

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re ALSTOM SA SECURITIES LITIGATION	:	Master File No. 03-CV-6595(VM)
	:	
	:	<u>CLASS ACTION</u>
This Document Relates To:	:	
	:	REVISED SECOND CONSOLIDATED
ALL ACTIONS.	:	AMENDED COMPLAINT FOR
	:	VIOLATIONS OF THE FEDERAL
	:	SECURITIES LAWS

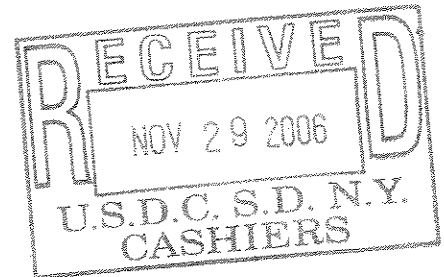


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I. NATURE OF THE ACTION

1. Lead Plaintiffs State Universities Retirement System of Illinois, the San Diego City Employees' Retirement System, Louisiana State Employees' Retirement System, West Virginia Investment Management Board, and the International Brotherhood of Electrical Workers, Local 269, ("Lead Plaintiffs") bring this action on behalf of themselves and all other persons or entities who purchased or otherwise acquired the publicly-traded stock, ADSs or other shares (the "Class") of Alstom SA ("Alstom" or the "Company") between and including August 3, 1999 and August 6, 2003, inclusive (the "Class Period"). Excluded from the Class are defendants and certain related persons and entities further defined below.

2. By and through the undersigned attorneys, Lead Plaintiffs allege the following upon information and belief, except as to those allegations concerning Lead Plaintiffs, which are alleged upon personal knowledge. Lead Plaintiffs' information and belief are based upon, among other things, their investigation into Alstom, including without limitation: (a) review and analysis of filings made by Alstom with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases, public statements, news articles and other publications disseminated by or concerning Alstom; (c) review and analysis of Alstom's analyst conference calls; (d) review and analysis of securities analysts' reports concerning Alstom; (e) review and analysis of documents produced by New Jersey Transit ("NJT"); (f) review and analysis of internal Alstom documents; and (g) other publicly available information disseminated by or concerning Alstom, Alstom USA, Inc. ("Alstom USA"), Alstom Transportation Inc. ("ATI"), ABB Ltd. ("ABB"), ABB Alstom, Marconi plc ("Marconi"), Alcatel SA ("Alcatel"), and others. Lead Plaintiffs' investigation also included interviews or consultations with numerous individuals in the United States and abroad, including former Alstom employees, former ABB employees, and former ABB Alstom employees who are knowledgeable about the business and operations of

Alstom, Alstom USA, ATI, ABB Alstom as well as the industry and markets in which the aforementioned operate.

3. Lead Plaintiffs believe that further substantial evidentiary support will exist for the allegations in this Revised Second Consolidated Amended Complaint after a reasonable opportunity for discovery. Most of the facts supporting the allegations contained herein are known only to the defendants or are exclusively within their custody or control.

II. BACKGROUND AND SUMMARY OF CLAIMS

4. Marconi and Alcatel, which each owned fifty percent of Alstom, took the Company public in 1998, selling, in a global public offering, approximately 52% of their combined holdings for more than \$3.2 billion. However, prior to the initial public offering ("IPO"), Marconi and Alcatel forced Alstom to pay them a €1.2 billion "special dividend" that, unbeknownst to investors, severely hindered Alstom's ability to compete in the marketplace. (During the Class Period, the euro to dollar exchange rate fluctuated between €0.827/\$1 and €1.19/\$1.) As reported in "New cases in Economics, Politics and Business," *European Case Clearing House* (February 2004), "[the pre-IPO dividend] severely diminished [Alstom's] available cash flow and hence its capability to innovate and destroying its core competence."

5. After the IPO, Marconi and Alcatel wanted to sell the rest of their Alstom shares, but having emptied the Company's coffers with the special dividend, they sought to keep Alstom looking prosperous so they could sell their stock at a premium. Thus, when the Company lost the technology license it used to produce power generating turbines, Marconi and Alcatel forced Alstom to protect the valuable revenue stream the turbines generated by quickly entering into a joint venture with Swiss-Swedish conglomerate ABB, a company with readily-available replacement technology, even though Alstom knew that technology was deeply flawed so that Alstom could protect its façade of prosperity. Once part of the joint venture, Alstom concealed

the huge costs of repairing the ABB turbines, ultimately purchasing the joint venture in order to control the disclosure of those costs to the public. Similarly, in order to create the false impression that demand for Alstom's cruise ships was strong, Marconi and Alcatel caused Alstom to secretly guarantee loans the Company's customers used to purchase ships from Alstom, despite the fact that these customers were so financially unstable that they could not obtain financing on their own.

6. Alstom maintained this appearance of prosperity long enough for Marconi and Alcatel to sell all of their Alstom stock. After that, Alstom gradually admitted the extent and costs of the ABB turbine defects and took over €4 billion in reserves related to those defects from 2000 to 2003. When Renaissance Cruises International ("Renaissance"), one of Alstom's cruise-ship customers, went bankrupt, the Company was forced to admit in September 2001 that it had guaranteed hundreds of millions of euros in loans to Renaissance that it now had to repay. These terrible revelations, one after another, had a devastating effect upon Alstom's stock price.

7. In order to help keep the Company afloat during the Class Period, Alstom engaged in yet another accounting fraud, this time at its Transport Division in the United States. As the Company has now admitted, Alstom artificially inflated net income at the Transport Division by approximately €167 million by "understat[ing] actual costs incurred" in fiscal 2003. This fraud was eventually uncovered and led to the firing of defendants Stephan Rambaud-Measson ("Rambaud-Measson") and Joe Janovec ("Janovec"), as well as to investigations by the SEC and the FBI. Eventually, the Chairman and CEO of Alstom himself, defendant Pierre Bilger ("Bilger"), was removed and was placed under judicial investigation for bribery and corruption in France in May 2003.

8. Among all of the specific facts and figures Lead Plaintiffs have set forth in this complaint detailing defendants' fraud, one fact must be emphasized: from the date Alcatel and Marconi dumped the last of their Alstom stock to the last trading day during the Class Period, the closing price of Alstom shares traded on the New York Stock Exchange ("NYSE") plummeted from \$27.64 to \$3.21. Similarly, Alstom lost approximately 93% of its value during the Class Period, going from a market-capitalization high of \$8.6 billion and plummeting to a low of \$647 million. This decline was not caused by business reversals, but rather by the revelation of adverse facts that were concealed while Marconi and Alcatel still owned Alstom stock. As a result, Marconi and Alcatel reaped billions of euros in profits on their Class Period sales of Alstom shares, while unsuspecting investors, unaware of the rampant fraud at Alstom, suffered massive losses.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78aa. This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337. The claims asserted herein arise under §§10(b), 18 and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b), 78(r), and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. §240.10b-5.

10. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §§1391(b) and (c). Many of the acts and transactions giving rise to the violations of law complained of herein, including the offer and sale of American Depositary Shares ("ADSs") and the preparation and dissemination to the public of materially false and misleading public filings, occurred in this District. ATI maintains an office in this district at 353 Lexington Avenue, Suite 800, New York, New York.

11. Pursuant to the “effect test” of extraterritorial jurisdiction, this Court may properly exercise subject matter jurisdiction over the claims of (a) all investors who purchased or acquired Alstom securities traded on U.S. markets, and (b) investors based in the United States who purchased or acquired Alstom securities regardless of where those securities traded.

12. Each of the exchanges on which Alstom shares or depositary shares traded was efficient, and there was but a single, highly integrated worldwide market for Alstom shares and Alstom ADSs. That worldwide market was defrauded by defendants’ conduct, causing extensive effects both domestically and abroad.

13. This Court may also properly exercise subject matter jurisdiction over the claims of foreign class members who purchased or acquired Alstom securities traded on foreign markets under the “conduct test,” which provides that a federal court has subject matter jurisdiction if (1) the defendants’ activities in the United States were more than “merely preparatory” to a securities fraud conducted elsewhere, and (2) these activities or culpable failures to act within the United States caused the claimed losses.

14. Defendants engaged in extensive fraud-related conduct in the United States by, *inter alia*, (i) artificially inflating earnings and shareholders’ equity through the omission of huge expenses from its financial statements at its U.S. railroad construction unit – ATI; (ii) secretly guaranteeing loans to Renaissance, a United States company headquartered in Fort Lauderdale, Florida; and (iii) filing a false and misleading registration statement in the United States and selling artificially inflated stock to U.S. investors pursuant to that registration statement.

15. During the Class Period, Alstom sold at least eight cruise ships to Renaissance for approximately \$148 million apiece. Alstom secretly guaranteed the loans this U.S. company used

to purchase Alstom's ships in order to create a false impression that demand for those ships was strong.

16. The defendants' fraudulent conduct in the United States also included pervasive and deliberate improper accounting regarding the ATI railway cars, which were largely built in the United States. The ATI agreements were negotiated and entered into primarily with United States companies. The fraudulent activity at ATI is now the subject of investigations by the United States Department of Justice and the SEC.

17. As discussed in more detail below, the accounting fraud at ATI involved, in part, understating costs incurred in connection with a \$280 million contract to build railcars for NJT. At the inception of the NJT contract, ATI created a "Project Management Plan" ("PMP") that was intended to "deal[] with the management of the overall project from its very beginning up to its completion." According to the PMP, Alstom participated in the performance of the NJT contract through its wholly-owned subsidiary, Alstom Transportation SA, located in Villeurbanne, France. The PMP specifically stated that "[t]here are three participating units within the ALSTOM Transport Division ... that are contributing to the NJT effort," and it identified these three participating units as ATI, an Alstom facility located in Sao Paulo, Brazil, and Alstom's facility in Villeurbanne, France. The PMP stated that the operations in Villeurbanne, France will "provide design and manufacturing services for the NJT Program." The PMP also said that "ALSTOM's Villeurbanne Facility may be utilized for design or consultation of the vehicle[s.]"

18. The PMP also indicated that Board of Directors of Alstom SA had oversight responsibilities for the performance of the contract and that the Program Director for the NJT contract "shall . . . [r]eport project progress to ALSTOM's Board of Directors."

19. In addition, a NJT memorandum dated June 27, 2000 indicates that Jean Pierre Froideaux, Thierry Guinard, David Fontaine, Isabelle Cornelus and Emmanuel Henry, each of whom were then employed by Alstom in France, traveled to the United States to meet with persons from ATI and NJT in connection with the performance of the NJT contract.

20. Further supporting this Court's subject matter jurisdiction, a significant number of defendants' false and misleading statements were initially made in the United States, and all were disseminated within the United States through the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of a national securities exchange. During the Class Period, Alstom regularly filed false and misleading reports and financial statements with the SEC in the United States, including Form 20-F Annual Reports and periodic reports on Form 6-K. On or around February 8, 2001, Alstom, Alcatel and Marconi conducted a secondary offering of Alstom stock ("Secondary Offering") in the United States, among other locations, pursuant to a registration statement filed with the SEC on Form F-3 on January 17, 2001, as amended on Forms F-3/A filed with the SEC on January 24, 2001 and February 7, 2001 (the "Registration Statement"). The proceeds from that offering exceeded €2 billion.

21. In addition to the substantial conduct in the United States in furtherance of the fraud, Alstom has a vast presence in the United States that justifies the exercise of subject matter jurisdiction of the claims of all plaintiffs who, relying on the health and value of Alstom's substantial businesses in the United States, acquired Alstom securities traded in foreign markets and were defrauded by defendants' misrepresentations. Alstom currently maintains numerous offices in the United States, including offices at the following locations:

(a) ALSTOM's Power Sector (Hydro); located at 7921 South Park Plaza, Suite 208, Littleton, Colorado. Alstom boasts that this plant's capabilities include, "[t]urnkey projects, complete plant modernization, turbines, generators, excitation systems, governors, hydro-mechanical, controls, protection, balance of plant, small hydro systems."

(b) Industrial Turbines; 10730 Telge Road, Houston, Texas. This location is marketed as dealing with "[g]as turbines under 50MW for the power generation industry in baseload, peaking, standby power, cogeneration and combined cycle applications and for the oil & gas industry in power generation and mechanical drive. Steam turbines under 100MW for power station and industrial use in power generation, combined cycle, cogeneration, mechanical drive and geothermal applications." It includes "[a] complete range of flexible products including condensing and back pressure, reheat and non-reheat, multiple extractions and/or secondary steam admissions and single or double casing configurations."

(c) ALSTOM Transportation Inc.; 650 Warrenville Road, Suite 200, Lisle, Illinois. This location deals with "Business Development, Sales and Marketing, Parts Management."

(d) ALSTOM Power Inc. (Performance Projects); 911 West Main Street, Chattanooga, Tennessee. Here, Alstom engages in the "[m]anufacture of pressure parts for utility, industrial, marine, resource recovery and heat recovery steam generators, reactor vessels, steam generators, pressure vessels, piping, gas turbine products, special heavy machining."

(e) Marine U.S. Headquarters; 3303 Biscayne Boulevard, Suite 804, Miami, Florida. Here, Alstom "[s]upports cruise ships operating out of North American ports from a base in Miami, as well as the building of luxury cruise liners, liquefied natural gas tankers, naval vessels and high-speed ferries."

(f) ALSTOM's Power Rentals; 13901 Sutton Park Drive South, Suite 330, Jacksonville, Florida.

(g) ALSTOM's Power Sector (Environmental Services); 10539 Lexington Drive, Knoxville, Tennessee. Alstom states that this location is:

For plant owners who need to re-evaluate their life continuation strategies in light of issues such as tightening emission standards, fuel switching, concerns over opacity and emission credits, we offer the most cost-effective way to maintain, repair or upgrade the air pollution control (APC) systems already in place. With virtually unparalleled expertise in fuels, pulverizers, ash constituents, boiler combustion processes and gas conditions, we take a[] systems approach rather than a hardware approach to solving air pollution control problems. In other words, we offer much more than the ability to simply repair, replace or rebuild existing equipment or components. We offer the experience and resources needed to develop and maintain an AC equipment retrofit strategy that reduces overall operating costs while meeting more stringent emissions control requirements.

(h) ALSTOM's Power Sector (Turbine Services); 2800 Waterford Lake Drive, Midlothian, Virginia. In promoting this location, Alstom states:

Whether you need a reconditioned rotor or a major upgrade we can offer you a solution that optimizes your operating costs while maintaining maximum availability, reliability and efficiency of your gas, hydro or steam turbine. We can provide extensive monitoring and diagnostics services give you an accurate assessment of the health of your turbine and generator. We repair and rebuild gas and steam turbines, generators and components and assemble new gas turbines. Our reconditioning services for gas turbine blades and heat shields can save you 50-70% over new component.

(i) ALSTOM Power Inc. (Heat Exchange); 1550 Lehigh Drive, Easton, Pennsylvania.

(j) ALSTOM Transport; 1025 John Street, West Henrietta, New York, boasts that "[r]ecent major contracts have included Grand Central Station in New York City, as well as the Shanghai Metro in the People's Republic of China."

(k) ALSTOM Power Air Preheater Co.; 3020 Truax Road, Wellsville, New York.

(l) ALSTOM Transportation Inc.; 1 Transit Drive, Hornell, New York, is a central player in Alstom's fraud.

(m) Alstom's U.S. Headquarters is located at 2000 Day Hill Road, Windsor, Connecticut.

(n) ALSTOM Transportation Inc.; 353 Lexington Avenuw, Suite 800, New York, New York. This location states that it provides "[c]ommunication, sales and marketing, business development, and legal counsel."

22. Further, Alstom is no stranger to litigating in the United States. In a suit brought by Interger N.V. in the United States District Court for the District of Massachusetts against Alstom for the sale of defective GT turbines, Interger N.V. named as defendants Alstom and "Eric Grina, a Massachusetts resident who allegedly acted as ALSTOM Power's agent for many of the relevant negotiations." *Interger N.V. v. Grina*, 344 F.3d 134, 139 (1st Cir. 2003). Thus, Alstom is already subject to the jurisdiction of U.S. courts.

IV. THE PARTIES

A. Plaintiffs

23. The San Diego City Employees' Retirement System ("San Diego") is a public pension system located in San Diego and organized for the benefit of the current and retired municipal employees of the City of San Diego. San Diego currently has total assets of approximately \$2.6 billion. San Diego purchased Alstom shares during the Class Period at artificially inflated prices and was damaged thereby.

24. The Louisiana State Employees' Retirement System ("Louisiana") is a public pension system organized for the benefit of current and retired public employees of the State of Louisiana. Louisiana is located in Baton Rouge, Louisiana, and has total assets of approximately

\$5.6 billion. Louisiana purchased Alstom shares on the Paris Exchange during the Class Period at artificially inflated prices and was damaged thereby.

25. The State Universities Retirement System of Illinois (“SURS”) is a public pension system organized for the benefit of current and retired employees of the Illinois state universities. SURS is a retirement system created and operating under the provisions of Article 15 of the Illinois Pension Code, 40 ILCS 5/15-101ff, and whose purpose is to provide retirement annuities and other benefits for employees of public higher education institutions in the State of Illinois and other governmental entities described in 40 ILCS 5/15-106. SURS purchased Alstom shares on the Paris Exchange and in the Secondary Offering during the Class Period at artificially inflated prices and was damaged thereby.

26. The West Virginia Investment Management Board (“West Virginia”) is a public pension system organized to be the principal investment management organization of all West Virginia’s defined benefit retirement plans, the Workers Compensation and Pneumoconiosis plans, general revenue, special revenue, municipal bond moneys, certain local government moneys, state bond proceeds and various other monies held by the state. West Virginia purchased Alstom shares on the Paris Exchange during the Class Period at artificially inflated prices and was damaged thereby.

27. The International Brotherhood of Electrical Workers, Local 269 Pension Fund (“IBEW”) is a pension fund operated by its trustees and organized for the benefit of its well over a thousand participants. IBEW purchased Alstom’s ADSs on the NYSE during the Class Period at artificially inflated prices and was damaged thereby.

28. By Order of the Court dated January 7, 2004, San Diego, Louisiana, SURS, West Virginia and IBEW were appointed Co-Lead Plaintiffs in this action in accordance with §21D(a)(3)(B) of the Exchange Act, 15 U.S.C. §78u-4(a)(3)(B).

B. Defendants

29. **Alstom SA**: Defendant Alstom is a provider of power and transportation equipment throughout the world. The Company is incorporated under the laws of the Republic of France and serves the energy market through its activities in the fields of power generation, power transmission and distribution, power conversion and electrical contracting. The Company is also active in rail and marine transportation. Alstom designs, supplies and services a complete range of technologically advanced products and systems for its customers, and offers systems integration and life maintenance and service. The principal executive offices of the Company are located at 25, Avenue Kléber, 75116 Paris, France.

30. During the Class Period, Alstom operated through its various wholly-owned subsidiaries located throughout the world, including the United States, and the Company reported its financial results on a consolidated basis, operating on a fiscal year that ends March 31.

31. During the Class Period, Alstom's ADSs were traded on the NYSE under the symbol "ALS" and the Company filed annual reports on Form 20-F ("20-F") and periodic reports on Form 6-K ("6-K") with the SEC. Alstom stock, in the form of United Kingdom Depositary Shares ("UKDSs"), was listed during the Class Period on the London Stock Exchange under the symbol "ALSA." The Company's stock is also listed on the premier marché of Euronext Paris ("Paris Exchange") under the symbol "ALS." As of September 30, 2003, there were 281,660,523 shares of Alstom outstanding.

32. **Alstom USA, Inc.**: Defendant Alstom USA is a wholly-owned subsidiary of Alstom and is the holding company of Alstom's subsidiaries in the United States, including ATI. Alstom USA is located at 2000 Day Hill Road, Windsor, Connecticut.

33. **Alstom Transportation Inc.**: Defendant ATI is located at 353 Lexington Avenue, Suite 800, New York, New York 10016 and at 1 Transit Drive, Hornell, New York 14843, and is a wholly-owned subsidiary of Alstom USA. ATI manufactures railway cars.

34. **Pierre Bilger**: Defendant Bilger was appointed CFO of Alstom's predecessor company in 1987, then known as Alsthom, and in 1989 became the Managing Director. In 1991, he was appointed CEO, and on May 14, 1998, Bilger was appointed as Alstom's CEO and Chairman of the Board. In that capacity, Bilger (through Attorney-in-Fact Francois Newey) signed the Registration Statement on February 7, 2001. Bilger served as CEO until January 1, 2003, and as Chairman of the Board until March 11, 2003. During the Class Period, Bilger was a member of Alstom's "Executive Central Management" and also served on the Company's Executive Committee. In addition, during the Class Period and at the time of the Secondary Offering, Bilger served on the Nominations and Remuneration Committee of the Board. According to the Company, the Nominations and Remuneration Committee is responsible for reviewing and making recommendations to the Board on issues including the nomination and revocation of the Chairman of the Board and the CEO; the nomination of new Directors; the nomination and revocation, upon proposal of the CEO, of any other mandataires sociaux and members of the Executive Committee; the Company's corporate governance practice and the composition and functioning of the Board and its Committees; the Company's policies relating to stock option plans and employee share purchase schemes; and Directors' fees. Bilger also served

as a member of the Supervisory Board of Alstom Power. On May 13, 2003, Bilger was placed under judicial investigation in France for bribery and corruption.

35. **Francois Newey**: Defendant Francois Newey ("Newey") was Senior Executive Vice President and Chief Financial Officer of Alstom from July 1998 to July 3, 2002. In that capacity, Newey signed the Registration Statement on February 7, 2001. During the Class Period, Newey also served as a member of Alstom's Executive Committee. Newey joined the Company in March 1998 as Corporate Director, Finance.

36. **Stephan Rambaud-Measson**: Defendant Rambaud-Measson was director and a senior vice-president of ATI from December 2001, until June 30, 2003, when he was suspended pending completion of the Company's investigation into the accounting improprieties alleged herein. Rambaud-Measson was "involuntarily terminated" from Alstom sometime after June 30, 2003. As senior vice-president of Rolling Stock Americas ("RSA"), an operating name for ATI within Alstom, he reported directly to Alstom's Transport Sector President (Michel Moreau) who, in turn, reported directly to Alstom's Chairman and CEO. According to Gregory Muscato ("Muscato"), ATI's vice president of human resources and ATI's corporate designee who testified in deposition on February 15, 2006 ("Muscato Tr."), as senior vice president of RSA, Rambaud-Measson "was in charge" of ATI and RSA facilities, including the facility in Hornell, New York. Muscato Tr. at 25.

37. **Joe Janovec**: Defendant Janovec was Vice-President of Finance at ATI/RSA from 2002 until June 30, 2003, when he was suspended pending completion of the Company's investigation into the accounting improprieties alleged herein. Janovec was "involuntarily terminated" from ATI in July 2005. As ATI's Vice-President of Finance, Janovec reported to Rambaud-Measson as well as to Alstom Transport's Chief Financial Officer Roland Kientz,

located in Paris. According to ATI's corporate designee, Janovec was "in charge" of the entire finance organization at ATI, was the most senior finance person at ATI, and was "responsible" for financial reporting for ATI. Janovec was responsible for all of the financial data, including costs and profitability, prepared by ATI/RSA. He received direct reports from the controllers in each RSA business unit as often as daily. His responsibilities included reviewing transactions and identifying financial risks.

38. Defendants Bilger, Newey, Rambaud-Measson and Janovec are collectively referred to herein as the "Officer Defendants." Because of the Officer Defendants' positions, each knew adverse non-public information about Alstom during the Class Period, including its financial results and business and financial prospects, and had access to non-public internal documents.

39. Alstom, Alstom USA, ATI, and the Officer Defendants will hereafter be referred to as the "Defendants."

C. Relevant Non-Parties

40. **Alcatel SA**: Defendant Alcatel owned 50% of Alstom in a joint venture with Marconi before the Class Period. In June 1998, Alcatel sold an ownership stake in the Company, representing 26% of Alstom, in a global IPO and received proceeds of approximately \$1.65 billion. Alcatel subsequently sold another portion of its ownership in the Company, representing 18% of Alstom, in the Secondary Offering for approximately €800 million, and 6% of the Company in June 2001 for about €390 million. After June 2001, Alcatel no longer owned any shares of Alstom.

41. **Marconi plc**: Marconi also known as GEC, owned 50% of Alstom in a joint venture with Alcatel before the Class Period. In June 1998, Marconi sold an ownership stake in the Company, representing 26% of Alstom, in a global public offering and received proceeds of

approximately \$1.65 billion. Marconi subsequently sold another portion of its ownership in the Company, representing 18% of Alstom, in February 2001 in a public offering for approximately €800 million, and 6% of the Company in June 2001 for about €390 million. After June 2001, Marconi no longer owned any shares of Alstom.

42. **Patrick Kron**: Patrick Kron (“Kron”) replaced Bilger as the Company’s CEO on January 1, 2003, and was appointed Chairman of the Board on March 11, 2003. Kron was appointed to the Board on July 24, 2001.

V. DEFENDANTS’ FRAUDULENT SCHEME

A. Marconi and Alcatel Render Alstom Financially Unstable

43. The corporate predecessor to Alstom, GEC Alsthom N.V. (“GECA”), was established in 1989 by The General Electric Company of the United Kingdom (now known as Marconi), which owned 50%, and by Alcatel of France, which owned the remaining 50%. On June 22, 1998, all the activities previously carried out by GECA were transferred to Alstom. On the same date, Marconi and Alcatel conducted an IPO of Alstom on the Paris, New York and London stock exchanges, selling approximately 52% of their holdings and receiving more than \$3.2 billion.

44. Just prior to the IPO, Marconi and Alcatel forced Alstom to pay them a €1.2 billion “special dividend” that severely hindered Alstom’s ability to compete in the marketplace. According to *The Wall Street Journal*:

Alstom’s troubles began in June 1998. In one of Europe’s largest initial public offerings, the company’s two corporate parents, France’s Alcatel SA and Britain’s Marconi PLC (then known as GEC), sold stock in their joint engineering unit. . . .

Just before the IPO, Alcatel and Marconi had drained Alstom’s coffers. Eager to fund expansion into the then-booming telecommunications sector, they made the company pay them a 1.2 billion euro special dividend. That left the newly independent Alstom, a heavy-engineering company that must make costly

investments in big projects before reaping profits from them years later, with a fragile balance sheet.

John Carreyrou, *Rescue Mission: Saving a Company, Paris Sets Pattern of Flouting the EU*, Wall St. J., Aug. 19, 2003.

45. In forcing the IPO dividend, Marconi and Alcatel left Alstom strapped for cash. According to *The Wall Street Journal* (Aug. 19, 2003), while Bilger was publicly supporting the dividend, in meetings within the Company he was strongly opposed to the payment. As reported in “New cases in Economics, Politics and Business,” *European Case Clearing House* (February 2004), “[the pre-IPO dividend] severely diminished [Alstom’s] available cash flow and hence its capability to innovate and destroying its core competence.” One year later, in July 1999, Alstom sold €500 million of corporate bonds to recover.

46. But €500 million was not enough, and the Company initiated a pattern of deceit at its Marine and Transport Divisions in an attempt to shore up its financial condition and its stock price, and in some instances merely to allow its owners, Marconi and Alcatel, to divest themselves of their Alstom stock at an artificially inflated price. These transactions included: (1) participating in a vendor-financing scheme whereby the Company guaranteed loans that its financially unsound customers used to purchase Alstom cruise ships from Alstom; (2) incurring enormous liabilities in connection with its sales of defective turbines; and (3) understating losses in connection with railcar contracts undertaken by ATI. In the end, each of these schemes proved to be disastrous to Alstom’s financial health, resulting in enormous losses and finally in one of the largest corporate bailouts in the French history.

B. Alstom Conceals a Vendor-Financing Scheme

47. Alstom attempted to conceal the effects from the devastating IPO dividend by engaging in a perilous vendor-financing scheme in its Marine Division. Alstom’s Marine

Division, which included cruise ship sales, was a relatively small segment but was extremely important to Alstom and its investors because it was the fastest growing. In FY2000, marine sales grew from €830 million to €1.3 billion and marine operating income nearly tripled to €70 million from €25 million in FY1999.

48. It was important to Alstom for its Marine Division to be perceived favorably and to minimize the risks associated with its liquidity so that it could raise the necessary financing to fund its business. Alstom's bank borrowings increased from €839 million at March 31, 1999 to €2.7 billion at March 31, 2000 to €4.5 billion at March 31, 2001. Thus, the off-balance-sheet risk associated with guarantees on debt incurred by customers making purchases from Alstom's fastest growing segment were concealed.

49. For example, in 1996, Alstom announced that Renaissance had ordered six identical, 350-cabin cruise ships to be built by Alstom over several years. This order was later expanded to eight ships. As Renaissance was to pay Alstom approximately \$148 million for each ship, the announcement of these orders assured investors that Alstom could count on significant revenue from Renaissance for several years. Indeed, between June 29, 1998, when the first ship was delivered, to the last delivery on February 10, 2001, Alstom recognized revenue on each of the eight ships. This revenue boosted Alstom's results and was crucial to the Company's profitability for over three years. Alstom failed to disclose, however, that it had guaranteed the loans Renaissance used to purchase all eight ships. Alstom's sales to Renaissance did not reflect strong demand for Alstom ships as Alstom represented. Rather, Alstom had facilitated financing to a customer too financially unsound to obtain it any other way. Accordingly, the Renaissance deal artificially inflated Alstom's stock price until Marconi and Alcatel could cash out at a profit.

C. Alstom Rushes into a Joint Venture with Turbine Maker ABB to Save Itself as Well as Alcatel's and Marconi's Investment While Concealing Huge Costs Associated with Turbine Defects

50. As set forth in greater detail in ¶¶ 242-267 under "Scienter" below and in Plaintiffs' previously filed Second Consolidated Amended Complaint, dated March 14, 2006, at ¶¶ 74-102, 109-115, 219, 222, 226, 228-237, 239-240, 242-245, 247-261, 263-286, 293-306, 309-327, 331-337, 342-344, and 355-358, Alstom engaged in an extensive fraud relating to defective heavy duty gas turbines sold by its Energy Sector, its largest business unit. Alstom incurred enormous liabilities by selling defective turbines in a joint venture with ABB, which supplied the turbines' technology, beginning in March 1999, and continued selling the defective turbines after buying ABB's interest in the joint venture in May 2000. Alstom knew that these sales exposed it to billions of euros of liabilities to its customers, but concealed those liabilities. This "Turbine Fraud" was part of a pattern of fraudulent conduct by Alstom that also included the Marine Fraud and ATI Fraud. The Turbine Fraud also provided a motive for Alstom to engage in the Marine Fraud and ATI Fraud in order to further conceal, and recover from, the financial impact of the Turbine Fraud. In accordance with the Court's prior decisions on Defendants' motions to dismiss which determined that the Turbine Fraud claims are time-barred, this Revised Second Consolidated Amended Complaint does not plead a cause of action based on misrepresentations or omissions relating to the Turbine Fraud, but pleads facts related to the Turbine Fraud that are relevant to the claims or defenses that relate to the Marine and/or ATI Frauds, including Defendants' scienter and motive to engage in the Marine Fraud and ATI Fraud.

D. Marconi and Alcatel Sell All Their Remaining Alstom Shares

51. In February 2001, with the public still unaware of Alstom's vendor financing scheme or the true extent of the turbine defects, Alstom's two corporate parents together sold over

71 million shares of Alstom common stock (representing 33% of Alstom's outstanding shares) for approximately €2 billion pursuant to the Registration Statement.

52. Marconi and Alcatel then sold all of their remaining Alstom shares in June 2001. According to Alstom's 2002 Form 20-F ("2002 20-F"), "the public offering on 14 February 2001 [was] carried out jointly between Alcatel and Marconi plc, in the course of which they sold 35,538,930 shares each (representing 16.5% of the share capital of ALSTOM each), Alcatel and Marconi plc each sold their remaining 5.7% shareholding in the capital of ALSTOM in June 2001."

53. Now that Alcatel and Marconi conveniently had no concerns over the fate of Alstom, the public would soon begin to become aware of the true condition of the Company. As it did, Alstom's closing price on the NYSE plummeted from \$27.90 on June 29, 2001 to \$3.21 on August 6, 2003, the last trading day during the Class Period.

E. The Public Begins to Learn the Truth About Alstom

1. Alstom's Vendor Financing Scheme Finally Comes to Light

54. On September 25, 2001, Renaissance declared bankruptcy. This should have been of little concern to Alstom investors because, although Renaissance had been a good customer, it had no orders pending with Alstom at that time. However, on September 27, 2001, Alstom finally admitted the secret it had concealed from investors since at least 1998: Alstom had guaranteed the loans Renaissance had used to purchase eight ships from Alstom. With Renaissance bankrupt, Alstom was suddenly liable pursuant to those guarantees for €684 million. Even worse, Alstom admitted to another €1.3 billion in outstanding vendor financing.

55. A February 25, 2002 article in *The Wall Street Journal* stated:

At the bottom of its financial statements, Alstom lists a line item called "commitments and contingencies." At the end of September, the figure next to that

line item was 12.8 billion euros (\$11.13 billion), not small change for a company with a stock market capitalization of about 3 billion euros.

“Talk about a black hole,” says Jay Huck, a London analyst with the Center for Financial Research and Analysis, a boutique research firm that combs through companies’ financial statements for institutional investors.

Until recently, Mr. Huck and other investors had no way of knowing what the 12.8 billion euros represented because Alstom neither highlighted nor explained it. Then came the Chapter 11 bankruptcy-court filing in late September of Renaissance Cruises, a Florida cruise line that operated eight cruise ships built by Alstom’s French shipyards. After initially saying its exposure to Renaissance was minimal, Alstom said on Oct. 1 that it could lose as much as 684 million euros as a result of the bankruptcy.

What Alstom had neglected to disclose is that among the commitments and contingencies were written guarantees it had given to banks that had lent money to cruise lines so that they could buy ships from Alstom. This is known as vendor financing. When Renaissance defaulted on those loans, they became Alstom’s responsibility.

Suddenly, shareholders became nervous that Alstom might be liable for other guarantees. They were right. When the company released its fiscal first-half results in November, Alstom for the first time provided footnotes breaking down the 12.8 billion-euro figure. Turns out that roughly two billion euros are vendor-financing liabilities, including 1.3 billion euros to the cruise industry.

Alstom now promises to put an end to its vendor-financing practices. Nonetheless, it continues not to classify these liabilities as debt, which many analysts say would more accurately reflect what they are, since Alstom is the ultimate guarantor of these loans.

In its first-half results, Alstom disclosed net debt of two billion euros. Adding in the vendor-financing liabilities would have doubled the company’s net debt to four billion euros, one billion euros more than the company’s market capitalization.

56. Many observers were shocked to discover that Alstom had guaranteed Renaissance’s loans. *Reuters* reported that a trader at a Paris-based broker stated: “We didn’t know Alstom was involved in credit guarantee for its ships.” Peter Reilly, engineering analyst at Deutsche Bank in London, stated: “This appears to have been a contingent liability which was not

disclosed in the Alstom report and accounts.” *The Financial Times* quoted one analyst stating: “It’s like a builder guaranteeing your mortgage even though he’s building your house as well.”

57. On October 1, 2001, J.P. Morgan Securities, Ltd. issued an analyst report which stated:

Alstom has lost EUR2.1 billion in market value since it revealed the exposure to Renaissance Group [I]nvestor focus has shifted to Alstom-specific problems like the high leverage, low cash generation and concern about other potential risks “hidden” in its off-balance sheet liabilities.

* * *

We believe that a significant part or even all of the profits the Marine business achieved in the last three years (cumulative EBIT of EUR176 million) will ultimately be lost even if the full extent of Alstom’s liability to Renaissance Group of EUR684 million is not realised. *We question the quality of the turnaround of the [Marine] division achieved in the last years, as it seems to have happened on the back of vendor financing. Alstom confirmed that the large order of eight ships from Renaissance Group was instrumental in the turnaround of the division.*

58. Alstom failed to disclose its liability related to the Renaissance guarantees even after Alstom knew Renaissance was in financial trouble. After losses in 1999 and a loss of over \$95 million in 2000, Malvern Maritime, of which Alstom is a beneficial owner, bailed out Renaissance in April of 2000 with an investment of \$72.5 million in cash. Even after this bail-out, analysts recognized that Renaissance was operating “on the edge” of financial ruin. Alstom’s concealment of its vendor financing liabilities not only misled investors, it inflated Alstom’s financial results and balance sheet in violation of Generally Accepted Accounting Principles (“GAAP”). To put the numbers in perspective, Alstom’s disclosed net debt at the time of its announcement was approximately €2 billion. Had Alstom’s vendor financing liabilities been included in this number, as they should have been, Alstom’s net debt would have risen to €4 billion, €1 billion more than the Company’s market capitalization.

59. When Alstom finally admitted the existence of the previously-undisclosed guarantees, Alstom's stock price on the Paris Exchange plummeted from €18.06, where it had closed on September 26, 2001, to €13.20 on September 27, 2001, and after disclosure of the full extent of the guarantees on October 1, 2001, the stock fell further to close at €9.20 on October 3, 2001. On the NYSE, Alstom's stock price plummeted from \$22.71 on September 26, 2001, to \$12.35 on October 3, 2001. The net effect was a total drop of approximately 50% in Alstom's market capitalization.

60. Alston attempted to remedy the havoc it had wreaked on its stock price by introducing the *Restore Value* program. On May 7, 2002, Alstom issued a press release in which Alstom announced its figures for fiscal year 2002 (which ended March 31, 2002). The press release quotes defendant Bilger as stating:

"Our results and our share price performance in fiscal year 2002 were unsatisfactory. Operating income and cashflow were negatively impacted primarily by difficulties encountered in the introduction of some of our heavy-duty gas turbines, in deliveries of regional trains in the UK, and by the bankruptcy of the US cruise-ship operator, Renaissance Cruises. . . .

We have taken steps to address these issues, launching a detailed action plan, *Restore Value*, to strengthen our balance sheet, reduce our debt and significantly improve cash generation and operating margins. . . .

We have already made progress towards achieving our objectives. . . .

* * *

Over the next three years our efforts will be focused on achieving operational excellence. ALSTOM will rightly be judged on its success in meeting the goals of *Restore Value*: an operating margin of 6 per cent, cashflow equal to EBIT and a gearing [sic] of 20 per cent by March 2005. I am absolutely confident that our plan is achievable, that these goals will be met and that value will be restored.

However, the *Restore Value* program simply helped conceal yet another fraud on the investing public.

F. Alstom Hides Massive Costs on Railcar Contracts

61. In addition to being badly hurt by its vendor financing scheme and the costs of repairing the defective turbines, Alstom committed another accounting fraud, this time in its Transport Division. In furtherance of this scheme, Alstom failed to recognize millions of dollars in costs incurred in connection with railcar contracts that ATI performed during the years 2000 through 2003.

1. ATI Intentionally Underbid the NJT Contract and Hid Cost Overruns From Investors

62. The seeds for the ATI fraud were planted in 1999 when Alstom was competing to win a contract to supply New Jersey Transit ("NJT") with 265 "Comet V" railcars (the "Comet V Contract" or "NJT Contract").

63. In order to win the Comet V Contract, Alstom intentionally underbid the contract by purposely setting unreasonably low cost estimates knowing that these estimates could not be achieved. Several former ATI employees informed Class Counsel's investigator that ATI had intentionally underbid the NJT Contract to keep its work force employed and its manufacturing facilities operating at Hornell, New York. In fact, a deliverables specialist at ATI for approximately 23 years until his departure in 2003 stated that ATI was "desperate for work" when it bid on the NJT Contract. Alstom's scheme was successful and it was awarded the Comet V Contract.

64. Confidential sources confirmed that Alstom would not have been awarded the Comet V Contract had the Company not underbid the contract. A former project manager who worked at ATI from February 1999 until February 2002, confirmed the intentional underbidding by stating that had ATI actually placed a realistic bid on the NJT Contract, ATI would not have been awarded the contract.

65. The projections used to bid contracts were set by management at ATI and Alstom. As discussed in more detail above, ATI's "Project Management Plan" for the NJT Contract indicated that the Board of Directors of Alstom SA had oversight responsibilities for the performance of that contract and that the Program Director for the NJT Contract "shall . . . [r]eport project progress to ALSTOM's Board of Directors." Further, Janovec's deposition testimony confirms that both ATI and Alstom executives were involved in setting the targets on ATI's contracts, including the Comet V Contract:

On every contract there were a series of targets that were established at the time that the contract was bid and tracked, and these targets included a breakdown in saying we expect the contract to have this amount of revenue, we expect the material to cost X amount of dollars, we expect the labor to cost X amount of dollars, and down the list of maybe 15 items that were tracked, and that number could be added to or deleted from, as necessary, to clarify the situation. . . .

Janovec Tr. at 35-36.

66. Janovec further explained that contract "targets" were established "jointly" by the project management team for the contract, ATI/RSA's management and Alstom management. *Id.* at 36. As indicated by Janovec's testimony, these costs were "tracked" and monitored by ATI and Alstom. *Id.* at 35-36.

67. A former project manager who worked at ATI from February 1999 until February 2002 stated that ATI intentionally underbid the NJT Contract in order to "fill in business and keep the workforce running." This former project manager also noted that, as of early 2000, the NJT Contract was already far behind schedule and was exceeding costs and that "everyone" at the Alstom facility in Hornell knew about the cost overruns. The former project manager stated that "the signs were on the wall and the wall was pretty big."

68. The deliverables specialist stated that the NJT Contract bid was submitted under cost and the bid had left out a number of key elements, such as the cost of the wheel assemblies.

He also said that by April 2003, well before the June 30, 2003 revelation of the accounting fraud, ATI announced to its employees that it had losses of \$40 million or more on the NJT Contract.

69. A quality assurance manager employed at ATI from October 2000 to July 2002, also said that the NJT Contract cost overruns were widely known throughout ATI as early as 2000. She said “everyone knew that they were doing substantial rework on the cars” that resulted from drawing errors and scaling errors caused by Alstom’s manufacturing facility in Brazil.

70. In fact, the former Executive Director of NJT told the Newark Star Ledger that ATI’s bid for the NJT Contract was roughly \$500,000 lower per car than NJT officials had estimated. Further, according to Lynn Bowersox, a NJT spokeswoman, ATI won the NJT Contract by underbidding its nearest competitor by about \$60 million.

71. A buyer at ATI from July 2000 until September 2003, described how ATI utilized complex financial management tools, including J.D. Edwards and Crystal Software, to track NJT Contract costs. He said that Chris Conner (“Conner”) was responsible for the overall cost accounting at ATI, and reported directly to Janovec. Organizational charts obtained by Class Counsel and Janovec’s deposition testimony confirm that Conner reported to Janovec. Janovec Tr. at 19. The ATI buyer said that if there was a cost accounting problem in connection with the NJT Contract, “there was no way that Janovec didn’t know about it.”

72. Additionally, ATI’s former director of purchasing from December 2000, until March 2002, said that he had heard from an ATI employee that sometime after March 2002, Janovec had traveled to Paris to discuss the cost overruns on the NJT Contract with officials at Alstom SA. The former director also said that it was apparent as early as December 2000 that the costs for the NJT Contract would exceed the original bid and that the budget overrun was going to be “irreversible.”

73. By establishing the targets used to bid the Comet V Contract, Alstom and ATI clearly knew of ATI's cost overruns long before investors were informed of ATI's true financial condition.

2. Rambaud-Measson, Janovec and Alstom Were Aware of the Cost Overruns on the Comet V Contract

74. Additionally, even if Rambaud-Measson and Janovec were not involved in initially setting the costs associated with the Comet V Contract, these two defendants were constantly provided cost information which was then communicated by them to Alstom.

75. Specifically, cost information relating to NJT contracts were provided to Janovec on, at the very least, a monthly basis. According to Janovec, "The costs on the Comet V were recorded in conformance with the project reviews, monthly management reviews, and supporting documentation as provided by the purchasing and other systems involved in the general ledger." Janovec Tr. at 154.

76. After Janovec received Comet V's cost information, this information was then relayed by Janovec and Rambaud-Measson in monthly reports to Alstom (via Moreau and Kientz). According to Janovec, these periodic reports included information relating to cost overruns with the Comet V Contract.

77. Janovec's testimony also shows that the Comet V Contract's cost overruns were well known throughout ATI and Alstom as there "were a number of discussions on the New Jersey Comet V projections and the action plans to correct them in establishing the target." Janovec Tr. at 41.

78. Janovec also raised the issue of Comet V's cost overruns on several occasions months prior to June 2003 (when the overruns were finally disclosed), and even requested that

cost controllers report directly to him. According to Janovec, his requests were initially denied by Rambaud-Measson. Janovec Tr. at 50.

79. In addition, internal emails show that ATI was actively trying to hide the Comet V Contract's cost overruns months before Alstom was forced to reveal the fraud. In a February 4, 2003, email from Rambaud-Measson to Janovec, Muscato, Wayne Martin (ATI's Vice President – Project for the United States and the head of an ATI task force on the Comet V Contract cost overruns), Jean LeFlour (ATI's Vice President of Engineering and R&D), and Alain Percet (a Vice President and Director of ATI), also copying Diane Jones (Alstom Transport's senior human resources executive in France), Rambaud-Measson refers to the "complexity" and "level of risk" relating to the "Comet V situation" and announces the creation of a "NJT Comet V Task Force." According to Rambaud-Measson's email, the Task Force was being created to "mitigate these risks and improve the profitability of the project." This email also shows that Rambaud-Measson transferred all project cost controllers to ATI's finance group. Janovec testified that the cost controllers did in fact report to him after March 2003. Janovec Tr. at 49.

80. Senior management of Alstom SA also knowingly or, at a minimum, recklessly adopted fraudulent financial information provided by ATI for use in Alstom's financial statements. The ATI financial reports that Rambaud-Measson and Janovec prepared, sent to Alstom SA in Paris, and discussed with senior management of the Transport segment in conference calls to Paris and meetings in Paris included the costs of the Comet V Contract, which Alstom later admitted were fraudulently understated. Janovec Tr. at 96-98. Moreau, Kientz and Floron Perdrot, the Transport segment's Controller ("Perdrot"), incorporated the ATI reports into the consolidated financial statements of Alstom SA and presented false and misleading financial results to investors. *Id.* at 107. Indeed, according to Janovec, he and Rambaud-Measson

specifically discussed the fact that the actual costs of the Comet V Contract exceeded target and reported costs with Moreau, Kientz and Perdrot no later than January 2003 – six months before Alstom SA publicly acknowledged this fact, which it did only after receiving anonymous letters alleging accounting improprieties and on the heels of federal investigations. *Id.* at 50, 58-63, 67-69, 74-77.

81. Notwithstanding the fact that Alstom and ATI knew of, and were aggressively trying to mitigate the overruns associated with the Comet V Contract, Alstom filed its first-half 2003 results on November 7, 2002, its nine-month orders and sales report on January 22, 2003, and its 2003 Annual Report on June 2, 2003, all of which either included materially false and misleading operating income and operating margin figures, related in part to the problems with Comet V, or failed to disclose material facts relating to the Comet V Contract that should have been disclosed.

3. The ATI Fraud Is Finally Disclosed

82. While Alstom knew as early as 2000 that costs on the Comet V Contract were spiraling out of control, and that these costs were being improperly reported in ATI's financial reports, the ATI fraud was not disclosed until after Kron received an anonymous letter in June 2003, alleging accounting improprieties at ATI. According to *The Wall Street Journal* (July 3, 2003), copies of the anonymous letter were also sent to the SEC and the FBI.

83. Francis Jelensperger, a Senior Vice President and Director of ATI, said that after ATI received the anonymous letter, the Company retained the law firm Hughes Hubbard & Reed LLP to perform an internal investigation.

84. On June 30, 2003, the Company revealed the existence of the ATI fraud and disclosed that the Company's previously reported financial results for fiscal year 2003 had been artificially inflated. Specifically, the Company stated that ATI was "conducting an internal

review . . . following receipt of letters earlier this month alleging accounting improprieties on a railcar contract being executed at the Hornell, New York facility.” The Company also admitted that:

The review has identified that losses have been significantly understated in ATI’s accounts, in substantial part due to accounting improprieties by the understatement of actual costs incurred, including by the non-recognition of costs incurred in anticipation of shifting them to other contracts, and by the understatement of forecast costs to completion.

85. The Company also said in its June 30, 2003 announcement that it would record a net after tax charge equivalent of €51 million for fiscal year 2003 as a result of the ATI accounting fraud. However, as discussed in more detail below, the Company later revealed that the €51 million charge was woefully inadequate because the fraud had actually inflated Alstom’s fiscal 2003 net income by at least €167 million.

86. The Company’s June 30, 2003 press release also disclosed that defendants Rambaud-Measson and Janovec had been “suspended pending completion of the review,” and that “[t]he Company has been advised of informal inquiries related to ATI, by the United States Securities and Exchange Commission and the United States Federal Bureau of Investigation.”

87. The price of Alstom shares dropped after the ATI accounting improprieties were revealed on June 30, 2003. Specifically, the price of Alstom ADSs listed on the NYSE fell from \$3.50 on Friday, June 27 to close at \$3.41 on Monday, June 30, and Alstom shares traded on the Paris Exchange fell from €3.14 on June 27 to close at €3.00 on June 30.

88. Several financial news services and Wall Street research analysts attributed the drop in the price of Alstom shares to the disclosure of the ATI accounting fraud. On June 30, 2003, a French newswire service, Agence France-Presse, quoted a securities trader who stated that “it’s clear that the accounting irregularities explain the fall in the share price this morning.” Ben Uglow, a Morgan Stanley research analyst who covered Alstom, wrote in a research report that

“[i]n plain vanilla English, this is fraudulent accounting,” and that Alstom “cannot give the reassurance that this is an isolated case . . . it raises further questions about the lack of discipline at Alstom, which is very worrying for a company on the edge of bankruptcy.” On July 1, 2003, Andrew Carter, a research analyst with Deutsche Bank AG London, wrote that “news of accounting problems at what was considered one of Alstom’s better businesses came as a blow yesterday. In our view, any semblance of a Bull case is now substantially undermined.”

89. Several newswire services and Wall Street research analysts reported that the ATI accounting fraud involved intentional underbidding and improper cost shifting to make ATI appear to be more liquid than reality. For example, on June 30, 2003, *Reuters* wrote that “[s]ome analysts said the accounting scandal suggested [ATI] . . . has been underbidding for rail contracts because it has been so desperate for cash.” *Reuters* also reported that Goldman Sachs had issued a research report on June 30, 2003, which stated that “[i]t is possible that Alstom could be underpricing contracts to . . . help liquidity at the expense of margins.”

90. On July 3, 2003, *The Wall Street Journal* reported that:

Mr. Jelensperger said a 1999 rail car contract valued at \$280 million is being investigated but declined to give further details. Lynn Bowersox, a spokeswoman for the New Jersey Transit Authority, confirmed that New Jersey Transit has a 1999 contract valued at \$280 million with Alstom for delivery of 265 rail cars.

* * *

Ms. Bowersox said that officials from [NJT] and Alstom plan to meet today to discuss the investigation.

91. Kenneth Worton, a Deputy Attorney General with NJT, informed Class Counsel’s investigator that the accounting improprieties ATI disclosed on June 30, 2003, involved a 1999 contract with NJT. Worton said that in 1999 NJT had contracted with ATI to purchase 230 “Comet V” railcars for \$233 million, and that NJT subsequently exercised its right under the contract to increase the order to 265 railcars for \$280 million. Worton also confirmed that soon

after ATI disclosed the existence of the accounting improprieties, officials from NJT met with officials from ATI to discuss the impact of the fraud and related governmental investigations.

92. In fact, a NJT internal memorandum, dated July 1, 2003, identifies the existence of a meeting between ATI and NJT to discuss “Alstom Corporate Concerns.” The memorandum summarized matters discussed during the meeting and stated that “Alstom noted that NJ Transit shouldn’t see any impact due to Comet V being a fixed contract.” The memorandum also noted that Rambaud-Measson had been suspended from ATI as a result of the fraud and that Steve Davies had assumed the duties of ATI’s Vice President of Finance, the position previously held by Janovec.

93. On August 6, 2003, the Company revealed that the accounting scandal at ATI was more widespread than the Company had first admitted on June 30, 2003, and that substantial costs had been understated on “certain other contracts.” The Company revealed that in addition to the €51 million after tax charge against fiscal 2003 earnings, the Company would also reduce the first half of fiscal 2004 earnings by an additional €100 million. Specifically, the Company admitted that:

[f]ollowing the discovery of accounting irregularities on one contract at the Hornell, USA Transport Unit, announced on 30 June 2003, a review of all projects managed by this unit has now been undertaken. This has identified the need for additional provisions on certain other contracts, which is expected to reduce first half 2003/04 operating income by around €100 million.

94. Following the August 6, 2003 press release, the price of Alstom’s shares fell even further. Specifically, the price of Alstom ADSs listed on the NYSE fell from \$3.21 on August 6 to close at \$2.78 on August 7th. Alstom shares traded on the Paris Exchange fell from €2.89 on August 6th to close at €2.31 on August 7th.

95. On August 11, 2003, the Company revealed that the SEC had upgraded its investigation from an informal inquiry to a “formal order of investigation in connection with its

inquiry relating to ATI.” Janovec was deposed by the SEC pursuant to a subpoena on October 17, 2003, in New York City. Janovec Tr. at 161. Janovec provided additional information to the SEC in July 2005. *Id.* at 163-64.

96. On October 15, 2003, the Company filed its 2003 20-F with the SEC for the fiscal year ended March 31, 2003, and gave further details about the ATI fraud. The Company revealed that the fraud had eliminated more than €167 million from the Company’s operating income and, as a result, the Transport Division had suffered a substantial net loss in fiscal 2003. Specifically, the Company announced:

Transport’s operating loss amounted to €118 million in fiscal year 2003, compared to operating income of €101 million in fiscal year 2002 on an actual basis and €83 million on a comparable basis. Operating margin declined to -2.3% in fiscal year 2003 as compared with 2.1% in fiscal year 2002. . . .

The operating loss in fiscal year 2003 includes an additional charge of €73 million, following contract losses at ALSTOM Transportation Inc.

In addition, following the discovery of accounting improprieties at ATI, we conducted reviews of other ATI contracts and, as a result, we recorded €94 million of charges in relation to the US Transport business. Slightly more than half of this amount related to a single equipment supply and maintenance project in the United States, where we recorded significant provisions in respect of expected contract losses relating to a number of performance related issues. . . .

(See 2003 20-F at 80-81.)

97. On November 13, 2003, Kron participated in an investors’ conference call with over 50 participants, including numerous Wall Street research analysts who covered Alstom. According to a CCBN StreetEvents transcription of the call, Kron stated that:

In the US, you also know that just a day or 2 before [the] last general assembly in July, *we had to take into account a fraud (ph) that was discovered in our unit [in] New York*, which resulted in an additional provision a 73m [euros] and deteriorated our net income by 51m [euros] which is the equivalent after tax amount....

Since July, we have conducted a complete reorganization of our transport operations in the US including an in-depth-project review This led us,

unfortunately, to put an additional provision that we already mentioned during the summer, indicating that it was around 100m but 102m, which impact the first-half numbers that we had presented a while ago. ***We have a new team in place who can take this business forward with confidence, and we have strongly improved our internal controls.***

98. As a result of the massive fraud that was perpetrated at ATI, and the resulting demise of the Company's stock price, Alstom's Transport Division – which had reportedly been one of Alstom's few profit centers in fiscal 2003 – became yet another disappointment for the Company as €167 million from the Company's net income was obliterated in one stroke.

G. Rambaud-Measson's and Janovec's Control Over ATI in Relation to the ATI Fraud

1. Rambaud-Measson Controlled ATI

99. Defendant Rambaud-Measson was appointed a Director and Senior Vice President of ATI on December 14, 2001, and remained in those positions through the date he was suspended from all of his responsibilities at ATI on June 30, 2003. In those positions, Defendant Rambaud-Measson controlled ATI with regard to ATI's understating actual costs incurred pursuant to contracts for the construction of railcars, particularly the 1999 contract with NJT to build 265 "Comet V" railcars for \$280 million, failing to recognize costs incurred in anticipation of shifting them to other contracts and by understating costs forecasted to complete these contracts.

100. As noted above, ATI's designee testified that Rambaud-Measson was the most senior executive at ATI and was in charge of its facilities and operations. In this regard, Rambaud-Measson was responsible for supervising ATI's bid process, including validating bid strategy, assessing bid opportunities, approving all major proposals prior to bid submission, chairing bid reviews, supervising "GO NOGO" meetings for major bid opportunities and negotiating with clients. He, along with Janovec and other senior officers of ATI and Alstom, were responsible for setting project targets at the start of each project. Rambaud-Measson had full

profit and loss responsibility for RSA, including RSA's overall strategy and objectives, financial targets and the RSA segment budget and 3-year plan.

101. ATI Board resolutions provided Rambaud-Measson with the unlimited authority to sign bids, proposals, commercial contracts, and other related ATI contracts. He was authorized to sign leases, insurance policies and other similar documents concerning the administration of ATI, and confidentiality agreements, letters of intent and all other general business documents. He had the authority to sign purchase orders (without limit of amount) and offer letters for new employees (without any limit as to salary). He was responsible for ATI's financial reports to its parents Alstom and Alstom USA. Moreover, ATI clearly identified Rambaud-Measson as controlling ATI. Muscato Tr. at 56-57. Specifically, ATI's corporate designee stated, "I looked at Stephan [Rambaud-Measson] as, for ATI, as the major, the top player." *Id.* at 57.

102. Defendant Rambaud-Measson was aware of increasing costs associated with the Comet V Contract long before Alstom's June 2003 disclosure. In an October 3, 2002 email chain, Rambaud-Measson complained of a "dramatic increase of our costs" due to modifications and that "I will check personally the status of modification [on Comet V] during our internal project review." This email evidences Rambaud-Measson's control over costs related to ATI contracts and specifically related to the Comet V contract even prior to 2003.

103. Moreover, Rambaud-Measson actively managed ATI employees to control the Comet V Contract's runaway costs. On February 4, 2003, Rambaud-Measson sent an email to several ATI employees including Janovec, wherein he announced the creation of a "NJT Comet V Task Force." Rambaud-Measson appointed Wayne Martin as leader of this Task Force. Rambaud-Measson stated in the email that the Task Force was being created to "mitigate risks" and "improve the profitability" of the Comet V Contract. Rambaud-Measson also ordered that all

project costs controllers be “immediately transferred to finance.” Defendant Rambaud-Measson’s oversight position of the NJT Comet V Task Force and his ability to order transfers of responsibility further shows his control over ATI in relation to the ATI fraud.

104. Internal Alstom documents obtained by Class Counsel also show Rambaud-Measson’s control over all ATI contracts. Specifically, internal documents show that Rambaud-Measson led reviews of over 12 ATI contracts in Hornell, New York on May 19 and 20, 2003, in the month prior to his suspension from ATI. Included in these 12 ATI contracts and listed in an agenda prepared for Defendant Rambaud-Measson is a contract designated “NJT Comet V.” Specifically, the review of the Comet V Contract was to include a “Financial Review” and a “Claim Strategy” review. Defendant Rambaud-Measson’s leadership role in the financial review of the Comet V Contract shows his knowledge of and control over the cost overruns related to that contract.

105. On June 18 and 19, 2003, days before his suspension from ATI, Rambaud-Measson led yet another review of 12 ATI contracts in Hornell, New York. The contracts reviewed again included “NJT Comet V.” The attention Rambaud-Measson directed to these contracts and his leadership role in conducting these reviews again show his control over ATI in relation to the ATI fraud.

106. Moreover, ATI, through its corporate designee, clearly identified Rambaud-Measson as controlling ATI. Specifically, Muscato stated, “I looked at Stephan [Rambaud-Measson] as, for ATI, as the major, the top player.” Muscato Tr. at 57.

2. Janovec Controlled ATI

107. Defendant Janovec was Vice President of Finance of ATI from at least 2002 through June 30, 2003. As ATI’s Vice President of Finance, Janovec controlled ATI’s finances and, in particular, was responsible for ATI’s understating actual costs incurred pursuant to

contracts for the construction of railcars, particularly the 1999 contract with NJT to build 265 “Comet V” railcars for \$280 million, failing to recognize costs incurred in anticipation of shifting them to other contracts and by understating costs forecasted to complete these contracts.

108. As noted above, ATI’s designee testified that Janovec was the most senior finance executive at ATI and was in charge of the entire finance organization and all of ATI’s financial reporting.

109. According to Janovec’s deposition testimony, he specifically reviewed the Comet V Contract in December 2002, and questioned the cost of material related to this contract and directed ATI cost accounting manager Dan Drake (“Drake”) to conduct a review. Janovec Tr. at 47-48. This review found that the material costs associated with Comet V were going to exceed the original estimate. *Id.* at 59. Janovec directed Drake to do additional research on these cost overruns in March 2003. *Id.* at 79. Defendant Janovec, thus, had a direct supervisory role regarding Comet V Contract costs. Defendant Janovec also was responsible for the internal controls that were in place to assure the accuracy of the financial information reported by RSA units.

110. Along with Defendant Rambaud-Measson, Janovec was responsible for formulating and presenting the information regarding cost overruns in the Comet V Contract to Alstom managers.

111. Documents obtained by Class Counsel further show that Janovec was responsible for overseeing costs associated with ATI contracts. On February 4, 2003, Rambaud-Measson sent an email to several ATI employees, including Janovec, wherein he announced the creation of a “NJT Comet V Task Force” and further stated that “in order to improve the level of Control on our Project Costs, all Project Cost Controllers are immediately transferred to Finance.” Thus,

Defendant Janovec, as Vice President of Finance, gained control over all project costs, including those related to the ATI contracts whose costs were understated.

112. On April 21, 2003, Rambaud-Measson sent an email to Janovec assigning ATI bids and contracts to certain Vice Presidents. In his email to Janovec, Rambaud-Measson asked Janovec to oversee the budgets of each such Vice President and the bids and contracts each was assigned. Thus, Defendant Janovec had knowledge of and control over the finances related to the ATI contracts whose costs were understated.

113. Finally, Defendant Janovec, as Vice President of Finance, participated in reviews of over 12 ATI contracts in Hornell, New York on May 19 and 20, 2003, in the month prior to his suspension for the ATI fraud. Included in these 12 ATI contracts and listed in an agenda prepared for Defendant Janovec is one designated "NJT Comet V." Specifically, the review of the Comet V Contract was to include a "Financial Review" and a "Claim Strategy" review. Defendant Janovec could not have conducted a financial review of the Comet V Contract without addressing the cost overruns related to that contract.

114. On June 18 and 19, 2003, just weeks before his suspension for the ATI fraud, Defendant Janovec participated in yet another review of 12 ATI contracts in Hornell, New York. The contracts reviewed again included "NJT Comet V." The attention Janovec directed to these contracts and his role as Vice President of Finance in conducting these reviews show his control over ATI in relation to the ATI fraud.

3. Defendants Rambaud-Measson and Janovec Provided False ATI Financials to Alstom, Which Were Incorporated Into Alstom's Financial Statements

115. Rambaud-Measson's deposition transcript shows, through an adverse inference based on Defendant Rambaud-Measson's assertion of his Fifth Amendment privilege against self-incrimination, that he was responsible for ATI's financial reports to Alstom, knew that those

financial reports contained materially false and misleading statements, and communicated those reports to Alstom.

116. For example, Defendant Rambaud-Measson was questioned as follows:

Q. You were responsible for ATI's financial reports to its parents Alstom USA and Alstom SA, correct?

A. I'm taking the Fifth.

Q. And you were responsible for ATI's financial reports to its parents from November 2001 to June 30th 2003, correct?

A. I'm taking the Fifth.

Q. And you reviewed ATI's financial reports to its parents from November 2001 to June 30th 2003, correct?

A. I'm taking the Fifth.

Q. And you approved ATI's financial reports to its parents from November 2001 to June 30th 2003, correct?

* * *

A. I'm taking the Fifth.

Q. And the ATI financial information that you reviewed and approved ultimately was publicly disclosed by Alstom SA in its financial statements, correct?

* * *

A. I'm taking the Fifth.

* * *

Q. All information about ATI that was incorporated in Alstom's public statements from November 2001 to June 30, 2003 was subject to your review and approval, correct?

* * *

A. I'm taking the Fifth.

Q. Reporting to Alstom SA regarding ATI's costs in connection with ATI contracts was subject to your review and approval, correct?

* * *

A. I'm taking the Fifth.

Q. To the extent that public reports by Alstom incorporated information about ATI and its costs, that ATI cost information was reviewed and approved by you, correct?

* * *

A. I'm taking the Fifth.

Q. You knew that financial information that was reviewed and approved by you and reported by ATI to its parents would be communicated to investors by Alstom SA, correct?

* * *

A. I'm taking the Fifth.

Rambaud-Measson Tr. at 13-15.

Q. You or someone operating under your control provided incorrect financial information related to ATI to Alstom, correct?

* * *

A. I'm taking the Fifth.

Rambaud-Measson Tr. at 28.

117. ATI, through its corporate designee (Muscato), admitted that Rambaud-Measson was responsible for ATI's false financial reports sent to Alstom:

Q. Was Mr. Rambaud-Measson responsible for reviewing financial statements prepared by Mr. Janovec for Rolling Stock Americas?

* * *

A. My understanding would be yes.

Q. Was Mr. Rambaud-Measson responsible for reviewing financial statements for ATI prepared by Mr. Janovec?

* * *

A. My understanding would be yes.

Q. And do you know whether in addition to reviewing those financial statements for ATI on Rolling Stock Americas, Mr. Rambaud-Measson was charged with approving those financial statements?

* * *

A. Yes.

Q. In both in connection with ATI and with Rolling Stock Americas?

A. Yes.

Muscato Tr. at 74-75.

118. Defendant Janovec's deposition testimony shows that he was responsible for the RSA segment financial reports to Alstom and specifically reviewed financial information related to ATI's Hornell, New York facility, where the Comet V Contract was being implemented, before it was sent to Alstom. Janovec Tr. at 16-17, 83, 94-95. Defendant Janovec communicated those financial reports to Alstom and knew that those reports, which included financial information related to the Comet V Contract, were consolidated into Alstom's financial statements. (Janovec Tr. at 91, 95, 105).

119. ATI, through its corporate designee, also admitted that Janovec was responsible for ATI's financial reports:

Q. Now, you said Mr. Janovec was in charge of the entire finance organization at ATI, correct?

A. That's my understanding.

* * *

Q. Do you know whether Janovec was involved in financial reporting for ATI?

A. My understanding was Joe was responsible, yes.

* * *

Q. And Mr. Janovec was the VP of finance for Rolling Stock Americas?

A. Correct.

Q. What were his job responsibilities as VP of Finance for Rolling Stock America?

A. I understand for all – for the finance responsibility.

Q. Was he in charge of producing financial statements for Rolling Stock Americas?

A. My understanding is yes.

Q. Was he in charge of producing financial statements for ATI?

A. My understanding is yes.

Muscato Tr. at 59, 72.

H. Alstom USA Is Liable for the Misstatements of Rambaud-Measson, Janovec and ATI

120. Throughout the Class Period, Alstom USA (formerly known as Alstom T&D Inc.) was a wholly-owned subsidiary of Alstom SA that owned all of ATI's stock, elected all of its directors, and selected all of its officers. According to a former officer of Alstom USA, the same officers who ran ATI were also the officers of Alstom USA. Through Alstom USA, Alstom SA maintained control over ATI and ATI's directors and officers. Through these interrelationships, ATI, Janovec and Rambaud-Measson were all agents of Alstom USA, and all of their unlawful conduct complained of herein was within the scope of that agency. Accordingly, Alstom USA is liable for the ATI fraud under the principles of *respondeat superior*. In addition, Alstom USA, through its control over ATI, Rambaud-Measson and Janovec, caused ATI, Janovec and Rambaud-Measson to carry out the improper accounting for the Comet V Contract.

I. Alstom Controlled Rambaud-Measson, Janovec and ATI in Relation to the ATI Fraud

121. Alstom SA is liable as a control person of Rambaud-Measson, Janovec, and ATI and under the principle of *respondeat superior* and as a direct participant in the fraud related to the Comet V Contract.

122. As discussed in more detail above, ATI's "Project Management Plan" for the NJT Contract indicated that the Board of Directors of Alstom SA had oversight responsibilities for the performance of that contract and that the Program Director for the NJT Contract "shall . . .

[r]eport project progress to ALSTOM's Board of Directors." Thus, the Alstom SA Board exercised ultimate control over the NJT Contract and supervised its progress.

123. In addition, a NJT memorandum dated June 27, 2000 indicates that Jean Pierre Froideaux, Thierry Guinard, David Fontaine, Isabelle Cornelus and Emmanuel Henry, each of whom were then employed by Alstom in France, traveled to the United States to meet with persons from ATI and NJT in connection with the performance of the NJT contract.

124. Senior management of Alstom SA exercised direct supervisory control over top management of ATI. Specifically, Rambaud-Measson, as Senior Vice President of ATI, a director of ATI, and the most senior executive of ATI, reported directly to Michel Moreau, the Senior Executive Vice President of Alstom SA and President of the Transport sector of Alstom SA in Paris. Muscato Tr. at 49-50, 56-58, 66. Moreau reported directly to the Chairman and CEO of Alstom SA (Bilger and later Kron). Janovec, as Vice President of Finance of ATI and the most senior finance executive of ATI, reported directly to Roland Kientz, the Chief Financial Officer of the Transport sector of Alstom SA in Paris. Muscato Tr. at 53, 56, 68, 71. Janovec's reporting responsibility was primarily to Kientz at Alstom SA and only secondarily to Rambaud-Measson, his nominal superior at ATI, because Alstom SA exercised direct control over the operations and financial reporting of ATI and did not treat ATI as a separate self-managed corporation. Janovec Tr. at 10, 16-17.

125. Alstom SA also exercised direct control over the selection of the ATI board of directors. In addition to Rambaud-Measson, at least one of the two other directors of ATI was also an agent of Alstom SA. Alain Percet, a Vice President and a director of ATI, was a Frenchman previously employed by Alstom SA in France who was assigned during the Class

Period to work at ATI by Alstom SA and subsequently transferred to work for Alstom SA in the United Kingdom.

126. According to Janovec, senior management of the Transport segment of Alstom SA in Paris set revenue and cost targets for every ATI contract, including the Comet V Contract. ATI management was consulted in setting these targets, but Transport segment President Moreau retained final say in determining the targets. Janovec Tr. at 37-39, 43-44.

127. Alstom SA senior management directly controlled ATI's financial reporting process and closely monitored ATI's financial reports. During the Class Period, Janovec and Rambaud-Measson prepared monthly financial reports detailing ATI's costs and revenues on a contract-by-contract basis and discussed these reports with senior management of the Transport segment of Alstom SA, including segment President Moreau, segment CFO Kientz, and segment Controller Floron Perdrot, by conference call between the United States and Paris and at meetings in Paris. Janovec Tr. at 22-28. In addition to the financial information included in these monthly management reports, Janovec and Rambaud-Measson prepared computerized financial reports of ATI's profit and loss, balance sheets and cash flow statements on a regular basis and transmitted these reports electronically to Alstom SA, which incorporated them into the consolidated financial statements of Alstom SA. Janovec Tr. at 83-85, 92-94.

128. Alstom SA, through Moreau, Kientz and Perdrot, exercised direct control over the financial reporting for ATI and specifically the financial reporting for the NJT Contract. In fact, according to Janovec, on at least one occasion, Kientz instructed him to accelerate the recognition of revenue on the NJT Contract, contrary to Alstom's internal procedure and internal accounting practice regarding revenue recognition. Janovec Tr. at 101-05.

129. As alleged in detail in ¶¶ 80-81 above, senior management of Alstom SA knowingly or, at a minimum, recklessly adopted fraudulent financial information provided by ATI for use in Alstom's financial statements.

130. Nevertheless, when the ATI Fraud came to light at the end of June 2003 as a result of an anonymous letter sent to the FBI, Alstom SA sought to put all the blame for the ATI Fraud on Rambaud-Measson and Janovec. Janovec was told of his suspension from ATI by Kientz on June 27, 2003. Despite the fact that Rambaud-Measson was then one of ATI's three directors along with Percet and Jelensperger, ATI's true nature as a passive agent manipulated by Alstom was revealed when the ATI board disregarded corporate formalities, and Percet and Jelensperger executed a consent of directors dated July 1, 2003 – days after Kientz informed Janovec – reciting that the two of them were the only directors and suspending Janovec and Rambaud-Measson, ignoring the fact that Rambaud-Measson was also a director of ATI. Thus, Janovec and Rambaud-Measson were suspended in June 2003 on the orders of top management of the Transport segment in Paris, including Kientz.

131. As demonstrated by the foregoing facts, Alstom SA actively controlled ATI in its operations and financial reporting, including the improper accounting for the NJT contract. Similarly, Alstom SA actively controlled Janovec and Rambaud-Measson in connection with ATI's financial reporting.

VI. ALSTOM'S CLASS PERIOD FINANCIAL RESULTS VIOLATED GAAP

132. Generally Accepted Accounting Principles ("GAAP") are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice. Those principles are the official standards adopted by the American Institute of Certified Public Accountants (the "AICPA"), a private professional association, through three successor groups it established: the Committee on Accounting

Procedure, the Accounting Principles Board (the “APB”), and the Financial Accounting Standards Board (the “FASB”). GAAP includes the following authoritative literature and pronouncements: Statements of Financial Accounting Standards (“FAS”), APB Opinions, FASB Interpretations (“FIN”), AICPA Accounting Research Bulletins (“ARB”), AICPA Statements of Position (“SOP”), FASB Technical Bulletins (“FTB”), Consensus Positions of the FASB Emerging Issues Task Force (“EITF”), Statement of Financial Accounting Concepts (“CON”) and Staff Accounting Bulletins (“SAB”).

133. The SEC allows foreign private issuers to file annual reports under §13(a) of the Exchange Act on Form 20-F. Pursuant to Item 17 of Form 20-F, the financial statements required to be included in Form 20-F may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States if those financial statements are reconciled to the accounting principles, methods and practices generally accepted in the United States and in Regulation S-X. As set forth in SEC Rule 4-01(a) of SEC Regulation S-X, “[f]inancial statements filed with the [SEC] which are not prepared in accordance with [GAAP] will be presumed to be misleading or inaccurate.” 17 C.F.R. §210.4-01(a)(1).

134. Management is responsible for preparing financial statements that conform to GAAP. As noted by the AICPA Auditing Standards (“AU”), §110.03:

Management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, initiate, record, process, and report transactions (as well as events and conditions) consistent with management’s assertions embodied in the financial statements. The entity’s transactions and the related assets, liabilities, and equity are within the direct knowledge and control of management. . . . Thus, the fair presentation of financial statements in conformity with generally accepted accounting principles is an implicit and integral part of management’s responsibility.

135. In Securities Act Release No. 6349 (Sept. 28, 1981), the SEC stated:

[I]t is the responsibility of management to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company.

136. In Securities Exchange Act Accounting Series Release No. 173 (July 2, 1975), the SEC reiterated the duty of management to present a true representation of a company's operations:

[I]t is important that the overall impression created by the financial statements be consistent with the business realities of the company's financial position and operations.

137. Under Item 303 of Regulation S-K, promulgated by the SEC under the Exchange Act, there is a duty to disclose in periodic reports filed with the SEC "known trends or any known demands, commitments, events or uncertainties" that are reasonably likely to have a material impact on a company's sales revenues, income or liquidity, or cause previously reported financial information not to be indicative of future operating results. 17 C.F.R. §229.303(a)(1)-(3) and Instruction 3.

138. Alstom's financial statements for the fiscal years 1999 through 2003 (including the related quarterly periods) violated SEC Regulations and GAAP in that they failed to (i) disclose facts necessary to present a fair and truthful representation of the Company's financial position and operations, (ii) provide those disclosures which were required by GAAP, and (iii) identify and address those key variables and other qualitative and quantitative factors which were peculiar to and necessary for an understanding and evaluation of the Company. Consequently, the overall impression created by the financial statements was not consistent with the business realities of the Company's reported financial position and operations.

139. The financial statements that were issued by Alstom during the Class Period under French GAAP and reconciled with U.S. GAAP did not fairly and accurately represent the Company's financial position and operations.

A. The Undisclosed Loan Guarantees Violated GAAP

140. Alstom's obligations arising from the Renaissance guarantees were contingent liabilities that Alstom was required to disclose in amount and nature in Alstom's financial statements on a timely basis, *i.e.*, when the obligations were first committed to at the time the sales were made. Yet, in the footnotes to Alstom's consolidated financial statement's Commitments and Contingencies section, these obligations were neither identified nor described for investors.

141. Alstom represented that its financial statements were reconciled to U.S. GAAP which, as set forth in FAS No. 5, *Accounting for Contingencies*, states that a guarantee of the indebtedness of others is a contingent liability. SAS No. 5, ¶4. FAS No. 5, 2010 requires that:

If no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, or if an exposure to loss exists in excess of the amount accrued pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred. ***The disclosure shall indicate the nature of the contingency*** and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made.

142. According to International Accounting Standards ("AC"), contingent liabilities must be disclosed on the balance sheet and include a brief description of the nature of the contingent liability, an estimate of its financial effect, an indication of the uncertainties relating to the amount or timing of any out-flow and the possibility of any reimbursement. AC §9037.86. International Accounting Standards defines a contingent liability as

a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non occurrence of one or more uncertain future events not wholly within the control of the enterprise.

AC §9037.10

143. Alstom's 1999-2001 Annual Reports did have a provision for Commitments and Contingencies, but this provision failed to disclose the nature of the contingent liabilities

represented by the vendor financing guarantees, as required by accounting standards. Alstom's 1999-2001 Annual Reports also included a footnote to the consolidated financial statements dealing with summary of differences between accounting principles followed by Alstom and U.S. GAAP. Notwithstanding the above requirements, the obligations for vendor financing guarantees were not disclosed in this footnote either.

144. Ultimately, Alstom's 2002 20-F included a disclosure in its Commitments and Contingencies section relating to €237 million "committed in connection with cruise-ships initially delivered to Renaissance Cruises. These guarantees given are to financial institutions in connection with the sale of the cruise-ships." Alstom's belated disclosure did not cure its failure to advise investors of the risks and obligations associated with revenue it had recognized.

145. As a result of Alstom's failure to disclose its obligations related to the indebtedness of Renaissance for which there was a reasonable possibility of loss, Alstom's financial statements were misleading in violation of accounting standards including International Accounting Standards and U.S. GAAP.¹

B. Unrecognized ATI Costs Violated GAAP

146. On November 13, 2002, Alstom reported its interim financial statements for the six months ended September 30, 2002, which it filed with the SEC on Form 6-K (the "November 13, 2002 Form 6-K").

147. APB No. 28, entitled *Interim Financial Reporting*, provides the guidance on the preparation and presentation of interim financial statements. It states in relevant part that:

¹ For the reasons previously set forth in ¶¶ 201-213 of the Second Consolidated Amended Complaint, dated March 14, 2006, the 2000 20-F also violated GAAP by recognizing revenue from the sale of defective turbines and understating provisions for warranties and contract losses related to defective turbines.

Interim financial information is essential to provide investors and others with timely information as to the progress of the enterprise. The usefulness of such information rests on the relationship that it has to the annual results of operations. Accordingly, the Board has concluded that each interim period should be viewed primarily as an integral part of an annual period.

APB No. 28, ¶9.

148. Further, APB No. 28, ¶9, states that the “results for each interim period should be based on the accounting principles and practices used by an enterprise in the preparation of its latest annual financial statements.”

149. The November 13, 2002 Form 6-K was materially untrue insofar as Alstom’s financial results were materially overstated and not prepared in conformity with GAAP. Specifically, the November 13, 2002 Form 6-K represented that for the 2003 half-year ended September 30, 2002, Alstom’s net income was €11.3 million and its shareholders’ equity was €2.1 billion. These representations were materially false and misleading and violated fundamental GAAP provisions in that they failed to include millions of dollars in costs that ATI understated in fiscal year 2003.

150. On information and belief, Alstom’s financial statements for fiscal years 2000, 2001 and 2002 were also materially false and misleading and violated GAAP in that they failed to include millions of dollars in costs that ATI understated in those fiscal years.

151. As such, these representations for fiscal years 2000 through 2003 violated, among others, the following fundamental GAAP precepts:

(a) The principle of completeness, which means that nothing is left out that may be necessary to ensure that financial results represent underlying events and conditions (FASB Statement of Concepts No. 2, ¶¶79, 80);

(b) The principle that revenues and earnings should not be recognized until earned and that expenses should be recognized in the period incurred (FASB Statement of Concepts No. 5 and No. 6);

(c) The principle that revenues are earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues (FASB Statement of Concepts No. 5); and

(d) The principle that financial reporting should provide information about an enterprise's financial performance during a given period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42).

VII. DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS

152. On August 3, 1999, Alstom filed with the SEC its 1999 20-F. The 1999 20-F was signed by defendant Newey. In the 1999 20-F, Alstom stated:

Marine had net sales in 1998/99 of Euro 830 million (5.9% of ALSTOM's total net sales) and . . . had [approximately 4500] employees . . . at March 31, 1999.

* * *

The demand for large cruise liners has experienced the most substantial growth in the specialty ship market over the last 5 years. Nearly all of this demand has been generated by the North American cruise business. However, the cruise business represents only 2% of American vacation spending and only 9% of Americans have been on a cruise, while 67% have expressed the wish to go on a cruise. Moreover, 90% of those who have been on a cruise have also been on a second one. Finally, the European market is beginning to emerge.

* * *

During 1998, firm orders were received worldwide for 17 cruise ships and 12 ships were delivered While the three principle groups of cruise ship operators,

Carnival, Royal Caribbean and P&O/Princess, continue to dominate the market with very large ships, recent orders of medium-size ships have noticeably expanded the luxury market, which until recently was underdeveloped. *The best example of this growth is the increase in fleet development by [Renaissance] Cruises Inc. and by Radisson Seven Seas.*

* * *

Alstom has focused on cruise ships and ranks third in that industry worldwide, based upon its delivery of 14 cruise ships since 1987.

Recent cruise ship deliveries include the *R.One* and *R.Two* for Renaissance Cruises, delivered in June 1998 and November 1998, respectively.

153. Alstom's 1999 20-F also contained a list of the "Current Significant Orders" of

Chantiers de l'Atlantique, Alstom's largest shipyard, as follows:

Date of Order	Shipowner	Order
December 1998	<i>Renaissance Cruises</i>	<i>R.Three</i>
December 1998	<i>Renaissance Cruises</i>	<i>R.Four</i>
April 1998	<i>Renaissance Cruises</i>	<i>R.Five</i>
April 1998	<i>Renaissance Cruises</i>	<i>R.Six</i>
		4 Cruise ships, 351 cabins - length 181 m, 30,000 GT diesel electric power.
March 1997	Auxiliaire Maritime/Festival	<i>Mistral</i>
		Cruise ship, 598 cabins - length 216 m, 48,000 GT diesel electric power.
December 1998	Radisson Seven Seas France	<i>K31</i>
		Cruise ship, 366 cabins - length 216 m, 46,000 GT diesel electric power.
March 1998 (2 Ships)	Royal Caribbean Cruise Ltd/Celebrity Cruises	4 Millennium cruise ships, 1,025 cabins - length 294 m, 91,000 GT gas/electric turbine power.
February 1999 (2 Ships)		
February 1999	Festival	1 cruise ship (plus one on option) 598 cabins - length 216 m, 48,000 GT diesel electric power.
March 1999	<i>Renaissance Cruises</i>	<i>R.Seven</i>
	<i>Renaissance Cruises</i>	<i>R.Eight</i>
		Cruise ships, 351 cabins -

Date of Order**Shipowner**

Order
length 181 m, 30,000 GT
diesel electric power.

154. The statements in the 1999 20-F were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the 1999 20-F were false and misleading as a result of the GAAP violations set forth in §VI.

155. On November 23, 1999, Alstom announced its financial results for the six months ended September 30, 1999. The Company reported net income after goodwill of €227 million and stated: "Orders received in Marine continue to grow with an increase of 12% in the First Half compared to the same period last year. . . . [Marine] sales have increased by 119% as a result of the successful delivery or completion of three cruise ships during the period, two for Renaissance and one for Festival."

156. Alstom's statements set forth in the preceding paragraph were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the November 23, 1999 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

157. On December 13, 1999, J.P. Morgan Securities, Ltd. issued an analyst report, stating: "Following an update with the company, we are raising our EPS estimates for 2001 and 2002 by 4% each. The revisions relate primarily to the Marine division where we have increased our forecasts for sales and operating margins owing to the recent strong order intake for cruise ships."

158. On January 18, 2000 Alstom issued a press release announcing its orders and sales for the first nine months ending December 31, 1999. Alstom reported overall orders were up 22% (+8% excluding Energy) and sales were up 16% (+7% excluding Energy). In commenting on the results, Defendant Bilger stated:

"We are reporting today a very strong performance in terms of overall orders and sales for the First Nine Months 99/00 with significant growth in Energy, Transport and Marine more than off-setting the exceptionally low level of activity registered by Transmission & Distribution, particularly in the 3rd Quarter."

159. The January 18, 2000 press release also stated: "Orders received in Marine increased by 77% compared to the First Nine Months 98/99. Order intake in the 3rd Quarter alone reached an exceptional level of over €850 million . . . [a]t 31 December 1999, Marine's order book contained 13 cruise ships for delivery before 2003/04. . . . [Marine] sales increased by 67% as a result of the successful delivery of three complete cruise ships, two for Renaissance and one for Festival as well as part completion of the Millennium cruise ship for RCCL and a further cruise ship for Renaissance."

160. The statements in the January 18, 2000 press release regarding the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results set

forth in the January 18, 2000 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

161. On February 25, 2000, Alstom issued a press release to dispel investors' concerns that the Company would be issuing a profit warning. The February 25, 2000 press release states:

In the face of wide-spread market rumours of a profit-warning concerning ALSTOM, ALSTOM's management confirms the full year 1999/00 outlook announced at the time of the publication of the Company's First Half Results on 23 November 1999 and re-confirmed at the time of the Company's 9 Months Orders and Sales announcement on 18 January 2000.

* * *

Alstom confirms its 6% operating margin target for 2001/02.

162. The statements in the February 25, 2000 press release confirming Alstom's financial stability were materially false and misleading for the same reasons as set forth in ¶ 160 above.

163. On May 22, 2000 Alstom issued a press release announcing its annual results for 1999/2000. The May 22, 2000 press release stated:

The 25% decrease in orders received in Marine is due to the exceptionally high level of order intake during the previous year and does not reflect a slowdown in demand in the cruise-ship market which continues, on the contrary, to boom.

* * *

1999/2000 saw the successful delivery of four cruise ships, which two other vessels, including the 2000 passenger Millennium cruise-ship reaching the stage of sea-trials. The resulting 59% increase in sales is due to the high level of orders received since 1998

164. The statements in the May 22, 2000 press release regarding the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans to third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships.

Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the May 22, 2000 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

165. On July 14, 2000, Alstom filed its 2000 20-F with the SEC which contained the Company's Annual Report for 2000, including its financial statement for the year ended March 31, 2000. The 2000 20-F was signed by defendant Newey. In the 2000 20-F, Alstom reiterated the Company's sales, net income, orders, and operating margin, as reported in the May 22, 2000 press release. Additionally, Alstom reconciled its figures with U.S. GAAP and reported net income of \$408 million. These financial statements represented that Alstom had commitments and contingencies of €7,290.8 million for 2000, but did not disclose the existence of customer financing guarantees for Renaissance or any other customer. That report further states:

Orders received from Marine in 1999/2000 amounted to €1.623 million as compared to €2.151 million in 1998/1999, which was exceptionally high. Orders received in 1999/2000 are 23% above net sales. The cruise market is very active and prospects are good for Marine.

* * *

Net sales for Marine amounted to €1,318 million as it compared with €830 million in 1998/1999. This increase is 59% as compared with 1998/1999, as the direct consequence of the high flow orders obtained since the beginning of 1998, the first sign of success of the Cap 21 Strategic programme. Main deliveries included to be 350-cabin cruise ships R III, R IV, and RV for Renaissance Cruise, . . . Marine net sales in 1998/1999 had increased by 7% as compared with 1997/1998 . . .

* * *

Operating income from Marine amounted to €71 million in 1999/2000 as compared with €25 million in 1998/1999 and €12 million in 1997/1998. The operating income has almost tripled between 1998/1999 and 1999/2000 and the operating margin increase from 3% to 5.4%. . .

* * *

Also during the year, Marine completed and delivered four cruise ships, Mistral (operated by Festival), R Three and R Four (operated by Renaissance in French Polynesia) and R Five (also operated by R. cruises) as well as reaching the stage of first sea trials for the 2,000 passenger millennium cruise ship and the 700 passenger R Six, both of which are to be delivered at the end of May 2000.

166. Alstom's Annual Report also contained a list of the "current significant orders" of Chantiers de l'Atlantique, Alstom's largest shipyard, as follows:

Date of Order	Shipowner	Order
December 1998	Radisson Seven Seas France	<i>K31 Seven Seas Manner</i> 366-cabin cruise ship - length 216 m, 16.6 MW diesel/electric propulsion
April 1998	<i>Renaissance Cruises</i>	<i>Q31 R. Six</i> 351-cabin cruise ship - length 181 m, 19.4 MW diesel/electric propulsion
March 1998	Royal Caribbean Cruises Ltd.	<i>R31 Millennium</i> 1,025-cabin cruise ship - length 294 m, 65 MW (gas and steam turbines) electric propulsion by pod
December 1999	P&O/Princess Cruises	<i>C32 996</i> cabin cruise ship - length 294 m, 5 MW (gas turbine and diesel) electrical propulsion
December 1999	P&O/Princess Cruises	<i>D32 996</i> cabin cruise ship - length 294 m, sister ship to C32
March 1998	Royal Caribbean Cruises Ltd.	<i>S31 Infinity</i> , 1,025-cabin cruise ship, sister ship to <i>R31</i>
February 1999	Royal Caribbean Cruises Ltd.	<i>T31</i> 1,025-cabin cruise ship, sister ship to <i>R31</i>
February 1999	Royal Caribbean Cruises Ltd.	<i>U31</i> 1,025-cabin cruise ship, sister ship to <i>R31</i>
March 1999	Festival Cruises	<i>V31 European Vision</i> 753-cabin cruise ship - length 251 m, 20 MW diesel/electric propulsion
October 1999	Festival Cruises	<i>X31 European Dream</i> 753-cabin cruise ship, sister ship to <i>V31</i>
March 1999	<i>Renaissance Cruises</i>	<i>Y31 R. Seven</i> 351-cabin cruise-ship, sister ship to <i>Q31</i>
March 1999	<i>Renaissance Cruises</i>	<i>R. Eight</i>

Date of Order	Shipowner	Order
		351-cabin cruise ship, sister ship to <i>Q31</i>
July 1999	Department of Defense of the Kingdom of Morocco	<i>A32</i> and <i>B32</i> – Floreal-type surveillance frigate - length 94 m, diesel propulsion

167. The statements in Alstom's 2000 20-F regarding the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the 2000 20-F were also false and misleading as a result of the GAAP violations set forth in §VI.

168. On July 21, 2000, Alstom issued a press release announcing its orders and sales for the three months ended June 30, 2000, stating: "Sales . . . rose by a significant 59% as a result of the past high level of orders received translating into sales. 2 cruise ships were completed and delivered during the period: the 350-cabin cruise-ship *R Six* to Renaissance Cruises and the 1,019 cabin *Millennium* to Royal Caribbean for Celebrity Cruises." In commenting on the results, Defendant Bilger stated, "ALSTOM's strategic repositioning, completed during this quarter, is now reflected in our reported figures and fully operational in the field. Moving forward in our new configuration, orders received increased by 24% and sales by 46% as compared to the same period last year."

169. The statements in the July 21, 2000 press release regarding the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships.

Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, not strong demand for Alstom's ships.

170. On July 24, 2000, J.P. Morgan Securities, Ltd. issued an analyst report stating: "We have raised our forecasts for the Marine division as Alstom confirmed the exceptional nature of this year during which it intends to deliver six cruise ships."

171. On July 31, 2000 Alstom issued a press release announcing its annual results for 1999/2000. Alstom's financial results in the July 31, 2000 press release were false and misleading as a result of the GAAP violations set forth in §VI.

172. On November 7, 2000 Alstom issued a press release announcing its annual results for the first half of 2000/2001. This press release was attached to a Form 6-K that Newey signed and filed with the SEC on November 16, 2000. In the November 7, 2000 press release, Alstom reported orders of €10.814 billion and sales of €10.651 billion. The November 7, 2000 press release also announced net income during the period of €103 million, stating:

Sales . . . rose almost 29% from € 722,000,000 to € 933,000,000 as a direct result of Marine's high order backlog and productivity improvements at the shipyard leading to shorter construction time and increased ship deliveries. During the first half, three cruise ships were delivered: 2x 350-cabin cruise-ships R Six and R Seven to Renaissance Cruises and the 1,019 cabin Millennium cruise-ship to Royal Caribbean for Celebrity Cruises.

173. The statements in the November 7, 2000 press release regarding the Marine division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial

results in the November 7, 2000 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

174. On November 30, 2000, Alstom filed on Form 6-K, which Newey signed, its half-year results for the half-year ended September 30, 2000, in which it disclosed that it had commitments and contingencies of €13,244.7 million at September 30, 2000, but did not disclose the existence of customer financing guarantees for Renaissance or any other customer.

175. The statements in the November 30, 2000 6-K were materially false and misleading because Alstom failed to disclose the existence of customer financing guarantees for Renaissance or any other customer. Alstom's financial results in the November 30, 2000 6-K were also false and misleading as a result of the GAAP violations set forth in §VI.

176. On January 9, 2001, Alstom issued a press release wherein Alstom announced its orders and sales for the first nine months ending December 31, 2000. This press release was attached to a Form 6-K that Newey signed and filed with the SEC on January 10, 2001.

177. The statements in the January 9, 2001 press release were materially false and misleading because Alstom failed to disclose the existence of customer financing guarantees for Renaissance or any other customer.

178. In February 2001, Alcatel and Marconi sold over 71 million Alstom shares in the Secondary Offering, raising approximately \$2.03 billion. In connection with the Secondary Offering, Alstom filed a Registration Statement on Form F-3, with the SEC on January 17, 2001 (amended January 24, 2001 and February 7, 2001) (the "2001 F-3") and the related prospectus on February 12, 2001 (the "2001 prospectus"). The 2001 F-3 was signed by defendants Bilger and Newey. The 2001 prospectus contained unaudited consolidated balance sheets which represented that Alstom had commitments and contingencies of €13,244.7 million at September 30, 2000, but

did not disclose the existence of customer financing guarantees for Renaissance or any other customer.

179. In connection with the Company's cruise line construction business, the Registration Statement stated as follows:

During the third quarter of 2000/01, Marine was awarded orders for three major cruise ships This brought orders received to €1.509 million for the first nine months of 2000/01.

Consequently, *the order backlog stands at a record level of €3.9 billion and comprises 12 cruise ships*, two high-speed ferries and two surveillance frigates. This does not include options for three further cruise ships.

* * *

Marine. Net sales increased by 29% from € 722 million to € 933 million as a direct result of Marine's high order backlog and productivity improvements at the shipyard leading to shorter construction times and increased ship deliveries.

180. In the 2001 F-3, Alstom reported net sales of €16.229 billion for the year ended March 31, 2000 and stated that this figure would be unaffected if accounted for under U.S. GAAP.

181. The 2001 Prospectus reiterated the statements in the 2001 F-3 with respect to Alstom's net sales of €16.229 billion.

182. The statements in the Registration Statement and Prospectus regarding the Marine division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the Registration Statement and Prospectus were also false and misleading as a result of the GAAP violations set forth in §VI.

183. On May 15, 2001, the Company issued a press release announcing its financial results for fiscal year ended March 31, 2001. It reported operating income of €1.51 billion and net income of €204 million. It also reported that sales rose 15% on a comparable basis to €24.6 billion. Defendant Bilger commented on the Company's performance, stating in pertinent part, as follows:

This year has been a year of significant change and continuing progress towards our strategic goals. We are now the recognised specialist in energy and transport infrastructure. Our actions this year have translated into an excellent order book, a new shareholder base and a more focused portfolio of activities.

Despite short-term world-wide economic uncertainties, we continue to benefit from strong medium to long term infrastructure demand and good market positions for most of our products and services. Although our operating income rose, we still feel that we can significantly improve the profitability of our businesses.

For the coming years, we will be building the foundations for future profitable growth by concentrating on operational efficiency, continued focusing of our activities and growth in higher value added products and services. The current lack of visibility of the world economy invites caution. Nevertheless, our performance during fiscal year 2002 should show again some progress and we see no reason today not to maintain our 6% operating margin target for fiscal year 2003.

* * *

During fiscal year 2001, we established asset-backed financing programs which generated additional cash of approximately €531 million during fiscal year 2001, principally for Marine.

184. Regarding Marine, the May 15, 2001 press release stated:

Orders received in fiscal year 2001 amounted to €1,835 million, versus €1,623 million in fiscal year 2000, an increase of 13%, mainly due to the active cruise-ships markets. In October 2000, Marine won the exceptional order of the Queen Mary 2, a 2,800-passenger transatlantic cruise-liner for Carnival/Cunard. The Marine order book has reached the record level of Euro 3.7 billion and comprises ten cruise-ships, two high-speed ferries, two surveillance frigates and one naval research vessel "BHO."

Sales amounted to €1,841 million in fiscal year 2001 versus €1,318 million in fiscal year 2000. The 40% increase over last year was a result of the previous year's order-book and was also due to improvements in shipbuilding organization and productivity, leading to shorter construction time and increased deliveries. Marine

delivered six cruise-ships in fiscal year 2001. The target of the CAP 21 strategic plan, launched in 1997 to double the level of sales, was more than exceeded.

185. The statements in the May 15, 2001 press release regarding the Marine division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the May 15, 2001 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

186. On May 15, 2001, *Dow Jones Int'l News* reported on Alstom's press releases in which the Company released its figures for fiscal year 2001 (the "May 15, 2001 article"). The May 15, 2001 article stated in relevant part:

Alstom (ALS) Chairman and Chief Executive Pierre Bilger said Tuesday that it is business as usual for the Anglo-French power engineering group, despite protracted negotiations related to solving costly problems with gas turbines that the company has supplied.

"This isn't a crisis situation," Bilger told reporters at a press conference.

* * *

Bilger said Alstom had no significant news to report on developments compared with six months ago. At that time, Alstom said it had set aside a provision of EUR903 million to repair faulty gas turbines inherited from a joint venture with ABB Ltd. (Z.ABB). That came on top of EUR670 million set aside in accounts for the year through March 2000.

* * *

Bilger said that *growth* in the rest of Alstom's business is compensating for any drain on the company's resources related to the turbines in the fiscal year to March 31, 2001, with the company's cashflow considerably improved in the past six months.

187. Defendant Bilger's statements in the May 15, 2001 article, were materially false and misleading because Bilger misrepresented Alstom's other business units' abilities to compensate for Alstom's exposure to the defects in the turbines, given that other units such as Marine and ATI were themselves engaging in improper accounting practices and inflating figures.

188. On July 2, 2001, Alstom filed its 2001 20-F with the SEC which contained the Company's Annual Report for 2001, including its financial statement for the year ended March 31, 2001. The 2000 20-F was signed by defendant Newey. These financial statements represented that Alstom had commitments and contingencies of €15,560.6 million for 2001, but did not disclose the existence of customer financing guarantees for Renaissance or any other customer. That report also stated:

Marine – Orders received in fiscal year 2001 amounted to € 1,835 million, versus € 1,623 million in fiscal year 2000, an increase of 13%, mainly due to the active cruise ships market.

* * *

The Marine order-book comprises ten cruise-ships, two high-speed ferries, two surveillance frigates and one BHO.

* * *

Marine – Operating income amounted to € 80 million in fiscal year 2001 (corresponding to an operating margin of 4.3%) against € 71 million in fiscal year 2000 (5.4% of sales) and € 25 million in fiscal year 1999 (3.0% of sales). Operating income almost tripled in two years, while sales more than doubled. This significant growth has been due to a rise in cruise-ship orders. Marine operating margin dropped to 4.3% from 5.4% in the previous fiscal year due to minor delivery difficulties encountered as a result of a significant volume increase and ship complexity.

* * *

Marine constructs predominately cruise-ships and has based its past and future growth on this market.

The US is the most important cruise-ship market with two thirds of the industry's passengers originating from there. The demand for cruises continued its

growth in 2000 with an exceptional 18% progression for the number of cruise ship passengers on the American market (nearly seven million passengers, according to the statistics compiled by the Cruise Lines International Association) and with the European market exceeding 2.2 million passengers. Based on other independent surveys on the growth in the overall leisure industry, which indicate a strong upturn in demand for cruises as a preferred type of vacation, particularly in the US and increasingly also in Europe, *we believe the long-term prospects for the cruise-ship market are strong.*

* * *

A record number of cruise-ships were delivered in fiscal year 2001:

- *R. Six, R. Seven and R. Eight, three 700-passenger cruise-ships to Renaissance Cruises[.]*

189. The Defendants' statements set forth in the 2001 20-F concerning the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results were also false and misleading as a result of the GAAP violations set forth in §VI.

190. The 2001 Annual Report, which was signed by defendant Newey, reiterated the "record" sales and net income figures reported in the May 15, 2001 press release. The Annual Report was also signed by Defendant Bilger under the heading "Persons assuming responsibility of the document," where Bilger states, "to our knowledge the information contained in this *Document de Reference* is accurate; it contains all information necessary to an investor to evaluate the properties, the activities, the financial situation, the results of operations and the prospects of ALSTOM. There is no other information the omission of which would alter the scope thereof." These financial statements represented that Alstom had commitments and contingencies of

€15,560.6 million for 2001, but did not disclose the existence of customer financing guarantees for Renaissance or any other customer.

191. The statements in the 2001 Annual Report regarding the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the purchase of Alstom ships. Thus, the orders for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships. Alstom's financial results in the 2001 Annual Report were also false and misleading as a result of the GAAP violations set forth in §VI.

192. On July 13, 2001, Alstom issued a press release, in which Alstom announced its orders and sales for the first quarter ended June 30, 2001. In commenting on the results, Defendant Bilger stated:

“For the first quarter, we continue to see sound order growth. . . . Overall, our order book of €39.5 billion remains at a record level, which will be progressively reflected in sales over the years to come.”

193. The July 13, 2001 press release continued, stating:

Sales recorded in the first quarter of fiscal year 2002 amounted to €6.0 billion versus €5.1 billion recorded during the same period last year.

On a comparable basis, sales rose by 5%. This was mainly due to the increase in sales recorded by Power and Transport offset by a decrease in Marine, due to the phasing of cruise-ship delivery schedules.

Order backlog was approximately €39.5 billion (including approximately €6.4 billion of long-term operation and maintenance contracts).

194. The statements in the July 13, 2001 press release that included the results of the Marine Division were materially false and misleading because, unbeknownst to the investing public, Alstom had artificially inflated demand for its cruise ships by secretly guaranteeing hundreds of millions of euros in loans third parties made to Renaissance and other Alstom customers for the

purchase of Alstom ships. Thus, the orders and backlog for Alstom cruise ships reflected financing offered to financially unstable customers, as opposed to strong demand for Alstom's ships.

195. On September 13, 2001, J.P. Morgan Securities Ltd. issued an analyst report regarding Alstom stating:

We've had an opportunity for an update with Mr. Bilger, a CEO, and Mr. Newey, CFO, on the company's prospects. ***Overall there is no change in the outlook regarding sales and earnings for the current and next year***, but following the situation in New York, Alstom is slightly more cautious on order intake in its 2002/03 fiscal year.

* * *

The company is comfortable on the order intake in the current year but thinks that Tuesday's events in New York could result in some delays on some projects thus affecting the order intake in fiscal 2002/03.

196. On September 25, 2001, Renaissance filed for Chapter 11 bankruptcy. On September 27, 2001, Alstom disclosed that the Company had guaranteed the loans with which Renaissance purchased eight ships from Alstom. In response to the Renaissance bankruptcy, Alstom issued a press release which stated:

Renaissance Cruises was operating eight cruise-ships built by ALSTOM. These cruise-ships are owned by a number of companies in which ALSTOM has no shares but Alstom has retained an interest in some of the risks and rewards associated with such cruise ships. In this context, ***ALSTOM has, in general, ultimate liability for part of the long-term loans of the financial institutions which have financed the purchase of these cruise-ships***. The long term loans are secured through first mortgages on all the cruise-ships concerned, . . . ALSTOM believes that it is adequately covered against the possible risks associated with this matter which, however, remains uncertain today.

197. Despite Alstom's repeated statements touting the Renaissance orders and sales, it had never disclosed the guarantees. Many observers were shocked to discover that Alstom had guaranteed Renaissance's loans. *Reuters* reported that a trader at a Paris-based broker stated: "We didn't know Alstom was involved in credit guarantee for its ships." Peter Reilly, engineering analyst at Deutsche Bank in London, stated: "This appears to have been a contingent liability which was not

disclosed in the Alstom report and accounts.” *The Financial Times* quoted one analyst stating: “It’s like a builder guaranteeing your mortgage even though he’s building your house as well.” Investors were shocked as well, sending Alstom’s share price plummeting from €18.06 on September 26, 2001 to €13.20 at the end of the next day, a drop of more than 25%.

198. On October 1, 2001, J.P. Morgan Securities, Ltd. issued an analyst report which stated:

Alstom has lost EUR2.1 billion in market value since it revealed the exposure to Renaissance Group . . . the investor communication of this event has, in our view, been poor – it took Alstom three days to address the market concerns. Investor confidence in the group took a significant hit and investor focus has shifted to Alstom-specific problems like the high leverage, low cash generation and concern about other potential risks “hidden” in its off balance sheet liabilities.

* * *

We believe that a significant part or even all of the profits the Marine business achieved in the last three years (cumulative EBIT of EUR176 million) will ultimately be lost even if the full extent of Alstom’s liability to Renaissance Group of EUR684 million is not realised. *We question the quality of the turnaround of the [Marine] division achieved in the last years, as it seems to have happened on the back of vendor financing. Alstom confirmed that the large order of eight ships from Renaissance Group was instrumental in the turnaround of the division.*

199. On October 1, 2001, Alstom issued a press release stating:

The theoretical maximum exposure of Alstom with respect to Renaissance Cruises (based on the hypothetical assumption that the cruise ships are worth zero), is €684 million arising under commitments given by ALSTOM to financial institutions in connection with the funding of the cruise ships. . . .

* * *

Separately ALSTOM has current commitments for €589 million in respect of other cruise ships already delivered to other shipowners, which are backed by mortgages on the relevant cruise ships. Of this €422 million existed at 31 March 2001.

200. However, on October 11, 2001, defendant Bilger assured the *Les Echos* newspaper that the real risk to Alstom from the collapse of Renaissance was “a few tens of millions of euros at most.”

201. Defendant Bilger’s statement set forth in the preceding paragraph was materially false and misleading because Alstom’s exposure was €684 million. In the wake of September 11, 2001, and the subsequent decline in tourism, Alstom would and did find it extremely difficult to resell Renaissance ships.

202. On November 6, 2001, Alstom issued a press release in which Alstom reported its results for the first half of fiscal 2002 (April 1, 2001 to September 30, 2001). In the November 6, 2001 press release, Alstom reported that for the six months ending September 30, 2001 it received orders of €13.193 billion, its sales were €11.942 billion and its net income was €92 million.

203. The statements in the November 6, 2001 press release were materially false and misleading because Alstom knew but failed to disclose that its other divisions such as ATI were engaging in improper accounting practices, therefore Alstom could not rely on other units to provide improved performance in the years to come. Alstom’s financial results in the November 6, 2001 press release were also false and misleading as a result of the GAAP violations set forth in §VI.

204. The November 13, 2001 6-K, signed by defendant Newey, reiterated the orders received, sales and net income figures stated in the November 6, 2001 press release.

205. Alstom’s financial results in the November 13, 2001 6-K were false and misleading as a result of the GAAP violations set forth in §VI.

206. On January 15, 2002, Alstom issued a press release announcing Alstom's orders and sales for the third fiscal quarter ending December 31, 2001. In commenting on the results, Defendant Bilger stated:

"Operating performance has continued in line with management expectations as detailed in November. Our continued target is to sustain the first half margins for the full year and we expect to deliver a significant improvement in 2003."

207. On January 18, 2002, Alstom repeated the figures and comments stated in the January 15, 2002 press release in a Form 6-K filed with the SEC (the "January 18, 2002 6-K") which was signed by defendant Newey.

208. The statements in the January 15, 2002 press release and the January 18, 2002 6-K were materially false and misleading because the Company's operating income, operating margin, and shareholders' equity were artificially inflated as a result of the accounting fraud at ATI. The figures announced in the January 18, 2002 6-K were also false and misleading as a result of the GAAP violations set forth in §VI.

209. A February 25, 2002 article in *The Wall Street Journal* stated:

At the bottom of its financial statements Alstom lists a line item called "commitments and contingencies." At the end of September, the figure next to that line item was 12.8 billion euros (\$11.13 billion), not small change for a company with a stock-market capitalization of about three billion euros.

"Talk about a black hole," says Jay Huck, a London analyst with the Center for Financial Research and Analysis, a boutique research firm that combs through companies' financial statements for institutional investors.

Until recently, Mr. Huck and other investors had no way of knowing what the 12.8 billion euros represented because Alstom neither highlighted nor explained it. Then came the Chapter 11 bankruptcy-court filing in late September of Renaissance Cruises, a Florida cruise line that operated eight cruise ships built by Alstom's French shipyards. After initially saying its exposure to Renaissance was minimal, Alstom said on Oct. 1 that it could lose as much as 684 million euros as a result of the bankruptcy.

What Alstom had neglected to disclose is that among the commitments and contingencies were written guarantees it had given to banks that had lent money to

cruise lines so that they could buy ships from Alstom. This is known as vendor financing. When Renaissance defaulted on those loans, they became Alstom's responsibility.

Suddenly, shareholders became nervous that Alstom might be liable for other guarantees. They were right. When the company released its fiscal first-half results in November, Alstom for the first time provided footnotes breaking down the 12.8 billion-euro figure. Turns out that roughly two billion euros are vendor-financing liabilities, including 1.3 billion euros to the cruise industry.

Alstom now promises to put an end to its vendor-financing practices. Nonetheless, it continues not to classify these liabilities as debt, which many analysts say would more accurately reflect what they are, since Alstom is the ultimate guarantor of these loans.

In its first-half results, Alstom disclosed net debt of two billion euros. Adding in the vendor-financing liabilities would have doubled the company's net debt to four billion euros, one billion euros more than the company's market capitalization.

210. Moreover, the Defendants purposefully downplayed the possible effect of the Renaissance loans to the market. According to defendant Bilger during Alstom's Q4 2002 Alstom SA Earnings Conference Call, "[w]e never considered vendor financing to be a normal tool to generate business. The exceptions in Marine were part of the turnaround of the business; we needed it to create profitable orders at the beginning of the turnaround, but even with low margins we're offsetting the loss of EU subsidies. We achieved our target and now we're stopping these exceptions."

211. On March 14, 2002, Alstom issued a press release announcing its "Restore Value" plan. The March 14, 2002 press release was subsequently filed on April 5, 2002 with the SEC on Form 6-K (the "April 5, 2002 6-K") which was signed by Newey.

212. Alstom also stated in the April 5, 2002 6-K that "[i]n fiscal year 2003 management expects ALSTOM to deliver an overall operating margin of 5%. . . ."

213. The statements in the March 14, 2002 press release and April 5, 2002 6-K were materially false and misleading because Alstom knew that its financial results did not accurately

reflect the costs of railcar projects at ATI and that the Restore Value targets could be met only by misstating Alstom's financial results.

214. On May 7, 2002, Alstom issued a press release in which Alstom announced its figures for fiscal year 2002 (which ended March 31, 2002). In the May 7, 2002 press release, Alstom reported sales of €23.453 billion, order backlog of €35.815 billion, and an operating margin of 4%. The May 7, 2002 press release quotes defendant Bilger as stating:

“Our results and our share price performance in fiscal year 2002 were unsatisfactory. Operating income and cashflow were negatively impacted primarily by difficulties encountered in the introduction of some of our heavy-duty gas turbines, in deliveries of regional trains in the UK, and by the bankruptcy of the US cruise-ship operator, Renaissance Cruises. . . .

We have taken steps to address these issues, launching a detailed action plan, Restore Value, to strengthen our balance sheet, reduce our debt and significantly improve cash generation and operating margins. . . .

We have already made progress towards achieving our objectives. . . .

* * *

Over the next three years our efforts will be focused on achieving operational excellence. ALSTOM will rightly be judged on its success in meeting the goals of *Restore Value*: an operating margin of 6 per cent, cashflow equal to EBIT and a gearing [sic] of 20 per cent by March 2005. I am absolutely confident that our plan is achievable, that these goals will be met and that value will be restored.

215. On May 9, 2002, Alstom filed a Form 6-K with the SEC (the “May 9, 2002 6-K”) which was signed by defendant Newey. The May 9, 2002 6-K contained the May 7, 2002 press release and Alstom's Annual Report for 2002 signed by Bilger as filed with the Commission des Operations de Bourse on May 7, 2002 (the “2002 COB Annual Report”).

216. Alstom's financial results in the May 7, 2002 press release and May 9, 2002 6-K were false and misleading as a result of the GAAP violations set forth in §VI.

217. On May 24, 2002, Alstom filed its 2002 20-F. The 2002 20-F was signed by defendant Bilger. In the 2002 20-F, Alstom reiterated the Company's sales, backlog and operating margin as reported in the May 7, 2002 press release.

218. Alstom's financial results in the 2002 20-F were false and misleading as a result of the GAAP violations set forth in §VI.

219. On July 16, 2002, Alstom issued a press release announcing its figures for the first quarter of fiscal year 2002/2003. This press release was filed on Form 6-K with the SEC on July 22, 2002, which Newey signed.

220. Alstom's financial results in the July 16, 2002 press release and July 22, 2002 Form 6-K were false and misleading as a result of the GAAP violations set forth in §VI.

221. On November 5, 2002 Alstom issued a press release announcing "Solid Progress in First-Half Results 2003." This press release was filed on Form 6-K with the SEC on November 7, 2002. The November 5, 2002 press release reported that Alstom's operating income and operating margin for the first-half of fiscal 2003 was €543 million and 5%, respectively. The press release reported that the Transport Division's operating income and operating margin for the first-half of fiscal 2003 was €90 million and 3.9%, respectively.

222. The statements in the November 5, 2002 press release and November 7, 2002 Form 6-K regarding Alstom's financial results and Transport Division were materially false and misleading because the Company's operating income and operating margin had been artificially inflated by approximately €167 million in fiscal 2003 as a result of the accounting fraud at ATI, as detailed in §V. Similarly, the ATI accounting fraud caused the Company's shareholders' equity to be artificially inflated by a corresponding amount.

223. The November 5, 2002 press release also quoted Bilger as follows:

“We have made solid progress over the past six months, delivering a healthy improvement in operating income on broadly maintained sales, with a strong recovery in net income.

* * *

The positive dynamics of the transport . . . markets should offset less favorable gas turbine, power plant, distribution and marine markets.

I am particularly pleased by the marked turn around in our profitability, with our operating margin up a full one-and-a-half percentage points over the second half of fiscal 2002. This improvement was delivered across all our Sectors and reflects not only the improved margins in our order intake . . . but also the benefits that are beginning to flow from restructuring and overhead reduction.

224. These statements were also materially false and misleading because the purported “improvement” in Alstom’s operating income, and the “marked turn around” in profitability, stemmed, in large part, from the ATI accounting fraud, which overstated fiscal 2003 operating income by approximately €167 million.

225. On November 11, 2002, defendant Bilger was removed as Chairman and CEO of Alstom and received a €3.8 million severance payment. After a public outcry over this huge bonus for essentially running Alstom into the ground, Bilger was forced to return this payment, saying he had no wish to be “an object of scandal.” This goal was thwarted when, in May 2003, Bilger was placed under judicial investigation in connection with an inquiry into the payment of a commission relating to the construction of GEC-Alstom headquarters in 1994.

226. On January 16, 2003, Alstom issued a press release in which Alstom announced its orders and sales for the first nine months ending December 31, 2002. This press release was filed on Form 6-K with the SEC on January 22, 2003.

227. The statement in the January 16, 2003 press release and January 22, 2003 Form 6-K that “demand for Transport remains strong” and the nine-month orders and sales figures for

Transport were materially false and misleading because they reflected ATI's underreporting of costs of sales to NJT and other customers.

228. On June 2, 2003 the Company filed its 2003 Annual Report with the SEC on Form 6-K. The 2003 Annual Report reported that Alstom recorded an operating loss of €434 million in fiscal 2003 and a net income loss of more than €1.3 billion. However, the 2003 Annual Report claimed that the Transport Division recorded an operating income of €49 million in fiscal 2003 and operating margin of 1.0%.

229. The statements in the 2003 Annual Report were materially false and misleading because the Company's operating and net income losses were understated by approximately €167 million as a result of the fraudulent accounting at ATI. Further, as the Company now admits in its 2003 20-F, the ATI fraud overstated the Transport Division's operating income by €167 million, and in reality the Transport Division sustained an operating loss of €118 million in fiscal 2003, and its operating margin was, in reality, minus 2.3%.

230. On June 30, 2003, ATI issued a press release that revealed the existence of an accounting fraud at Alstom's Transport Division. ATI admitted that "losses have been significantly understated in ATI's accounts, in substantial part due to accounting improprieties by the understatement of actual costs incurred" ATI also revealed that the Department of Justice and the SEC had commenced investigations into the accounting fraud and that Janovec and Rambaud-Measson had been suspended from the Company.

231. On August 6, 2003, Alstom disclosed that the ATI accounting scandal was more pervasive than ATI had first revealed on June 30, 2003, and that "substantial" costs had been understated on "certain other contracts." The Company disclosed the need for additional provisions, which it expected would reduce first half 2003/2004 operating income by around €100 million. As

detailed above, following disclosure on August 6, 2003, the price of Alstom shares dropped on the New York, London and Paris stock exchanges.

VIII. SCIENTER

232. As alleged herein, the Defendants acted with scienter in that the Defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company, were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, the Defendants, by virtue of their receipt of information reflecting the true facts regarding the Company and its business practices, their control over and/or receipt of the Company's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, were active and culpable participants in the fraudulent scheme alleged herein.

233. The Defendants knew and/or recklessly disregarded the false and misleading nature of the information which they caused to be disseminated to the investing public. The deceptions and ongoing fraudulent schemes described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Officer Defendants.

234. Indeed, as stated above and as confirmed by confidential inside sources at Alstom, Alstom Power, ABB and ABB Alstom Power, the Defendants knew that the Company was engaged in an undisclosed and precarious vendor-financing scheme. The Defendants were also aware that the Company was misrepresenting to the public the extent of the problems associated with the GT24/26 turbines, underestimating the costs and liabilities associated with the GT24/26

turbines, and improperly accounting for those costs and liabilities. Sources have also confirmed and the Company later revealed that the Company was artificially inflating earnings through the elimination of huge expenses from its financial statements at ATI, its U.S. railroad construction unit, to compensate for the frauds occurring at the Marine and Turbine Divisions. Moreover, as explained above, throughout the Class Period, the Defendants concealed adverse information about the Company while they completed offerings of Company stock and while Marconi and Alcatel sold their own Company stock holdings.

235. As alleged herein, the Officer Defendants had both the motive and opportunity to commit fraud. Their opportunity to cause the Company to issue false and misleading disclosures to the investing public is obvious and beyond dispute: as the key officers and directors of the Company, they were the chief spokespersons for the Company in all public statements and dealings with analysts and other market participants, and had control, responsibility, and direct involvement with the contents of press releases and documents filed with the SEC and disseminated to the market. Their motives to commit fraud were many, including the desire to materially misrepresent the Company's financial condition and business practices, and to conceal the adverse facts alleged herein in order to enable the Company to artificially inflate its financial figures and the price of its stock to raise more than €1.8 billion from the Secondary Offering and to allow Marconi and Alcatel, the principal shareholders in the Company, to unload their Company stock in the public marketplace at inflated prices.

A. The Defendants Knew that the Company Had Guaranteed Loans to Customers and that Renaissance, for One, Was Likely to Default

236. Alstom and its officers knew that the Company was guaranteeing loans to its customers because the Company itself was executing those guarantees. The Defendants also knew that Renaissance was likely to default because of lost business and poor pricing decisions.

237. In the late 1990's, Renaissance attempted to circumvent travel agents and to market cruises directly to travelers. This alienated travel agents, who stopped booking their clients on Renaissance cruises. Renaissance was unable to make up for the business it lost from travel agents through direct bookings. As a result, Renaissance had to lower its prices far below those of its competitors.

238. As a result of this blunder, Renaissance lost money in 1999, and in 2000 lost \$95 million on \$580 million in revenue. In April 2000, Malvern Maritime, a London-based investment concern of which Alstom was a beneficial owner, along with CFB, the global private equity arm of Credit Suisse Group, purchased 85% of Renaissance for \$72.5 million, \$67 million of which came from Malvern. The investors also restructured \$220 million of Renaissance's debt. Even after the influx of new capital, analysts believed Renaissance's long-term debt to be in excess of \$1 billion.

239. In June of 2000, Ed Rudder, Renaissance's founder, chairman, and chief executive, resigned "following poor financial results in the failure of the line's direct selling strategy." On February 19, 2001, Leisure Travel News published an article which stated: "There's been considerable discussion in the industry, particularly in Europe, that Renaissance Cruises is in serious financial trouble and that the cruise line must either refinance or sell its fleet within months in order to continue service."

240. After Renaissance declared bankruptcy, media reaction indicated that it was no surprise. "When you operate that close to the edge, external shock can finish you, and that is what happened," said Scott Berry, leisure analyst with Credit Suisse First Boston. "Under reasonable circumstances they were probably destined to fail. This just accelerated their demise," he said. "They had been losing a tremendous amount of money, and this just convinced their lenders

enough is enough: 'We're not going to throw good money after bad.'" The AP Newswire stated: "The demise of debt-ridden Renaissance was no surprise to analysts."

241. On September 28, 2001, an analyst report by J.P. Morgan Securities Ltd. stated:

Renaissance was one of the largest customers of Alstom in the past three years and Alstom is likely to have known about the financial situation of Renaissance Group ahead of yesterday's Chapter 11 filing.

B. The Defendants Knew of the Existence and Extent of the Turbine Defects

242. As stated above and as confirmed by confidential inside sources at Alstom, Alstom Power, ABB and ABB Alstom Power, the Defendants knew of the existence of the turbine defects. Even prior to entering into the ABB Alstom joint venture, Alstom had prepared an internal analysis of its competitors in January 1999, in which Alstom's marketing department analyzed the status (including the many defects) of 36 turbines sold by ABB as far back as 1993. Alstom entered into the joint venture despite the existence of the turbine defects because it desperately needed ABB's turbine technology, and deliberately kept quiet about those defects so as to protect its stock price while its two corporate parents owned a majority of its shares

243. Alstom's Heavy Duty Gas Turbines business, which was a part of the Company's Energy sector, was its most important business unit. It directly accounted for approximately 6% of the Company's combined net sales for the fiscal year ended March 31, 1998 and for approximately 8% of the Company's combined net sales on average for each of the three fiscal years ended March 31, 1996, 1997 and 1998. In addition, the Company sold heavy duty gas turbines in combination with the products and services of the other Energy businesses, which accounted for an additional 2.5% of the Company's combined net sales for the fiscal year ended March 31, 1998. These indirect sales of related products and services combined with direct sales of heavy duty gas turbines produced, according to Alstom in its IPO prospectus, on average approximately 12% of the Company's combined net sales and operating profit for each of the

three fiscal years ended March 31, 1996, 1997 and 1998. For the fiscal year ended March 31, 1998, the sales of heavy duty gas turbines alone accounted for approximately 13.5% of the Company's operating profit. Thus, the Heavy Duty Gas Turbines business was an extremely significant business to Alstom, one that Alstom could not afford to lose.

244. The core technology underlying the Company's heavy duty gas turbines was licensed from General Electric ("GE") in a series of agreements entered into in 1989 and 1990 and amended in 1995. The significance of these GE licenses to Alstom cannot be overstated. In fact, Alstom listed in its IPO prospectus the following Risk Factor: "Importance of GE Agreements; Risk of Modification or Termination." In this Risk Factor, Alstom stated that the IPO involved transactions that would result in a change in its holding structure and that "GE has stated that it is concerned that the proposed transactions would appear to breach certain of the GE Agreements." Alstom's loss of the GE licenses "could have a material adverse effect on the Company's position in the market for heavy duty gas turbines and related businesses and on its results of operations and financial condition generally." The threat of the loss of the GE licenses was real and potentially devastating.

245. The threat became a reality when, in early March 1999, Alstom's long-time arrangement with GE to license GE's turbine technology ended. Alstom had no doubt predicted this, because immediately thereafter, on March 23, 1999, it announced in a press release that it was entering into a 50/50 joint venture with Swiss-Swedish conglomerate ABB, which had developed its own proprietary gas turbine technology.

246. According to a former vice president in Alstom's U.S. corporate offices, the impetus for Alstom's joint venture with ABB was its desire, after the loss of its GE license, to continue to be a player in the market for gas turbines, which was a "very hot" market between

1997 and 2000. If Alstom had not continued in the heavy duty gas turbine business, its overall value would have been ravaged, to the detriment of its owners Alcatel and Marconi. With the demise of the GE license, Alcatel and Marconi were under great pressure to maintain Alstom's heavy duty gas turbine business so they could protect their investment in Alstom until they could sell out. The pressure was so great and the alternatives so scarce that Alstom rushed into a joint venture with a company that it knew had a proprietary heavy duty gas turbine technology that was severely flawed.

247. Prior to the joint venture, ABB manufactured heavy duty gas turbines under the name "GT24/26" turbines. GT24/26 turbines are heavy duty natural gas powered turbines that are used by power plants to generate electricity. ABB had initiated the development and marketing of the GT24/26 turbines in 1995, and entered into contracts for sales of these turbines shortly thereafter.

248. ABB's GT24/26 turbines had severe technical problems and Alstom knew about them. In an internal analysis of its competitors dated January 13, 1999, Alstom's marketing department analyzed the status of 23 GT24 units and 13 GT26 units sold by ABB as far back as 1993. According to the report, nine of the 23 GT24s sold had been delivered as of the date of the report. Of those nine delivered, seven were declared defective and operation of the remaining two was placed on hold. The report references a "compressor blade rubbing issue," "performance degradation," "vibrations," and "difficulties in balancing the rotor."

249. This internal analysis also points to problems with the GT26 units sold by ABB. According to the report, five of the 13 GT26s sold had been delivered as of the date of the report and had become operational. Of those five delivered, all were declared defective, including one that had apparently gone to a test center. The report references "[h]uge issues on the compressor

section,” “severe last stages blades rubbing,” “[h]eat shields had to be replaced,” and “[o]verfiring.” Indeed the report specifically states “ABB personnel on-site consider [] the machine [] dangerous” and that two GT26 turbine purchasers were already being paid penalties and liquidated damages.

250. Thus, Alstom entered into the joint venture with ABB knowing full well that the technology it desperately needed was flawed, but Alstom was not going to imperil its very existence by losing a major business sector. Alstom was also not about to turn away from a “hot” market where it could run up its revenues, at least until Alcatel and Marconi could sell their Alstom stock.

251. Upon entering into the ABB Alstom joint venture, Alstom gained even more information regarding the extent of the defects and the existence of defects in all GT24/26B rating turbines previously commissioned. Alstom learned that the turbines produced 15% less power than they were designed to produce prior to entering into the venture with ABB.

252. In total, eighty defective GT24/26 turbines had been sold. Alstom knew what the defects were and knew who each affected customer was. According to a former design engineer with ABB and later with ABB Alstom, the joint venture maintained a Lotus Notes file called the “Smokers Database” (a play on the expression “where there’s smoke, there’s fire”) beginning in 1999, which listed each turbine client and project, open issues/problems, the estimated minimum and maximum costs to resolve them, and the likely costs to resolve them. Based on this information, Alstom easily could have accurately calculated and timely revealed to the public the true extent of the liabilities caused by the turbine defects. Indeed, Alstom spoke to its customers and developed a plan that included standardized procedures to deal with the problem. According

to the Annual Report on Form 20-F for the year ended March 31, 2003 ("2003 20-F") filed with the SEC on October 16, 2003:

We also embarked on a comprehensive programme to discuss and resolve any contractual issues with customers. Commercial settlements with customers were negotiated to deal with the consequences of the de-rating. Typically, what was proposed was a Performance Recovery Period of around 2-3 years, prior to implementing the life-time and performance upgrades, that we call a "recovery package". This deferred the timing of the date at which provisional acceptance was achieved and related contractual remedies, including liquidated damages, applied. During that period, varying solutions were applied depending on the situation, however in general we replaced short life components at our costs and agreed on contractual amendments, including revised financial conditions, with each customer.

2003 20-F at 75. Given the full knowledge of Alstom regarding the technical problems, the costs necessary to resolve those problems, and the exact number and contractual status of each turbine unit, such a plan allowed Alstom to accurately estimate from the outset the full extent of the turbine liabilities.

253. Notwithstanding its knowledge of the defects in the turbines, according to an Alstom marketing director, Alstom continued to sell turbines in the last half of 1999 and first half of 2000, knowing it would have to pay liquidated damages. According to *Power Economics* (Jan. 30, 2001 at 6), despite the problems, Alstom sold 10 units of GT24/26 turbines in the last few months of 2000 alone. In an effort to continue to generate revenue and maintain the stock price until Marconi and Alcatel closed their positions, the joint venture did not cancel these sales. In fact, according to a former Alstom manager, the joint venture sold the problematic turbines knowing that the cost to remedy the defects could potentially wipe out the entire net value of these sales.

254. Further, Alstom was unable to get insurance to guarantee the performance of the GT24/26 gas turbines. Because of this, Alstom, according to an Alstom manager, was obligated to set up reserves sufficient to remedy the failures of the turbines to meet contractual performance

specifications. Alstom knowingly set up deficient reserves so as not to alarm the public and to protect its stock price.

255. On May 11, 2000, less than one year after the joint venture was established, Alstom purchased ABB's remaining 50% interest for €1.25 billion, giving Alstom 100% ownership of the venture. After the buyout, Alstom recorded €3.953 billion in goodwill and renamed the entity Alstom Power. The main asset Alstom received in the buyout was ABB's gas turbines.

256. Alstom's buyout of ABB's 50% interest in the joint venture on May 11, 2000 was motivated in part by its desire to prevent, under French GAAP, the already known costs (repair costs and any penalties owed) necessary to correct the turbine defects from becoming expenses on its income statement, which would significantly reduce its net income and ultimately decrease its stock price. Under French GAAP, if Alstom remained a partner in the joint venture, its share of turbine defect reserves would have had to have been expensed on Alstom's income statement. This would have reduced Alstom's net income and impacted its stock price. Instead, when Alstom purchased the remaining 50% of the joint venture from ABB, the provision for the costs to correct the turbine defects were, under French GAAP, simply booked as an increase to the provisions in the liability of the balance sheet and as a corresponding increase to the goodwill generated by the joint venture purchase that was recorded as an intangible asset. Since the goodwill was amortized over a period of 20 years, there would be a much smaller current charge against net income and less of an impact on Alstom's stock price. Under French GAAP, the allocation of the purchase price of the remaining 50% of the joint venture between goodwill and the fair value of the respective assets and liabilities could be finalized up until the end of the fiscal

year following the purchase date. This allowed Alstom to increase goodwill each time it set up a turbine reserve (instead of expensing it on the income statement) until March 31, 2002.

257. Thus, it is clear that Alstom knew of the existence and extent of the GT24/26 turbine defects at the time it purchased the remaining 50% interest in the ABB joint venture, and purchased the joint venture precisely to prevent the reserves it knew would be required from impacting its net income. This allowed Alstom to protect its net income until its two owners, Marconi and Alcatel, could completely divest themselves of Alstom stock. Had it not purchased the joint venture, under French GAAP, Alstom's net income would have been reduced by an amount equal to 50% of the turbine reserves.

258. Less than three months after Alstom bought out ABB's share of the joint venture, Alstom issued a vague press release, dated July 31, 2000, announcing that the Company was experiencing what it described as relatively routine technical difficulties with the introduction of its turbines. Alstom stated:

In the past months, technical issues have arisen which are not unusual in the commissioning of new high-tech complex products of this type, and for which modifications have been identified and are being implemented. Recent inspections have revealed a further localised deficiency, which will require component modification on all 'B' rating machines. . . . The impact of these issues may involve material additional costs. Any such costs will be included in the purchase accounting treatment of the acquisition of ABB ALSTOM Power, which will be reported in the 30 September 2000 interim accounts. On this basis, the Company does not believe that these issues will affect significantly the operating margin target of 6% for 2002/03 previously disclosed.

259. The press release did not fully describe the problems with the turbines and provided no estimate of the cost of repairing them, even though Alstom had put in place a settlement protocol and had already entered into settlement negotiations with its customers regarding the costs of repairs and penalty payments. In fact, the Company later admitted that each of the 80 turbines sold to that date was defective. Moreover, Alstom was liable for the full cost of

any defects since, according to a spokesman for ABB: “Alstom acquired the business from us with all the liabilities. They agreed to indemnify us” Carreyrou, *supra* ¶ 44.

260. In the same year in which Alstom entered into the joint venture with ABB (the year ended March 31, 2000), ABB Alstom set aside **€519 million** to correct turbine defects. Alstom hid the existence and amount of this reserve in provisions for accrued contract costs of €3.3 billion set forth in its March 31, 2000 Form 20-F (Note 17, p. F-26). Indeed, this €519 million reserve was not specifically disclosed until June 2, 2003, when it appeared in the Annual Report for the year ended March 31, 2003 (“2003 Annual Report”), filed with the SEC on Form 6-K on that date.

261. Since Alstom knew this reserve was inadequate, it set aside an additional **€165 million** as of May 2000, the date of its buyout of ABB’s interest in the joint venture. Alstom made sure that this additional reserve was also hidden. It was buried in Alstom’s March 31, 2001 Form 20-F in provisions of €1.274 billion recorded against goodwill for the entire Power sector, including the GT24/26 turbines (Note 20, p. F-25). Alstom revealed in its March 31, 2003 20-F that of this €1.274 billion total reserve, €1.068 billion was for turbine defects. Subtracting a €903 million reserve announced in November 2000 (*see infra* ¶¶262-263) from the €1.068 billion total reserve for the March 31, 2001 fiscal year is the only way to calculate the additional €165 million reserve taken.

262. In fact, Alstom did not disclose the amount of any reserve related to the turbine defects until November 7, 2000. Four months after making the initial announcement regarding the discovery of “technical issues” with the turbines and close to a year and a half after it entered into the joint venture, Alstom stated in a November 7, 2000 press release that design flaws associated with its GT24/26 gas turbines would require that it set aside an additional **€903 million**.

Alstom did not disclose in this press release that it had previously set aside reserves for turbine defects. It kept the existence of those prior reserves secret until the end of that month and only disclosed them aggregately. On November 30, 2000, Alstom filed its consolidated financial statement for the first half of fiscal 2000 on Form 6-K, which stated that “[t]he estimates of the related costs as currently determined by the management amount to €903 million. *Provisions and other accruals on GT24/26 gas turbines as of 30 September 2000 including this amount total €1,625 million.*”

263. Thus, the reserves taken for the fiscal year ended March 31, 2001 equaled €1.068 billion (€165 million + €903 million), and the total reserves taken by Alstom since entering into the joint venture equaled €1.587 billion (€1.068 billion + €519 million).

264. Based on interviews with a former Alstom commissioning engineer, marketing director and design engineer, Alstom’s internal marketing department analysis of ABB turbines and its Smokers Database, and Alstom’s status as a 50% owner of the joint venture, Alstom knew the full extent of the turbine problems and that each of the reserves it had established were, at the time they were established, insufficient. Indeed, as Alstom stated in its November 7, 2000 press release, it had conducted a “contract by contract analysis” of the turbine problem. But larger reserves would have indicated to the market the true severity of the turbine defects, which would have threatened the stock price before Alcatel and Marconi could sell out.

265. Given Alstom’s knowledge regarding the technical problems, Alstom estimated the full costs necessary to resolve them and the exact number and contractual status of each turbine unit, formulating a plan that included standardized procedures to deal with each turbine purchaser.

266. Alstom knew of and misrepresented to the public the extent of the problems associated with the GT24/26 turbines, and intentionally underestimated the costs and liabilities

associated with the GT24/26 turbines, until its two owners, Marconi and Alcatel, could completely divest themselves of their Alstom ownership. Alstom also intentionally improperly accounted for the costs and liabilities associated with turbine defects so as to make the full extent of those costs and liabilities difficult to discern. In fact, Alstom took five different reserves in an attempt to conceal the problems caused by the turbine venture. Not until its Annual Report for the year ended March 31, 2003, filed with the SEC on Form 6-K on June 2, 2003, did Alstom finally reveal the true state of the reserves it had established for the problems in the GT24/26 gas turbines over the years.

267. By June 2001, Marconi and Alcatel had received several billion euros for their Alstom shares. After they sold out of their Alstom positions, Alstom took additional charges associated with the turbine defects of over €2 billion. After Marconi and Alcatel sold the last of their Alstom stock, the closing price of Alstom's shares on the NYSE plummeted.

C. The Defendants Acted with Scienter in Connection with the ATI Fraud

268. Defendants Janovec and Rambaud-Measson each acted with scienter with respect to the materially false and misleading statements in connection with the ATI fraud, in that they had actual knowledge of the statements' falsity or they acted with reckless disregard for the truth. ATI and Alstom also acted with scienter with respect to the ATI fraud. Beyond the fact that the Company, through Kron, has now *admitted* that ATI committed "fraud" by understating losses in order to improperly boost operating results, there is circumstantial evidence supporting a strong inference that Defendants acted with scienter.

1. Alstom's Determination that Janovec and Rambaud-Measson Were Responsible for the ATI Fraud Supports a Strong Inference of Scienter

269. As an initial matter, the fact that Alstom suspended Janovec and Rambaud-Measson upon disclosure of the ATI fraud – and after receipt of anonymous letters that detailed

the fraud – supports a strong inference of their scienter. Further, in June 2003, after receiving the letters, the Company retained the law firm Hughes Hubbard & Reed LLP to perform an internal investigation into the ATI fraud, and the fact that ATI terminated Janovec and Rambaud-Measson after completion of the investigation supports a strong inference of their scienter.

270. ATI's June 30, 2003 press release announcing the suspension of Rambaud-Measson and Janovec stated that "ALSTOM today announced that it is conducting an internal review assisted by external accountants and lawyers following receipt of letters earlier this month alleging accounting improprieties on a railcar contract being executed at the Hornell, New York facility of ALSTOM Transportation Inc. (ATI), a US subsidiary of the Company."

271. ATI, through its corporate designee, confirmed that the railcar contract as to which accounting improprieties were alleged was ATI's Comet V Contract.

272. Alstom's June 30, 2003 press release also stated:

[ATI's] review has identified that losses have been significantly understated in ATI's accounts, in substantial part due to accounting improprieties by the understatement of actual costs incurred, including by the non-recognition of costs incurred in anticipation of shifting them to other contracts, and by the understatement of forecast costs to completion.

273. ATI, through its corporate designee, clearly stated that Alstom determined that Janovec was responsible for ATI's accounting improprieties:

Q. Now, did the company make some determination that Mr. Janovec was in some way responsible for those accounting improprieties?

* * *

A. My understanding is yes.

Muscato Tr. at 97.

274. ATI through its designee also admitted that Alstom determined that Rambaud-Measson was also responsible for ATI's accounting improprieties:

Q. Did the company, Alstom, make the determination that Mr. Rambaud-Measson had some responsibility for those accounting improprieties?

* * *

A. Yes, sir.

Muscato Tr. at 98-99.

275. Additionally, on August 6, 2003, Alstom issued a press release announcing that the Company discovered further improprieties on "certain other contracts" which would reduce first-half 2004 earnings by an additional €100 million (in addition to the reduction reported on June 30, 2003).

276. ATI through its corporate designee identified Janovec and Rambaud-Measson as being responsible for the financial figures related to the "other contracts" identified by Alstom on August 6, 2003:

Q. I'm going to turn your attention to primarily to one sentence, which I'll read. It says "In addition, following the discovery of accounting irregularities on one contract at the Hornell USA Transport unit announced on 30, June 2003, a review of all projects managed by this unit has now been undertaken. This has identified the need for additional provisions on certain other contracts which is expected to reduce first half 2003/'04 operating income by around euro 100 million." Do you know whether Mr. Janovec was responsible for the accounting on the contract[s] as to which certain additional provisions was taken?

* * *

A. My understanding, he was responsible for all the financials on all the projects.

* * *

Q. Do you know whether Mr. Rambaud-Measson was responsible for the accounting for the certain other contracts as to which additional provisions were taken?

A. Yes, I believe Stephan [Rambaud-Measson] was responsible.

Muscato Tr. at 106-07.

277. ATI's corporate designee's testimony also shows that ATI suspended Janovec and Rambaud-Messon after a review of ATI's financial records indicated that a restatement was necessary:

Q. To your understanding, how is it that Mr. Janovec came to be suspended?

A. My understanding is through a company review of the financials, the company made a decision to restate some of the financials and that's what resulted in the suspension of Mr. Janovec.

Q. And Mr. Rambaud-Measson also was suspended. What's your understanding of how he came to be suspended?

A. The same reason as Mr. Janovec.

Muscato Tr. at 91.

278. Furthermore, Rambaud-Measson's deposition transcript dated February 8, 2006, shows, through an adverse inference based on Rambaud-Measson's assertion of his Fifth Amendment privilege against self-incrimination, that he knew the ATI financial reports he provided to Alstom contained materially false and misleading statements.

Q. You knew that materially incorrect financial information related to ATI was being provided to Alstom, correct?

* * *

A. I'm taking the Fifth.

Q. You knew that materially incorrect information related to ATI would be included in Alstom's financial statements, correct?

* * *

A. I'm taking the Fifth.

Rambaud-Measson Tr. at 29.

2. Rambaud-Measson's and Janovec's Incentive Compensation Supports a Strong Inference of Scienter

279. Between January 1, 2002 and March 31, 2003, Defendant Rambaud-Measson was granted additional compensation in the form of bonuses based on the economic performance of ATI. Specifically, Defendant Rambaud-Measson received incentive compensation based on the Transport division and/or ATI achieving specified levels of certain economic performance indicators, including EBIT (Earnings Before Interest and Taxes), Free Cash Flow, Cumulative Free Cash Flow, Average Monthly Cumulative Free Cash Flow, Operating Income, Cash and CONQ Objectives. As ATI's and Alstom Transport's financial performance increased, Rambaud-Measson's bonus increased.

280. According to ATI's corporate designee, Janovec's bonus compensation, like Rambaud-Measson's bonus compensation, was also based on ATI's financial performance.

281. These incentive-based bonuses provided a motive for Rambaud-Measson and Janovec to falsify ATI's financial reports and to approve those false financial reports before they were provided to Alstom, knowing that they would be incorporated into Alstom's public disclosures.

282. Rambaud-Measson's oversight, review of and control over costs related to ATI contracts and specifically related to the Comet V Contract, even prior to 2003, and his position of Senior Vice President that included full profit and loss responsibility over the RSA segment and responsibility for ATI's financial reports, gave him the opportunity to understate ATI's actual costs incurred pursuant to contracts for the construction of railcars. Defendant Rambaud-Measson's motive and opportunity to understate ATI railcar construction costs creates a strong inference that he acted with scienter.

283. Additionally, Janovec's oversight, review of and control over costs related to ATI contracts and specifically related to the Comet V Contract and his position of Vice President of

Finance gave him the opportunity to understate ATI's actual costs incurred pursuant to contracts for the construction of railcars. As stated by Janovec, he reviewed financial figures before they were sent to Alstom and he was also responsible for maintaining adequate internal controls which purported to ensure the accuracy of figures sent to Alstom. Specifically, Janovec testified "I was responsible for maintaining – for assuring that there were adequate internal controls . . . in place, to provide reliable data." Janovec Tr. at 110. Janovec's motive and opportunity to understate ATI railcar construction costs creates a strong inference that he acted with scienter.

3. ATI's Preoccupation with Meeting the "Restore Value" Program Supports a Strong Inference of Scienter

284. On March 14, 2002, in the wake of the vendor financing fraud, Alstom unveiled its "Restore Value" plan at a full day presentation before investors and research analysts. (See Form 6-K, April 5, 2002.) The objective of the "Restore Value" plan included "strengthening the balance sheet . . . increasing cash generation . . . and restoring [investor] confidence in the Company." *Id.* Bilger declared that under the Restore Value plan the Company would cut €250 million in costs by fiscal March 2005 and would lift operating margins to 5% by fiscal 2003.

285. The only way ATI was able to comply with the Restore Value plan was to significantly understate costs in fiscal 2003, thereby giving the artificial appearance of significantly increased margins. Janovec and Rambaud-Measson knew that ATI was losing substantial business in 2002, and that ATI was lagging far behind Alstom's other subsidiaries within the Transport Division. Specifically, the 2002 Annual Report stated that the Transport Division had total sales of €4,413 million in fiscal 2002, a 1% increase over fiscal 2001, and that sales in Europe (excluding the UK) had increased 25% and sales in Asia had increased 72%. (See 2002 Annual Report at 18-19.) Conversely, ATI sales had decreased to €617.8 million or 14% of

Transport's total sales in fiscal 2002, compared to €792 million euros or 18% of Transport's total sales in fiscal 2001. (*See* 2003 Annual Report at 21.)

286. Similarly, the 2002 Annual Report indicated that the Transport Division's total orders were €6.15 billion in fiscal year 2002, an increase of 11% over fiscal year 2001, but that ATI's orders had fallen 46% compared to its orders received in fiscal 2001. (*See* 2002 Annual Report at 16.) As a result, ATI's orders in fiscal 2002 amounted to just 11% of the Transport Division's total orders, compared to 23% at the same period in fiscal 2001. *Id.*

287. While ATI's performance continued to slip, Janovec and Rambaud-Measson created the false illusion that ATI's operating margin and cost-cutting strategies had far exceeded the mandate set forth in the Restore Value plan. As Alstom has now admitted, ATI's operating income was artificially inflated by €167 million, amounting to 30% of ATI's sales of €557 million in fiscal 2003. (*See* 2003 20-F at 33, 80-81.)

288. In fact, the ATI fraud improperly boosted the operating income and margins for the entire Transport Division, making it appear as if the Transport Division was operating at a profit and with increasing operating margins when, in reality, it was operating at a massive loss. The Transport Division reported operating income of €49 million and an operating margin of 3.7% in fiscal 2003. (*See* 2003 Annual Report at 63.) When the full scope of the ATI fraud was finally revealed, and the Company admitted that ATI had inflated its operating income by €167 million, the Transport Division recorded an operating loss of €118 million and an operating margin of minus 2.3% in fiscal year 2003, which was far below the targets set forth in the Restore Value plan. (*See* 2003 20-F at 80.)

D. Alstom Acted with Scienter in Connection with the ATI Fraud

289. Alstom SA is liable as a culpable participant in the ATI fraud, as well as through the principles of respondeat superior. All of the principals of ATI, and ATI itself, were agents of

Alstom SA, and all of their unlawful conduct complained of herein was within the scope of that agency and for the benefit of Alstom SA. Indeed, Alstom SA has admitted that accounting improprieties at ATI inflated its financial results for fiscal 2003.

290. The fact that ATI, under Alstom's direct, active control, intentionally underbid the NJT Contract, which was the locus of the fraud, and had experienced significant cost overruns in the tens of millions of dollars in connection with the NJT Contract, which was widely known throughout ATI and reported to Alstom, also gives rise to a strong inference that ATI and Alstom knew or were deliberately reckless in not knowing about the accounting fraud at ATI. Indeed, several former ATI employees informed Class Counsel's investigator that ATI had intentionally underbid the NJT Contract to keep its work force employed and its manufacturing facilities operating at Hornell, New York, and, as a result, ATI encountered significant cost overruns.

291. Rambaud-Measson, the most senior executive and a director of ATI, reported directly to Michel Moreau, the Senior Executive Vice President of Alstom SA and President of the Transport sector of Alstom SA in Paris. Muscato Tr. at 49-50, 66. Moreau, in turn, reported directly to the Chairman and CEO of Alstom SA (Bilger and later Kron).

292. Similarly, Janovec, the Vice President of Finance of ATI and the most senior finance executive of ATI, reported directly to Roland Kientz, the Chief Financial Officer of the Transport sector of Alstom SA in Paris. Muscato Tr. at 53, 56, 68, 71. Janovec's reporting responsibility was primarily to Kientz at Alstom SA and only secondarily to Rambaud-Measson, his nominal superior at ATI, because Alstom SA exercised direct control over the operations and financial reporting of ATI and did not treat ATI as a separate self-managed corporation. Janovec Tr. at 10, 16-17.

293. At least one of the remaining two directors of ATI was also an agent of Alstom SA. Alain Percet, a Vice President and a director of ATI during the Class Period, worked for Alstom SA both before and after his tenure at ATI.

294. Further, Alstom SA was directly involved in the business and financial affairs of ATI, including the NJT Contract that was at the heart of the instant fraud. As detailed above, at the inception of the NJT Contract, ATI created a “Project Management Plan” (“PMP”) that was intended to “deal[] with the management of the overall project from its very beginning up to its completion.” According to the PMP, the Board of Directors of Alstom SA had oversight responsibilities for the performance of the contract and it required that the Program Director for the NJT Contract “shall . . . [r]eport project progress to ALSTOM’s Board of Directors.”

295. Moreover, Alstom SA participated in the performance of the NJT Contract through its wholly-owned subsidiary, Alstom Transportation SA, located in Villeurbanne, France. The PMP specifically stated that “[t]here are three participating units within the ALSTOM Transport Division . . . that are contributing to the NJT effort,” and it identified these three participating units as ATI, an Alstom facility in Brazil, and Alstom’s facility in Villeurbanne, France. The PMP stated that the operations in Villeurbanne, France will “provide design and manufacturing services for the NJT Program.” The PMP also said that “ALSTOM’s Villeurbanne Facility may be utilized for design or consultation of the vehicle[s.]” And internal NJT memoranda reflect that employees of Alstom SA, including Jean Pierre Froideuaux, Thierry Guinard, David Fontaine, Isabelle Cornelus and Emmanuel Henry, participated in meetings in the United States relating to ATI’s performance on the NJT Contract.

296. According to Janovec, senior management of the Transport segment of Alstom SA in Paris were responsible for setting revenue and cost targets for every ATI contract, including the

NJT Contract. While ATI management was consulted in setting these targets, it was Transport segment President Moreau who retained the final say in determining what the targets would be. Janovec Tr. at 37-39, 43-44.

297. During the Class Period, Janovec and Rambaud-Measson prepared detailed monthly financial reports regarding ATI's costs and revenues on a contract-by-contract basis. They provided these reports to their superiors at Alstom SA, including Moreau, Kientz and Floron Perdrot, the President, CFO and Controller, respectively, of Alstom's Transport segment. These reports were discussed at length in monthly meetings that took place either by conference call or in person in Paris. Janovec Tr. at 22-28.

298. Janovec and Rambaud-Measson also prepared computerized financial reports of ATI's profit and loss, balance sheet and cash flow statement on a regular basis and transmitted these reports electronically to Alstom SA. Alstom SA, in turn, incorporated these results into the consolidated financial statements of Alstom SA. Janovec Tr. at 83-85, 92-94, 107.

299. Testimony provided from Joe Janovec makes clear that, through these processes, Alstom SA exercised direct control over the financial reporting for ATI, and specifically the financial reporting for the NJT Contract. Indeed, according to Janovec, on at least one occasion, Kientz instructed him to accelerate the recognition of revenue on the NJT Contract, contrary to Alstom's internal procedure and internal accounting practice regarding revenue recognition. Janovec Tr. at 101-05.

Janovec's testimony also makes clear that senior executives at Alstom SA, including Moreau, Kientz, and Perdrot, were aware of the ATI fraud, yet they allowed Alstom to issue the materially false and misleading financial statements at issue in this action, as detailed above. The ATI financial reports that Janovec and Rambaud-Measson provided to Alstom SA and discussed with senior

management of the Transport segment included the costs on the NJT Contract, which Alstom later admitted were fraudulently understated. Janovec Tr. at 96-98. In fact, according to Janovec, he and Rambaud-Measson specifically discussed the fact that the actual costs of the NJT Contract exceeded ATI's targets and reported costs with Moreau, Kientz and Perdrot in January 2003 – six months before Alstom SA publicly acknowledged this fact. Janovec Tr. at 50, 58-63, 67-69, 74-77.

IX. CLASS ACTION ALLEGATIONS

300. This is a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of all persons or entities who purchased or otherwise acquired Alstom publicly-traded stock, ADSs or other shares between August 3, 1999 and August 6, 2003.

301. Excluded from the Class are (1) the Company, Alstom USA, ATI, Alcatel, Marconi and the underwriters of the Secondary Offering and their officers and directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which they have a controlling interest or of which they are a parent; and (2) the Officer Defendants, their immediate families, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which any of them has a controlling interest.

302. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impracticable. Throughout the Class Period, Alstom ADSs were traded on the NYSE, Alstom UKDSs were traded on the London Stock Exchange, and Alstom common stock was traded on the Paris Exchange. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe that there are hundreds of thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Alstom or its transfer agent and may be notified of the pendency of the action by mail, using the form of notice similar to that customarily used in securities class actions.

303. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. The questions of law and fact common to the Class include whether defendants: (i) violated the Exchange Act; (ii) omitted and/or misrepresented material facts; (iii) knew or recklessly disregarded that their statements were false; and (iv) artificially inflated Alstom's stock price, and the extent of and appropriate measure of damages.

304. Plaintiffs' claims are typical of the claims of the members of the Class as plaintiffs and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

305. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class actions and securities litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the other class members.

306. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual class members may be relatively small, the expense and burden of individual litigation make it impossible for the class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

307. Class members were damaged. In reliance on the integrity of the market, they paid artificially-inflated prices for Alstom stock.

X. NO SAFE HARBOR

308. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the statements pleaded herein were not specifically identified as "forward-looking

statements” when made, and many were representations about the Company’s present status. To the extent there were any forward-looking statements: (a) there were no meaningful cautionary statements identifying the important then-present factors that could cause actual results to differ materially from those in the purportedly forward-looking statements; and (b) the particular speakers of such forward-looking statements knew that the particular statements were false or misleading, and/or the forward-looking statements were authorized and/or approved by an executive officer of the Company who knew that those statements were false when made.

309. Any purported warnings contained in the press releases and statements quoted herein were generic and unparticularized boilerplate statements of risks, and thus lacked the meaningful cautionary language necessary to insulate any purportedly forward-looking statements.

XI. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET

310. Plaintiffs will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) The omissions and misrepresentations were material;

(c) The Company’s shares traded in efficient markets;

(d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company’s shares; and

(e) Plaintiffs and other members of the Class purchased Alstom publicly-traded shares between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

311. At all relevant times, the markets for Alstom publicly-traded shares were efficient for the following reasons, among others:

(a) As a regulated issuer, Alstom filed periodic public reports with the SEC and the French Commission des Opérations de Bourse;

(b) Alstom regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services; and

(c) Alstom's publicly-traded shares were actively traded in an efficient market.

XII. CLAIMS FOR RELIEF

A. Count I for Violation of §10(b) of the Securities Exchange Act and Rule 10b-5 Promulgated Thereunder

Against Alstom SA, Alstom USA, ATI, Bilger, Newey, Rambaud-Measson, and Janovec ("10(b) Defendants")

312. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

313. This Count is asserted against the 10(b) Defendants by plaintiffs on behalf of themselves and all members of the Class for violations of §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder.

314. During the Class Period, the 10(b) Defendants individually and in concert, directly and indirectly, by the use and means of instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct that intended to and did: (i) deceive the investing public, including plaintiffs and the Class; (ii) artificially inflate the earnings reported by the Company and included in the Company's financial statements filed with the SEC; (iii) artificially inflate and maintain the market price of the Company's stock; and (iv) cause plaintiffs and the Class to purchase or otherwise acquire the Company's stock.

315. The 10(b) Defendants: (a) employed devices, schemes, and artifices to defraud while in the possession of material, adverse non-public information; (b) made untrue and/or misleading statements of material fact and/or omitted to state material facts necessary in order to make the statements made not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs and the other members of the Class in an effort to artificially inflate the price of the Company's securities and maintain such artificially inflated prices, in violation of §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

316. In addition to the duties of full disclosure imposed on the 10(b) Defendants as a result of their making affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they had a duty to promptly disseminate truthful information that would be material to investors, in compliance with GAAP and the integrated disclosure provisions of the SEC as embodied in SEC Regulations S-X (17 C.F.R. §210.01, *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*) and other SEC regulations, including truthful, complete and accurate information with respect to the Company's operations and performance so that the market prices of the Company's publicly-traded securities would be based on truthful, complete and accurate information.

317. The 10(b) Defendants named in this count had access to the non-public information detailed above, by virtue of their receipt of periodic internal reports and other financial information. During the Class Period, Alstom, Alstom USA and ATI acted through the Officer Defendants, whom they portrayed and represented to the press and public as their authorized representatives. The willfulness, motive, knowledge, and/or recklessness of the Officer Defendants is therefore imputed to Alstom, Alstom USA, and ATI which are liable for the securities law violations of the Officer

Defendants while acting in their official capacity as Company representatives, or, in the alternative, which are liable for the acts of the Officer Defendants under the doctrine of *respondeat superior*.

318. As detailed above at ¶¶ 121 to 131, Alstom SA is liable as a direct participant in the ATI fraud, as well as through the principles of *respondeat superior*. All of the principal officers of ATI, and ATI itself, were agents of Alstom SA, and all of their unlawful conduct complained of herein was within the scope of that agency.

319. As detailed above at ¶ 120, Alstom USA is also liable for the ATI fraud under the principles of *respondeat superior*.

320. Each of the 10(b) Defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market of Alstom's securities. Had the adverse facts been properly disclosed, Alstom's securities would not have sold at artificially inflated prices during the Class Period.

321. As alleged herein, each 10(b) Defendant acted with scienter during the Class Period, in that each had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth and failed to ascertain and disclose the true facts.

322. The facts, as alleged herein, compel a strong inference that the 10(b) Defendants made materially false and misleading statements to the investing public and acted with scienter in that they knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. Moreover, the 10(b) Defendants

caused Alstom to engage in improper accounting practices, and in turn caused Alstom to report artificially inflated financial results.

323. Defendants Bilger and Newey were senior executives of Alstom and responsible for all of its day-to-day operations, and Defendants Rambaud-Measson and Janovec were senior executives of ATI and responsible for all of its day-to-day operations. By virtue of their positions and control, the Officer Defendants were privy to information reflecting the true facts regarding ATI and Alstom. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Officer Defendants.

324. The Officer Defendants participated in the drafting, preparation, and/or approval of the various public reports and other communications complained of herein and knew of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature.

325. As a result of the dissemination of the materially false and misleading information and/or the 10b Defendants' failure to disclose material facts, as set forth herein, the market price of Alstom securities was artificially inflated at all times during the Class Period. In ignorance of the fact that the market price of Alstom's publicly-traded securities was artificially inflated, and relying directly or indirectly on the materially false and misleading statements made by the 10(b) Defendants, or upon the integrity of the market in which the securities trade, plaintiffs and the Class purchased or otherwise acquired for value Alstom securities during the Class Period at artificially high prices and were damaged thereby.

326. At the time of such misstatements and omissions, plaintiffs and the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs, the Class, and the

marketplace known of the true financial condition of the Company, which was not disclosed by the 10(b) Defendants, plaintiffs and the Class would not have purchased or otherwise acquired Alstom shares during the Class Period, or, if they had purchased or otherwise acquired such shares during the Class Period, they would not have done so at artificially inflated prices.

327. The price of Alstom securities declined materially upon public disclosure of the true facts that had been misrepresented or concealed, as alleged herein. Plaintiffs and other members of the Class have suffered substantial damages as a result of the wrongs alleged herein.

328. Alstom, Alstom USA, ATI, and the Officer Defendants are liable as direct participants in all of the wrongs complained of herein. Through their positions of control and authority, the Officer Defendants were in a position to and did control all of the Company's public filings and press releases as more particularly set forth above. In addition, certain of these false and misleading statements constitute "group published information," which the Officer Defendants were responsible for creating, reviewing and/or approving before they were disseminated to the investing public. Alstom, Alstom USA, and ATI are liable for each of the statements of the Officer Defendants through the principles of *respondeat superior*.

329. In addition, the Officer Defendants are liable for the following specific false and misleading statements:

(a) Defendant Bilger is also liable for his own statements as more particularly set forth above in ¶¶ 158, 168, 178-81, 183, 186, 190, 192, 195, 200, 206, 210, 214, 215, 217, and 223;

(b) Defendant Newey is liable for his own statements as more particularly set forth above in ¶¶ 152, 153, 165, 166, 172, 174, 176, 178-81, 188, 190, 195, 204, 207, 211, 212, 215, and 219;

(c) Defendants Janovec and Rambaud-Measson are liable for the false and misleading statements set forth in ¶¶ 158, 161, 163-165, 168, 171-172, 174, 176, 180-181, 183, 188, 190, 192-193, 202, 204, 206, 207, 211-212, 214-215, 217, 219, 221, 223, and 226-228 to the extent that Alstom's consolidated financial statements and consolidated orders and sales data included ATI's financial results.

330. By reason of the foregoing, the 10(b) Defendants violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

B. Count II for Violation of §20(a) of the Exchange Act

Against Alstom, Alstom USA, Bilger, Newey, Rambaud-Measson and Janovec (the "20(a) Defendants")

331. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

332. This count is asserted against the 20(a) Defendants by plaintiffs on behalf of themselves and all members of the Class for violation of §20(a) of the Exchange Act.

333. The 10(b) Defendants committed a primary violation of §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, by making false and misleading statements of material fact, in connection with the purchase and sale of securities, which were relied upon by plaintiffs and all other members of the Class to their detriment (as described herein). At the time these false and misleading statements were made, the Company knew, or was reckless in not knowing, of their falsity.

334. Bilger and Newey had direct control and/or supervisory involvement in the operations of the Company and therefore had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. Alstom and Alstom USA had the power to control or influence ATI, Rambaud-Measson, and

Janovec with respect to the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. Rambaud-Measson and Janovec had the power to control or influence ATI with respect to the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

335. By reason of their status as officers and members of management and/or as senior executives of Alstom and/or ATI, or their ownership of substantial amounts of Alstom common stock during the Class Period, the Officer Defendants are “controlling persons” of Alstom within the meaning of §20(a) of the Exchange Act because they had the power and influence to cause Alstom to engage in the unlawful conduct complained of herein. Because of their positions of control, the Officer Defendants were able to, and did, directly or indirectly, control the conduct of Alstom’s business, the information contained in its filings with the SEC, and public statements about its business.

336. As detailed above at ¶¶ 99-114, Rambaud-Measson and Janovec were control persons of ATI throughout the Class Period by virtue of, among other things, their positions as senior officers at ATI, and they were in positions to control and did control the false and misleading statements and omissions with respect to the ATI accounting fraud as alleged in this Complaint.

337. As detailed above at ¶¶ 121-131, Alstom SA controlled Rambaud-Measson, Janovec, and ATI throughout the Class Period.

338. As detailed above in ¶ 120, Alstom USA controlled Rambaud-Measson, Janovec and ATI and caused ATI, Janovec and Rambaud-Measson to carry out the improper accounting for the NJT contract.

339. Each of the 20(a) Defendants named in this Count were provided with or had access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

340. As set forth above, each of the 20(a) Defendants controlled persons or entities who violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. By virtue of their positions as controlling persons, the 20(a) Defendants named in this count are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate cause of the 20(a) Defendants' wrongful conduct, plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's shares during the Class Period.

XIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs on their own behalf and on behalf of the Class pray for judgment as follows:

- A. Declaring this action to be a proper class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Certifying plaintiffs as Class Representatives and their counsel as Class Counsel;
- C. Declaring and determining that Defendants violated the federal securities laws by reason of their conduct as alleged herein;
- D. Awarding plaintiffs and the Class monetary damages, jointly and severally, for all losses and damages suffered as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- E. Awarding plaintiffs and the Class their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements;

F. Compelling the defendants to disgorge all proceeds they realized from their illegal insider trading;

G. Granting restitution of plaintiffs' monies of which they were defrauded;

H. Awarding extraordinary, equitable and/or injunctive relief as permitted by law; and

I. Granting such other and further relief as the Court deems to be just and proper.

XIV. JURY DEMAND

Plaintiffs hereby demand a trial by jury.

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