

PUBLISH

AUG 23 2004

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PATRICK FISHER
Clerk

ALAN V. FUNK; WELLS FARGO
BANK, N.A., successor by assignment to
Wells Fargo Bank Northwest, N.A.,
formerly known as First Security Bank of
Utah, N.A.,

Plaintiffs - Appellees,
v.

LFLM DEFENDANTS consisting of: DR.
MAURICE ADAM, DR. & MRS.
JEROME A. ARNDT, DR. & MRS. JAY
H. ARNETT, DR. & MRS. ROBERT E.
ASKEW, DR. & MRS. JOE N. BAILEY,
III, MR. & MRS. ROBERT J.
BARBERO, MR. & MRS. GARY R.
BEYNON, DR. & MRS. JOHN
BLEWETT, MR. & MRS. JACK T.
BROWN, DR. & MRS. JOHN W.
BUCHANAN, JR., DR. CHRISTOPHER
S. CHENAULT, DR. H. ANSON CONE,
ANSON CONE as personal representative
of the Estate of Florence Ann Vaughan,
DR. BARRY D. CUNNINGHAM, DR. &
MRS. CLYDE R. DANKS, DR. & MRS.
WILLIAM M. DEANE, DR. ELWOOD J.
EICHLER, SUE EICHLER, ROBERT
M. ELDER and IRENE ELDER
individually and as Trustees of the Elder
Trust, DR. & MRS. ROBERT K.
EMERSON, DONNA MARIE FARACI,
DR. & MRS. SAM B. FASON, DR. &
MRS. CHARLES E.

04-4122
(D. Utah)
(D.C. No. 2:03-CV-204-DB)

FELGER, DR. JAMES R. FRICKE, DR.
& MRS. PEDRO E. GARCIA, DR.
EDWARD GERETY individually and as
Trustee of the Edward J. & Margaret H.
Gerety Revocable Trust and the Edward J.
Gerety IRA, MARGARET H. GERETY
individually and as Trustee of the Edward
J. & Margaret H. Gerety Revocable Trust,
DR. RICHARD L. GERETY, DR. J.M.
GIBLIN, DR. & MRS. EARL R.
GODWIN, DR. & MRS. HOMER
GOEHRIS, RICHARD E. GRAY, DR.
DON GREENWAY, ANNE
GREENWAY, DR. & MRS JOHN A.
HABRA, DR. STANLEY HANDEL &
CAROLYN HANDEL individually and as
Trustees of the Carolyn H. Handel Trust,
DR. ROBERT A. JOHNSON, DR. &
MRS. MORTON L. KRUMHOLZ, DR.
VICTOR J. LI-PELAEZ, VERONICA
LI-PELAEZ, LYNN A. LONGFIELD,
DR. RICHARD D. LUEKER individually
and as Trustee of the Southwest
Cardiology Associates Pension Trust and
the Lueker Revocable Trust, DR. & MRS.
ERNEST MAX, DR. & MRS. WILLIAM
E. MCCARRON, JOHNT T. MITCHELL
individually and as Trustee of the John T.
Mitchell Trust, DR. & MRS. KARL R.
MOEDL individually and as Trustees of
the Moedl Trust, EVELYN R. DIBONA,
EVELYN R. DIBONA PARISH, PED
LIMITED FAMILY PARTNERSHIP,
DR. & MRS. RONALD J.
PINKENBURG, DR. & MRS. NORTON
A. POPE, DR. & MRS. JAMES F.
REEVES, DR. & MRS. J.
CHRISTOPHER REYNOLDS, DR.
JOHN S. RICHARDSON, JANET

PUCKETT RICHARDSON, DR. JANET
PUCKETT, DR. & MRS. LARRY B.
SCHRADER, LINWOOD DENMAN
SHELTON, DR. THOMAS O.
SHELTON, LINDA SHELTON, MR. &
MRS. JACK C. SHEWMAKER, DR.
WILLIAM N. STASSEN, DR.
DEBORAH O'CONNELL, DR. & MRS
BURT S. STRUG, DR. & MRS. FRED K.
SOIFER, ROBERT L. SPERRY, DR.
LAWRENCE J. SPINGOLA, MR. &
MRS. WILLIAM H. STEVENS, DR. &
MRS. JON B. WANG, DR. & MRS.
ROBERT H. WERNECKE, DR. & MRS.
BYRN WILLIAMSON, JR., VIRGINIA
YOUNGBLOOD individually and as
Trustee of the Virginia Youngblood
Living Trust, MR. & MRS. WAYLAND
K. ADAMS, DR. JOHN S.
ALEXANDER, DR. & MRS. VINCENT
A. AMICUCCI, DR. & MRS. EDWARD
ATLER, MR. & MRS RICHARD L.
BARONE, DR. & MRS. DAVID C.
BARNETT, JANICE BARSON, DR. &
MRS. GORDON L. BILBREY, DR. &
MRS. DAVID W. BOSSLER, DR. JACK
BROCK, DR. SONJA BROCK, DR. &
MRS. FRED O. BRUMFIELD, MR. &
MRS. MICHAEL F. BRUSTKERN,
JUDITH J. BRYAN individually and as
Trustee of the Judith J. Bryan Trust, DR.
JAMES R. BURTON, DR PAUL M.
CHAU individually and as Executor of the
Betty S. Chau Estate, DR. & MRS.
NORMAN H. CHENVEN, DR. & MRS.
WILLIAM J. CHESNUT, MR. & MRS.
STEPHEN S. CLARK, DR. M. CLARK
COLVARD, DR. & MRS. COURSEN B.
CONKLIN, DR. JOHN COON, LINDA

COON, DR. & MRS. KERMIT
COUNTS, DR. & MRS. J. BRUCE COX,
DR. & MRS. CLINTON E. CRAVEN,
DR. & MRS. JAMES E. CROUT, DR. &
MRS. ASA CROW, MR. & MRS
PHILLIP L. CURRIE, DR. & MRS
GEORGE M. DECHERD, IV, DR. &
MRS. ROBERT A. DENNISON, DR. &
MRS. H. JOE DICKERSON, MR. &
MRS. DAVID T. EACRET, DR. & MRS.
MERLYN E. ECKELBERG individually
and as Trustees of the Eckelberg
Revocable Trust, MR. & MRS. HARRY
EDWARDS, DR. & MRS. MICHAEL
EMMETT, DR. & MRS. STEVEN H.
FEAGLER, CARL J. FINK individually
and as Trustee of the Carl J. Fink Family
Trust, DR. JOHN FINLEY, AUDREY
FINLEY, RAY G. FORMAN, FORMAN
FAMILY ASSOCIATES, DR. ALLAN
FRANK, MR. & MRS. WAYNE L.
GARCEAU, SIDNEY G. GARRETT,
BEVERLY GOSS, DR. JERRY E. GOSS
individually and as Trustee of the
Albuquerque Cardiology Associates
Pension & Profit Trust, GARY GROSS,
DR. CATHY GROSS, DR. & MRS.
HARRIS D. HANSON, DR. BOYD A.
HARDESTY individually and as Personal
Representative of the Mildred Hardesty
Estate, MRS. BOYD A. HARDESTY,
DR. & MRS. EVERETT G. HEINZE,
DR. & MRS JACK A. HILL, DR. &
MRS. NEIL R. HOFFMAN, DR. & MRS.
RICHARD HOLT, DAVID M. HOYT,
DR. & MRS. PHILLIP T. JACOB, JANIE
F. JULIAN, DR. STEVEN E.
KAMMEYER, DR. & MRS JAY A.
KATZ, DR. STEPHEN P. KELLY

individually and as Trustee of the Stephen P. Kelly IRA, SANDRA KELLY, DR. WILLIAM L. KELLY, DR. & MRS. C. LEONARD KEMP, MR. & MRS. HARTWELL J. KENNARD, DR. & MRS. JAMES W. KENNEDY, DR. MICHAEL W. KISTLER, MR. & MRS. GREGORY F. KITE, BARBARA N. KOONS individually and as Trustee of the Barbara N. Koons Trust, DR. & MRS. MAURICE R. LAVA, DR. LARRY LAWSON, NIKKI P. LAWSON, DR. & MRS. IHN P. LEE, HELENE DENISE LERMAN, JENNIFER EILEEN LERMAN, JEROME T. LOENDORF, DR. & MRS. GORDON LONG, DR. & MRS DEWEY L. LONG, DR. & MRS. BRUCE P. LOVETT individually and as Trustees of the Lovett Revocable Trust, DR. THOMAS I. LOWRY, DR. M.E. MAULE, DR. & MRS. WILLIAM MCCALEB, JOE L. MCCLAUHERTY, DR. & MRS. MICHAEL EDWARD MCCUTCHEON, DR. & MRS JOE S. MCILHANEY, DR. & MRS. WALTER M. MERRITT, NELLIE S. MITCHELL, MR. & MRS. REID M.. MITCHELL, MR. & MRS. THEODORE J. MITCHELL, DR. & MRS. CHARLES W. MONTGOMERY, DR. DAVID BENJAMIN MOORE, JR., MR. & MRS. DAVID E. NAIL, DR. & MRS. MERRILL C. OAKS, ARLEITA L. OHAI COMBS, DR. & MRS. J. THOMAS OKIN, DR. JOHN P. O'REILLY, DR. & MRS. DONALD W. OWENS, DR. ARTHUR J. OZOLIN, AIJA OZOLIN, DR. & MRS. GARY N. PAMPLIN, JANE GREENOUGH

PAULSON, MR. & MRS. DON G.
PIXLEY, RONALD C. PRATI, DR. &
MRS. GERALD F. PROHASKA, DR.
ROBERT S. RIGOLOSI, DR. & MRS.
SIDNEY T. ROBIN, DR. & MRS.
ROBERT L. ROCK, DR. & MRS.
JAMES E. RYTTING, DR. WILLIAM H.
SAYRE, MARY ANN SAYRE, DR. &
MRS. LARRY W. SCHORN, DR.
BENNIE SCOTT, JUDY SCOTT, DR.
VERN ANN SHOTTS, C. MACK
SHOTTS individually and as Trustee of
the C. Mack Shotts IRA, JOHN W.
SKADAN, THOMAS T. SMITH,
BONNIE SMITH, DR. & MRS.
WILLIAM C. SMYTH, DR. & MRS.
DONALD SPENCER, NANCY
SPENCER, MR. & MRS. ROBERT L.
STARKS, BARBARA M. STOYKO, DR.
GAIL B. STRAIT, MR. DONALD J.
STROCK, DEBORAH STROCK, DR. &
MRS. EDWARD LEE SUMMERS, DR.
THOMAS C. SUMNERS, DR. THOMAS
B. SUMMERS, DR. & MRS. WILLIAM
P. TAYLOR, MR. & MRS. LAWRENCE
E. THATCHER, DR. & MRS. PATRICK
R. THOMAS, UNION NATIONAL
BANK as Trustee of the Mrs. Audrey J.
Thompson Revocable Trust, DR. & MRS.
RICHARD J. TOLL, DR. & MRS. F.
GERALD THURMAN, MR. & MRS.
BOYCE L. TUCKER, MR. & MRS.
JOHN D. URQUHART, HARRIET A.
VINEYARD, DR. & MRS. RICHARD F.
WALKER, DR. & MRS. PETER WEISS,
MR. & MRS. JOHN D. WEST, MR. &
MRS. ALLAN J. WESTMAAS, DR. &
MRS. MADELINE WHITE, DR. & MRS.
MARTIN G. WHITE, DR. & MRS.

JOHN N. WILSON, DR. & MRS.
CAREY WINDLER, WINDLER
FAMILY PARTNERS LIMITED
PARTNERSHIP, DR. DONALD A.
WOLFEL and CYNTHIA A. WOLFEL
individually and as Trustees of the Donald
A. & Cynthia A. Wolfel Revocable Trust,
DOUG BETTERS, DR. FRED
CLAYSON, DONALD M. DUNCAN,
P.E., MR. & MRS RICHARD E. GRAY,
MR. W.C. MUMM, DR. GARY B.
STANFORD, MR. & MRS. RICHARD
BERGER, DR. JACK R. BOYD, DR. &
MRS FRED J. JOHNSON, III, DR. &
MRS. JOHN E. LOWE,

Defendants - Appellants,

and

WOODBURY AND KESSLER
DEFENDANTS consisting of: CASAS
ADOBES INVESTORS LIMITED
PARTNERSHIP, DESERT TREE
ASSOCIATES LIMITED
PARTNERSHIP, FOOTHILLS WEST
LIMITED PARTNERSHIP, PARK
SANTA FE LIMITED PARTNERSHIP,
SUN TREE LIMITED PARTNERSHIP,
WILLOW CREEK INVESTORS
LIMITED PARTNERSHIP, MAURICE
ADAM, MRS. MAURICE ADAM
individually and as Trustee of the AMD
Trust, DR. & MRS. PATRICK H.
BECKHAM, DR. & MRS. RONALD L.
BOLEN, DR. & MRS. SAM H. CADE,
CADE FAMILY BUSINESS LIMITED
PARTNERSHIP, COLLEGE GARDENS
UTAH, LTD., COLLEGE GARDENS II,

DR. & MRS. JAMES R. COTTON,
ROGER M. ELLISON, DR. & MRS. H.
ALAN FLOWERS, DR. & MRS.
KERMIT W. FOX, DR. & MRES DEAN
KUMPURIS, MR. & MRS. E. BURNS
LUNDGREEN, CDR. YVONNE
RUSSELL, HARRY CAMPER, DR.
EUGENE P. SCHOCH, III, DR. & MRS.
KENNETH W. SMITH, RICHARD
KING, RICHARD AND JANET KING
individually and as Trustees of the King
Family Trust,

Defendants.

ALAN V. FUNK, WELLS FARGO
BANK, N.A., successor by Assignment to
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Plaintiffs - Appellees,

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BAILEY,III, MR. & MRS. ROBERT J.
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BEYNON, DR. & MRS. JOHN
BLEWETT, MR. & MRS. JACK T.
BROWN, DR. & MRS. JOHN W.
BUCHANAN, JR., DR. CHRISTOPHER
S. CHENAULT, DR. H. ANSON CONE,
ANSON CONE as personal representative

No. 04-4141
(D. Utah)
(D.C. No. 2:03-CV-204-DB)

of the Estate of Florence Ann Vaughan,
DR. BARRY D. CUNNINGHAM, DR. &
MRS. CLYDE R. DANKS, DR. & MRS.
WILLIAM M. DEANE, DR. ELWOOD J.
EICHLER, SUE EICHLER, ROBERT M.
ELDER and IRENE ELDER individually
and as Trustees of the Elder Trust, DR. &
MRS. ROBERT K. EMERSON, DONNA
MARIE FARACI, DR. & MRS. SAM B.
FASON, DR. & MRS. CHARLES E.
FELGER, DR. JAMES R. FRICKE, DR.
& MRS. PEDRO E. GARCIA, DR.
EDWARD GERETY individually and as
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GODWIN, DR. & MRS. HOMER
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MRS. MORTON L. KRUMHOLZ, DR.
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PUCKETT RICHARDSON, DR. JANET
PUCKETT, DR. & MRS. LARRY B.
SCHRADER, LINWOOD DENMAN
SHELTON, DR. THOMAS O.
SHELTON, LINDA SHELTON, MR. &
MRS. JACK C. SHEWMAKER, DR.
WILLIAM N. STASSEN , DR.
DEBORAH O'CONNELL, DR. & MRS
BURT S. STRUG, DR. & MRS. FRED K.
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MRS. WILLIAM H. STEVENS, DR. &
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BARONE, DR. & MRS. DAVID C.
BARNETT, JANICE BARSON, DR. &
MRS. GORDON L. BILBREY, DR. &
MRS. DAVID W. BOSSLER, DR. JACK
BROCK, DR. SONJA BROCK, DR. &
MRS. FRED O. BRUMFIELD, MR. &
MRS. MICHAEL F. BRUSTKERN,

JUDITH J. BRYAN individually and as
Trustee of the Judith J. Bryan Trust, DR.
JAMES R. BURTON, DR PAUL M.
CHAU individually and as Executor of the
Betty S. Chau Estate, DR. & MRS.
NORMAN H. CHENVEN, DR. & MRS
WILLIAM J. SHESNUT, MR. & MRS.
STEPHEN S. CLARK, DR. M. CLARK
COLVARD, DR. & MRES COURSEN B.
CONKLIN, DR. JOHN COON, LINDA
COON, DR. & MRS. KERMIT
COUNTS, DR. & MRS. J. BRUCE COX,
DR. & MRS. CLINTON E. CRAVEN,
DR. & MRS. JAMES E. CROUT, DR. &
MRS. ASA CROW, MR. & MRS.
PHILLIP L. CURRIE, DR. & MRS.
GEORGE M. DECHERD, IV, DR. &
MRS. ROBERT A. DENNISON, DR. &
MRS. H. JOE DICKERSON, MR. &
MRS. DAVID T. EACRET, DR. & MRS.
MERLYN E. ECKELBERG individually
and as Trustees of the Eckelberg
Revocable Trust, MR. & MRS. HARRY
EDWARDS, DR. & MRS. MICHAEL
EMMETT, DR. & MRS. STEVEN H.
FEAGLER, CARL J. FINK individually
and as Trustee of the Carl J. Fink Family
Trust, DR. JOHN FINLEY, AUDREY
FINLEY, RAY G. FORMAN, FORMAN
FAMILY ASSOCIATES, DR. ALLAN
FRANK, MR. & MRS. WAYNE L.
GARCEAU, SIDNEY G. GARRETT,
BEVERLY GOSS, DR. JERRY E. GOSS
individually and as Trustee of the
Albuquerque Cardiology Associates
Pension & Profit Trust, GARY GROSS,
DR. CATHY GROSS, DR. & MRS.
HARRIS D. HANSON, DR. BOYD A.
HARDESTY individually and as Personal

Representative of the Mildred Hardesty Estate, MRS. BOYD A. HARDESTY, DR. & MRS. EVERETT G. HEINZE, DR. & MRS JACK A. HILL, DR. & MRS. NEIL R. HOFFMAN, DR. & MRS. RICHARD HOLT, DAVID M. HOYT, DR. & MRS. PHILLIP T. JACOB, JANIE F. JULIAN, DR. STEVEN E. KAMMEYER, DR. & MRS JAY A. KATZ, DR. STEPHEN P. KELLY individually and as Trustee of the Stephen P. Kelly IRA, SANDRA KELLY, DR. WILLIAM L. KELLY, DR. & MRS. C. LEONARD KEMP, MR. & MRS. HARTWELL J. KENNARD, DR. & MRS. JAMES W. KENNEDY, DR. MICHAEL W. KISTLER, MR. & MRS. GREGORY F. KITE, BARBARA N. KOONS individually and as Trustee of the Barbara N. Koons Trust, DR. & MRS. MAURICE R. LAVA, DR. LARRY LAWSON, NIKKI P. LAWSON, DR. & MRS. IHN P. LEE, HELENE DENISE LERMAN, JENNIFER EILEEN LERMAN, JEROME T. LOENDORF, DR. & MRS. GORDON LONG, DR. & MRS DEWEY L. LONG, DR. & MRS. BRUCE P. LOVETT individually and as Trustees of the Lovett Revocable Trust, DR. THOMAS I. LOWRY, DR. M.E. MAULE, DR. & MRS. WILLIAM MCCALEB, JOE L. MCCLAUHERTY, DR. & MRS. MICHAEL EDWARD MCCUTCHEON, DR. & MRS JOE S. MCILHANEY, DR. & MRS. WALTER M. MERRITT, NELLIE S. MITCHELL, MR. & MRS. REID M. MITCHELL, MR. & MRS. THEODORE J. MITCHELL, DR. & MRS. CHARLES W.

MONTGOMERY, DR. DAVID
BENJAMIN MOORE, JR., MR. & MRS.
DAVID E. NAIL, DR. & MRS.
MERRILL C. OAKS, ARLEITA L.
OHAI COMBS, DR. & MRS. J.
THOMAS OKIN, DR. JOHN P.
O'REILLY, DR. & MRS. DONALD W.
OWENS, DR. ARTHUR J. OZOLIN,
AIJA OZOLIN, DR. & MRS. GARY N.
PAMPLIN, JANE GREENOUGH
PAULSON, MR. & MRS. DON G.
PIXLEY, RONALD C. PRATI, DR. &
MRS. GERALD F. PROHASKA, DR.
ROBERT S. RIGOLOSI, DR. & MRS.
SIDNEY T. ROBIN, DR. & MRS.
ROBERT L. ROCK, DR. & MRS.
JAMES E. RYTTING, DR. WILLIAM H.
SAYRE, MARY ANN SAYRE, DR. &
MRS. LARRY W. SCHORN, DR.
BENNIE SCOTT, JUDY SCOTT, DR.
VERN ANN SHOTTS, C. MACK
SHOTTS individually and as Trustee of
the C. Mack Shotts IRA, JOHN W.
SKADAN, THOMAS T. SMITH,
BONNIE SMITH, DR. & MRS.
WILLIAM C. SMYTH, DR. & MRS.
DONALD SPENCER, NANCY
SPENCER, MR. & MRS. ROBERT L.
STARKS, BARBARA M. STOYKO, DR.
GAIL B. STRAIT, MR. DONALD J.
STROCK, DEBORAH STROCK, DR. &
MRS. EDWARD LEE SUMMERS, DR.
THOMAS C. SUMNERS, DR. DR.
THOMAS B. SUMMERS, DR. & MRS.
WILLIAM P. TAYLOR, MR. & MRS.
LAWRENCE E. THATCHER, DR. &
MRS. PATRICK R. THOMAS, UNION
NATIONAL BANK as Trustee of the
Mrs. Audrey J. Thompson Revocable

Trust, DR. & MRS. RICHARD J. TOLL,
DR. & MRS. F. GERALD THURMAN,
MR. & MRS. BOYCE L. TUCKER, MR.
& MRS. JOHN D. URQUHART,
HARRIET A. VINEYARD, DR. & MRS.
RICHARD F. WALKER, DR. & MRS.
PETER WEISS, MR. & MRS. JOHN D.
WEST, MR. & MRS. ALLAN J.
WESTMAAS, DR. & MRS. MADELINE
WHITE, DR. & MRS. MARTIN G.
WHITE, DR. & MRS. JOHN N.
WILSON, DR. & MRS. CAREY
WINDLER, WINDLER FAMILY
PARTNERS LIMITED PARTNERSHIP,
DR. DONALD A. WOLFEL and
CYNTHIA A. WOLFEL individually and
as Trustees of the Donald A. & Cynthia A.
Wolfel Revocable Trust, DOUG
BETTERS, DR. FRED CLAYSON,
DONALD M. DUNCAN, P.E., MR. &
MRS RICHARD E. GRAY, MR. W.C.
MUMM, DR GARY B. STANFORD,
MR. & MRS. RICHARD BERGER, DR.
JACK R. BOYD, DR. & MRS FRED J.
JOHNSON, III, DR. & MRS. JOHN E.
LOWE, MAURICE ADAM, MRS.
MAURICE ADAM individually and as
Trustee of the AMD trust, DR. & MRS.
PATRICK H. BECKHAM, DR. & MRS.
RONALD L. BOLEN, DR. & MRS. SAM
H. CADE, CADE FAMILY BUSINESS
LIMITED PARTNERSHIP, COLLEGE
GARDENS UTAH, LTD., COLLEGE
GARDENS II, DR. & MRS. JAMES R.
COTTON, ROGER M. ELLISON, DR. &
MRS. H. ALAN FLOWERS, DR. &
MRS. KERMIT W. FOX, DR. & MRS.
DEAN KUMPURIS, MR. & MRS. E.
BURNS LUNDGREEN, CDR. YVONNE

RUSSELL, HARRY CAMPER, DR.
EUGENE P. SCHOCH, III, DR. & MRS.
KENNETH W. SMITH, RICHARD
KING, RICHARD AND JANET KING
individually and as Trustees of the King
Family Trust,

Defendants,

and

WOODBURY AND KESSLER
DEFENDANTS, Woodbury and Kessler
Defendants consisting of: CASAS
ADOBES INVESTORS LIMITED
PARTNERSHIP, DESERT TREE
ASSOCIATES LIMITED
PARTNERSHIP, FOOTHILLS WEST
LIMITED PARTNERSHIP, PARK
SANTA FE LIMITED PARTNERSHIP,
SUN TREE LIMITED PARTNERSHIP,
WILLOW CREEK INVESTORS
LIMITED PARTNERSHIP,

Defendants - Appellants.

ORDER

Before **EBEL**, **KELLY** and **BRISCOE**, Circuit Judges.

This matter is before the court on the appellees' motions to dismiss. The appellees' argue that the notices of appeal were filed late. We agree and grant the

motions.

The district court entered an order on September 16, 2003, adopting the recommendation of the bankruptcy court that a declaratory judgment be entered concluding that certain funds were property of the bankruptcy estate, and ordering that judgment be entered in accordance with that recommendation. Judgment, however, was not entered until May 7, 2004. One group of defendants filed an appeal on June 1, 2004; another filed its appeal on June 15.

Rule 58 of the Federal Rules of Civil Procedure requires that “[e]very judgment and amended judgment must be set forth on a separate document” Fed. R. Civ. P. 58(a)(1). The September order does not satisfy the separate document requirement. *See Clough v. Rush*, 959 F.2d 182, 185 (10th Cir. 1992) (holding that a district court order which contained detailed legal analysis and reasoning could not, standing alone, trigger the appeal process). Accordingly, the time to appeal did not begin to run.

Where a separate judgment is required, judgment is entered “when the earlier of these events occurs: A) when it is set forth on a separate document, or (B) when 150 days have run from entry in the civil docket under Rule 79(a).” Fed. R. Civ. P. 58(b)(2). Thus, where no separate judgment is entered within 150 days, judgment is deemed entered when 150 days have run from entry in the civil docket. *See Caldwell v. Barnhart*, No. 03-4235, 2004 WL 1234146, **2 (10th Cir. Jun. 4, 2004) (unpublished) (where the district court did not file a separate entry of judgment “judgment is considered entered 150 days after

entry of the district court's [order].”).

To interpret the rule otherwise would defeat the purpose of the 2002 amendments to Rule 58, which added the 150 day limit. The amendments were added “to ensure that appeal time does not linger on indefinitely.” Fed. R. Civ. P. 58, Advisory Committee Notes, 2002 Amendments.

The September order was entered on the 16th. Thus, the time to appeal began to run on February 13, 150 days later. This is the date that the time to appeal begins to run because it was earlier than May 7, the day the separate judgment was entered. The time to file an appeal, therefore, expired on Monday, March 15, 2004, more than two months before these appeals were filed.

Accordingly, these appeals are **DISMISSED**. The mandate shall issue forthwith.

Entered for the Court
PATRICK FISHER, Clerk of Court

by:
Deputy Clerk