recovered from the plaintiffs in this case. Said allegation was denied by plaintiffs in their reply to the Second Amended Counterclaim. As stated in Finding 103 the court found no evidence in the record of any such alleged assignment or transfer and thus concludes that its right to such monetary proceeds, if any, was not proven during the trial.

62. As shown in Finding 104, Exhibit 223, contains evidence as to Sampson's receipts and disbursements of \$645,103.38 during the period from June 27, 1980 and November 30, 1982, included among which were disbursements of \$146,551.03 which primarily involved payments to the original owners-sellers of the various farm properties which Sampson made without paying those amounts to RFC and/or Richtron, Inc. as required in the real estate contracts they had with the individual partnerships.

About one month prior to the ending date of this accounting period, the IRS sale took place, and one week before Judge Palmer's ruling ended Ag Management's role as general partner. Sampson's claimed authority to continue control of the limited partnerships after Judge Palmer's ruling was based upon whatever rights therein were received under the IRS sale and the validity of that sale.

63. As of August 30, 1983 the John P. Sampson, Attorney at Law, Trust Account contained \$11,574.50, which included deposits

since December 20, 1982 of \$5,000 from Ag Management and \$6,000 from Consolidated Farms (Finding 105).

64. As found in Finding 105, Exhibit 219 related to the Ag Management Account for the period of February 16, 1982 to October 29, 1984. Seventy five deposits made to this account after November 30, 1982 totaled \$230,700, \$143,000 of which came from Consolidated Farms, \$20,000 from Snowville rent and \$51,974 from Springfield grain. During the same period 260 disbursements were made. As of October 29, 1984, the account showed a credit balance of \$43,103. Among disbursements were one to Everingham of \$32,460 on the Springfield property, one of \$16,119 to Utah Mortgage on Snowville, and \$8,000 to Sampson as attorneys fees. Following the federal court's ruling in May, 1984 that the IRS sale was void, about \$14,300 was deposited to this account from Consolidated Farms and some named limited partners and \$1,000 on Snowville rental. Only one \$100 disbursement was made after that ruling.

65. Consolidated Farms was incorporated by Sampson for the sole purpose of receiving the assets of all limited partnerships. The account was opened on November 15, 1982 and a summary thereof by Richins extended to October 29, 1984 on which date a credit balance of \$145,597 remained from deposits totaling \$778,136 consisting almost entirely of contributions from limited partners. One is left to wonder whether any of such payments

by the limited partners would have been made to Richins had he retained or remained in control. (See Finding 106) From an analysis of disbursements almost all were checks to Ag Management or to Keith Blanch, or to one of his two bank accounts. On or about October 13, 1983 \$100,000 was paid out on Randlett. \$24,000 was paid to Sampson on attorney's fees. Following the federal court ruling in May, 1984, receipts totaled about \$74,320, and disbursements about \$12,000.

66. Keith Blanch had two bank accounts, one in Oregon and one in Idaho. Between November 3, 1980 and May 10, 1983, \$159,515 was deposited in the Oregon account which consisted almost entirely of transfers from the John Sampson PC Trust Account prior to March 5, 1982 and from the Ag Management account after that date. Disbursements therefrom appeared to be for Blanch's personal as well as partnership business purposes. The Idaho account covered a period of July 8, 1983 to December 31, 1983 during which receipts totaled \$108,326 and disbursements \$107,849. The source of receipts appeared to be transfers from Consolidated Farms. (Findings 107 and 108)

67. No evidence of receipts or disbursements after October 29, 1984 was received, but Richins' schedules appear to substantially cover all receipts and disbursements to that date.

68. It appears from Finding of Fact 110 that the Springfield and Moreland properties had been sold prior to April 30, 1981.

69. A balance sheet for RFC as of April 30, 1981, offered as evidence of damage contained unexplained amounts based upon assumptions that did not exist, including a "present market" list of values, the source of which appears to have been opinions of Richins. I conclude this exhibit offers no credible evidence of damages other than a possible source of determining markup on resale of properties to the partnerships of about 40%. (Finding 110)

70. A status report of RFC dated July 1, 1981 offered as evidence of value contained as a basis for use therein of an "estimated market value" of some 20 partnerships of \$9,900,120, which company one year before had filed bankruptcy proceedings. I conclude that this exhibit offers no credible evidence on damages. It did reflect a total of \$3,889,364 payable on real estate contracts. (Finding 111)

71. While settlement negotiations were under way and RFC had just filed bankruptcy, Richins prepared a schedule "to give an idea on values" showing, based upon his opinion, a total combined real estate value for all partnerships of \$12,380,400 on 14,374 acres, which "idea on values" I conclude lacks any foundational basis or credibility on damages. (Finding 112)

72. A consolidated balance sheet for Richtron, Inc., dated June 20, 1980, was prepared by Richins for "internal use only" with all computations subject to audit. For all partnerships

it listed real estate contract receivables as valued at \$4,831,315 while those payable totaled \$3,462,010 or a difference of \$1,396,305. I have searched the mass of exhibits in vain for evidence as to what the total original purchase price was for all property purchased by RFC or Richtron, Inc. from original owners and what the total prices were for those same properties when resold to the partnerships. This balance sheet (226) though dated June 20, 1980, in my opinion, comes closer to reflecting that ratio of those totals than any other exhibits. Copies of the original buy and resale contracts were never placed into evidence. Using this schedule, it reflects an average markup upon resale to the partnership was about 28.35%. (Finding 113)

73. Just prior to trial Richins prepared a "final accounting" which he described as a "summary of partnership equities" determined by him as of June 30, 1980. Using values affixed to the properties in the schedule mentioned in Conclusion of Law 71, but excluding Snowville, Grandview and Young Farms, this schedule showed a total equity of \$6,410,980. This schedule, when compared to the schedule of properties contained in the bankruptcy schedule for RFC, which did not include the above three partnerships, nor Blackfoot, North Bear Lake, Pleasant Valley and Randlett, and when adjusted for those not included on the bankruptcy schedules, showed an estimated market value of the properties that were listed on the bankruptcy schedules to total \$9,539,400, while

the "market value" for those same properties as valued in the bankruptcy schedules was \$3,937,357, which reflects a value less than the total indebtedness on those same properties which was shown on Richins' schedule as \$4,034,300. These values were selected by Richins for the two purposes indicated for dates that were one day apart. The purposes of the two evaluations are evident. Richins' schedule showing a high valuation was to try to furnish a yardstick for measuring damages in this lawsuit, while the low values set out in the bankruptcy schedules reduced valuations to a point, less than obligations, (Finding 114), thus showing no real equity for the bankruptcy court to administer.

74. The defendants' rights to 10% of the profits upon the wind up of partnership affairs and final resale of the land is fixed by the Certificate of Limited Partnership. The Richtron general partners, even after withdrawal, had the duty and obligation under the law to wind up the partnership affairs and terminate the partnerships, when there had been no valid exercise of the partners' right to remove by majority vote the general partner and elect a new one. Richins continuously challenged the validity of Sampson's actions with respect to installing a new general partner, yet delayed in seeking help from the court to rule on his challenge when prompt action seemed indicated. The defendants failed to prove by a preponderance of the evidence that any

final profits, of which they were entitled to 10%, existed as to any partnership and the Court so concludes. (Finding 115) (See also Conclusion 60)

75. The facts set forth in Finding of Fact 116 have credibility as to true value, but not with respect to proving damages.

76. Based upon the facts considered in Finding of Fact 118, it is my opinion that the defendants did not prove by a preponderance of the evidence an entitlement to punitive damages in this case and I so conclude.

77. Based upon the facts set forth in Finding of Fact 120, it is my opinion that the affirmative defense raised by Sampson and considered therein has no merit, for Sampson did not prove by a preponderance of the evidence that facts existed which established this alleged affirmative defense as a defense to and an excuse for Sampson's tortious conduct, and I so conclude.

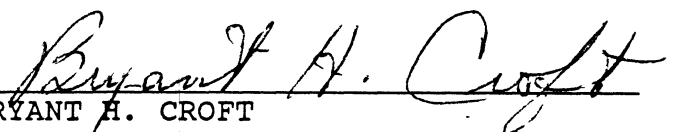
78. As to the affirmative defenses of estoppel, waiver and laches, it is my opinion that Sampson did not prove by a preponderance of the evidence that Richins' actions at any time induced Sampson to believe certain facts existed that led to Sampson's detriment; or by his actions evince in any unequivocal manner an intent to waive his control over the partnerships and step aside in favor of Sampson; nor did Richins' actions at any time constitute a lack of diligence which brought injury to Sampson; and I so conclude.

79. In Finding of Fact 122, the affirmative defense of breach of duty and trust is considered and from the findings made I conclude that the alleged defense is without merit or factual support.

80. Finding of Fact 123 touches upon two final affirmative defenses noted in Finding 119 and comments upon certain facts relating thereto. Based thereon I find no merit to either defense and so conclude.

81. As to the dispute set forth in Finding 124, I conclude that while the alleged actions may be relevant in another lawsuit between parties having an interest therein, such contentions, even if assumed to be true, would not constitute a defense to Sampson on the Counterclaim which is based on Sampson's tortious conduct beginning a substantial period of time after the Valmont obligation was incurred.

Dated this 19th day of September, 1986.


BRYANT H. CROFT
DISTRICT COURT JUDGE

VERDICT ON PLAINTIFFS'COMPLAINT

Based upon the Findings of Fact and Conclusions of Law on plaintiffs' Complaint against the defendants, Paul H. Richins, Richtron, Inc., and RFC, the Court renders its Verdict thereon as follows:

1. As to defendant Richtron, Inc., the Court finds the issues on the Complaint in favor of the defendant, Richtron, Inc., and against the plaintiffs Milton R. Goff as trustee for Virgil R. Condon, Paul D. Huber, O & M Plumbing and Heating, Earl V. Gritton, Philip O. Boyer, Toffie Sawaya, and Russell Smuin of no cause of action.

2. As to defendants Paul H. Richins and RFC, the Court finds the issues on the Complaint in favor of Milton R. Goff, as trustee for the plaintiffs named in paragraph 1, and against defendants Richins and RFC and renders a verdict thereon in the amount of \$5,683.16, together with interest thereon as provided in the judgment and in the amounts (subject to correction for error) determined and as set forth in Finding of Fact #21.

3. As to the plaintiffs' Complaint I rule that John P. Sampson is not a plaintiff with respect thereto and the verdicts set forth above do not apply to him.

Judgment shall be entered accordingly with a formal judgment to be prepared and submitted to the Court by counsel for the plaintiffs upon receipt of written notice of the signing and filing of the Findings of Fact and Conclusions of Law relating to the Complaint.

ON DEFENDANTS' COUNTERCLAIM

Based upon the Findings of Fact and Conclusions of Law on defendants' Counterclaim against John P. Sampson and the named plaintiffs for whom Milton R. Goff sues as trustee, the Court renders a decision and its verdicts thereon as hereinafter set forth.

On their second claim for relief Richins is entitled to a judgment against Sampson for \$2027.40 and Richtron, Inc. is entitled to a judgment against Sampson \$2188.70. (Payment of one would constitute a credit for payment of the other.)

The ultimate issue in this case is as to what damages, if any, defendants are entitled to against Sampson for the injuries he caused to defendants or any one of them by his tortious conduct of intentionally interfering with existing economic relations they had with the limited partnerships or any other party.

Counsel for defendants provided a reference to Torts Second, Chapter 13, relating to Interference with Contract, which, under Section 766(g), states:

A similar situation (to voidable contracts) exists with a contract that, by its terms or otherwise, permits the third person to terminate the agreement at will. Until he has so terminated it, the contract is valid and subsisting, and the defendant may not properly interfere with it. The fact that the contract is terminable at will, however, is to be taken into account in determining the damages the plaintiff has suffered by reason of its breach.

In this case the partnership agreements provided that the contract was terminable at the will of either the general partner or the limited partners. The general partner could withdraw at will and terminate the partnership while the limited partners could either by majority vote remove the general partner and elect a new general partner (which method could not affect the general partner's right to share in partnership profits and distributions as provided in the agreement), or terminate the partnership and order the disposition of assets. In either event, upon termination the affairs were to be wound up as provided in the agreement.

Section 774A of Torts Second relates to damages for liability in cases involving interference with contract cases. It provides:

(1) One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for

(a) the pecuniary loss of the benefits of the contract or the prospective relation;

(b) consequential losses for which the interference is the legal causes; and
(c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.

The Second Amended Complaint contained a claim for relief by Richins for slander. During the trial counsel for defendants stated Richins would not present any evidence upon this claim and it was dismissed. No evidence was presented of emotional distress and I thus rule that damages under (c) in the preceding paragraph will not be considered or allowed.

In the Comment it is stated this section applies only to the recovery of compensatory damages and that one who becomes liable for interference is liable for the pecuniary loss of the contract or the relation. In the case in which a third person (the partnership here) is prevented from performing a contract with the plaintiff, the plaintiff may recover for the loss of profits from the contract. When it is the plaintiff himself who is prevented from performance of his contract with a third person, he may recover for expense to which he is put or for other pecuniary losses incurred in making his performance good. In the case at bar it is apparent that both situations existed. Sampson prevented the partnerships from performing their contracts with defendants by his taking over complete control of the partnerships and thereby prevented the defendants from completing performance on the agreements with the partnerships.

The Restatement in its comments under damages spotlights the Court's problem with the comment that:

A major problem with damages of this sort is whether they can be proved with a reasonable degree of certainty.

It goes on to say that sometimes, when the court is convinced that damages have been incurred, but the amount cannot be proved with reasonable certainty, it awards nominal damages.

Another important principle stated is that the action for interference with contract is one in tort and damages are not based on the contract rules, and it is not required that the loss incurred be one within the contemplation of the parties to the contract itself at the time it was made. The plaintiff can also recover for consequential harms, provided they were legally caused by the defendant's interference.

I have ruled that Sampson's conduct constituted a tortious intentional interference with existing economic relations causing injury to defendants, or some of them, and have examined and considered the evidence to determine whether defendants proved by a preponderance of the evidence facts sufficient to establish damages with a reasonable degree of certainty from a tort, not a contract, point of view. I have done so with respect to Richins individually; with respect to the general partner of each partnership which as to most partnerships was Richtron, Inc., and was Richtron General as to the others; and with respect to the contract seller

of the farm properties to each partnership, which in most partnerships was RFC and was Richtron, Inc. as to the others. I note that RFC was also a limited partner in two (#2 and #6) Catlow Valley partnerships with a capital account of \$7,911 in #2 and of \$2,103 in #6, and in Richfield Farms with a capital account of \$20,960.00. Also, Richtron, Inc. had a limited partner interest in Pleasant Valley of \$4222.50.

During the trial defendant Frontier Investments was identified as a corporation organized by Richins to which each of the other defendants had assigned whatever funds were received as damages in the trial of this case. I thus see no need for the Court to undertake any attempt to divide whatever damages may be awarded the general partner between Richtron, Inc., and Richtron General, nor to the contract seller between RFC and Richtron, Inc. Facts which I consider proven by a preponderance of the evidence and relevant to the question as to whether damages were proven with a reasonable degree of certainty are being set forth in what follows.

In May, 1980, the Richtron companies with Richins as the owner and president of each have agreements with 25 limited partnerships going, though not without serious problems at that time, and within seven months thereafter Sampson, a lawyer, has in his own way obtained and taken over control of all partnerships and retained it over the next four years.

His control was so complete that he precluded defendants from having the general partner control and manage the affairs

of each partnership and from winding up the affairs of each partnership. The "winding up" process involved the sale of assets; the payment of each partnership's liabilities and obligations to creditors (or adequately providing therefor); the distribution of all remaining assets as provided in Article IV which first required the repayment to all limited partners the amounts of their capital contributions, and then distributing 90% of the remainder to the limited partners and 10% to the general partner; and as the final step in the liquidation process the cancellation of the Certificate of Limited Partnerships in the manner provided in Section 48-2-25 of the Code.

The general partner was a party to each partnership agreement. Upon execution it received its management fee. It was entitled to no further compensation for its management services, and had to await final dissolution and termination to receive its 10% mentioned in the previous paragraph, with no assurance that upon wind-up there would be any final remainder or profits from which its 10% was to come. Ongoing expenses incurred in management were payable, but I have ruled there was no proof that any such expenses were due. The only remaining claim the general partner asserted during the trial was the repayment of advances it made to various partnerships prior to May, 1980. I have made mention several times of Sampson's repeated declarations to the limited partners that any advances by the general partner to any partnership

need not be repaid, both orally and in writing. Sampson even questioned that any advances had been made, but I have found the evidence shows otherwise, and note here that in May, 1980, Hurd mentioned in one of his memoranda that no more advances could be made because the creation and sale of additional partnership properties had been stopped because of the state securities commission's stop order. I have already ruled that Sampson's declarations regarding the advances were erroneous and that they were obligations owed by the partnership to the general partner.

In this case the uncertainty lies in the amount thereof and what damages, if any, should be allowed. The evidence established that the Leo H. Richins Family Trust put up \$100,000 for advance purposes and that Shari Richins put up \$32,000. The total of such advances was not specifically proven with one exhibit (160) produced thereon, an exhibit attached to the Compromise and Settlement Agreement, approved by both Richins and Sampson, showing net advances of \$393,840, not including interest and subject to audit for completeness as of August 1, 1980. An uncertainty appears here because it appears to be a net figure, not explained, which showed about \$535,000 in advances to 12 partnerships remaining unpaid with about \$142,000 being deducted which appears to have been advances or loans by eight partnerships to the general partner. No oral testimony

was given to explain these amounts. A logical inference is that Richins used funds received from the limited partners of the eight partnerships for purposes other than their own obligations, such as advances to the other twelve partnerships to pay their obligations, or possibly to pay some general partner obligations.

Reference is made here to the eighteen promissory notes executed on June 5, 1980, by Richins as president of the general partner of each partnership. Eleven of these notes were in various round figure amounts totaling \$529,000, while the notes for the seven Catlow Valley partnerships recited that they were for \$100 or "the total amount equal to the aggregate advances" made to the partnerships as shown by "the financial records and accounting books." All the notes recited that they were for advances in the amounts shown or as disclosed by such records. One other exhibit fixed the amount owed by the partnership on advances at \$600,000, including accrued interest.

The partnership agreements contained a provision that any and all advances, together with accrued and unpaid interest, became immediately due and payable upon the sale of the property or the termination and dissolution of the partnership "unless otherwise agreed upon." It is apparent from the evidence that Richins had not made known to the limited partners that obligations for such advances were owed to the general partner by the partnerships until May, 1980, when information concerning partnership

and Richtron problems began to surface. It is thus apparent that repayment of the advances was conditional upon the end results of each partnership.

Section 48-2-23 of the Code states that in settling accounts after dissolution the liabilities of a limited partnership shall be entitled to payment in the order fixed therein, which is, first, payments to creditors (excluding the general partners); second, to limited partners in respect to their share of the profits and other compensation by way of income on their contributions; third, to limited partners in respect to the capital of their contributions; and fourth obligations to general partners. Here too, it is apparent that repayment of the advances to the general partners was conditional upon the end results of each partnership, which leaves no assurance that any partnership, if properly wound up, as provided by law and the partnership agreements, would have been able to repay any of the obligations owed by it to the general partner for such advances.

But it is clear from the evidence that Sampson's control blocked any winding up and dissolution of the partnerships by the general partners. While, as I have repeated elsewhere, help from the court was always available with respect thereto, and noting again that defendants did not file a responsive pleading to plaintiffs' Complaint for almost eighteen months (probably because of settlement negotiations) it is clear that with Sampson's

repeated contention that such advances did not have to be repaid, there would be no effort in his control of the partnerships to repay any of said advances or to take proper steps to wind up the affairs of any partnership and thereby determine if the sale of any partnership property would produce funds sufficient to repay any advances, or part thereof, or produce any profits.

But the problem here is not to determine the debts of the partnerships, including what each may have owed on advances, but rather it is to determine what damages, if any, can with reasonable certainty be attributed to Sampson's tortious conduct either for pecuniary loss of the benefits of the contracts, or the consequential losses for which his interference was the legal cause. Consequential damages may be defined as such damages, loss or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act. (Black's Law Dictionary, Fifth Edition, p. 352).

Defendants contend that one other area must be considered in determining damages to the general partners and that is the alleged unauthorized receipts and disbursements by Sampson of partnership funds. Evidence offered in support thereof is found in the summaries Richins made of Sampson's financial records and accounts, which were finally made available to him by discovery

process and court order. Evidence contained in such summaries may be summarized as follows:

The John P. Sampson trust and business accounts showed receipts by Sampson of \$645,101.58 from limited partners and farm receipts between June 27, 1980 and November, 1982. The total of such receipts was disbursed by Sampson during this period for various listed purposes, included among which were payments of \$146,551 on partnership properties to the original owner; \$96,057 to Blanch for salary and expenses; \$28,770 to Marilyn Brown, secretary to Sampson; \$60,182 to Sampson for legal fees; and \$78,184 to "general overhead", the details of which sum was not included in the analysis.

Between December 20, 1982 and August 30, 1983, Sampson deposited \$11,574.00 into his "attorney at law trust account", \$5,000 of which came from Ag Management and \$6,000 from Consolidated Farms. As of August 30, 1983, these funds remained in this account.

Between February 16, 1982 and October 29, 1984 the sum of \$352,547 was deposited in the Ag Management account. Of that amount \$230,700 was deposited after November 30, 1982, the ending period for the \$645,101.58 summary. (supra). Of the latter amount, \$143,000 were transfers from the Consolidated Farms account, \$20,000 came from Snowville rentals, \$51,974 from Springfield grain and the balance from miscellaneous sources.

Disbursements from this account for the entire period was \$309,444, leaving a credit balance of \$43,103 at the end of that period. Each disbursement was indentified, the court noting that \$51,000 went to Consolidated Farms, \$32,460 to Everingham (the original property owner) on Springfield, \$16,119 to Utah Mortgage on Snowville and \$8,000 to Sampson on attorney's fees.

Between November 15, 1982, and October 29, 1984, the sum of \$778,136 was deposited in the Consolidated Farms account. Most of the deposits came from limited partners, farm income, and Ag Management, with minor amounts from miscellaneous sources. Deposits of \$74,320 were made to this account after Judge Winder's ruling in May, 1984 voiding the IRS tax sale to Goff, trustee, with about all of these deposits coming from limited partners. Disbursements from this account during that period totaled \$632,539, leaving a credit balance of \$145,597 on the last date of the summary period. Most of these disbursements went to Ag Management and the Keith Blanch accounts, although \$100,000 were paid to attorneys for Randlett and \$24,000 went to Sampson for legal fees. After Judge Winder's ruling, \$12,000 was withdrawn, all of which went to Ag Management.

As set forth in the Findings Keith Blanch had two bank accounts, one in Oregon and one in Idaho. Between November 3, 1980 and May 10, 1983, the sum of \$159,515 was deposited in the Oregon account. The initial deposit included a check

for \$10,713.68 which David Gillette gave to Sampson on August 27, 1980, stating by letter that such funds were to be used exclusively for Catlow Valley Farms and were to be released to the general partner of the Catlow Valley partnerships after Sampson and Richins "had finalized their arrangements to work together". Sampson endorsed this check and sent it to Blanch before its deposit in the Oregon account on November 3, 1980, doing so contrary to Gillette's instructions and without any legal authority to do so. The other sources of these deposits were all from the John P. Sampson PC Trust account up to March 5, 1982, after which date the balance of the deposits came from Ag Management. Withdrawals from this account during that period totaled \$219,981, which is an unexplained overdraft of \$60,465 above deposits. Checks to "Cash" or to Blanch or his wife (as wages) totaled about \$31,000. The balance went for various itemized expenses, the checks for which suggest that many of such disbursements were probably for Blanch's personal obligations. On July 8, 1983, a check for \$2,476.70 payable to the Idaho Bank closed this account.

Between July 8, 1983 and December 31, 1983 there was deposited in Blanch's Idaho bank account the sum of \$108,326, the initial deposit of which was the \$2,476.70 from the Oregon bank account. All of these deposits came from Consolidated Farms. Disbursements

from this account during that period totaled \$107,489, the pattern of which was similar to disbursements from the Oregon account.

From the foregoing it appears that from June 27, 1980 to October 29, 1984, approximately \$1,522,000 of unduplicated funds were deposited in the various accounts over which Sampson had control. The last date of any of Richins accountings was October 29, 1984, on which date the accounts (if we include the account with \$11,574 deposited therein) had \$200,474 remaining on deposit. From disbursement it appears that Sampson took out \$103,000 for attorney's fees, with \$78,184 being withdrawn from his trust accounts as general overhead during the period of June 27, 1980 and November 30, 1982. Even after Judge Winder's ruling in May, 1984, some limited partners contributed \$74,320 which went into the Consolidated Farms account. There is no evidence as to the purpose for which some limited partners continued to give Sampson funds after that ruling, but it is apparent that with all but one farm foreclosure completed before Judge Winder's ruling Sampson and said limited partners were doing something with respect to partnership property affairs.

Upon closing argument counsel for defendants stated that Sampson and twelve people ended up with all the "Richtron assets". He probably meant partnership assets, but as I noted in my findings and conclusions, no evidence was placed in the record establishing that such was in fact the case, but if so, absent any such evidence,

I cannot consider this statement as a factor upon which this decision can be made. I have repeatedly noted the absence of evidence as to what finally happened to the partnerships and their properties other than a schedule showing only the dates upon which foreclosures presumably took place.

Also, upon closing argument counsel for defendants suggested that the schedule (Ex. 223) showing the receipts and disbursements of some \$645,000 was a basis for determining changes, suggesting an interest award on each payment from the date received should be computed and allowed, together with the \$645,000 expenditures, since Sampson's use of these funds did the partnerships no good and made it impossible for Richins to liquidate the partnerships. He made no reference to the \$877,000 collected by Sampson, independent of the \$645,000, nor the uses made thereof. An unknown answer remains to the question as to how much, if any, the limited partners would have contributed to Richins had the course of events left him in complete control and receipt thereof. But, as stated before, in May, 1980, Richins had 25 limited partnerships he was administering as president of the general partners over which Sampson had in seven months' time assumed and taken control and in a manner which proved to be illegal and contrary to law.

I think it is clear from the evidence that most of the funds that passed through Sampson's hands were paid out on partnership expenses. He, of course, took out over \$100,000 as attorney's

fees, paid thousands of dollars to Marilyn Brown, and sent Blanch over \$556,000. At closing argument defense counsel mentioned two lines of cases discussing the question as to whether funds were used or converted by a volunteer which were disbursed for partnership obligations should be given an offsetting credit. He stated one line said a volunteer was not entitled to any credit while the other line held a converter was entitled to credit to the extent he applied funds to pay outstanding debts. The case book authority referred to said one line of cases appears to hold that where the converter's possession is "wrongful from the beginning" statutes in some states precludes him from taking credit for reducing the plaintiff's debt by the conversion. The other line says even if the converter is at fault and acts in bad faith, damages ought to be reduced where the converted property is used to discharge the plaintiff's debt to a third party. This case with its mass of convoluted facts and circumstances cannot be so simply categorized, but if any decision is such as to require the application of either ruling, I would say that credit must be given as to all funds used to apply on legitimate partnership obligations.

Turning now to RFC's claims for relief, I note that in Sampson's initial meeting with Richins in May, 1980, and at the May 29, 1980 meeting of Catlow Valley partners, Sampson immediately, and thereafter repeatedly, said mark-ups on the

sale price by which RFC (or Richtron, Inc.) resold the farm properties to the partnerships involved a breach of fiduciary duty and rendered them void. The resale contracts were not themselves placed into evidence, but the record shows they all contained a markup (disclosed in the prospectus), a down payment and periodic installment payments with an increased interest over what was to be paid as interest upon the original contracts of purchase. From Exhibit 227 I note a suggested total mark-up for all partnerships of about \$1,466,000, and from Exhibit 226 one of about \$1,369,000.

Problems causing and resulting in defaults on contract payments due RFC by the partnerships have heretofore been noted, as well as RFC's own defaults on its purchase contracts. One subject discussed at the May 29, 1980 meeting was that the foreclosure sale set for June 6, 1980, was confronting RFC. Even if a true value of RFC's equity in each partnership property under its resale contracts could be established, circumstances existing in May, 1980, created a strong probability that some, if not all, of such contracts would never be paid out. Thus, exhibits 226 and 227 do not prove damages to RFC to any reasonable degree of certainty.

Other factors affecting RFC's damages from Sampson's actions are present. About June 1, 1980, RFC filed a Chapter 11 bankruptcy proceeding, brought on by Sampson's suggestion and the unauthorized

vote of a few Catlow Valley limited partners at the May 29, 1980 meeting. This proceeding presumably brought all of RFC's assets and liabilities under control of the bankruptcy court, prior to the dismissal of those proceedings. The record contains no evidence of what happened to RFC under control of the bankruptcy court. It appears the foreclosure sale on June 6, 1980 was not stayed. It does not appear that during the bankruptcy proceedings any installment payments due RFC on the partnership purchase agreements were ever paid into the bankruptcy court, although evidence showed Sampson made a \$100,000 payment to attorneys for Randlett on October 13, 1983; a \$32,460 payment to Everingham on February 28, 1983 on Snowville; property payments of about \$146,000 direct to owners prior to November, 1982; and a suggestion, but with no other facts with respect thereto, that Springfield and Moreland were sold before April 30, 1981 (Finding 110). The bankruptcy schedules filed by RFC did show a total equity in its contracts of a value less than its total debts.

At the May 29, 1980, meeting Sampson, although in attendance as counsel for only two Catlow Valley partners, took it upon himself to tell all in attendance that the mark up on the price of each property upon its resale by RFC to the partnership was a breach of fiduciary duty and unenforceable. Sampson's attitude and repeated statements thereafter made to this effect makes

certain that Sampson at no time had any intent to honor the partnership's obligations in their respective contracts with RFC. I note here that even had the limited partners, with or without Sampson's guidance, properly and legally removed the Richtron general partner and elected a new one, such new general partner would have had no power or authority to declare the RFC contracts void and no longer in force and effect. Such new general partner may have said the partnerships would no longer make payments to RFC, only to thereafter meet the consequences that probably would have followed, but could not have ruled them void and unenforceable. But with RFC in bankruptcy and the Richtron general partners still in control of the partnerships, one is hard put to point to any act of Sampson that up to that point had caused any damage to RFC. I note also that at the May 29, 1980 meeting the limited partners there voiced a strong reluctance to make any further assessment payments to Richins without any controls thereon. Even Richins suggested there that funds needed to meet pressing Catlow Valley obligations be placed in Hansen's hands to handle to which those in attendance agreed.

But the very next day Sampson disclosed to Richins the desire of himself and others (who, he did not say) to take over all the partnerships and buy out defendants' interests. This started a snowball rolling which unfortunately did not stop.

Sampson's employment as counsel spread immediately to other partners or partnerships. Such quick developments may well have influenced Richins to do what he did on June 5, 1980 when he executed quit-claim deeds by which he purported to convey back to RFC all of each partnership's interest in their respective farm properties. Richins' actions in later recording those quit-claim deeds, done about the same time Sampson was taking steps to collect proxy powers of attorney to vote in his PC to replace the Richtron general partner, may thereby have created an excuse for Sampson, while exercising an illegal control over the partnerships as president of the presumably newly elected general partner, for not making any future payments to RFC on its contracts, and all this without regard to the control of the bankruptcy court at this time over RFC matters.

At the time Richins executed those quit-claim deeds, any partnership default on installment payments to RFC was Richins' responsibility, as it was under his control as president of all the Richtron companies that those payments were not made. It appears from the evidence that Richins had the idea that once he conveyed legal title to the farm properties back to RFC by the use of these deeds, the partnership interests in the farm properties was gone, perhaps along with the 90% interest in any profits that the limited partners were entitled to upon resale of the properties and termination of the partnerships.

He further appears to have concluded that upon repossession of the properties by the former owners, he could assert and fix damages by the market value he personally placed upon the farm properties. As I set forth in the Findings and Conclusions, the validity of those deeds were questionable to say the least. But RFC is here asserting a claim for damages it alleges occurred by the conduct of Sampson. Aside from its interest as a limited partner in Catlow Valley partnerships 2 and 6, which totaled \$10,014, and in Richfield which totaled \$20,760.50, RFC's claim for relief lies in its claim that Sampson's tortious conduct constituted an intentional interference with its existing economic relations with each partnership, resulting in injury. Sampson's conduct certainly constituted an intentional interference with RFC's existing contract relations with each partnership. RFC had to look to complete pay off on its contracts to realize its fully hoped for profits on the contracts. With conditions as they were RFC's only reasonable expectancy for gain on its contract could be found only in dissolution of each partnership in accordance with law and the agreements with the hope that sufficient funds would be realized through the dissolution to pay it something for its equity. Before such hope could be achieved any dissolution would have required the receipt of sufficient funds to first pay off all obligations remaining due to the original owners, or sold under circumstances by which the buyer was willing to pay off the balance owed to the original

owner in a manner acceptable to such owner. Sampson by his conduct precluded any such circumstances from occurring.

But Sampson alone was not responsible for RFC's losses on its economic relations with the partnerships. By May, 1980, Richins had so mismanaged partnership affairs that they did not have funds to pay installments owed to RFC, so RFC could not pay its installment obligations to the contract sellers. Substantial judgments were obtained for failure to pay partnership obligations. ^{Some BHP} Partners were angry because of Richins' failure to follow the partnership agreements upon assessments and failure to pay; to give an annual audited report to each; to have the properties appraised by a qualified appraiser and give the partners a report on the value of their holdings; to advise them regarding advances and obligations with respect thereto; and to keep them advised of the problems that developed. Richins agreed that RFC should be taken into bankruptcy and did so, yet he executed the quit-claim deeds and had them recorded; and apparently gave no consideration to his obligation to advise the bankruptcy court that such had been done. Finally, and of great importance, was Richins' failure to himself undertake efforts to wind up partnership affairs and bring about dissolution and termination with any resulting benefits to all concerned. The courts were there to help him do so but he never used them for that purpose. I recall that in the Blackstone suit against defendants, they

counterclaimed seeking dissolution; but when Judge Palmer ruled in their favor that Ag Management was not legally elected general partner, any further efforts in that case on their Counterclaim was not brought out in this trial. Even in the case at bar, Richins did not seek a wind-up and dissolution by this Court.

From the acts of both Richins and Sampson and the consequences that followed, this Court is hard pressed to find evidence that establishes to a reasonable degree of certainty the amount of damages caused by Sampson's tortious conduct respecting the RFC contracts. Even if Sampson had never appeared on the scene, it does not appear probable that Richins and RFC could have prevented foreclosure of the original purchase contracts, based upon the existing facts and circumstances disclosed by the evidence. I do find that Sampson gave no recognition to RFC's limited partnership interests in Richfield Farms and Catlow Valley Farms 2 and 6, nor to Richtron, Inc.'s limited partnership interest in Pleasant Valley, that he ignored its rights as such limited partners, sent no notices to either, offered no evidence as to what in fact happened to the interests of the Pleasant Valley, Richfield and Catlow Valley limited partners, and thereby caused a loss to RFC and Richtron, Inc. in the amounts of their respective capital interests in those partnerships.

As to Richins individually, I have already ruled that his claim against Sampson under the first claim lacked proof of damages and that his claim for an alleged interference with

his making a living or obtaining future economic benefits failed for lack of proof. On Richins' second claim, damages of \$2027.40 for attorneys fees paid Gary Kennedy for vacating the default judgment, granted to Valmont against Richins and Richtron, Inc. because Sampson failed to file a responsive pleading, have been allowed.

Upon closing argument the thrust of plaintiffs' counsel regarding damages was that Richins' mismanagement, resulting in all the problems existing in May, 1980, coupled with the alleged unconscionable markups on the resale contracts, caused his own demise. He argued that the stop order of the state securities commission prevented the sale of more partnerships and Richins had no funds of his own that could keep the partnerships going. The payment of all assessments might have helped. But, as repeatedly considered, a substantial part of the Richtron funds were loaned back to partnerships as advances and never repaid, with Sampson doing nothing to see that they were, but, on the contrary, repeatedly saying that they need not be.

It was problems created by Richins' mismanagement followed by Sampson's tortious conduct that brought this case to court for a decision as to whether any damages are recoverable upon the Counterclaim. As floundering as the partnerships were, Sampson saw value there and spent what now totals six years in achieving what he now has, whatever it may be, leaving Richins and his companies with no tangible assets or values. Even after

Judge Winder ruled the IRS sale of Richtron assets to Goff as trustee void and of no force and effect, Sampson undauntingly went forward, collected \$74,320 from certain limited partners, undoubtedly using such funds for purposes he saw fit, together with the \$200,000 remaining in his bank accounts as of October 29, 1984, doing so presumably upon the theory that existing new relationships put his actions beyond the control of the courts.

As stated before, damages are in tort, not in contract, rendering liability for damages for either the pecuniary loss of the benefits of the contract or consequential for which the tortious interference is the legal cause. I think that as to some claims for relief damages, of at least a consequential nature, have been shown with a reasonable degree of certainty by a preponderance of the evidence.

As I noted at the outset, defendants seek an accounting from plaintiffs on their fifth claim. I have at times in my findings and conclusions noted that perhaps certain aspects of the case then under consideration suggested that an accounting may be called for. However, at the end of all my Findings and Conclusions, and giving due consideration to the detailed schedules prepared by Richins from Sampson's records, I have concluded that any further accounting would not add to the certainty of the evidence as I now see it; that it is time a decision was rendered in this case, and that such request should be and is

denied. I have been told in the evidence that foreclosures occurred on all partnership properties and the dates thereof, but nothing else. I have often made reference to the fact that the record contained no evidence as to what happened to the partnerships and their properties, but I shall not allow my curiosity in that regard to further prolong a decision in this case.

It is thus the verdicts of the Court that:

1. I find the issues as to Richins' individual claims against the plaintiffs, excluding Sampson, and all of them in favor of the plaintiffs and against Richins of no cause of action. As against Sampson Richins is entitled to a judgment for \$2027.40

2. I find the issues as to RFC as follows:

In favor of RFC and against the plaintiff Sampson in the sum of \$30,974.50. Since the date of such loss cannot be determined, no interest thereon is granted.

In favor of RFC and against Sampson for his tortious conduct in intentionally interfering with its existing economic relations with the partnerships, but for which I can allow only nominal damages because, although convinced that damages have been incurred, there has been no proof with reasonable certainty of the kind or amount thereof, nor by a preponderance of the evidence. Nominal damages in the sum of \$100 are granted.

3. I find the issues as to the Richtron general partners in favor of Richtron, Inc. and Richtron General and against

the plaintiff Sampson and grant a verdict thereon in the sum of \$250,000.

Richtron, Inc., as a limited partner in Pleasant Valley, is granted a judgment against Sampson in the sum of \$4222.50

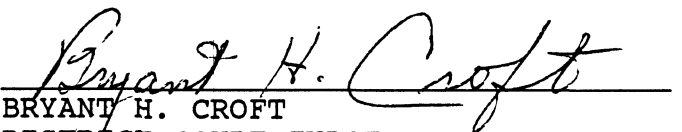
4. As to any claims asserted by defendants against plaintiffs Milton R. Goff, trustee for Virgil R. Condon, Paul D. Huber, O & M Plumbing and Heating, Earl V. Gritton, Philip R. Boyer, Toffie Sawaya, and Russell Smuin, I find the issues in favor of said plaintiffs and against the defendants and render a verdict of no cause of action.

5. As to the claims asserted by defendants and against Sampson for an accounting and injunctive relief I find the issues in favor of Sampson and against the defendants and render a verdict of no cause of action.

Judgment shall be entered accordingly with a formal judgment to be prepared and submitted to the Court by counsel for defendants upon receipt of written notice of the signing and filing of the Findings of Fact and Conclusions of Law relating to the Counterclaim.

The signing of this verdict, too, shall await the final entry of the Findings and Conclusions.

Dated this 19th day of September, 1986.


BRYANT H. CROFT
DISTRICT COURT JUDGE