IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE DELPHI CORP. SECURITIES LITIGATION This Document Relates to: ALL ACTIONS	MDL No. 1725 Master Case No. 05-md-1725 E.D. Mich. No. 06-10026 Hon. Gerald E. Rosen

FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

REDACTED PUBLIC VERSION

The unredacted version of this document is filed under seal because it contains material designated by defendants in this litigation as confidential and subject to the protections of a confidentiality order signed on October 15, 2007 and entered on October 18, 2007 *In re Delphi Corp. Securities Litigation,* MDL No. 1725, Master Case No. 05-and-1725.

Dated: October 25, 2007

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1. Court-appointed Lead Plaintiffs, the Teachers' Retirement System of Oklahoma, the Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H and Stichting Pensioenfonds ABP (collectively "Lead Plaintiffs"), bring this First Amended Consolidated Class Action Complaint ("Amended Complaint") on behalf of themselves and all other persons and entities, other than Defendants and their affiliates as specified in ¶¶ 37-57 below, who purchased or acquired publicly traded shares, bonds or notes of Delphi Corp. ("Delphi" or the "Company") and securities issued by Delphi's Trusts ("Trust I" and "Trust II"), as defined below, between March 7, 2000 and March 3, 2005 (the "Class Period," as defined more fully below), based on the misrepresentations and material omissions asserted herein, and were injured thereby.

2. This Amended Complaint asserts claims against Deloitte & Touche LLP ("Deloitte"), the outside auditing firm of Delphi Corp.; and certain third parties that participated in sham transactions with the Company intended to manipulate the Company's financial statements, namely BBK, Ltd. ("BBK"), SETECH, Inc. ("SETECH") and JPMorgan Chase & Co. ("JP Morgan") (as successor to Bank One ("Bank One")) (collectively, the "Scheme Defendants").

3. The original Consolidated Class Action Complaint also alleged claims against Delphi; Delphi Trust I and Delphi Trust II; certain of Delphi's former officers, namely its former President, Chief Executive Officer and Chairman of the Board, J.T. Battenberg III ("Battenberg"); its former Vice Chairman, Chief Financial Officer and member of the Board of Directors Alan Dawes ("Dawes"), its former Chief Accounting Officer and Controller Paul R. Free ("Free"), its former Vice Chairman and Chief Technology Officer, Donald Runkle ("Runkle"); its Vice President, Chief Restructuring Officer John D. Sheehan ("Sheehan"); its

former Vice President of Treasury, Mergers and Acquisitions John G. Blahnik ("Blahnik"); certain former and current members of the Company's Audit Committee, including, Robert H. Brust ("Brust"), Oscar De Paula Bernardes Neto ("Neto"), Cynthia A. Niekamp ("Niekamp"), John D. Opie ("Opie"); certain of the Company's other former and current Directors, including Virgis W. Colbert ("Colbert"), David N. Farr ("Farr"), Dr. Bernd Gottschalk ("Gottschalk"), Susan A. McLaughlin ("McLaughlin"), Roger S. Penske ("Penske"), John F. Smith, Jr. ("Smith"), Patricia Sueltz ("Sueltz"); and certain investment banks that participated in the Company's debt and preferred securities offerings during the Class Period ("the Underwriters"), namely Banc of America Securities LLC ("BAS"), Barclays Capital Inc. ("Barclays"), Bear, Stearns & Co. Incorporated ("Bear Stearns"), Citigroup Global Markets Inc. ("Citigroup"), Credit Suisse First Boston Corporation ("Credit Suisse"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Morgan Stanley & Co. Incorporated ("Morgan Stanley"), UBS Securities LLC ("UBS"), Wachovia Capital Markets, LLC ("Wachovia") (hereafter referred to collectively as the "Settling Parties").

4. On August 31, 2007, the Settling Parties reached a settlement with Lead Plaintiffs and the Class, which was preliminary approved by Order of this Court dated September 5, 2007 and which is scheduled for a final hearing on November 13-14, 2007. The remaining fraud claims alleged herein, brought pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), are asserted against the Scheme Defendants for their direct and active participation in Delphi's fraudulent scheme, and Deloitte, for abdicating its audit responsibilities and certifying Delphi's financial statements in the face of egregious fraud, for the sake of huge consulting profits. In addition, this Complaint asserts non-fraud claims, pursuant to the Securities Act of 1933 ("Securities Act"), which relate to certain securities offerings made pursuant to registration

statements filed by Delphi. Those claims, as to which Lead Plaintiffs expressly disclaim reliance on any allegation of fraud made herein, are brought against Deloitte.

5. With respect to the remaining Defendants in this action, Lead Plaintiffs allege the following upon information and belief, except as to those allegations concerning Lead Plaintiffs, which are alleged upon personal belief. Lead Plaintiffs' information and belief is based upon, among other things, their investigation regarding Delphi, the Defendants, the Settling Parties, and other Relevant-Non Parties, including, without limitation: (a) a review of approximately 700,000 documents produced by the Defendants and the Settling Parties pursuant to the Court's February 15, 2007 Order which lifted the discovery stay under the Private Securities Litigation Reform Act (the "Lift Stay Order") and required the Defendants and the Settling Parties to produce all documents they produced to any regulatory authorities in connection with these regulatory authorities' investigations into Delphi's accounting fraud as alleged herein ("Lift-Stay Document Production"); (b) review and analysis of filings made by Delphi, Trust I and Trust II with the United States Securities and Exchange Commission ("SEC"); (c) interviews with current and former Delphi employees, and employees of entities with which Delphi engaged in transactions during the Class Period; (d) review and analysis of internal Delphi documents; (e) review and analysis of press releases, public statements, news articles and other publications disseminated by or concerning the automotive industry, Delphi, other former defendants, including Battenberg, Dawes, Free, Runkle, Sheehan, and Blahnik; (f) review and analysis of transcripts of Delphi's conference calls; (g) review and analysis of securities analysts' reports concerning Delphi; (h) other publicly available information concerning the Settling Parties and current Defendants; (i) the civil complaint filed by the SEC on October 30, 2006 against Battenberg, Dawes, Free, Blahnik, Milan Belans, a former director of capital planning and

pension analysis at Delphi, Catherine Rozanski, a former director of financial accounting and reporting at Delphi, Judith Kudla, a former director of finance in Delphi's information technology department, Atul Pasricha, a former assistant Treasurer at Delphi, Laura Marion, former director of financial accounting and reporting at Delphi, B.N. Bahadur, founder and Chairman of BBK, as well as Scott McDonald, Stuart Doyle and Kevin Curry, former executives at EDS Corp., a company whose transactions Delphi accounted for fraudulently.

6. The Lift Stay Document Production has been designated as "attorneys-eyes only" by the producing parties pending the entry by this Court of the stipulation and proposed protective order submitted on June 27, 2007 (the "Proposed Protective Order"), and also contains documents designated as "Confidential" pursuant to the terms of the Proposed Protective Order. Therefore, the unredacted version of this Amended Complaint has been filed under seal.

7. Lead Plaintiffs believe that further substantial evidentiary support will exist for the allegations in this Complaint after a reasonable opportunity for additional discovery. Many of the facts supporting the allegations contained herein are known only to Defendants, the Settling Parties, and other Relevant Non-Parties or are exclusively within their custody and control.

I. SUMMARY OF CLAIMS

8. Delphi became a public company in May 1999, following a spin-off from General Motors Corporation ("GM"). Launched into a difficult industrial market with intense pressure to succeed, within weeks Delphi's managers found creative ways to conceal the true financial condition of the Company. As early as July 1999, Delphi entered into the first of what would become a series of transactions with SETECH and other third parties to temporarily unload hundreds of millions of dollars of worthless and excess inventory from its balance sheet, recognizing these transactions as sales of inventory on its income statement, yet failing to

disclose its arrangement to buy back from SETECH (and the other Scheme Defendants) the very same inventory. Similar hijinks took place with GM – where Delphi hid from investors hundreds of millions of dollars in warranty costs owed to its former parent.

9. There are a myriad of other instances where artful accounting and fictitious transactions were exploited so that Delphi could conjure earnings where there were none. This pattern continued for years – indeed, virtually every financial statement filed by this Company since its inception was materially false and misleading.

10. On June 30, 2005, following the commencement of an SEC inquiry, which prompted an internal investigation by its Audit Committee, Delphi restated all the financial statements it had issued as a stand-alone company, admitting that its previously reported results were unreliable due to accounting errors, and included material overstatements of pre-tax income among other misstated financial metrics (the "Restatement").

11. As made clear by the Restatement, Delphi inflated its revenues during the Class Period by, *inter alia*, booking revenues from fictitious sales of inventory and precious metals, misclassifying warranty payments as pension obligations, prematurely recognizing revenues and improperly deferring expenses, thereby increasing its net income during these years by hundreds of millions of dollars. The accounting improprieties highlighted by the Restatement included, among other things:

- Delphi improperly recognized approximately $441 million from sham, round-trip transactions at the end of key financial reporting periods with BBK, Bank One, and SETECH;
- Delphi improperly amortized more than $240 million in warranty expenses owed to GM, booking these expenses as payments relating to outstanding pre-separation pension obligations owed to GM so as to avoid the immediate recognition of these expenses;
- Delphi improperly accelerated recognition of at least $68 million in rebates from Delphi's information technology service providers, including EDS; and

- Delphi improperly understated Delphi's inventory balances by intentionally failing to record and/or delaying delivery of inventory.

12. Delphi's Restatement was the culmination of a fraud committed by Delphi, certain of its most senior officers, the Scheme Defendants – who had entered into transactions with Delphi for the sole purpose of manipulating Delphi's reported financial results – and Deloitte, Delphi's independent auditor, which had opined to the public markets that Delphi's financial statements complied with generally accepted accounting principles despite it knowing that Delphi, its officers and directors, and the Scheme Defendants, had manipulated Delphi's financial results and rendered the Company's financial statements false and misleading.

13. On August 31, 2007, Lead Plaintiffs reached a partial settlement with Delphi and its officers and directors for the claims asserted in Lead Plaintiffs Consolidated Class Action Complaint. This First Amended Consolidated Class Action Complaint is thus limited to Plaintiffs' remaining claims against Deloitte and the Scheme Defendants for their role in defrauding Plaintiffs.

A. Summary Of Claims Against Deloitte

14. Deloitte served as the independent auditor for both GM and Delphi. This relationship was forged well before these companies split in May 1999 and, with respect to Delphi, continued until shortly after Delphi filed for bankruptcy. Deloitte's role in the new Delphi was extensive and permeated throughout the organization. In 1999 and 2000, in advance of, and following the split from GM, Deloitte was retained to develop Delphi's financial reporting system through its installation of a SAP management program. Deloitte was responsible for establishing accounting procedures for the new Company based on its institutional knowledge of GM. In addition, in mid-1999, shortly after the separation, Deloitte

performed reviews of Delphi's internal control and reporting protocols, including in the key area of inventory accounting.

15. Deloitte's consulting engagement with Delphi was highly lucrative. In 2000 and 2001 alone, Deloitte was paid a total of $70 million for its financial consulting services, including the installation of Delphi's SAP system. During this same time, Deloitte was paid $13.2 million for its auditing services. In effect, Deloitte's engagement during this period was principally a consulting engagement and its auditing work for the Company represented just a small portion – 16% – of its revenues from Delphi. It is therefore unsurprising that it was during this period when Deloitte's independence was most compromised, and that Delphi engaged in the most egregious and blatantly transparent accounting schemes, all of which were either tacitly, or explicitly, approved by Deloitte.

16. As set forth below, Deloitte was complicit with, and/or recklessly indifferent to, the accounting fraud committed by Delphi's officers and directors. There were also glaring red flags – obvious signs of fraudulent conduct – that should have alerted Deloitte to the fraud being perpetrated by Delphi's management.

17. During the Class Period, Deloitte was required under United States Generally Accepted Auditing Standards ("GAAS") to test Delphi's accounting controls and policies, evaluate the methods used by Delphi to process significant accounting information, assess the level of control risk, and determine conditions that could require the extension or modification of audit tests. GAAS requires auditors to consider and evaluate the risks that a company's audited financial statements are free of material misstatements and identifies various "red flags" that the auditors need to consider in determining audit risk relating to misstatements arising from fraudulent reporting. In performing these audit functions, Deloitte was responsible for collecting

competent evidential matter, including contracts, checks, invoices etc., to support its audits of Delphi's transactions. As evidenced by the facts set forth herein, Deloitte abandoned its auditing function in the face of egregious and obvious fraud.

B. Summary Of Claims Against The Scheme Defendants

18. From 1999 to 2003, and often right before the end of critical financial reporting periods, the Scheme Defendants engaged in sham, round-trip transactions whereby they purported to "buy" certain inventory owned by Delphi in exchange for huge fees and reimbursement of all of their expenses. The (undisclosed) key to each of these transactions was the Scheme Defendants' promise to "sell-back" the very same assets in the future – typically right after the close of the financial reporting period in which the sale was recorded. The Scheme Defendants collaborated with Delphi to represent to the market that these transactions were income and cash flow generating sales, instead of what they actually were: loans.

19. In return for hefty fees, the Scheme Defendants perpetrated these fictitious transactions that had the effect of: (1) artificially inflating Delphi's cash from operations, net income, earnings and return on net assets; (2) understating Delphi's debt obligations, giving the impression that Delphi was less leveraged than it actually was; and (3) projecting the false impression that Delphi was efficiently and effectively managing its excess assets and inventory.

20. As set forth below, the Scheme Defendants knew that these transactions were fraudulent, but actively participated in them nonetheless. For example, a former marketing and sales employee at SETECH, who, over a period of several years, had "bought" and quickly "resold" to Delphi $145 million of indirect materials, indicated that SETECH knew it was engaged in loan transactions rather than sales, as it was clear that "it was borrowed money that you've got to repay, and the collateral is the inventory."

21. Similarly, as alleged more fully herein, at the end of December 2000, Bank One loaned Delphi $200 million despite knowing that,

REDACTED

22. Likewise, a former BBK consultant stated that BBK knew that its three round-trip transactions with Delphi, all of which occurred right before the close of critical financial periods and temporarily reduced Delphi's reported inventory levels by $89 million, were a device used "to move things off [Delphi's] books for a short period of time, and then bring them back on the books when cash flow improved."

23. Thus, the Scheme Defendants are culpable in the fraudulent scheme because they played an integral part in creating these transactions, and because they knew that the transactions served no purpose other than to deceive the market.

II. JURISDICTION AND VENUE

24. Certain claims asserted herein arise under Sections 10(b) 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. Certain other claims asserted herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o.

25. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, Section 22 of the Securities Act, 15 U.S.C. § 77v, and 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States.

26. Venue in this District is based on the order of the Panel on Multidistrict Litigation dated December 12, 2005, which transferred this case from the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1407. Venue in the Southern District of New York was proper pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and Section 22 of the Securities Act, 15 U.S.C. § 77v. Many of the acts and transactions that constitute the violations of law complained of herein, including the dissemination to the public of materially false and misleading statements, occurred in that District.

27. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications and the facilities of national securities exchanges.

III. PARTIES

A. Lead Plaintiffs

28. Teachers' Retirement System of Oklahoma ("OTRS") is a public pension fund established for the benefit of the current and retired employees of Oklahoma's local school districts, career technology schools, and public colleges and universities. OTRS provides retirement benefits to thousands of members and their beneficiaries. OTRS has over $7 billion in assets under management. As set forth in the certification attached as Exhibit 1, OTRS purchased common stock of Delphi during the Class Period and suffered losses as result of the federal securities law violations alleged herein.

29. Public Employees' Retirement System of Mississippi ("MS PERS") is a pension fund for the benefit of the current and retired public employees of the State of Mississippi. MS PERS has approximately $16 billion in total assets under management and is responsible for the retirement income of employees of the state, including current and retired employees of the state,

public school districts, municipalities, counties, community colleges, state universities and such other public entities as libraries and water districts. MS PERS provides benefits to over 60,000 retirees, and future benefits to more than 250,000 current and former public employees. As set forth in the certification attached as Exhibit 2, MS PERS purchased common stock of Delphi during the Class Period and suffered losses as a result of the federal securities law violations alleged herein.

30. Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen") is a Vienna, Austria based mutual fund manager with more than $40 billion in assets under management. As set forth in the certification attached as Exhibit 3, Raiffeisen purchased common stock of Delphi during the Class Period and suffered losses as a result of the federal securities law violations alleged herein.

31. Stichting Pensioenfonds ABP ("ABP") is an entity established under the laws of the Kingdom of the Netherlands. ABP is the pension fund for public employees in the governmental and educational sectors in the Netherlands. With assets amounting to nearly €150 billion, ABP is one of the three largest public pension funds in the world. Its assets represent around thirty-five percent of total Dutch pension fund assets, and its client base totals some 2.2 million participants and retirees (e.g., civil servants, educators, university employees, the police and firemen). ABP maintains its office and principal place of business at Oude Lindestraat 70, Postbus 2889, 6401 DL Heerlen, The Netherlands. ABP also maintains an office and conducts significant operations in the United States at 666 Third Avenue, 2nd Floor, New York, NY 10017. As set forth in the certification attached as Exhibit 4, ABP purchased Delphi common stock during the Class Period in reliance on the Defendants' public statements, omissions and misconduct, and suffered losses as result of the federal securities law violations alleged herein.

32. On June 27, 2005, the Honorable Naomi Reice Buchwald, United Stated District Judge for the Southern District of New York, appointed OTRS, MS PERS, Raiffeisen and ABP as Lead Plaintiffs for this litigation.

B. Additional Named Plaintiffs

33. The Oklahoma Law Enforcement Retirement System ("OLERS") is a public pension fund established to provide retirement and medical benefits to members and their survivors for members of the law enforcement profession in Oklahoma. OLERS purchased shares of Delphi during the Class Period and suffered a loss as a result of the federal securities law violations alleged herein. OLERS has joined in this Action as a Named Plaintiff and proposed Class Representative.

34. Norman Rosencrantz purchased shares of Delphi Trust I 8.25% Cumulative Trust Preferred securities during the Class Period and suffered damages as a result of the federal securities law violations alleged herein. Rosencrantz has joined in this Action as a Named Plaintiff and proposed Class Representative.

35. Ronald Lee Wasserman, Sr. purchased Delphi Corporation 6.5% Bonds issued during the Class Period and suffered damages as a result of the federal securities law violations alleged herein. Wasserman has joined in this Action as a Named Plaintiff and proposed Class Representative.

36. Naomi Raphael purchased shares of Delphi during the Class Period and suffered a loss as a result of the federal securities law violations alleged herein. Raphael has joined in this Action as a Named Plaintiff and proposed Class Representative.

C. The Defendants

1. Deloitte & Touche LLP

37. Defendant Deloitte is a Delaware limited liability partnership headquartered in New York. Deloitte was directly involved in auditing Delphi and its affiliated and subsidiary companies and played an integral part in the conduct, acts and omissions described below. At all times relevant to this action, Deloitte provided auditing services to Delphi, including without limitation conducting audits of the Company's year-end financial statements and review of its quarterly reports. In connection therewith, Delphi issued unqualified audit reports for Fiscal Years 1999, 2000, 2001, 2002 and 2003. In addition, Deloitte signed consent letters for the incorporation by reference of the following audit reports appearing in Delphi's Forms 10-K and 10-K405; February 9, 1999 for Fiscal Year 1999; January 16, 2001 for Fiscal Year 2000; January 16, 2002 for Fiscal Year 2002; January 16, 2003 for Fiscal Year 2002; and January 26, 2004 for Fiscal Year 2003.

2. Scheme Defendants

38. BBK is an international business consulting firm that specializes in corporate renewal, operations improvement and turnaround management. It helps businesses recover from challenging circumstances to remain viable business entities. Since its formation in 1984, BBK has worked closely with businesses in the automotive and manufacturing sectors, including Delphi, General Motors Corp. ("GM"), Visteon Corp., Toyota Motor Corp. and DaimlerChrysler. According to its website, BBK claims that it holds a dominant and privileged vantage point and position in the area of automotive turnaround services and supply chain consulting. In April 2005, B.N. Bahadur, BBK's founder and Chairman, confirmed that Delphi is a long-standing BBK client. Bahadur and William G. Diehl ("Diehl"), BBK's President, CEO and Global Automotive Group Lead, are responsible for managing BBK's business relationship

with Delphi. BBK is headquartered in Southfield, Michigan. As described above, BBK served as a counter-party to various of Delphi's inventory disposal transactions during the Class Period. On October 30, 2006, the SEC named B.N. Bahadur for violations of the federal securities laws based on his actions and those of BBK set forth in this Complaint. Bahadur reached a settlement with the SEC on the same date, paying a penalty of $500,000.

39. SETECH, located in Murfreesboro, Tennessee, is a provider of integrated supply and inventory management services. It offers customers outsourcing of maintenance, repair and operations ("MRO"), supply procurement and management. SETC de Mexico, a subsidiary of SETECH, also specializes in MRO and conducts SETECH's business with the Mexican operations of SETECH's existing clients, including Delphi. SETECH bills itself as a "pure" integrator – a "neutral" third party providing management MRO services at a nominal fee. It touts that its approach "reduces excess inventory on hand." SETECH also states on its website that "[t]ransfer of actual ownership of the complete maintenance, repair and operations support inventory directly to SETECH is optional but encouraged. Most of our clients have chosen this option and have immediately realized savings in cash flow, budgets, balance sheets and earnings statements. The improved flexibility in the finance and planning areas can be dramatic." As described above, SETECH served as a counter-party to various of Delphi's indirect material disposal transactions during the Class Period.

40. Bank One was, at all relevant times during the Class Period, a bank holding company headquartered in Chicago, Illinois. Bank One operated the Bank One Automotive Group, which was based in Detroit, Michigan from prior to the start of the Class Period through April 2002. In December 2000, the Bank One Automotive Group entered into a $200 million transaction with Delphi that, as set forth below in greater detail, amounted to a financing

transaction secured by Delphi's inventory of precious metals. Bank One has produced documents to the SEC in connection with the SEC investigation of Delphi. On July 1, 2004, Bank One merged with JPMorgan and ceased to exist as an independent entity. JPMorgan is named as a defendant herein as the successor-in-interest to Bank One.

D. Relevant Non-Parties

1. The Company And Its Trusts

41. Delphi Corp. (formerly Delphi Automotive Systems) is the largest auto parts supplier in the world. As the leading global supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology, Delphi's technologies are present in more than 75 million vehicles on the road worldwide as well as in communication, computer, consumer electronic, energy and medical applications. Delphi was incorporated in Delaware in 1998 and spun-off from GM in 1999. The Company has its headquarters in Troy, Michigan, and has regional headquarters in Paris, France, Tokyo, Japan, and São Paulo, Brazil. During the Class Period, Delphi's shares traded on the New York Stock Exchange under the symbol "DPH." Shortly after the filing of the Complaint, on October 8 and October 14, 2005, Delphi and certain of its subsidiaries sought bankruptcy protection under Chapter 11 or the United States Bankruptcy Code. Delphi's Chapter 11 petition is pending before the Honorable Robert D. Drain, United States Bankruptcy Court for the Southern District of New York.

42. Delphi Trust I is a Delaware trust established by an August 25, 2003 Declaration of Trust among Delphi, as Sponsor, and the following Trustees: Bank One Delaware, Inc. as "Delaware Trustee," and Battenberg and Dawes as "Regular Trustees." Delphi created the Trust to buy 8.25% Junior Subordinated Notes from Delphi, due October 15, 2033, and to sell Delphi-guaranteed 8.25% Cumulative Trust Preferred Securities ("Trust I Notes") to the public.

According to the Declaration of Trust, Delphi Trust I was "established by the Sponsor and the Trustees for the purposes of (i) issuing preferred securities ... representing undivided beneficial interests in the assets of the Trust in exchange for cash, (ii) issuing and selling common securities . . . representing undivided beneficial interests in the assets of the Trust to the Sponsor in exchange for cash, [and] (iii) owning subordinated debt securities of the Sponsor." On September 3, 2003, Delphi (as registrant) and Delphi Trust I, along with Delphi Trusts II, III and IV, filed a registration statement with the SEC on Form S-3 ("2003 S-3") for up to $1.5 billion in debt securities fully and unconditionally guaranteed by Delphi. In the 2003 S-3, Delphi stated: "Each of the trusts is a newly-formed special purpose entity, has no operating history or independent operations and is not engaged in and does not propose to engage in any activity other than its holding as trust assets our junior subordinated notes and the issuing of the trust preferred securities." Delphi added: "We formed Delphi Trust I, II, III and IV, Delaware Statutory trusts, to raise capital for us by: [i] issuing trust preferred securities under this prospectus; and [ii] investing the proceeds from the sale of the trust preferred securities in our junior subordinated notes." The Trust I Notes were issued on or about October 21, 2003 ("the "Trust I Offering") pursuant to the 2003 S-3, prospectus filed on October 21, 2003 under 424(b)(5) filed on October 2, 2003 (collectively, the "Trust I Offering Materials").

43. Delphi Trust II is a Delaware trust established by an August 25, 2003 Declaration of Trust among Delphi, as Sponsor, and the following Trustees: Bank One Delaware, Inc. as "Delaware Trustee," and Battenberg and Dawes as "Regular Trustees." Like Delphi Trust I, Delphi Trust II was "established by the Sponsor and the Trustees for the purposes of (i) issuing preferred securities ... representing undivided beneficial interests in the assets of the Trust in exchange for cash, (ii) issuing and selling common securities . . . representing undivided

beneficial interests in the assets of the Trust to the Sponsor in exchange for cash, [and] (iii) owning subordinated debt securities of the Sponsor." On or about November 21, 2003, pursuant to the 2003 S-3, Delphi Trust II issued $150 million of Adjustable Rate Trust Preferred Securities (6.197% initial rate) ("Trust II Notes"), guaranteed by Delphi. The Trust II Notes were issued ("the "Trust II Offering") pursuant to the 2003 S-3 and a prospectus supplement under Rule 424(b)(5), filed on November 14, 2003 (collectively, the "Trust II Offering Materials").

2. Delphi's Officers

44. J.T. Battenberg is the former President, Chief Executive Officer and Chairman of the Board of Delphi. Battenberg's career in the auto industry began in 1961 as a student at the GM Institute (now the Kettering Institute). Over the course of his career, Battenberg held numerous positions at GM and Delphi. In 1992, Battenberg was appointed Vice President and Group Executive of GM's Automotive Component Group worldwide ("ACG"), the GM department eventually spun-off as Delphi. In 1995, he was elected President of Delphi Automotive System (formerly ACG) and, in 1999, he was named to lead the initial public offering ("IPO") and eventual spin-off of Delphi. At the time of the IPO, Battenberg was also named Delphi's President, CEO and Chairman. Battenberg served as Delphi's President from 1999 until January 7, 2005, when Rodney O'Neal was named President and COO. Battenberg served as Delphi's CEO and Chairman until succeeded by Robert S. Miller on July 1, 2005. Battenberg's retirement was announced on February 23, 2005, ten days before Delphi admitted to pervasive accounting manipulations dating back to the Company's IPO. Battenberg signed the Company's Forms 10-K405 for the fiscal years ending December 31, 1999 ("Fiscal Year 1999"), December 31, 2000 ("Fiscal Year 2000") and December 31, 2001 ("Fiscal Year 2001"). He also signed the Company's Forms 10-K for the fiscal years ending December 31, 2002 ("Fiscal Year

2002") and December 31, 2003 ("Fiscal Year 2003"). Pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), Battenberg certified the accuracy of the Company's financial statements for Fiscal Years 2002 and 2003, each quarter of 2003 and the first two quarters of 2004. In addition, Battenberg also signed the registration statement for Delphi's June 5, 2001 and July 25, 2003 debt offerings, as well as Delphi's October 21, 2003 and November 21, 2003 offerings. Battenberg reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

45. Alan Dawes served as the Company's Vice Chairman, Chief Financial Officer and a member of the Board of Directors at all times relevant hereto. Dawes was named CFO and Vice Chairman in August 1998 and a Director in January 2000. He served in these positions until March 4, 2005, when Dawes was forced to resign in the midst of Delphi's accounting scandal and after the Audit Committee expressed a loss of confidence in him. While Vice Chairman and CFO, Dawes reported to Battenberg and had several people reporting directly to him, including: John P. Arle, Vice President of Mergers and Acquisitions; John G. Blahnik, Vice President and Treasurer; and Peter H. Janak, Vice President and Chief Information Officer. Prior to serving as Delphi Vice Chairman and CFO, Dawes worked at GM for eighteen years. Dawes signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001. He also signed the Company's Forms 10-K for Fiscal Years 2002 and 2003, and certified the accuracy of the Company's financial statements for these periods. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Dawes certified the accuracy of the Company's financial statements for Fiscal Years 2002 and 2003, the third quarter of 2002, each quarter of 2003 and the first two quarters of 2004. Dawes also signed the registration statements for Delphi's June 5, 2001 and July 25, 2003 debt offerings, as well as Delphi's October 21, 2003 and November 21, 2003 offerings. Dawes

reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

46. Paul Free served as Delphi's first Chief Accounting Officer and Controller from the Company's IPO in 1999 until June 6, 2002. At that time, he was appointed as Executive Director of Delphi's Delco Electronic Systems Division, a position he held until his resignation from Delphi on March 4, 2005. According to a press release published by Delphi on March 14, 2002, "Free was deeply involved in establishing the accounting systems and processes necessary to enable Delphi to operate as an independent company." Free also served in several capacities in the St. Louis, Missouri and New York, New York offices of Defendant Deloitte between 1979-1984 and 1988-1994. He was a practice fellow at the Financial Accounting Standards Board ("FASB"), Chief Financial Officer of a multinational specialty chemical company, and an operations executive for a privately owned commercial refrigeration manufacturing company. Free is also a Certified Public Accountant, licensed in Missouri. Free signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001. Free also signed each of the Company's 10-Q quarterly reports from the first quarter of 2000 through the first quarter of 2002. Free also signed the registration statement for Delphi's June 5, 2001 debt offering. Free reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

47. Donald Runkle was Delphi's Vice Chairman and Chief Technology Officer from January 1, 2003 until sometime in 2005, when he served as consultant to the management team on a transitional basis until his retirement that year. Prior to that, starting in January 2000, he served as Delphi's Executive Vice President and President of Delphi's Dynamics & Propulsion Division. He was head of Delphi's engineering and manufacturing task teams and a member of

the Delphi Board of Directors. Runkle also previously served as President of Delphi Energy & Engine Management Systems, and General Manager of Delphi Energy & Engine Management Systems. Runkle signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001 and the Company's Forms 10-K for Fiscal Years 2002 and 2003. Runkle also signed the registration statement for Delphi's July 25, 2003 debt offering, as well as Delphi's for October 21, 2003 and November 21, 2003 offerings. Runkle reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

48. John Sheehan is Vice President, Chief Restructuring Officer of Delphi Corporation. He was named to this position in October 2005 and leads Delphi's restructuring activities. Sheehan is also responsible for overseeing Delphi's regulatory reporting functions, budgeting and overall financial accounting processes, and is a member of the Delphi Strategy Board. Prior to this role, on March 4, 2005, following the departure of Paul Free, Sheehan was named acting Chief Financial Officer and Chief Accounting Officer and Controller of Delphi Corporation. In this position, Sheehan oversaw Delphi's finance functions, including treasury, tax, mergers and acquisitions, internal and external reporting, internal controls, budgeting, forecasting and financial planning and analysis. In July 2002, Sheehan joined Delphi as Chief Accounting Officer and Controller, with responsibility for all of Delphi's regulatory reporting functions, budgeting and overall financial accounting processes. Prior to joining Delphi, Sheehan worked at KPMG LLP, serving in numerous positions both in the United States and overseas. Sheehan is a licensed Certified Public Accountant in Michigan and Connecticut. Sheehan is a member of the American Institute of Certified Public Accountants. Sheehan signed each of the Company's Forms 10-K for Fiscal Years 2002 and 2003 and the Company's Forms 10-Q for the quarters ending June 30, 2002, March 31, 2003, June 30, 2003, October 16, 2003,

March 31, 2004 and September 3, 2004. Sheehan also signed the registration statement for Delphi's July 25, 2003 debt offering, as well as for Delphi's October 21, 2003 and November 14, 2003 offerings. Sheehan reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

49. John Blahnik served as Delphi's Vice President of Treasury, Mergers and Acquisitions until March 2005, when he was demoted in connection with Delphi's unfolding accounting scandal. On June 9, 2005, Blahnik was forced to resign from Delphi. Blahnik joined GM in 1978 and occupied various roles in both GM's and then Delphi's finance departments. Prior to Delphi's spin-off from GM, Blahnik served as Delphi's executive director of finance. He was named Treasurer of Delphi in August 1998. In 2002, he was named Delphi's Vice President of Treasury, Acting Chief Accounting Officer and Controller and in December 2003, assumed the position of Vice President of Treasury, Mergers, Acquisitions and New Markets. Blahnik reported directly to Dawes throughout the Class Period. Blahnik reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

3. Delphi's Audit Committee

50. Robert H. Brust is a member of Delphi's Board of Directors and signed the Company's November 26, 2002 registration statement on Form S-3 in connection with the July 25, 2003 offering and the Company's September 3, 2003 registration statement on Form S-3 in connection with the October 21, 2003 and November 21, 2003 offerings. Brust also signed the Company's Form 10-K405 for Fiscal Year 2001 and the Company's Forms 10-K for Fiscal Years 2002 and 2003. Brust became a member of Delphi's Board of Directors in 2001. Brust served on the Audit Committee of Delphi's Board of Directors (the "Audit Committee") from

2001 through 2003, serving as its Chairman in 2002 and 2003. Brust reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

51. Thomas H. Wyman was a member of the Board of Directors and served as the Lead Independent Director at all times relevant until May 1, 2002. Wyman signed the Company's March 3, 1999 registration statement on Form S-3 and the Company's March 25, 1999 registration statement on form S-3/A in connection with the June 5, 2001 offering. He also signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001. Wyman served on the Audit Committee from 1999 through 2001. Wyman was voluntarily dismissed by Lead Plaintiffs due to his death.

52. Oscar De Paula Bernardes Neto is a member of the Board of Directors and signed the Company's March 3, 1999 registration statement on Form S-3 and the Company's March 25, 1999 registration statement on Form S-3/A in connection with the June 5, 2001 offering. He also signed the Company's November 26, 2002 registration statement on Form S-3 in connection with the July 25, 2003 offering and the September 3, 2003 registration statement on Form S-3 in connection with the October 21, 2003 and November 21, 2003 offerings. In addition, Neto signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001 and the Company's Forms 10-K for Fiscal Years 2002 and 2003. Neto served on the Audit Committee at all relevant times. Neto reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

53. John D. Opie is a member of the Board of Directors and Lead Independent Director and signed the Company's March 3, 1999 registration statement on Form S-3 and the Company's March 25, 1999 registration statement on Form S-3/A in connection with the June 5, 2001 offering. Opie also signed the Company's November 26, 2002 registration statement on

Form S-3 in connection with the July 25, 2003 offering and the Company's September 3, 2003 registration statement on Form S-3 in connection with the October 21, 2003 and November 21, 2003 offerings. In addition, Opie signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001 and the Company's Forms 10-K for Fiscal Years 2002 and 2003. Opie was a member of the Audit Committee at all relevant times, serving as its Chairman from 1999 through 2001. Opie reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

54. Cynthia A. Niekamp is a former member of the Board of Directors having joined in 2003 and signed the Company's 10-K for Fiscal Year 2003. Niekamp also served as a member of the Audit Committee in 2003. Niekamp reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

55. Susan A. McLaughlin was a member of the Delphi Board of Directors and signed the Company's March 3, 1999 registration statement on Form S-3 and the Company's March 25, 1999 registration statement on Form S-3 in connection with the July 25, 2003 Offering. McLaughlin also signed the Company's Forms 10-K405 for Fiscal Years 1999, 2000 and 2001 and the Company's Forms 10-K for Fiscal Years 2002 and 2003. McLaughlin was also a member of the Audit Committee. McLaughlin reached a settlement with Lead Plaintiffs which was preliminarily approved by the Court on September 5, 2007.

4. General Motors Corp.

56. GM is one of the world's two largest automakers. Founded in 1908, GM has manufacturing operations in 32 countries and its vehicles are sold around the world. GM's well known brands include Buick, Cadillac, Chevrolet, GMC, HUMMER, Opel, Pontiac, Saab and Saturn. GM is the former corporate parent of Delphi. As described below, GM served as a counter-party to certain transactions for which Delphi engaged in improper accounting.

5. Electronic Data Systems

57. Electronic Data Systems ("EDS") is a Delaware corporation listed on both the NYSE and London Stock Exchange. It was formerly a division of GM, having been spun-off from GM in 1996. EDS provides information technology and business process outsourcing services to clients in the automotive, manufacturing, financial services, healthcare, communications, energy, transportation, consumer and retail industries. In its 2004 Annual Report on Form 10-K, filed March 24, 2005, EDS announced that in July 2004, it had reported a transaction with Delphi to the SEC. Two months later, Delphi reported receiving a formal SEC order of investigation into payments made and credits given by EDS to Delphi during 2000 and 2001, as well as certain payments made by Delphi to EDS for system implementation services in 2002 and early 2003. Lead Plaintiffs' investigation to date has confirmed that EDS's bills to Delphi totaled approximately $350 million annually, making Delphi one of EDS's biggest clients. As described below, EDS served as a counter-party to certain transactions for which Delphi engaged in improper accounting.

IV. CLASS ACTION ALLEGATIONS

58. Lead Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of: all persons and entities who purchased or otherwise acquired publicly traded securities of Delphi, including securities issued by Delphi Trust I and Delphi Trust II, during the period beginning March 7, 2000 through and including March 3, 2005, and who were injured thereby, including all persons and entities who acquired shares of Delphi common stock and preferred stock in the secondary market and all persons or entities who acquired debt securities of Delphi in the secondary market or pursuant to a registration statement. Excluded from the Class are: (i) Defendants and Settling Parties; (ii) members of the family of

each individual Settling Defendant; (iii) any entity in which any Defendant or Settling Party has a controlling interest; (iv) officers, directors and partners of Delphi, SETECH, BBK, JP Morgan, Deloitte, the Underwriters and their subsidiaries and affiliates; and (v) the legal representatives, heirs, successors or assigns of any such excluded party.

59. Throughout the Class Period, shares of Delphi common stock were traded actively on the NYSE, and Delphi debt securities were traded on the NYSE and on the Luxembourg Stock Exchange, both of which are efficient markets. The members of the Class, as purchasers of debt and common and preferred stock securities, are so numerous that joinder of all members is impracticable. While the exact number of Class members may only be determined through appropriate discovery, Lead Plaintiffs believe that Class members number in the thousands. As of May 31, 2005, there were approximately 561,418,059 shares of Delphi common stock issued and outstanding during the Class Period. There were also approximately $2 billion of debt securities issued by Delphi, through the Underwriters, during the Class Period.

60. Lead Plaintiffs' and Named Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and other members of the Class acquired their Delphi common stock, preferred stock, and/or debt securities pursuant to registration statements or on the open market, and sustained damages as a result of Defendants' wrongful conduct complained of herein.

61. Lead Plaintiffs will fairly and adequately protect the interests of the other members of the Class and have retained counsel competent and experienced in class action securities litigation.

62. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual class members

may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members individually to seek redress for the wrongful conduct alleged herein.

63. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting individual members of the Class. Among the common questions of law and fact common to the Class are:

a. Whether the federal law securities laws were violated by Defendants' acts as alleged herein;

b. Whether Deloitte's unqualified reports issued on Delphi's financial statements during the Class Period materially misstated that Deloitte's audits thereon were conducted in accordance with GAAS;

c. With respect to the claims arising under § 10(b) of the Exchange Act, whether Defendants named in those claims acted with scienter;

d. Whether the market prices of Delphi's publicly traded securities during the Class Period were artificially inflated due to the material omissions and misrepresentations complained of herein; and

e. Whether the members of the Class have sustained damages and, if so, the appropriate measure thereof.

64. In addition to the common questions of law or fact, there are certain undisputed material facts that pertain to the claims of all class members. Among those undisputed facts are the following:

a. Delphi has admitted issuing false and misleading statements during the Class Period;

b. Delphi has admitted that its false and misleading statements during the Class Period were material; and

c. Delphi has admitted that the financial statements included in registration statements and prospectus supplements filed during the Class Period contained material misstatements or omitted to state material information.

65. The names and addresses of the record owners of Delphi's publicly traded securities, purchased or acquired during the Class Period, are available from the Company's transfer agent(s) and/or from the Underwriters. Notice may be provided to such record owners via first class mail using techniques and a form of notice similar to those customarily used in class actions.

V. BACKGROUND

A. Delphi Is Launched As A Public Company

66. During the late 1990s, GM, facing increasing foreign competition and decreasing market-share, sought to improve its efficiencies and reduce its costs by spinning-off Delphi, its vertically integrated component parts manufacturer. Known within GM as the Automotive Components Group, Delphi had slowly transitioned from a completely integrated GM division to a semi-autonomous wholly-owned subsidiary of GM that also supplied components and parts to other auto-makers.

67. Delphi's vertical integration came at a cost to GM. Like GM, Delphi was saddled with expensive union contracts. As of late 1999, Delphi employed about 203,000 people, of whom approximately 95% were unionized. Where non-union workers earned approximately $10 an hour, Delphi's unionized workers were paid twice that under GM union contracts. Thus, Delphi's manufacturing costs were substantially greater than its competitors.

68. In spinning-off Delphi, GM wanted to transform itself from a "complacent and non-competitive company into a more stream-lined, more agile organization," according to *The New York Times*, May 25, 1999. Rather than getting 80% of its components from Delphi, GM projected substantial savings in seeking more competitive pricing from other suppliers. And once severed from GM, Delphi could in turn renegotiate more favorable union contracts, minimize its union work force, and be able to market itself freely to GM's direct competitors.

69. GM began its divestiture of Delphi in February 1999, by selling 17.8% of Delphi in an IPO. Delphi's opening price was $17. In May 1999, GM completed the divestiture by giving its shareholders seventy Delphi shares for every one hundred shares of GM stock owned. At the time of its spin-off, Delphi, with revenues of $28 billion, was the largest supplier of automotive parts in the world on both a gross sales and market capitalization basis. The Company immediately became a Fortune 25 company.

70. Also at the time of the spin-off, the stock market was riding the telecom and internet high. For fiscal year 1999, Delphi enjoyed a healthy balance sheet as a result of the strong economy, demand for GM's high-profit SUVs, and because its pension plans were being largely funded by the soaring stock market. At the time of the IPO, Delphi presented an optimistic long-term business plan for gradual reduction of its reliance on GM as its primary customer so that, by 2002, other vehicle manufacturers would account for at least 50% of its net sales. Indeed, Battenberg proclaimed at the time of the spin-off that by 2002, he wanted Delphi's earnings per share to grow more than 10 percent a year.

71. According to a December 27, 1999 article in *Automotive News*, shortly after the spin-off Battenberg built a cabinet of "top lieutenants" to create "more collaboration among the company's core business units and a greater responsiveness to customer and market demands."

This cadre of lieutenants included Dawes (appointed as CFO), Runkle (appointed as Executive Vice President), and O'Neal (appointed as COO). Battenberg, Dawes and Runkle were also appointed as the only executive officers on Delphi's board of directors.

72. Each of Delphi's senior executives had personal stakes in Delphi's success. Under Delphi's Annual Incentive Plan, senior executives were rewarded with bonuses based on the Company's performance in certain metrics including, "return on assets, return on net assets, asset turnover, return on equity, return on capital, market price appreciation of [Delphi's] common stock, economic value added, total stockholder return, net income, pre-tax income, earnings per share, operating profit margin, net income margin, sales margin, cash flow, market share, inventory turnover, sales growth, capacity utilization, increase in customer base, environmental health and safety, diversity and/or quality." Under this incentive plan, based on Delphi's (false) reported financial results in its first fiscal year as a stand-alone company (1999), Battenberg received a $2.2 million annual bonus on top of his $1.2 million salary; Runkle received a $650,000 bonus on top of his $581,000 salary; Dawes received a $635,000 bonus on top of his $506,000 salary; and O'Neal received a $660,000 bonus on top of his $426,000 salary.

73. Delphi's maintenance of key financial indicators was also important to securing favorable credit ratings and thereby ensuring more affordable financing. Delphi's operations relied on financing since production cycles often spanned several years, with the final account settling at the end of the cycle. As a result, ensuring that its financial indicators were (or at least appeared) sound was critical to fulfilling its business plan. One of the most critical financial indicators repeatedly touted by the Company and its officers – and tracked by Wall Street analysts – was Delphi's "operating cash flow." Every press release issued by the Company during the Class Period emphasized (often in the headline) Delphi's purported "track record" of

"strong" cash flow, and how that cash flow enabled Delphi to weather what Battenberg called "head winds" of tough economic times.

B. Delphi Encounters Severe Obstacles As The Market Collapses, But Posts Improving Performance And Positive Earnings

74. Coming out of the spin-off, Delphi was highly dependent on GM. Over its last several years as a GM division, Delphi had garnered close to 80% of its revenue from GM, and thus the business' financial results directly corresponded to the number of vehicles GM produced in any given year and any changes in GM's fortunes.

75. After its spin-off, it was critical for Delphi to grow its non-GM business since "most-favored-nation" contractual provisions with GM created at the time of the spin-off were to expire in 2001. For example, pursuant to a supply agreement between Delphi and GM, GM had to offer Delphi the "right of last refusal" for new initiatives until 2001. This meant that Delphi was given the opportunity to provide a more competitive price on the lowest bid that GM obtained from competing suppliers.

76. Based on this arrangement, analysts expected Delphi sales to GM to decline significantly over the coming years and thus, like cash flow, Delphi's ability to grow non-GM business became one of the major variables that both investors and analysts tracked to predict Delphi's revenue and earnings, and to gauge its financial condition. As Kenneth A. Blaschke, a BT Alex Brown analyst, reported on March 25, 1999, "of concern to investors is whether Delphi can build its non-GM revenue faster than it loses its GM revenue base."

77. BT Alex Brown's Blaschke estimated that "Delphi is likely to lose about $500 million in sales annually over the next five years, from its current $22.3 billion in sales to GM, as GM seeks to reduce its dependence on Delphi." Similarly, on March 9, 1999, Donaldson, Lufkin

& Jenrette ("DLJ") analyst Wendy Beale Needham reported that DLJ estimated that Delphi's sales to GM would decline to "about $19.5 billion in 2003 [from its current $22.3 billion]."

78. Cutting costs, increasing efficiencies, and making itself more competitive with other suppliers were critical to Delphi's growth. The Company's pension and post-retirement health benefit costs were important components of costs. After the spin-off, Delphi retained pension obligations and Other Post-Retirement Employee Benefits ("OPEB"), which consisted primarily of retiree medical obligations, for all employees who retired after January 1, 1999, while GM retained responsibility for pension obligations and OPEB for those who retired before that date. As of December 31, 1999, Delphi's underfunded pension obligation was approximately $1.9 billion, and its OPEB obligation was approximately $5.4 billion, totaling $7.3 billion. This figure included $1.6 billion that Delphi was likely to owe GM because of the way the spin-off from GM was structured.

79. Delphi's separation agreement from GM called for Delphi to make additional payments to GM if the number of U.S. hourly employees who retired before January 1, 1999 turned out to be higher than originally assumed in the Separation Agreement. During 1999, the "handoff" date between GM and Delphi changed from January 1, 1999 to January 1, 2000, which caused GM to assume responsibility for a larger number of retirees. The change in the handoff date thereby increased the amount of money that Delphi owed to GM for pension benefits.

80. In 2000, Delphi's business plan began to unravel. First, the stock market collapse precipitated a downturn in the economy. This, in turn, led to a decline in the production of cars by GM. In 2000 alone, GM cut production capacity by 400,000 vehicles, over 5% of its North American and European production capacity. In December 2000, GM announced that it would produce 15% fewer cars and trucks than it did in the first quarter of 1999. Indeed, in the first

quarter of 2001, GM produced over 275,000 fewer cars and trucks in North America than it did in the first quarter of 1999, a decline of more than 18%. The decline in auto production widely impacted the various businesses that support auto manufacturers. For example, sales for the packaging of auto parts sold by companies like Delphi declined between 15-20% in late 2000 as a result of the industry slow down.

81. Further, the production and sale of light vehicles in North America had peaked; conditions and dynamics in the aftermarket were poor; the heavy duty truck market had sharply weakened; and the value of the Euro was weak, which had a significant negative impact on companies (like GM and Delphi) with exposure in Europe. Additionally, investors believed that the auto industry had collapsed and that there was fundamental long term deterioration in return on capital.

82. Production declines by automakers threatened increased inventories at Delphi's various plants, which in turn would inflate Delphi's carrying costs for inventories and further deflate Delphi's income. By the fall of 2000, the souring economy, reduced production, and declining stock market, all pointed to a terrible year at Delphi.

83. The industry downturn continued into 2001 and the U.S. auto market continued its decline. Indeed, facing poor sales, GM discontinued its venerable Oldsmobile division. As a result, sales trended further downward, production cuts materialized and inventory build-ups started to occur.

84. Despite the collapsing economy in 2000, 2001, and 2002, Delphi surprised analysts and investors during these years by reporting profitable quarters. In every quarter after the IPO until the second quarter of 2002, except for restructuring write-downs and the impact of

September 11, 2001, Delphi was able to meet or exceed analyst expectations for pro forma earnings per share ("EPS") within pennies:

	1999	2000	2001	2002	2003
Analyst Consensus	$1.90	$1.90	$0.40	$0.91	$0.62
As Reported	$1.91	$1.94	$0.40	$0.92	$0.62

85. Hiding the true source of its profitability, its financial manipulations, Delphi's profitability was attributed to greater efficiencies and cost cutting methods that allegedly were resulting in greater margins and reduced costs. For example, in the third quarter of 2000, while GM was reporting production cuts and layoffs, Dawes announced that "[w]e continue to see improved margins in our operations as we aggressively manage our portfolio." According to Delphi's quarterly report for the third quarter of 2000, "For seven consecutive years, we have achieved our financial performance objectives.... Our continued cost reduction efforts and lean manufacturing initiatives again improved our gross margin and operating income in the third quarter.... Net sales for the third quarter of 2000 were $6.6 billion compared to $6.8 billion in 1999." This was exactly the sort of news that analysts wanted to hear.

86. On October 11, 2000, Robert W. Baird analyst David Leiker reiterated his firm's "Market Outperform" rating for Delphi, noting increased operating income, improved operating margins, and stating that the Company was "well positioned for when investors return to the sector." Also on October 11, 2000, First Union analyst Philip Fricke upgraded Delphi to a "Strong Buy," commenting that Delphi "continues to deliver on all expectations." He based his recommendation on improved gross, operating and net margins, as well as increased sales. He noted that "[t]oday's announcement was the seventh consecutive quarter that Delphi met or exceeded investor expectations," and added that "[p]romises are being kept."

87. Indeed, Delphi was able to report increased gross margins for 2000 of 15.1%, compared to 14.2% in 1999, and attributed this improvement to "continuing cost reduction efforts and lean manufacturing initiatives that are being implemented in response to industry pricing pressure and aggressive inventory management."

88. Having claimed to have met or exceeded performance expectations in these years, Delphi's senior executives were handsomely rewarded. For Fiscal Year 2000, Battenberg received an annual bonus of $2.6 million above his salary of $1.387 million; Runkle received an annual bonus of $1.17 million over his annual salary of $800,000; Dawes received a $1.1 million bonus over his annual salary of $700,000; and O'Neal received an annual bonus of $950,000 over his annual salary of $600,000.

89. In 2001, Delphi was beset with a massive restructuring that drained cash flow. In addition, revenues were affected by the events of September 11, 2001. Yet, Delphi, in other respects, appeared able to report continued cost cutting, profitability, and prospects for growth. For example, for the third quarter of 2001, despite market declines and restructuring charges, Delphi reported earnings per share of $0.05 and operating cash flow of $111 million. According to Dawes, "[t]he flexibility inherent in the Delphi Manufacturing System, combined with key business initiatives, helped Delphi meet our customer commitments while also protecting our results for the quarter." Dawes added that "[g]iven the uncertain market, ***Delphi is increasingly focused on improving cash flow***. Actions include: trimming structural costs in line with demand; efficiently managing working capital; limiting capital expenditures; and accelerating global restructuring plans. These steps allowed us to materially improve our cash flow, reduce our breakeven level and stabilize third quarter earnings." (Emphasis added).

90. Thus, to the market, Delphi was doing remarkably well, particularly given the industry circumstances, and was still generating earnings and steady positive cash flow. Analysts commenting on Delphi in 2001, exalted the Company's fine performance under difficult conditions and, based on Delphi's reported financials, encouraged investors to buy or hold Delphi stock. On July 19, 2001, for example, Charles Brady of Credit Lyonnais credited Delphi's management with cost-cutting to reduce SG&A expenses, and blamed market conditions for the Company's diminished earnings. He concluded his report by stating: "Delphi's recent stock performance has been exceptional. Year to date, Delphi stock price has appreciated 51% and in turn, has reached our 12-month price target." On October 18, 2001, Wachovia Securities analyst Jon Rogers maintained his firm's "buy" rating for Delphi despite the Company missing his earnings estimate. He stressed that the restructuring undertaken in early 2001, would pay benefits and noted: "DPH's management team is one of the best in the industry – its vision has not changed."

91. In short, while many expected Delphi to suffer due to numerous adverse market factors, including declining demand from GM, a weakening Euro, and weakening aftermarket sales, Delphi repeatedly surprised analysts and the investing public with a remarkable sequence of reported financial results. This was particularly so when, in the years immediately following Delphi's emergence as an independent publicly traded company, Delphi assured the market that these results were the product of management's efforts and talents and, of course, management was generously rewarded.

92. As described in Section VI below, however, Delphi's financial disclosures were, in reality, elaborate lies designed to hide systemic and growing problems, and enrich management while hoping that somehow, someday, Delphi's problems would be resolved and

the Company could actually attain its claimed successes. These hopes were not to be realized. As later revealed, however, these results were substantially overstated. On June 30, 2005, Delphi restated its reported financial results for Fiscal Years 2002 and 2003, and selected financial data for Fiscal Years 2000 and 2001 (including retained earnings at December 31, 2001), in its Form 10-K for the year ended December 31, 2004 (the "Restatement").

93. One consequence of "robbing Peter" to overstate income in the early years of the Class Period, was Delphi's subsequent need to "pay Paul" and understate its performance in the later years of the Class Period — *i.e.*, the years from which the income had been pulled forward. Thus, having made a bed of falsehoods, at the end of the day, Delphi was forced to lie in it publicly, or risk revealing its long-standing fraud on the investing public.

VI. <u>THE FRAUDULENT SCHEME</u>

94. Lead Plaintiffs describe below how Delphi, its officers, Defendant Deloitte and the Scheme Defendants (SETECH, BBK and Bank One) engaged in acts, practices, and a course of business that operated as a fraud on the investing public. To summarize briefly here, by participating in a series of multi-million dollar transactions disguised to appear as something other than what the participants knew to be true, each of these Defendants together with Delphi and its employees played a direct role in a scheme whereby Delphi presented the investing public with a materially false and misleading picture of the Company's cash flow, earnings, debt and/or inventory for the Fiscal Years 1999, 2000 and 2001.

95. As noted in ¶¶ 41-49 above, Delphi and the Officers understood that the market, and particularly analysts, closely scrutinized discrete elements of the Company's financial statements to gauge whether it was succeeding as a new, stand-alone enterprise. Among the pieces of financial information most scrutinized in its early years were the Company's cash flow, earnings, debt load and inventory. As described more fully below, when it became clear to

Delphi's senior officers that the results of the Company's operations would, if fairly reported, sharply disappoint the market, these officers embarked on a scheme and course of conduct, together with the Scheme Defendants named in this Complaint, to falsify those results.

96. While much of the fraud could be and was accomplished internally - for example, through the Company's manipulation of when credits, expenses and obligations were recognized (*see* ¶¶ 208-274 *infra*) - Delphi and its employees understood that they could not complete the false portrait they wished to paint for the market without the direct and integral participation of certain third parties willing to engage in subterfuge on the Company's (and their own) behalf – parties that would, among other artifices, purport to "buy" swaths of Delphi's problematic inventory for huge sums of money, but with an obligation by Delphi to buy the inventory back once the manipulations for the affected financial reporting period had been completed. The parties directly participating in this scheme included the Scheme Defendants. Defendant Deloitte's liability for Delphi's transactions with the Scheme Defendants is premised on Deloitte's unqualified audit opinions of Delphi's financial statements which reported artificially inflated revenues from these transactions, despite Deloitte's knowledge, or reckless disregard, of the particular facts of each of these transactions and clear warning signs that the transactions were simply sham sales designed to boost year end revenues.

A. Delphi Improperly Engages In Bogus Transactions Involving Inventory And Indirect Materials

97. During the Class Period, Delphi knowingly gave the investing public a misleadingly positive impression of its financial performance by creating the appearance of income and cash flow-generating sales that were in reality disguised loans. Specifically, in 1999, 2000 and 2001, Delphi entered into a series of sham, round-trip transactions in which the Company purported to "sell" certain of its assets – classified as inventory or "indirect materials"

(defined below) – to third parties, including the Scheme Defendants, in exchange for hundreds of millions of dollars, with an associated but undisclosed obligation to buy back these very same assets – typically right after the close of the financial reporting period in which the sale was recorded. Delphi falsely presented the proceeds of these loans as though they were the product of asset sales in the ordinary course of business.

98. Generally Accepted Accounting Principle ("GAAP") Statement of Financial Standard No. 49 ("SFAS 49") provides that where, as here, a company concludes "a transaction in which [it] sells and agrees to repurchase inventory with the repurchase price equal to the original sale price plus carrying and financial costs," that transaction is a product ***financing*** transaction, not a sale or any other sort of income or cash flow-generating asset transfer. SFAS 49 further provides that a company that agrees to repurchase the inventory "shall record a liability at the time the proceeds are received from the other entity" and "***shall not record the transaction as a sale and not remove the covered product from its balance sheet.***" (Emphasis added).

99. Despite the fact that it had committed to reacquire the inventory and indirect materials it had transferred to other parties, Delphi failed to record the transactions as financings, improperly removed the assets it was obligated to repurchase from its balance sheet, and improperly recorded income and cash flow from the transactions as though the underlying assets had been sold for profit. In accounting for these loans as sales of inventory and indirect materials, Delphi materially misrepresented its financial condition in several critical ways:

a. First, Delphi recorded the proceeds of these financing transactions as income and cash flow from operating activities, which had the effect of inflating the Company's cash from operations, net income and earnings.

Such income and cash flow-generating events are typically understood by the market to be the result of a company's core operations and imply – falsely in this case – that such income and cash flow will be available in the future.

b. Second, Delphi gave the investing public the false impression that it was less leveraged than it actually was — *i.e.*, the Company understated its debt obligations by avoiding recording the proceeds of the financings as liabilities on its balance sheet. Increases in a company's debt burden of the sort that Delphi should have reported in connection with these off-balance sheet financings are understood negatively by the market, adversely impacting a company's credit rating and raising questions about its ability to generate future income.

c. Finally, beyond the income, cash flow and balance sheet distortions just discussed, the transactions gave the misleading impression that Delphi was efficiently and effectively managing its excess assets and inventories because they removed indirect materials and inventory from its balance sheet.

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101. As discussed more fully below, the Company admitted to fraudulently accounting for the following transactions in violation of GAAP:

a. $145 million in transactions with SETECH;

b. $89 million in transactions with BBK;

c. $200 million in transactions with Bank One; and

d. $7 million in transactions to an unidentified third party.

1. Delphi Disguises Transactions With SETECH As Sales Of Indirect Materials

102. Beginning in July 1999, less than eight weeks after Delphi's IPO, and continuing through 2003, SETECH and Delphi engaged in several "back room" deals involving the fraudulent "sale" of indirect materials totaling $145 million. "Indirect materials" or "IM" refers to materials used in production, but which do not end up as part of the finished product. These materials made up a substantial portion of Delphi's overall inventories. A former Delphi senior manager explained that the purpose of this transaction was to remove millions of dollars of worthless, scrap inventory from Delphi's books without affecting the bottom line.

103. The timing of these transactions could not have been more suspect. Indeed, these were trying times for Delphi, it had just spun-off from GM and needed cash to prove itself as a stand-alone, profitable company, a fact well known to SETECH. These off-balance sheet transactions were short-term, round-trip inventory and indirect material transactions with no economic substance and no legitimate business purpose. The only purposes behind the transactions — and the driving force behind the conduct of both parties — was to fraudulently:

a. create the appearance that Delphi's inventory on hand decreased;

b. create the appearance that Delphi's Return on Net Assets (RONA) increased;

c. create the appearance that Delphi's LIFO inventory had been reduced;

d. allow Delphi to recognize income by reversing LIFO reserves; and

e. allow Delphi to avoid excess and obsolete expenses by moving inventory off its balance sheet.

104. To achieve these purposes, SETECH and Delphi worked directly together to promulgate, carry out, and then cover up a scheme that allowed Delphi to make it appear as though it had sold over $145 million of indirect materials to SETECH. In reality, however, these transactions were nothing more than cleverly crafted – and unlawful – off-balance sheet financing transactions that violated SFAS 49. Indeed, in its 2005 Restatement, Delphi admitted:

> In 1999 and 2000, Delphi improperly recorded asset dispositions, in a series of transactions, amounting to approximately $145 million of indirect materials to an [unidentified] indirect material management company. . . The transactions should not have been accounted for as asset dispositions but rather as financing transactions, principally because Delphi had an obligation to repurchase such materials.

105. As a critical component of these transactions, Delphi REDACTED REDACTED Delphi improperly recorded these transactions as sales, recognizing pre-tax income of approximately $60 million in 1999 and an additional $16 million in 2000. Delphi has explained that "[t]he cash flow effect of accounting for these transactions as financings [was] to reclassify approximately $138 million and $33 million of cash flow from operations to cash flow from financing activities in 1999 and 2000, respectively."

106. As set forth below, publicly filed documents, documents produced by the Defendants and Settling Parties, as well as and statements by former SETECH employees all confirm that the transactions between Delphi and SETECH were at best financing transactions, not legitimate sales. These documents prove:

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a. Delphi's Dispositions Of Indirect Materials To SETECH Did Not Constitute Bona Fide Asset Dispositions

107. From its inception, Delphi wanted to find ways to remove slow moving and/or obsolete inventory from its books in order to increase its RONA, avoid E&O expenses, and increase revenue.

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This REDACTED was nothing more than a means for Delphi to reimburse SETECH its borrowing costs for loaning money to Delphi.

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108. By 1999, however, REDACTED

REDACTED to avoid accounting for these transactions as off-balance sheet financing transactions under SFAS 49.

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In reality, and as confirmed by both former Delphi and SETECH employees, the value of the goods transferred from Delphi to SETECH bore little relation to the cash amounts that SETECH paid to Delphi. Indeed, a substantial part of this inventory was excess and obsolete ("E&O"), and thus, virtually worthless.

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111. In function,

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112. In order to carry out this scheme, SETECH had to obtain financing from lenders who were willing to fund these sham transactions. After all, these transactions were nothing more than loans devised to appear as sales. In furtherance of that goal, Delphi worked to try to

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Ultimately, SETECH

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116. REDACTED Delphi made "sales" of inventory to SETECH:

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117. Each one of these "sales" was structured by Delphi and SETECH to avoid SFAS 49 treatment as financing. However, as was apparent to both Delphi and SETECH from REDACTED REDACTED these transactions were product financings under SFAS 49 and ***not*** "sales" of inventory. Indeed, the risks and rewards of ownership of the inventory never transferred.

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Thus, while the nature of these agreements were back room deals hidden from public view, the terms of the agreement were "explicit," "open" and "clear" insofar as SETECH knew it was engaging in sham, round-trip transactions that were not being accounted for properly.

118. By summer 2001, it was obvious that the sham transactions from 1999 and 2000 were beginning to affect Delphi's profit negatively. Delphi staff believed it was important to eliminate the Company's relationship with SETECH, which was simply draining profit and providing no meaningful inventory management services for the Company's various plants.

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119. Delphi's efforts to explore alternative approaches to

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120. Consequently,

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121. Ultimately, Delphi

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124. As a direct result of SETECH's fraudulent scheme, and despite the fact that Delphi's "sales" of inventory to SETECH were actually financing arrangements that clearly met the criteria for SFAS 49, Delphi accounted for these transactions as sales of inventory and improperly recognized pre-tax income of approximately $60 million in 1999 and an additional $16 million in 2000.

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b. Confidential Sources Confirm That Delphi's Arrangement With SETECH Was An Improper Scheme That Artificially Boosted Delphi's Income And Reduced Its Inventory Levels

125. As set forth below, former SETECH employees have confirmed that SETECH was aware of the true nature of the transactions between Delphi and SETECH and have provided significant evidence to Lead Plaintiffs regarding the impropriety of the accounting for those transactions.

126. Indeed, Confidential Source ("CS" 1) stated that it was understood by all parties that the inventory would be repurchased by Delphi. CS 1, a current manager at SETECH, was involved in the early discussions and initial presentations that SETECH made to Delphi regarding their indirect material and integrated supply services at Delphi's facility in Kokomo, Indiana. CS 1 was also involved in the front end contract negotiations between Delphi and SETECH. At the time that the SETECH – Delphi contract was negotiated and implemented, CS 1 held a marketing and sales position at SETECH.

127. CS 1 explained that it was not a real sale because, for Delphi, the deal was that "***it was borrowed money that you've got to repay, and the collateral is the inventory***." (Emphasis added). With respect to the buy-back agreement, CS 1 described the contracts as self-explanatory. He stated, "[y]ou take the contracts, the terms are explicit. You take the buy-back agreements, and the terms are explicit in it." In sum, CS 1 said "[o]ur contract was very open and clear" and the transaction was "pretty open and shut."

128. Similarly, CS 2 stated that SETECH handled the Delphi contract as a financing transaction. CS 2 has worked for SETECH for almost two decades. CS 2 was responsible for significant aspects of the contract between Delphi and SETECH. Having worked directly with Delphi, CS 2 confirmed that it was clearly understood that Delphi would repurchase the inventory. CS 2 explained that the terms of the contract with Delphi were governed by a Supplier Planning Document, known as an "SPD," and that the SPD obligated Delphi to repurchase the inventory. CS 2 stated that, pursuant to the SPD, SETECH acquired a total of $145 million of inventory items from Delphi with a buy-back agreement and, in return, Delphi received $145 million in cash.

129. Significantly, CS 2 explained that Delphi entered into this financing transaction with SETECH because it needed capital. CS 2 stated:

> At the time that Delphi and General Motors had their falling out, so to speak, that's about the time that Delphi was looking for some capital.
>
> If you look at the day that Delphi and General Motors split, the day after that would be the day that we actually wrote a check to Delphi.

130. CS 2 explained that Delphi was "able to use the $145 million that we gave them right away. They did not have to keep it in escrow or in some kind of account sitting off to the side for the re-procurement of this inventory. And the money came from our bank."

131. Former Delphi employees have also provided significant details regarding the SETECH and Delphi transactions. For instance, CS 3 explained that he observed improper inventory accounting transactions, including with SETECH, while at Delphi. CS 3 was a senior manager for Delphi through most of the Class Period and had significant responsibilities pertaining to manufacturing, materials and asset management issues for Delphi's Energy & Chassis Division ("Delphi E&C"). One of CS 3's responsibilities was to resolve the Company's inventory problems and, in particular, its indirect materials inventory problems. In this regard, CS 3 dealt directly with and participated in – along with corporate purchasing personnel – the "sale" of millions of dollars of indirect inventory to SETECH.

132. CS 3 explained that, "[w]hen they spun-off Delphi, they didn't scrap the material, they kept it on the books as inventory when in fact it wasn't inventory, either direct or indirect." CS 3 tried to help "put together an organization that could get control of an out of control inventory and an out of control manufacturing process." According to CS 3, however, he was unable to address the Company's inventory problems because Delphi's approach to the problem

involved improper accounting. As CS 3 stated, "there is a right way and a wrong way to do business and they weren't doing it the right way."

133. Specifically, CS 3 stated that, in October 2000, he, along with several Delphi corporate purchasing personnel, participated in the sale of millions of dollars of indirect materials to SETECH. CS 3 stated that, under the terms of these sales, Delphi was required to buy back the inventory from SETECH. He further stated that the purpose of the transactions was to get the inventory off Delphi's books.

134. According to CS 3, Delphi needed to get the inventory off its books because it was worthless scrap. For instance, he explained that, while he was at the Electronics & Safety Division:

> [I] was staring down the gun barrel of probably 25-30 millions of dollars of scrap that was being booked as inventory when it was garbage that had been intentionally put on the books. When I talked to the finance guys because I got them by the throat down there, and I said I'm going to kill somebody. They said oh no, it came from on high. They said to book it this way. I said bullshit this is garbage. I can't use it. It's scrap. I was being told by one guy that we had containers full of high priced scrap sitting down there that everyone had put on the books as good inventory. I was absolutely beside myself when I found it and I went stomping back up to Kokomo and I was not a happy camper.

135. After discovering that the inventory was worthless, CS 3 explained that he wanted to remove it from the books:

> I said I want to scrap it and they had a stroke because when you scrap material it comes off your bottom line. They should have done that before they spun-off. They should have scrapped all the scrap out and they never did. Of course, they are not going to sit there and eat the bullet for 10-15 million worth of scrap in one week.

136. Ultimately, CS 3 stated that he handled millions of dollars of indirect material at Delphi's Electronics & Safety Division by "grabb[ing] a couple of weasels down from [Delphi

headquarters in] Troy, from [Delphi's] purchasing side, and we worked together a deal with SETECH. This was a back room deal. I told SETECH, you buy this stuff, get it off my books and I will buy it back from you."

137. CS 3 described a similar instance where Delphi engaged in a transaction to get millions of dollars of obsolete, worthless inventory maintained at Delphi's facilities in Mexico off the Company's books. CS 3 stated that, upon discovering the obsolete inventory in the Mexico facilities, "[he] was flabbergasted" because it was

> millions of dollars worth of stuff that wasn't going to go anywhere but in a landfill eventually. It consisted of very expensive electronic stuff manufactured by Delphi that was on the books as finished inventory. It was carried on the books as good inventory but it never was. In fact, it was junk to be very blunt about it.

138. After learning this, CS 3 confronted Delphi's financial personnel. According to CS 3, the financial personnel told him that they were directed to record the worthless, obsolete inventory on the books as valuable inventory "by financial people in Troy and in division headquarters." In fact, CS 3 said that John Rotko, the Head of Indirect Materials for Electronics & Safety in Mexico, "flat out told me that he was ordered to do so" by division headquarters and the financial team in Troy. At this time, Delphi's financial team included, among others, Dawes and Free.

139. CS 3 then explained that he wanted the worthless inventory off his Division's books. Thus, according to CS 3:

> We sat down and I cut a deal in 48 hours and I dragged these guys down to Mexico, got in a back room and cut a deal and had to buy back a little over a million bucks worth of inventory to get it off my books. Then we started to peddle more shit back from the other plants. We had a lot in Kokomo and a lot in the other plants we could get rid of and get off the books, sell back to these people, get the cash and at least get the inventory relief and get the cash. This consisted of indirect material and direct material.

140. CS 3 also described his experience at Delphi E&C, when Delphi corporate purchasing personnel pressured him to sell indirect materials to SETECH:

> Purchasing people like Ray Campbell [Delphi's Vice President of Global Purchasing at the time] and his staff came in constantly and tried to get me to peddle the shit to SETECH. They used to come creeping into the plant and tried to sweet-talk me into doing it and I'd say get out. And finally they stopped doing it because it became so apparent we were more successful than they could ever be from both a cost and inventory level.

141. CS 3 stated that he left Delphi after a confrontation with the Company's manufacturing and financial leadership regarding the Company's fraudulent inventory accounting practices.

142. Similarly, CS 4, a former GM and Delphi employee who was involved in logistics for Delphi's Electronics and Safety Division until 2004, also confirmed that Delphi sold indirect materials to SETECH during 1999 and 2000, in order to get the inventory off of Delphi's books.

143. Specifically, CS 4 stated that SETECH purchased approximately $15 million of indirect materials from Delphi's six Electronics & Safety facilities located in Reynosa, Mexico. He said that SETECH also purchased indirect materials from Delphi's Electronics & Safety facility located in Kokomo, Indiana. In total, CS 4 believes that, based on his experience and knowledge from working at Delphi, the Electronics & Safety Division accounted for approximately $30 million of SETECH's $145 million worth of indirect material purchases.

144. Further, CS 4 stated that the Electronics & Safety Division's treatment of indirect materials was highly regarded and considered a "success" within the Company. In fact, CS 4 explained that Delphi had a corporate-wide program where personnel and management from the other divisions in the Company were sent to the Electronics & Safety Division to see how they disposed of their indirect materials and to learn from their methods. In particular, CS 4 recalled that Alison Jones, a divisional Production Control & Logistics Director, came to Mexico to

observe and learn from the program's success. CS 4 also stated that Mark Lorenz, Delphi's Vice-President of Operations and Logistics, who reported to both Battenberg and Mark Weber, Delphi's Executive Vice-President of Operations, Human Resources and Corporate Affairs, sent out a Company-wide memo regarding the indirect materials disposal program.

145. As later acknowledged in the Restatement, by improperly accounting for these financing transactions with SETECH, Delphi artificially inflated its pre-tax income by approximately $60 million in 1999 and $16 million in 2000. In addition, the Company's inventory was understated by $78 million in 1999, and $17 million in 2000. Also, the Company's liabilities were understated by $138 million in 1999, and $33 million in 2000.

c. SETECH Knew Of Delphi's Improper Purpose For The Transaction

146. As demonstrated by documents produced by SETECH and Delphi, as well as evidence uncovered during Lead Plaintiffs' investigation, SETECH knew that these transactions were illegitimate off-balance sheet financing transactions. Former SETECH and Delphi employees confirmed that the fraudulent nature of these transactions was known and understood by ***all parties***, and that it was clearly understood by all that the risks and benefits of ownership were never transferred to SETECH and that Delphi would repurchase the inventory. Indeed, SETECH's knowledge that the transactions were fraudulent is beyond question: internal SETECH documents show that SETECH's Chief Financial Officer and Chief Operating Officer were, at all relevant times, intimately involved in and aware of the negotiations between the companies to create and structure these transactions.

147. Further, one of Lead Plaintiffs' confidential sources, a former Delphi senior manager, directly told SETECH that the purpose of the transactions was to remove millions of dollars of worthless, scrap inventory from Delphi's books without affecting the bottom line. In

addition, internal SETECH and Delphi documents establish that SETECH was highly motivated (and rewarded) to engage in this conduct. Indeed, Delphi paid SETECH tens of millions of dollars in "fees" simply for participating in these transactions, and participated in these transactions until at least year-end 2003.

148. SETECH knew at all times that the contracts were nothing more than disguised financing transactions. It was SETECH who first made a

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149. Internal SETECH documents produced by Delphi evidence SETECH's knowledge of the true purpose and nature of the transactions with Delphi. For instance,

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150. Additional documents show that SETECH not only knew from the inception that the transactions were nothing more than shams, but also that it was intimately involved with the process every step of the way.

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153. At a minimum, this indicates that SETECH knew Delphi was required to buy back the inventory from SETECH and that the value of the inventory had to remain reasonable in order to satisfy SETECH's lien holders who were financing the loan. Thus, SETECH knew it was a loan all along, not a sale of inventory.

154. Based on the totality of the circumstances of the SETECH-Delphi transactions, there is no doubt that SETECH knowingly and actively engaged in deceptive acts that had the principal purpose and effect of furthering Delphi's fraudulent scheme to inflate its financial results.

2. Delphi Engages In Sham Transactions With BBK

155. Similar to the SETECH transaction, in 2000 and 2001 Delphi improperly accounted for $89 million in sham transactions with another third-party. In the Restatement, Delphi admitted:

> In 2000 and 2001, Delphi entered into several transactions, in each case improperly recording the transaction as a disposal of inventory to [an unidentified] third party and repurchasing the same inventories in subsequent periods. Each of these transactions should have been accounted for as a financing transaction, not a disposal. Specifically, in the fourth quarter of 2000, Delphi entered into transactions, one for approximately $70 million. . . . In the first and fourth quarters of 2001, Delphi disposed of $10 million and $9 million, respectively of inventory at book value.

156. Delphi has declined to identify this third party but, in the course of their investigation prior to filing this Complaint, and in subsequent discovery that has shed light on the details of these transactions, Lead Plaintiffs identified the counterparty as BBK.

157. As mentioned above, Delphi's purported sales of inventory to BBK included:

a. A "sale" for approximately $70 million in the fourth quarter of 2000;

b. A "sale" of $10 million in the first quarter of 2001; and

c. A "sale" of $9 million in the fourth quarter of 2001.

158. Delphi carried out each of these three improper inventory transactions with BBK by recording an account receivable for the purchase price of the inventory, and then allowing BBK to settle the account receivable by using cash received through financing arranged by Delphi.

159. Publicly filed documents including: the SEC's complaint against Delphi and Bahadur; documents produced by Defendants and the Settling Parties; and statements by former BBK employees all confirm the financing nature of the transactions between Delphi and BBK. They also provide irrefutable evidence as to the impropriety of the accounting for Delphi and BBK's transactions.

a. Delphi Engaged In Bogus Sales To BBK

160. On December 27, 2000 – just before the end of Delphi's fiscal year – Delphi entered into an agreement purportedly to sell inventory (batteries and generator cores) to BBK, a consulting firm for distressed companies which was not in the business of inventory management. This deal was specifically engineered to meet Delphi's income targets for year-end 2000.

161. As part of this transaction and in violation of SFAS 49, BBK agreed to "purchase" the inventory of generator cores for $70 million in exchange for Delphi's oral agreement to repurchase this inventory in the first quarter of 2001 for $70 million, plus a 0.5% fee.

162. However, the transaction did not go exactly as planned. BBK was unable to secure financing to "buy" the inventory before the close of Delphi's fiscal year and, therefore was not able to "pay" Delphi as originally agreed. Despite this setback however, and notwithstanding the fact that without BBK's cash payment, Delphi could not use this transaction to meet its year end 2000 financial targets as planned, Delphi and BBK were determined to proceed with the arrangement.

163. According to Milan Belans ("Belans"), Delphi's former Director of Capital Planning, Pensions and Structured Finance, the Company, under the direction of Blahnik and Free, decided to proceed with the transaction because it was important to the Company's

inventory reduction scheme. Reporting lowered inventory levels (regardless of how such reductions were achieved) was also important to Delphi and its senior management.

164. To see that the transaction was accomplished, and was done so with BBK's participation, Delphi's executives decided to enroll BBK in the Company's supplier financing program. By so doing, BBK could issue, at Delphi's direction, a manufactured invoice to the Company for an amount that would allow BBK to receive cash and thereafter "pay" Delphi for the agreed upon inventory.

165. On January 5, 2001 BBK issued just such an invoice and Delphi immediately authorized payment, and BBK was promptly paid. BBK then received those funds on or about January 12, 2001, and immediately paid $70 million to Delphi, while retaining its $350,000 fee, per the agreement. Approximately one month later, Delphi paid its supplier financing program the total invoiced amount.

166. At a cost to Delphi shareholders of almost $900,000, Delphi's engineered plan allowed it to fraudulently realize income from LIFO liquidation gains and achieve LIFO inventory targets, without physically moving any inventory from Delphi's premises. Delphi engaged in two additional and similar transactions with BBK, one in March 2001 for approximately $10 million, and another in December 2001 for $9 million. Delphi again used their supplier financing program to ensure the transactions were completed.

167. As Delphi admitted in its Restatement, its accounting for the BBK transactions was improper. No "sale" of inventory ever occurred between Delphi and BBK. The Company remarked further, that

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The BBK transactions were deceptive in nature and served only to temporarily move inventory off of Delphi's books at the end of each reporting period so that Delphi could meet its financial targets.

b. BBK Knowingly Engaged In Sham "Sales" With Delphi With The Intent To Inflate Delphi's Reported Financials

168. As with SETECH, BBK knowingly engaged in conduct that had the principal purpose and effect, of creating a false appearance of fact, in furtherance of Delphi's deceptive scheme to temporarily remove inventory from its books and inflate its financial results. Prior to 2000, BBK had been engaged by Delphi to provide consulting services, but BBK had never purchased inventory from an automotive or automotive supply company. Moreover, BBK had no need or use for the core and batteries inventory it purportedly "purchased" from Delphi.

169. Each of the BBK transactions was carried out in the same deceptive manner, which underscores BBK's knowing and active participation in these fraudulent transactions. Specifically, in each of the transactions, BBK purportedly "purchased" inventory from Delphi before the end of a critical financial reporting period, namely in December 2000, REDACTED

170. Each of the transactions involved an undisclosed obligation by Delphi to "repurchase" the very same inventory from BBK. For each of these transactions, BBK never took delivery of the inventory that it "purchased." Additionally, BBK never paid Delphi any money for the inventory it "bought." Rather, the "purchased" inventory was paid for by financing arranged by Delphi. And, for each of these transactions, BBK was paid a substantial fee.

171. BBK knew of Delphi's illegitimate purpose for the transactions. According to CS 5, a BBK consultant from 2001 to 2003 who had previously worked for GM for over thirty years, these types of transactions were "done in order to move things off the books for a short period of time, and then bring them back on the books when cash flow improved." CS 5 explained that these types of transactions were focused on timing: "It's always a timed deal. It's always a deal where some time is bought or some strategic negotiating time with the union or you get some number of people off their books of whatever they have to do to remain viable on financial terms on their books." In describing these types of transactions generally, which he confirmed had occurred between BBK and GM, CS 5 said:

> To me, those were mostly parking, you buy things, you sit on it, and then you transfer them back to them at some margins to BBK. BBK worked on pretty thin margins. They had set up some warehouses to store excess inventory, or in some cases, they will pick up the goods and services, pay for them at a given price and [the company] will buy them back from them.

172. These transactions were arranged and handled for Delphi by Dawes and members of Delphi's Treasury Department, including, among others, Blahnik, who reported to Dawes as well as Free and Battenberg. CS 6 confirmed that Dawes was directly involved in the transactions between Delphi and BBK. CS 6 worked in the senior executive offices of BBK during the early part of the Class Period, assisting in the preparation of reports and presentations for senior management. CS 6 stated that Dawes "had a very close working relationship" with Bahadur and Diehl and that they met on a regularly scheduled bi-monthly basis to discuss the BBK - Delphi engagements.

173. BBK entered into the transactions with Delphi knowing that their sole purpose was to meet the Company's internal financial goals, and that they were round-trip transactions that served no legitimate business purpose. Indeed, the timing of these

transactions - right before the end of critical financial reporting periods at a time when the auto industry was known to be struggling - further demonstrates BBK's knowledge, or, at a minimum, its reckless disregard, for Delphi's true purpose in conducting these transactions: to inflate its financial results.

174. As an experienced consulting firm that "works closely with businesses in the automotive and manufacturing sector," "holds a dominant ... position in the area of automotive turnaround services" and boasts Delphi as a longstanding client, BBK was undoubtedly aware of the depressed state of the auto industry.

175. Louise Kelley ("Kelley"), Delphi's Manager of Structured Finance at the time of these transactions, worked with her direct supervisor, Belans, to consummate the deal with BBK. She stated that BBK was intimately familiar with Delphi's business, hiring experts in specific areas to assist Delphi with troubled suppliers. According to Kelley, it was "BBK's business to know Delphi's business," and Bahadur, with whom she had met personally, had to have been aware that the battery and generator core transactions would directly affect Delphi's financial statements.

176. Moreover, BBK representatives attended regular bi-monthly meetings with Delphi throughout this period and, therefore, BBK was in a position to know Delphi's true financial condition. Despite its awareness of the true purpose for these transactions, BBK nevertheless continued knowingly to participate in a deceptive scheme in order to collect substantial fees.

177. Indeed, BBK engaged in deliberate conduct in furtherance of Delphi's misleading and fraudulent schemes. For example, Bahadur, then CEO of BBK, participated in negotiating, preparing and executing deceptive documents that Delphi used, and that BBK knew Delphi

intended to use, to deceive the investing public regarding the substance of the December 2000 transaction. The amount of the agreed upon "purchase" was $70,000,000 in battery and core inventory from Delphi. The agreement was to include a "sell-back" clause of the same inventory to Delphi in January 2001 for the $70,000,000 purchase price plus a 0.5% fee of $350,000.

178. BBK's counsel drafted the contract for this transaction and recommended that BBK put Delphi's "repurchase" obligation in writing. When Delphi refused to do so because of the Company's desire to make the transaction appear as a sale, rather than insist upon the wording in the contract, BBK agreed to deliberately omit that material term from the transaction documents. However, Bahadur, on behalf of BBK, entered into a secret, oral side-agreement with Delphi, in which he and management agreed that Delphi would "repurchase" the inventory in early 2001 for the total original purchase price plus a fee. BBK and Bahadur understood that the only purpose - which was not legitimate - for keeping this repurchase agreement secret was to assist Delphi in mischaracterizing it as a seemingly legitimate "sale."

179. Accordingly, on December 27, 2000 - three business days before the end of Delphi's fiscal year - BBK entered into an "Inventory Purchase Agreement" pursuant to which BBK agreed to "purchase" $70,000,000 of cores and batteries from Delphi. The Inventory Purchase Agreement made no mention of Delphi's "repurchase" obligation or its agreement to pay a fee to BBK.

180. As mentioned above, when this transaction could not be consummated as planned, because BBK was unable to secure financing to "buy" the inventory from Delphi before the close of the fiscal year, BBK - although it was not a supplier to Delphi - at

Delphi's suggestion, enrolled in Delphi's Supplier Financing Program. The program was through REDACTED and was designed to provide suppliers with early, but discounted, payment of invoices issued to Delphi for materials it had purchased. Under the program, REDACTED would pay a supplier of materials immediately upon receipt of an invoice and approval by Delphi; payment however, would be at a discount. Delphi would then pay REDACTED the full amount of the invoice on its actual due date.

181. Subsequent to BBK's enrollment, on January 5, 2001, a false invoice was issued to Delphi, from BBK, for $70,840,214.28, an amount that would allow BBK to receive from REDACTED payment of the $70,350,000, the exact amount due BBK under the inventory agreement.

182. Delphi immediately authorized the payment of this invoice; and promptly paid BBK. BBK received these funds on or about January 12, 2001, skimmed its $350,000 fee off the top, and sent the remaining $70,000,000 to Delphi. Thus, BBK never actually paid for the inventory it purportedly "purchased" from Delphi.

183. BBK with clear knowledge of the undocumented oral agreement, along with the unsubstantiated invoice issued through the supplier financing program, was equally aware that no legitimate purpose for the transactions existed. BBK of their own volition, and in accordance with Delphi's wishes, BBK set about preparing and signing documents that had the principal purpose and effect of furthering Delphi's fraudulent scheme.

184. By their nature and terms - including the facts that BBK never even paid for the inventory; that BBK entered into a side agreement to, shortly after purchasing the inventory, "resell" it to Delphi at the same price; and that BBK attempted to conceal this side agreement - BBK's active role in and responsibility for these transactions is readily apparent.

It is clear that BBK knowingly and actively engaged in deceptive acts that had the principal purpose and effect of furthering Delphi's fraudulent scheme.

3. The Bogus $200 Million "Sale" To Bank One

185. As with BBK and SETECH, Delphi also improperly accounted for another $200 million in sham transactions with Bank One. In the Restatement, Delphi admitted:

> In 2000 and 2001, Delphi entered into several transactions, in each case improperly recording the transaction as a disposal of inventory to [an unidentified] third party and repurchasing the same inventories in subsequent periods. Each of these transactions should have been accounted for as a financing transaction, not a disposal. Specifically, in the fourth quarter of 2000, Delphi entered into transactions…a second to a different third party for approximately $200 million…

186. Bank One and Delphi engaged in a deceptive $200 million round-trip transaction, which book-ended critical financial reporting periods and served no legitimate purpose other than to inflate Delphi's 2000 financial results.

187. By improperly recording the $200 million precious metals transaction as a sale in 2000, Delphi was able to recognize LIFO inventory gains that increased its pre-tax income for 2000 by approximately $100 million. Delphi was thus able to report record cash flow from operations of $268 million for 2000. This was viewed as a significant accomplishment for Delphi because, at this time, the rest of the auto industry was suffering from production cuts and lay-offs. As subsequently admitted by Delphi, however, this achievement was reached only through bogus transactions and fraudulent accounting. In actuality, Delphi's cash flow from operations was only $68 million, which is $200 million – or 75% – less than originally reported.

188. Further, Delphi falsely touted these improvements as being the result of "aggressive inventory management" and the result of "strong inventory reduction programs." At no time prior to the SEC's investigation did Delphi disclose that the improvements were the

result of financing arrangements that, pursuant to GAAP, did not support the removal of inventory from Delphi's balance sheet.

a. Bank One's Inventory Transaction Was A Bogus Sale

189. After its spin-off, Delphi carried high value inventories of precious metals, commonly referred to as PGM inventory, used to make catalytic converters. Pursuant to its dealings with GM, Delphi had expected GM to repurchase this PGM inventory before the end of 2000. In October 2000, however, Delphi learned that GM would not buy the PGM inventory until early 2001. To satisfy market expectations, Delphi's executive management financially engineered an eleventh hour plan to nonetheless "sell" this inventory in 2000.

190. According to Kelley, throughout December 2000, a deal team comprised of Delphi employees representing the many Delphi "stakeholders", outside attorneys, Bank One employees and Deloitte auditors (the "PGM Deal Team") met repeatedly to fashion a transaction that would appear to be a true sale of Delphi's PGM inventory. Kelley confirmed, however, that the ***substance of the transaction never changed*** during this process: it was always clearly a sale of PGMs to Bank One tied directly to a "forward" – a forward purchase agreement – according to which Delphi would repurchase the PGMs at a premium that consisted of interest, carrying costs and a deal fee.

191. At the conclusion of the PGM Deal Team discussions, Bank One and Delphi entered into an agreement on December 28, 2000 – just two business days before the end of Delphi's fiscal quarter and year-end – in which Bank One purported to "purchase" $198,936,786.00 worth of PGM inventory from Delphi. On the same day, Bank One and Delphi also executed a Forward Purchase Agreement with Bank One, requiring Delphi to repurchase the same PGM inventory for the agreed price of approximately $202 million, plus interest, on

January 29, 2001. This figure included Bank One's original purchase price plus a handsome $2 million fee plus interest for one month and costs.

192. Despite labeling the transaction a "sale", it was, according to Kelley, always understood that the inventory would never leave Delphi's premises and would continue to be used by Delphi, which is exactly how the deal transpired. Upon receipt of Bank One's $200 million payment, Delphi recorded it as a $193 million reduction to inventory and a gain on sale of $6 million. One month later, Delphi repurchased the same inventory, but it had already obtained the $200 million cash flow "benefit".

193. As noted above, in its Restatement, Delphi admitted that it improperly recorded this transaction as a sale instead of a financing transaction, since it had agreed to buy back those assets at a later time. The transaction served only the illegitimate purpose of temporarily moving inventory off of Delphi's books at year-end so that Delphi could meet analysts' expectations and other financial goals by recording $54 million in extra pre-tax income through the recognition of LIFO inventory gains. According to former Delphi employees, this was the desired effect: by structuring this transaction so Delphi could obtain the $200 million benefit before year-end, only to unwind it one month later at the outset of the following fiscal year, the intent to manipulate Delphi's financial reporting is self-evident. CS 7, a former GM employee who worked in the division that was spun-off as Delphi, stated that the PGM transactions with Bank One "were done to try to generate cash flow from off balance sheet financing."

b. Bank One Knew Of Delphi's Improper Purpose For The Transaction

194. Delphi expressly told Bank One that "it wanted an 'accounting transaction' that would allow Delphi to move the metals off of its books, yet satisfy its auditor that the transaction could be accounted for as a sale." In its own documents, Bank One acknowledged that Delphi

was using this year-end transaction to deceive investors by taking assets off its balance sheet and not recording any debt.

REDACTED

Moreover, given the auto industry's well-known financial difficulties during the fourth quarter 2000, Bank One – an experienced and sophisticated banking institution – knew, or recklessly disregarded, that the transaction served only to make Delphi seem more profitable.

195. Aware of Delphi's improper purpose, Bank One prepared and executed documents that misrepresented the true nature of the transaction so as to allow Delphi to achieve its fraudulent objectives. For example, an email exchange between Kelley and Daniel Muhling, a Managing Director at Bank One, with a copy to Ric Huttenlocher, a Senior Managing Director at Bank One who served as the bank's relationship manager with Delphi, evidences Bank One's active participation in the deceptive scheme.

REDACTED

196.

REDACTED

Specifically,

REDACTED

(Emphasis added).

197. Thereafter, Bank One prepared the transaction documents to evidence a purported "sale" of Delphi's PGM inventory, instead of what the transaction actually was: a short-term loan. In other words, Bank One drafted and executed documents that misrepresented the nature of the transaction knowing that the documents were going to be used to deceive the investing public about Delphi's financial results. For instance, the transaction documents, which Bank One sent to Delphi, included two separate contracts: one for the Purchase Agreement and one for the Forward Purchase Agreement.

198. The Purchase Agreement also misleadingly addressed Delphi's concerns over its continued use of the metals by having Bank One, REDACTED

REDACTED of the PGMs and, as such, permitted Delphi's continued "use" of the PGMs. REDACTED

Bank One concealed its compensation for the transaction in the prearranged, "sell-back" price by drafting the Forward Purchase Agreement

USD 202,514,626.18, which included, without any direct mention, Bank One's excessive $2 million fee plus implied interest and costs. Simply put, Bank One knew that Delphi wanted to account for the transaction as a sale and participated directly in Delphi's deceptive scheme by drafting misleading documents that allowed Delphi to meet that goal.

199. REDACTED Bank One knew of Delphi's intent to account for the transaction as a sale, and structured the transaction to allow Delphi to achieve that illegitimate objective:

REDACTED

(Emphasis added).

200.

REDACTED

demonstrates Bank One's knowing and active participation in Delphi's fraudulent scheme. In

REDACTED

201. There is no doubt that, at the time that Bank One was deliberately drafting and executing the transaction documents to create the appearance that Delphi was "selling" the PGMs. Bank One knew that the transaction was ***not*** a "true sale." For instance,

REDACTED

Similarly, the fact that Bank One never took physical delivery of the metals evidences that Bank One knew that, despite the terms of the contracts, it was not purchasing the PGMs from Delphi. As set forth above, the PGMs – the object of this purported sale – never even left Delphi, but instead remained in its plants. From the date of the purchase to the date of the buy back, Delphi maintained and warehoused the PGMs and continued to use them in its manufacturing process.

REDACTED

202. Bank One also knew that the transaction was not a sale because it assumed no risk in the transaction.

REDACTED

Because Delphi agreed in advance to "buy-back" the identical PGMs it sold to Bank One for the same price, Bank One was safeguarded against any price drop in the market for precious metals and, therefore, bore no risk.

REDACTED

These circumstances, along with the massive size and suspicious timing of the transaction, underscore that Bank One knew that it was engaged in documenting a deceptive round-trip transaction that served no purpose other than to boost Delphi's year-end financial results.

203. Kelley confirmed that Bank One's Muhling was a member of the PGM Deal Team, which met throughout December 2000 to execute the PGM transaction. Muhling, Kelley's primary contact at Bank One, was privy to all emails and communications exchanged during this time, and was sufficiently senior to have "signing authority" on behalf of the bank. Like every other member of the PGM Deal Team, Muhling understood that the sale and repurchase of the PGMs were inseparable parts of one transaction.

204. Bank One had two economic motives for participating in and supporting Delphi's deception. First, the Delphi PGM Transaction was highly profitable for Bank One.

REDACTED

Second, the PGM transaction advanced Bank One's goal of becoming one of Delphi's top financial service providers.

REDACTED

205.

REDACTED

REDACTED

206. In addition,

REDACTED

207. In sum, Bank One was motivated to, and did, knowingly and actively, engage in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of Delphi's fraudulent scheme to materially inflate its 2000 earnings.

B. Delphi Violates GAAP And Creates The Appearance Of Income Through Its Dealings With GM

208. In order to artificially inflate its income further still, for example, Delphi fraudulently accounted for over $260 million in transactions with GM by alternatively (i) deferring expenses that should have been recognized immediately, and (ii) immediately recognizing credits that should have been deferred. In so doing, Delphi manipulated the timing of its expense recognition, thereby materially understating its expenses and overstating its income. Accordingly, at a critical point early in its life as a stand-alone company, Delphi's

improper accounting for its transactions with GM made the Company appear significantly more profitable than it actually was.

209. According to its Restatement, Delphi's improper accounting for its transactions with GM included the following:

a. Delphi improperly classified and recorded a $202 million cash payment to GM to settle a warranty claim as an adjustment to post-retirement obligations in the fourth quarter of 2000;

b. Delphi improperly recorded $30 million in warranty credits received from GM in 2001 as a reduction to expenses in 2001 and 2002; and

c. Delphi improperly failed to record a $10 million warranty obligation in the first quarter of 2003.

210. As discussed below and more fully in ¶¶ 228-236, Delphi's accounting for each of these transactions violated GAAP. Its impact on Delphi's financial reporting was significant: in total, by fraudulently accounting for these transactions with GM, Delphi overstated its pre-tax income by $202 million in 2000; $30 million in 2001; and $20 million in 2002.

1. Delphi's Improper Classification of Warranty Expenses

211. In the third quarter of 2000, Delphi paid GM $237 million in cash as settlement of warranty claims. This payment arose out of a dispute between Delphi and GM over which company was responsible for warranty or recall costs associated with Delphi-produced parts. After lengthy negotiations, and an agreement that an outside mediator would review the parties' settlement, Delphi agreed to pay GM $237 million to cover the still-contested warranty issues.

212. The fraud relating to the manner in which Delphi and GM mischaracterized Delphi's payment to GM of warranty claims has its roots in the spin-off of Delphi from GM. In its IPO prospectus, Delphi disclosed reserves in the amount of $53 million to cover unsettled

warranty obligations owed to GM and represented that these reserves were adequate. In early 2000, however, only months after the Delphi-GM separation, GM told Delphi's management that it would seek between $350 million and $800 million from Delphi to cover warranties on Delphi's products.

REDACTED

213. Former GM and Delphi employees confirm that warranty issues were hotly contested between the two companies around the time of Delphi's spin-off. According to CS 8, "prior to the Delphi spin-off, there were significant disagreements between GM and Delphi as they related to warranty costs associated with recalls relating to defective airbags and powerlocks manufactured by Delphi Automotive Interiors." CS 8 worked for GM and then Delphi for three decades before retiring during the Class Period. While employed by Delphi, CS 8 worked extensively on corporate, merger and acquisition matters. CS 8 further stated that "the companies were engaged in discussions and negotiations concerning these financial issues at the time that Delphi was formed," and that, it is CS 8's understanding, "the ultimate resolution of these issues was handled at the highest financial levels involving the CFOs of both companies," which included Dawes.

214. Indeed, as revealed by the documents obtained in the Lift Stay Discovery,

REDACTED

REDACTED

215.

REDACTED

216.

REDACTED

REDACTED

217.

REDACTED

218.

REDACTED

219. Dawes informed the Board of the manner in which Delphi was going to raise its reserve, that Wyman and John Opie (Audit Committee Member) were involved in determining Delphi's negotiating positions. In addition,

REDACTED

REDACTED

220. Rather than disclose to shareholders the potential liability from GM and the fact that the Company was under-reserved, Delphi instead set aside a $112 million reserve and improperly recorded it as a direct charge to retained earnings, rather than as an expense. As a result of this misclassification, Delphi materially overstated its net income for the second quarter and full year of fiscal 2000 by $69 million. Because there was no basis for Delphi to charge the warranty accrual to equity, Delphi's accounting for and disclosure of this warranty reserve were materially false and misleading.

REDACTED

221. REDACTED . By September 2000, Delphi and GM reached an agreement to settle twenty-seven of GM's warranty claims for $237 million. To minimize the negative impact of the $237 million payment (an amount well above the $53 million originally set aside) on Delphi's income, GM and Delphi developed an "asymmetrical" accounting scheme whereby Delphi would account for the transaction as a deferrable pension/OPEB expense and GM would account for it as a warranty payment. In furtherance of this scheme, GM and Delphi added to their settlement agreement a provision releasing Delphi from a non-existent pension/OPEB claim. This provision was based on a report manufactured by Delphi's actuarial consultant, which roughly calculated the claim to be worth $202 million.

222.

REDACTED

223. According to

REDACTED

the first draft of this settlement agreement on September 22, 2000

REDACTED

The settlement agreement called for the payment of $237 million to GM, with $35 million assigned to warranty claims and $202 million assigned to pension/OPEB.

224. Yet Delphi and GM did conjure this pension/OPEB claim solely to execute this "transaction." In fact, GM never asserted this claim nor had any basis to do so. Essentially, the claim GM ultimately released was that the companies should have used 1999 (as opposed to 1998) actuarial assumptions to calculate the amount of Delphi's pension/OPEB true-up

payments. A two-page fax from Delphi's actuarial consultant estimated that Delphi's pension/OPEB payments to GM could have been about $202 million higher had the parties used 1999 assumptions.

225. REDACTED

Therefore, as planned, Delphi apportioned most of the payment, $202 million, as a pension/OPEB payment and the remaining $35 million as a warranty charge.

226.

REDACTED

REDACTED

227. As Delphi finally acknowledged in the Restatement, the accounting for the GM warranty agreement violated GAAP (FASB Concept No. 6) and the payment to GM should have been accounted for what the payment was: a settlement of warranty claims to be expensed in fiscal year 2000. As Delphi admitted in its Restatement:

> Delphi improperly accounted for $202 million cash payments made to its former parent in calendar year 2000 as a pension settlement agreement. The payment should have been accounted for as a settlement of warranty claims and should have been expensed or charged against the warranty accrual in 2000 rather than reflected as an adjustment to post-retirement obligations and amortized over future periods.

228. In other words, Delphi should have immediately recorded the full amount of this payment as an expense. Despite this clear requirement, Delphi failed to immediately recognize this expense. Rather, as later conceded in the Restatement, Delphi violated GAAP by improperly classifying $202 million – or 85% – of this cash payment as an adjustment to post-retirement obligations in order to defer the expense by amortizing this amount over several future periods and reduce the unwanted adverse effect on the 2000 financial results.

229. In addition, by improperly classifying this warranty expense as an adjustment to its post-retirement obligations, Delphi was able to reduce its post-retirement liabilities by $202 million on its balance sheet. As discussed above in ¶¶ 78-79, Delphi had substantial unfunded pension liabilities. The market had a favorable view of Delphi paying down its pension liability, since doing so appeared to remove a form of risk from Delphi's balance sheet and cleared the way for cash to be used for purposes other than pension fund contributions.

2. Delphi's Premature Recognition Of Warranty Credits

230. Delphi continued to exploit the accounting for the GM warranty transaction to its benefit in subsequent quarters. As set forth in ¶ 211 above, Delphi and GM had referred the warranty dispute to an outside mediator. Ultimately, the outside mediator determined that Delphi had overpaid GM by $85 million to settle the warranty claims. As a result, GM provided Delphi with $85 million in credits, even though it previously recorded only a $35 million warranty expense to GM.

REDACTED

231. As Delphi admitted in the Restatement, it improperly and prematurely recorded $30 million and then $20 million of the $85 million in credits as immediate reductions in expense in 2001 and 2002, respectively.

232. Remarkably, Delphi's improper accounting treatment did not end there,

REDACTED

233. Under GAAP Statement of Financial Accounting Standard No. 5 ("SFAS 5"), Delphi was required to recognize these credits as a reduction to warranty obligations when utilized. In other words, Delphi was only permitted to use these credits as a reduction to expenses against actual warranty claims when such claims occurred. Nevertheless, as Delphi has

now admitted, it improperly recorded $30 million of the $85 million in credits – or 35% – immediately as a reduction to expenses in violation of GAAP, thereby immediately understating its expenses and overstating its income.

234. By immediately recording these warranty credits, Delphi improperly reduced expenses based on claims that had not yet occurred, which resulted in an increase to income. The financial impact was a $30 million income overstatement in 2001 and a $20 million income overstatement in 2002.

3. Delphi's Failure To Recognize A Warranty Obligation To GM

235. In addition, Delphi failed to recognize a $10 million warranty obligation to GM in the first quarter of 2003. GAAP provides that warranty obligations shall be accrued, and therefore, an expense recognized, when they are probable and estimable. In violation of GAAP, Delphi did not recognize this warranty expense even though its obligation to GM was probable and estimable. As Delphi has since admitted in the Restatement, "Delphi should have recognized a $10 million warranty obligation to its former parent in the first quarter of 2003."

236. The financial impact of Delphi failing to recognize this warranty obligation was to overstate its 2003 pre-tax income by $10 million. In conjunction with the other 1Q 2003 transactions discussed in ¶ 480 below, the $10 million overstatement allowed Delphi to beat analysts' earnings estimates in the first quarter of 2003 by one penny.

237. Having thus manipulated the accounting treatment for its dealings with GM in order to create the false appearance of income, Delphi continued its cover-up in 2003. As a further result of the machinations described in ¶¶ 211-236 Delphi artificially inflated income in the earlier years of the Class Period to the detriment of later years. Specifically, by (i) deferring warranty expenses that should have been recognized immediately and (ii) immediately recognizing credits that should have been deferred, Delphi was, by 2003, left with substantial

expenses without any credits to offset them. In other words, as a result of its earlier manipulations, Delphi faced the prospect of ***understating*** income in 2003. Put another way, Delphi and its employees had a choice: (i) lie in the bed of deceit they had created and understate income for 2003; or (ii) reveal its fraud. As is now evident, Delphi chose to conceal its fraud – a choice perhaps facilitated by the fact that, even by understating income in the later periods, Delphi nonetheless just managed to meet consensus analyst estimates.

C. Delphi's Improper Accounting For Transactions With The Company's Suppliers

238. In order to even further artificially inflate its income, Delphi fraudulently accounted for nearly $110 million in transactions with various service suppliers during the Class Period. Specifically, throughout the Class Period, Delphi: (i) prematurely recognized credits; (ii) improperly deferred recognition of expenses; and (iii) improperly failed to recognize obligations in transactions with its suppliers. Simply put, Delphi inflated its income by gaming when it would and would not recognize income and expenses. As set forth below, Delphi admitted in the Restatement that its accounting for these transactions violated GAAP.

239. Delphi created the false appearance of more than $86 million in retained earnings at December 31, 2001 by prematurely recognizing the cost savings provided by rebates, credits and other lump sum payments received from third party suppliers. REDACTED

REDACTED Delphi did this by recognizing substantial "savings" on purchases of goods and services that had not yet occurred.

REDACTED

240. Under GAAP (FASB Concept No. 5, ¶ 83), the benefit of rebates, credits and similar payment arrangements can only be recorded when realized, realizable and earned. GAAP provides that rebates can be recognized only when the products are actually purchased and/or the related services are actually performed. Delphi, however, disregarded this principle and fraudulently recognized the benefits offered by rebates and credits immediately, rather than at the time of contractual performance, as required by GAAP.

REDACTED

The Company admitted in its Restatement that it improperly accounted for rebate payments and credits received from Company service providers:

> Delphi did not recognize certain liabilities or appropriately defer recognition of payments and credits that were received in conjunction with agreements for future information technology services. In addition, the investigation identified other rebate transactions occurring between 1999 and 2004 in which the payments and credits received by Delphi from suppliers were tied to agreements for the provision of future services or products, and for which Delphi recognized the payment or credit when received rather than as the services were performed or products were purchased.

241. During the period between 1999 and 2004, REDACTED

REDACTED . Specifically, as set forth below, Delphi has admitted that it improperly recognized rebates and credits received from at least three separate suppliers, including the following:

a. $19.5 million in rebate credits received from one of the Company's technology service providers as a reduction of expense when received;

b. $26 million in rebate credits as a reduction of expenses when received from EDS, one of the Company's primary information technology service providers in the third quarters of 2000 and 2001;

c. $20 million rebate from EDS as income in the fourth quarter of 2001; and

d. $22 million deferred recognition of expense to EDS

REDACTED

1. Delphi's Improper Recognition Of Rebate Credits From Information Technology Service Providers

242. In late July 2004, Delphi received a subpoena from the SEC requesting information regarding the Company's agreements with EDS. In August 2004, the Company received a formal order of investigation from the SEC. The SEC staff subsequently advised Delphi that the SEC staff was also reviewing the accounting treatment of payments received by Delphi from other suppliers of information technology services. The payments and credits that the SEC identified included $3.5 million that Delphi received in 2001, from an information technology provider. Thereafter, a Delphi internal review identified additional instances in which Delphi received credits or payments of $16 million in 1999 where the accounting treatment was being reviewed.

REDACTED

243. Delphi artificially inflated its income in 2000 and 2001 by improperly recording the $19.5 million in rebate credits received from REDACTED First, Delphi prematurely recorded $16 million of the credits as income from January 2000 through August 2001. Second, Delphi improperly recorded the $3.5 million balance of the credits as a reduction to expenses in the second quarter of 2001.

244. Delphi admitted in its December 8, 2004 Form 8-K that its accounting for the $19.5 million rebate credits was improper, and that the "credits should have been recognized over the related contract periods, which are from 2000 through 2007."

245. Thereafter, in its March 1, 2005 Form 8-K, Delphi confirmed its admissions from the prior 8-K regarding improper accounting for certain rebate transactions between Delphi and information technology service providers. Delphi admitted that it "failed to recognize certain liabilities and did not appropriately defer recognition of payments and credits that were received in conjunction with agreements for future information technology services." In sum, Delphi overstated its pre-tax income for Fiscal Years 2000 and 2001 by fraudulently recording $19.5 million in rebate credits when received instead of recognizing the credits when earned over the seven years provided for under the contract.

246.

REDACTED

2. Delphi's Improper Accounting Of Rebates Received From EDS

247. EDS was a part of GM until 1996. EDS had provided IT services to Delphi since 1984 under a global services agreement between GM and EDS. After Delphi's spin-off,

REDACTED

Delphi admitted in its Restatement that it improperly recognized in 2000 and 2001 nearly $50 million of rebates and rebate credits that it received from EDS. Specifically, Delphi improperly accounted for $26 million in credits and $20 million rebates. EDS offered substantial cost savings and price concessions to Delphi in order to effectively compete for contracts. These cost savings were typically offered in the form of rebates, credits and similar payment discounts. As CS 9 explained, in order to win contracts, EDS had to offer Delphi "big price concessions" or Delphi would go to another supplier. CS 9 worked for GM and then Delphi for over three decades. CS 9 served as a senior technical officer who reported to Dawes and was actively involved in the master service agreement negotiations between Delphi and EDS.

248. The cost savings offered by EDS were not sufficient for Delphi's purposes, however, because the benefits could not be recognized immediately. For this reason, Delphi's finance department, including Free and Dawes, insisted that the rebates be recognized up-front as opposed to when actually earned in subsequent periods. Indeed, CS 9 stated that Delphi's finance department was "pretty clear that they wanted the upfront payments from EDS" because "the whole issue was the timing of those savings. We were a young start-up company and ***[we were] looking for numbers***." (Emphasis added).

a. Delphi's Improper Accounting Of $26 Million Up-Front Recognition Of Credits Received From EDS

249. Delphi artificially inflated its income by improperly recognizing approximately $26 million in rebate credits received from EDS as a reduction of expenses when received, rather than as the Company actually earned the credits over the course of the contract's performance. Delphi admitted in its Restatement that it improperly recognized these credits from EDS and that "each credit was received in conjunction with an agreement for future information technology services and therefore should have been recognized ratably over the life of the related service agreement." Specifically, Delphi fraudulently reduced its expenses, which resulted in an increase to the Company's income, by $8 million in the third quarter of 2000 and $18 million in third quarter of 2001.

250.

REDACTED

251.

REDACTED

. According to the terms of the service agreements, Delphi should have recognized the $8 million in credits ratably over 3.5 years, meaning Delphi should have reduced its expenses by $571,000 per quarter for fourteen quarters (from the first quarter of 2001 through the second quarter of 2004), instead of reducing its expenses by all $8 million in one quarter.

252. As mentioned,

REDACTED

253. Again, Delphi improperly accounted for the $18 million. Where the Company should have recognized the $18 million in credits ratably over 6.25 years, meaning Delphi should have reduced its expenses by $720,000 per quarter for twenty-five quarters (from the fourth quarter of 2001 through the fourth quarter of 2007), instead it reduced its expenses by all $18 million in one quarter, specifically the third quarter 2001.

b. Delphi's Improper Accounting Of $20 Million Up-Front Payment From EDS

254. Delphi has also admitted that it fraudulently recorded a $20 million rebate from EDS as income at the time it was received in the fourth quarter of 2001, even though Delphi knew that the payment was, in substance, a loan.

REDACTED

On the same date Delphi and EDS entered into a new IT contract, the REDACTED, whereby EDS agreed to provide Delphi with certain services and manpower, and to facilitate certain third party payments, associated with the implementation of enterprise application software at Delphi.

REDACTED

255. At the time they signed the contract, Delphi and EDS agreed that Delphi would repay the $20 million to EDS over a 5 year period through monthly installments of $333,333.33. As devised, EDS paid Delphi the $20 million and Delphi simultaneously entered into the REDACTED, under which Delphi would pay EDS approximately $207 million over the course of the five years for supposed software implementation services. However, the true value of the contract was only $187 million, the additional $20 million was included as a means for Delphi to repay the up-front payment.

256. It was also agreed that Delphi would pay interest on the $20 million, through an "intentionally opaque scheme involving accelerated payments on other EDS service invoices, and utilizing a supplier finance program." In order to compensate EDS for its interest costs on the $20 million loan, Delphi agreed to pay certain invoices on an unrelated contract one month early. Delphi used a supplier finance company to pay EDS early on invoices or portions of invoices that had a total dollar value equal to the Company's outstanding principal balance on the loan. Delphi then reimbursed EDS for the supplier finance company's discount. Internal Delphi and EDS documents reflect that the purpose of this early payment arrangement was to compensate EDS for Delphi's use of the $20 million.

257. It was widely known throughout Delphi that the $20 million would be repaid to EDS, and that because the $20 million was refundable, it would contravene GAAP to record the amount as an immediate reduction of IT expense instead of as a Delphi liability to EDS. Regardless, Dawes showed that the $20 million in income was key to Delphi meeting its external analyst targets and that Delphi intended to take the $20 million as income.

258. EDS knew that Delphi's goal was to draft "vague" documents that would allow it to achieve its accounting goals. EDS accounting personnel, the most senior of whom was U.S. GAAP Manager Scott McDonald, were also involved in reviewing and approving the new IT Contract and the terms of the $20 million payment. In November 2001, McDonald was warned by another accountant at the IT company that Delphi had "questionable accounting objectives," including an intention to "record the $20 million as revenue."

259. Delphi's auditor, Deloitte, advised the Company that, in order for Delphi to treat the $20 million as income, there would need to be a written agreement among the parties that made clear that the $20 million was not refundable and not tied to EDS. *See infra* at ¶ 720.

Accordingly, and consistent with this guidance, Delphi provided multiple drafts of a side letter to EDS, despite the fact that the Company knew this guidance was based on the false premise that the $20 million payment and REDACTED were unrelated. The side letter drafts all used intentionally vague, false and misleading language and EDS approved this language.

260. Even though all parties to the negotiations knew that the payment was tied specifically to a new contract, Delphi proposed that the letters indicate that the payment was in connection with "ongoing and past business service relationships" or, at the very least, in connection with "ongoing business relationships." Moreover, even though all parties knew that Delphi was required to repay the $20 million to EDS, some of the draft letters characterized the payment as "nonrefundable." Finally, even though all parties knew that the payment was specifically tied to the REDACTED , in all drafts of the letter, Delphi omitted any reference whatsoever to the REDACTED .

261. The letter was approved by both sides, and the $20 million was accounted for as income. Despite the fact that EDS had signed-off on the side letter, in the weeks after the letter was signed, EDS became concerned, in part because the letter was deliberately vague and misleading, that Delphi had not entered into any clear written obligation to repay the $20 million. In early 2001, after discussion among the companies, Judy Kudla, a former director of finance in Delphi's IT department of Delphi, approved a solution that was once again vague and misleading, but gave EDS the assurances it believed it needed. The solution was to enter into false "work orders."

262. In the normal course of business, under the terms of the REDACTED , Delphi would instruct EDS to perform work by negotiating so-called "work orders." In connection with the $20 million, Delphi and the IT company agreed to enter into "work orders" that purported to

be for $20 million of "administrative services" that the IT company would provide Delphi under the REDACTED . In return for these purported administrative services, Delphi agreed to pay EDS $20 million over five years at a rate of $333,333.33 per month. In fact however, EDS provided no administrative services under the work orders. Rather, the work orders were simply a mechanism for Delphi to pay $20 million to EDS without making it obvious that it was repaying the December 2001 payment. Consequently, the rebate of $20 million had not been earned as Delphi had neither received nor paid for any services or products from EDS. Accordingly, Delphi should not have treated the payment as income.

263. In the Restatement, Delphi admitted that it improperly recognized the rebate as income, conceding that, "the $20 million pre-tax payment should have been recorded as a liability when received in the fourth quarter of 2001 and that this liability should have been reduced as payments were made to EDS pursuant to a services agreement entered into at the time the payment was received." In fact, according to the terms of the service agreement, Delphi should have recorded a $20 million liability in the fourth quarter of 2001; reduced it by a total of $11 million pre-tax (or $1 million per quarter) over the period from January 2002 through September 30, 2004; and, had a $9 million liability remaining on its books at September 30, 2004.

264. CS 9, a former Delphi senior manager who was involved in Delphi's contract negotiations with EDS, confirmed that Delphi's improper recognition of rebates and credits from EDS were well known to and directed by Delphi management. According to CS 9, all of the EDS transactions involved up-front payments and slower cost reduction terms in the later years of the agreements. As he explained, all of Delphi's accounting for its EDS rebate transactions was handled in the finance department by Dawes and Free and their staff. CS 9 stated that, in

terms of the payments, credits and rebates between Delphi and EDS, nothing was ever done without the full knowledge of all concerned at Delphi, including Dawes and Delphi's Chief Information Officer Pete Janak, who reported to Dawes.

265. In terms of specific rebates and credits, CS 9 has stated that the $20 million rebate transaction in 2001 related to the Desktop Agreement (which was executed on February 1, 2001 to enhance Delphi's worldwide desktop technology and messaging environment agreement) and/or the LAN (local area network) agreement, both of which were among the largest transaction agreements between EDS and Delphi.

3. Delphi's Improper Accounting For Implementation Services Rendered By EDS

266. In addition to the above mentioned $20 million upfront payment that Delphi received under the guise of the REDACTED , Delphi conceded in the Restatement that the Company had improperly deferred recognition of expenses for the REDACTED in 2002. The net effect of this improper accounting was approximately $22 million.

267. GAAP (FASB Concept No. 6) requires that these costs be recognized as an expense at the time the services are rendered. Delphi has admitted that, "[t]hese payments should have been recorded as expense when services were rendered, rather than deferred and recorded as an expense in later periods."

268.

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269.

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REDACTED

271. REDACTED

Dawes and Free were aware of this misconduct because, as explained by CS 9, Dawes, Free and the finance department handled all accounting aspects of the EDS transactions. The financial reporting impact of improperly deferring these expenses was to artificially inflate its 2002 net income by approximately $22 million.

D. Delphi's Improper Accounting For Obligations And Adjustments

272. Delphi also artificially inflated its pre-tax income by failing to accrue for obligations, and recording adjustments in the wrong period. Under GAAP (FASB Concept No. 6), a company must record the financial effects of transactions or events in the periods in which those transactions or events occur rather than only in the periods in which cash is received or

paid. In addition, SFAS 5 also requires that a company accrue for a loss contingency when it is probable and estimable.

273. By failing to accrue obligations and recording adjustments in the wrong period, Delphi overstated its retained earnings by $29 million in 2001, and overstated its pre-tax income by $14 million in 2002 and by $34 million in 2003.

274. In addition, Delphi failed to recognize an obligation of approximately $1.8 million pre-tax to an unknown technology service provider. Delphi has not revealed the identity of this information technology service provider, but has admitted that its accounting for this obligation was improper. In its Restatement, the Company stated that "the obligation and the related expense should have been recognized as incurred in the second, third and fourth quarters of 2001, which would have reduced pre-tax income in those quarters."

E. Delphi Misleads The Investing Public Regarding Its Use Of Factoring Facilities

275. From at least 2003 to 2004, Delphi knowingly failed to disclose the full extent of its European Accounts Receivable Factoring program. By hiding a material portion of its European factoring, Delphi was able to materially misrepresent its "Street Net Liquidity" by up to $330 million. In addition, in at least one period, Delphi further manipulated its disclosure of the factoring in order to materially overstate its "Street Operating Cash Flow" by an additional $30 million.

276. Factoring is a common source of financing where a company agrees to sell some or all of its accounts receivable, at a discount, to a financial institution or other entity with the goal of obtaining the cash more quickly. Analysts view these off balance sheet facilities like debt because they serve a financing function and often involve substantial recourse and indirect guarantees.

277. During all relevant periods, Delphi's investors, analysts and rating agencies relied upon Delphi's reported Street Net Liquidity and Street Operating Cash Flow as important measures of Delphi's financial condition and performance. Delphi reported that Street Net Liquidity was a non-GAAP measure of Delphi's liquidity, calculated as total cash less the sum of total on balance sheet debt plus certain off balance sheet obligations, such as factoring and securitization programs that are not treated as debt for purposes of GAAP but are considered debt by rating agencies. Delphi reported that Street Operating Cash Flow was a non-GAAP measure of Delphi's operating cash flow, calculated as cash provided by operations, from the statement of cash flows, plus pension contributions and restructuring payments, less capital expenditures, and further reduced by increases in off balance sheet obligations, such as factoring and securitization programs.

278. To some employees at Delphi, the undisclosed factoring became known simply as the "secret" or "base level" factoring. Under the direction of Dawes and Blahnik, during the period 1999 through 2002, only factoring exceeding the base level was disclosed by Delphi. By late 2002 or early 2003, Dawes and Blahnik were advised that it was improper for Delphi to exclude the secret factoring from its disclosures. However, Dawes and Blahnik took no immediate steps to correct the issue. In fact, in the first quarter of 2003, at Blahnik's suggestion and with Dawes' knowledge, Delphi briefly and intentionally increased the hidden factoring, and decreased disclosed factoring, by $30 million. By doing so, Delphi was able to understate its incremental period-to-period change in accounts receivable factoring and thus cause an automatic $30 million or approximately 20% overstatement of reported Street Operating Cash Flow in the quarter. The overstatement was included in Delphi's earnings release, which was filed with the Commission on Form 8-K.

279. Discussions of whether and how to disclose the factoring continued at Delphi throughout 2003. Dawes ultimately decided that the factoring should be disclosed. However, after discussion with Blahnik and others, he decided the disclosure should be done in a way that would not be obvious to rating agencies. In particular, had Delphi disclosed all of the secret factoring immediately, it would have had the immediate result of decreasing Delphi's Street Net Liquidity by $300 million. Accordingly, Dawes approved a plan where the factoring would be "bled in" over time. Dawes and Blahnik concluded that by disclosing only $35 million of factoring per quarter, the discrepancy would go unnoticed by the ratings agencies. Delphi finally started to bleed in the $35 million per quarter in the first quarter of 2004, more than a year after Dawes and Blahnik had been informed that it was improper for Delphi not to disclose the secret factoring.

280. By October 2004, using its piecemeal disclosure scheme, Delphi had incrementally moved $105 million of the secret factoring into disclosed factoring, with $195 million of the factoring remaining undisclosed - by that time Delphi was in the midst of the Commission Investigation. Dawes, recognizing that Delphi's failure to fully disclose the factoring was inappropriate and, if discovered, would draw additional scrutiny to his conduct, directed that Delphi discreetly disclose the rest of the factoring in Delphi's next earnings release. The amount was described in the Net Liquidity section of Delphi's analyst presentation as part of a line item called "Other." In a January 20, 2005 earnings call with analysts, Dawes described the "Other" line as relating to "some small capital structure items." He did not tell analysts that the "Other" line included the newly disclosed factoring.

281. Delphi, Dawes and Blahnik failed to disclose the full extent of Delphi's Accounts Receivable Factoring Program with the intent and effect of overstating Delphi's Street Net

Liquidity. From the fourth quarter of 2002 to the fourth quarter of 2004, Delphi materially overstated its Street Net Liquidity in amounts ranging from $195 million to $330 million and by percentages ranging from 7% to 11%. The misstatements of Delphi's Street Net Liquidity were reflected in Delphi's earnings release for the period ending December 31, 2002, as furnished to the Commission on a Form 8-K filed January 17, 2003 and in presentations made to Delphi investors and financial analysts in connection with Delphi's earnings releases for the periods ending December 31, 2002, March 31, 2003, June 30, 2003, September 30, 2003, December 31, 2003, March 31, 2004, September 30, 2004 and December 31, 2004.

282. Delphi, Dawes and Blahnik also materially overstated Delphi's Street Operating Cash Flow by $30 million or approximately 20% for the period ended March 31, 2003. This overstatement was reflected in Delphi's earnings release for the period ending March 31, 2003, as furnished to the Commission on a Form 8-K filed April 16, 2003, and in related presentations to Delphi investors and financial analysts.

283. On June 9, 2005, Delphi filed a Form 8-K in which it acknowledged that it did not accurately disclose to credit rating agencies or analysts "the amount of sales of accounts receivable or factoring arrangements from the date of its separation from [its former parent company] until year-end 2004."

284. Delphi was careful not to exceed

REDACTED

This approach enabled Delphi to report a strong position on operating cash flow because the

REDACTED

285. Delphi concealed that its use of these European factoring facilities

REDACTED

The precise amount of the non-disclosure is presented on a quarterly basis in Section VIII below. From Delphi's perspective, and with Deloitte's agreement, the non-disclosures were easy to maintain.

REDACTED

Delphi employees recognized the undisclosed factoring as a "base level" of factoring and it was only the factoring that exceeded the base level that was disclosed by Delphi.

F. Delphi's Understatement Of Its Inventory Balances

286. Delphi also fraudulently accounted for its direct materials by understating the value of its direct materials inventory on a monthly, quarterly and yearly basis.

287. According to CS 4, a former GM and Delphi employee who was involved in logistics for Delphi's Electronics and Safety Division until 2004, schemes to understate inventory levels were a constant feature during his employment at Delphi in Mexico. CS 4 stated that at the end of every month there was always a crunch to ensure lower inventories:

> Receipts were delayed, schedules were pushed out with little or no notice, trucking companies were told to hold shipments and [not] to bring them in. This activity happened almost every month and there was a major push at the end of each quarter and at the end of the fiscal year.

288. CS 4 said that this activity was designed to lower inventory levels and, thus, materially misstated the Company's inventory. CS 4 explained that he received this mandate

"verbally, in voice-mails, phone calls, in a weekly scheduled teleconference between 'corporate' and the plant materials employees every Wednesday, which was called a 'cash call.'"

289. CS 4 provided specific examples of how Delphi understated its inventories. In particular, CS 4 explained that Delphi understated inventories by (i) intentionally failing to record high-dollar supplies as inventory, and (ii) intentionally delaying delivery of inventory.

290. Delphi understated inventory by not recording receipt of high-dollar inventory supplies. Specifically, when Delphi received supplies, management instructed the receiving personnel not to record them. Thus, Delphi had the inventory in their facility, but had no records evidencing Delphi's receipt of the materials. Ultimately, the inventory was entered on the books – or "received" – after the close of the particular reporting period (e.g. month, quarter or year). CS 4 said that Delphi's receiving records highlight this scheme as they document the repeated non-activity before the end of the reporting period followed by an "explosion of millions of dollars of inventory" after the close of the reporting period.

291. Delphi also understated inventory by intentionally delaying delivery from freight holders by instructing them to hold on to their inventory deliveries. CS 4 stated that Dan Renick, Delphi's Director of Plant Production Control and Logistics, who reported to Rick Birch, Delphi's Global Director of Production Control and Logistics, instructed Delphi logistics employees to have freight forwarders hold the freight and not send it on to the receiving plant despite the fact that the material had already been ordered and that a Just-In-Time (JIT) order was sent for replenishment. As an example, CS 4 relayed that "instead of having a freight forwarder deliver the freight from the Pacific Rim and having it delivered to the Milwaukee facility, [Mr. Renick] would have the folks at Milwaukee direct the freight forwarder to hold the freight in Chicago and not send it in to the plant."

292. CS 4 explained that such inventory manipulations were the result of inventory level targets and commitments that divisional management made to Delphi Corporate. Specifically, CS 4 stated that Renick made commitments to Birch and to Mark Lorenz, Delphi's Vice-President of Operations and Logistics, that he would achieve certain inventory levels.

293. A May 3, 2004 internal Delphi document entitled Audit Report: Energy & Chassis Divisional Production, Control & Logistics (the "May 2004 Audit Report") from Derek Kolano, Director of Delphi Corporate Audit Services to William Elia, Director of Production, Control and Logistics of Delphi E&C confirms these improper inventory records and recording practices.

294. The May 2004 Audit Report sets forth the results of a risk-based audit conducted by Delphi's Corporate Audit Services of Delphi E&C divisional Production Control & Logistics (PC&L), located in Troy, Michigan, which is responsible for establishing business practices, policies, and procedures for each of the manufacturing sites within the division. "[T]he Audit focused on high and medium risk areas, which primarily included inventory, logistics, central order processing, direct ship operations, and material master data." According to the Report, one of the areas that needed to be improved was the receipt of materials. In sum, the Report determined it was necessary for Delphi to "[r]ecord receipt of material in a timely manner."

295. Specifically, the "Audit Observations and Management Action Plans" section of the Report identifies the problems with how Delphi was recording the receipt of materials and outlines how such received materials should be recorded on a going-forward basis. In particular, the Report makes clear that Delphi consistently failed to record materials received as inventory in a timely fashion, and discusses the financial reporting impact of this failure. The Report specifically notes instances "where material was delivered to the plant prior to year-end but not

recorded until January." After testing receipts from "near th[is] cut-off period," the Report states that Delphi concluded, for approximately 80% of the receipts, that "title had transferred to Delphi in 2003 yet items were not recorded in inventory until 2004." Further, the Report makes clear that the failure to timely record inventory will render Delphi's disclosures misleading:

> Observation:
>
> Material received at the manufacturing sites is not consistently recorded in the inventory records in a timely manner.
>
> Effect:
>
> If goods are not received into the inventory system when the title has transferred to Delphi, financial statements may be ***misstated or not prepared in accordance with GAAP.***

(Emphasis added).

296. The May 2004 Audit Report was sent to Battenberg, Dawes, and Sheehan, as well as John Arle, Delphi's Vice-President of Corporate Audit Services; Rick Birch; Rajib Chakravarty, Manager of Internal Controls of Delphi E&C; Joseph Gumina, Director of Worldwide Finance of Delphi E&C; Guy Hachey, Vice President of Delphi and President of Delphi E&C; Mark Lorenz, Delphi's Vice-President of Operations and Logistics; Rodney O'Neal, President of Delphi's Dynamics, Propulsion, Thermal & Interior Sector; and Mark Weber, Executive Vice-President of Operations, Human Resource Management and Corporate Affairs.

297. The May 2004 Audit Report was also provided to Deloitte on or about May 3, 2004. Thus, by at least May 3, 2004, Deloitte knew that Delphi was understating its inventory and violating GAAP as a result of its failure to consistently record materials in inventory.

G. Delphi's Manipulation Of Environmental Reserves

298. Lead Plaintiffs' investigation has also revealed that Delphi violated GAAP in ways not discussed in the Restatement. For example, Delphi manipulated its reserves for environmental remediation activities in order to report earnings in line with analyst expectations. Specifically, Delphi inflated its reported income by failing to establish appropriate environmental reserves, and by reversing environmental reserves that had been properly established.

299. According to CS 10, a former financial manager of integrated services at Delphi with responsibility for environmental reserve reporting, Free personally threatened him with dismissal for establishing environmental reserves that would interfere with Delphi's ability to meet analyst expectations. In late 1999, CS 10 made $1 million of reserve adjustments related to two separate facilities at the direction of the Company's Chief Environmental Officer and the Chief Environmental Officer's legal counsel. After making the adjustments, CS 10 was called to the office of Free, who inquired how CS 10 liked working for Delphi. CS 10 replied that he liked working at Delphi very much. Free threatened CS 10, stating: "You are not going to be working at Delphi very much longer if you continue to make environmental reserve adjustments that weren't part of the corporate plan."

300. According to CS 10, Free went on to explain that the environmental reserve adjustments would prevent Delphi from achieving Wall Street's estimates and targets. CS 10 made no further environmental reserve adjustments after his meeting with Free, but noted that the environmental reserves he had established were reversed by unknown persons in the controller's office – i.e., Free's department.

H. Delphi Consistently Meets And Beats Wall Street's Expectations By Means Of Its Fraudulent Accounting Practices

301. By engaging in such extensive and pervasive accounting manipulations, Delphi was able to artificially inflate its earnings and ***always*** meet or exceed Wall Street's expectations during the Class Period. As set forth in the table below, Delphi met or exceeded its quarterly and year-end analyst EPS expectations for the first nineteen financial reporting periods of its existence as an independent publicly traded company:

Comparison of Delphi's Reported EPS v. Wall Street Analysts' Expectations

Reporting Period	Analyst Consensus Expectations	Delphi's EPS As Reported*	Difference
1999			
Q4 1999	$0.46	$0.48	Exceeded by $0.02
1999 Year End	$1.90	$1.91	Exceeded by $0.01
2000			
Q1 2000	$0.56	$0.57	Exceeded by $0.01
Q2 2000	$0.75	$0.75	Met Expectations
Q3 2000	$0.26	$0.26	Met Expectations
Q4 2000	$0.32	$0.36	Exceeded by $0.04
2000 Year End	$1.90	$1.94	Exceeded by $0.04
2001			
Q1 2001	($0.05)	($0.04)	Exceeded by $0.01
Q2 2001	$0.29	$0.29	Met Expectations
Q3 2001	$0.05	$0.05	Met Expectations
Q4 2001	$0.10	$0.10	Met Expectations
2001 Year End	$0.40	$0.40	Met Expectations
2002			
Q1 2002	$0.21	$0.22	Exceeded by $0.01
Q2 2002	$0.39	$0.39	Met Expectations
Q3 2002	$0.08	$0.10	Exceeded by $0.02
Q4 2002	$0.20	$0.21	Exceeded by $0.01
2002 Year End	$0.91	$0.92	Exceeded by $0.01
2003			
Q1 2003	$0.22	$0.23	Exceeded by $0.01
Q2 2003	$0.16	$0.16	Met Expectations
Q3 2003	$0.01	$0.01	Met Expectations
Q4 2003	$0.21	$0.23	Exceeded by $0.02
2003 Year End	$.062	$0.62	Met Expectations
2004			

Q1 2004	$0.20	$0.22	Exceeded by $0.02

* In accordance with conventions adhered to by analysts covering Delphi, and as originally reported by Delphi, the above numbers are presented on a pro-forma basis.

VII. THE FRAUD BEGINS TO COME TO LIGHT

302. Delphi's fraudulent accounting practices and use of fictitious transactions to improve its financials went undetected by investors for years, and even the Company's series of disclosures over the past year (including the Restatement) has yet to illuminate the full nature and extent of the fraud. The first public acknowledgement that something might be amiss with Delphi's accounting came on September 29, 2004, when Delphi announced that the SEC had served a subpoena on Delphi in July 2004 seeking information about certain transactions between Delphi and its suppliers of information technology services, including EDS. According to Delphi's September 29, 2004 press release, filed with the SEC on a Form 8-K:

> In late July 2004, [Delphi] received a subpoena from the [SEC] requesting information regarding the Company's agreements with Electronic Data Systems Corporation ("EDS"), a long time supplier of information technology services to the Company. In August 2004, the Company received a copy of the formal order of investigation from the Commission indicating that the staff of the Commission (the "Staff") had commenced a non-public fact-finding inquiry regarding transactions between Delphi and EDS, including the accounting treatment of payments made and credits given by EDS to Delphi during 2000 and 2001, and certain payments made by Delphi to EDS for system implementation services in 2002 and in early 2003. The Staff has subsequently advised that they are also reviewing the accounting treatment of payments received by Delphi and from other suppliers of information technology services. The payments and credits the SEC has identified involve $46 million Delphi received from EDS in 2000 and 2001, and $3.5 million Delphi received from another information technology provider in 2001. The amount Delphi paid to EDS in 2002 and in early 2003 for system implementation services was $40.5 million. The Company is reviewing the accounting for these and other transactions, including contracts for information technology services and products from the same and other periods. There can be no assurance that the Staff will not expand the scope of their review. The Company is fully cooperating with the Staff's requests for information. Until the

> Staff's investigation and our review is complete, we are not able to predict the potential effect they will have on Delphi.

303. On October 18, 2004, Delphi filed a Form 8-K publishing its quarterly financial information, but failed to file its quarterly report on Form 10-Q. The Company explained that the reason for its not filing a Form 10-Q to report its quarterly financial information was an internal investigation by the Company's Audit Committee precipitated by the SEC's investigation. According to the October 18, 2004 8-K:

> Deloitte & Touche LLP ("Deloitte"), the Company's independent registered public accounting firm, has informed us that due to the ongoing status of an internal review by the Audit Committee of the Board of Directors into the accounting treatment accorded to certain transactions with suppliers, including those for information technology services, it has not completed its review of the unaudited Consolidated Financial Statements included herein for the three and nine months ended September 30, 2004. The internal review was initiated in response to an investigation commenced by the staff of the Securities and Exchange Commission that was disclosed on a Form 8-K filed on September 29, 2004. Additional information regarding the nature and status of both the SEC investigation and the Audit Committee's internal review is contained in the Exhibit to this Form 8-K.

304. On December 8, 2004, Delphi revealed further information regarding the Audit Committee's review of the transactions identified in the SEC's ongoing investigation, and disclosed that the Audit Committee had hired outside counsel and PricewaterhouseCoopers ("PwC") to conduct its review. Delphi's December 8, 2004 press release, acknowledged that this review had uncovered significant accounting irregularities and internal control issues relating to the transactions and reported the following regarding those transactions:

> • Delphi's pre-tax income in the fourth quarter of 2001 reflected a $20 million payment from EDS. It is the preliminary conclusion of the review that the $20 million pre-tax payment should have been recorded as a liability when received in the fourth quarter of 2001, and that this liability should have been reduced as payments were made to EDS pursuant to a services agreement entered into at the time the payment was received. The

impact of this treatment would be to increase expense by $20 million pre-tax in the fourth quarter of 2001 and to lower expense by a total of $11 million pre-tax over the period from January 2002 through September 30, 2004. Additionally, at September 30, 2004 Delphi would have a remaining liability of $9 million.

- Delphi recognized credits received from EDS (approximately $26 million pre-tax: $8 million of which was recognized in the third quarter of 2000, and $18 million of which was recognized in the third quarter of 2001) as a reduction of expense when received. It is the preliminary conclusion of the review that each credit was received in conjunction with an agreement for future information technology services and therefore should have been recognized ratably over the life of the related service agreement. The preliminary conclusion is that recognition of the $8 million credit should have been recognized ratably over 3.5 years from the first quarter of 2001 through the second quarter of 2004, and the $18 million credit should have been recognized ratably over 6.25 years from the fourth quarter of 2001 through the fourth quarter of 2007.

- Delphi recognized credits received from another technology service provider (approximately $19.5 million pre-tax: $16 million of which was recognized in income from January 2000 through August 2001, and $3.5 million of which was recognized in the second quarter of 2001) as a reduction of expense when received. The preliminary conclusion of the review is that these credits should have been recognized over the related contract periods, which are from 2000 through 2007.

- Delphi did not recognize an obligation of approximately $1.8 million pre-tax to a technology service provider. The preliminary conclusion of the review is that the obligation and the related expense should have been recognized as incurred in the second, third and fourth quarters of 2001, which would have reduced pre-tax income in those quarters.

305. On February 23, 2005, Battenberg, who had served as CEO and chairman of Delphi since its spin-off from GM in 1999, announced that he would retire from Delphi. Delphi did not name a successor and disclosed that it had appointed a committee of directors and hired a recruiting firm to search for Battenberg's successor.

306. On March 3, 2005, barely a week after Battenberg announced his resignation, Delphi's Audit Committee released the preliminary findings of the internal investigation launched in September 2004. These preliminary findings pointed to widespread accounting irregularities in Delphi's transactions dating back to 1999, requiring the Company to restate its financial statements.

307. On the following day, March 4, 2005, Delphi filed a Form 8-K with the SEC, signed by Sheehan, which confirmed the need to restate its financial statements:

> **ITEM 4.02 NON-RELIANCE ON PREVIOUSLY ISSUED FINANCIAL STATEMENTS OR A RELATED AUDIT REPORT OR COMPLETED INTERIM REVIEW**
>
> [A]s a result of its ongoing internal investigation, indicate that certain prior transactions involving the receipt of rebates, credits or other lump-sum payments from suppliers ("Rebate Transactions") and off-balance sheet financing of certain indirect materials and inventory were accounted for improperly. Based upon information to date, the Company believes that the improper accounting for off-balance sheet financing transactions in 2000 resulted in the Company overstating cash flow from operations, determined in accordance with generally accepted accounting principles (GAAP), for that year by approximately $200 million and that the improper accounting for Rebate Transactions in 2001 resulted in the Company overstating pre-tax income under GAAP for that year by approximately $61 million. In addition the Company is still evaluating the impact of adjustments to the Company's financial statements for other periods that will be required to be reflected as the Company unwinds the improper accounting of the transactions identified below.

308. The March 4, 2005 Form 8-K added:

> Although the Company is still evaluating additional transactions, the magnitude of the errors and the preliminary conclusions reached to date with respect to the transactions under review led the Audit Committee to conclude that ***the audited financial statements and related independent auditors' reports for 2001 and subsequent periods as a result of the unwinding of the improperly recorded transactions, should no longer be relied upon and a restatement will be required.*** As emphasized below, the internal investigation is not complete and although the findings

> described below have been preliminary discussed with the Company's auditors, Deloitte & Touche LLP, the findings have not been the subject of a review or audit by Deloitte & Touche LLP. Moreover, additional transactions are under examination, and it is possible that the review will determine that they were not properly recorded and that previously issued financial statements for other periods may require additional corrections.

(Emphasis added).

309. In addition, the March 4, 2005 Form 8-K revealed a slew of accounting manipulations that Delphi had engaged in since 1999. According to the press release:

a. Delphi had inflated its cash flow from operations and earnings from 1999 to 2001 by $446.5 million and $166 million, respectively;

b. In the fourth quarter of 2000, Delphi inflated its cash flow from operations by over 80% by prematurely recognizing income from technology contracts and rebates where it should have spread them over the lifetime of the contract. In addition, Delphi improperly capitalized expenses over time, rather than recognizing them immediately, and boosted cash flow from operations and pre-tax earnings by claiming it sold assets and inventory that it had actually agreed to buy back later;

c. Delphi admitted that, in a series of transactions from 1999 to 2001, it sold inventory, precious metals and other assets to unnamed companies and recorded operating cash flow and in some cases, earnings. In one instance, $200 million of precious metals that Delphi said it sold in 2000 were repurchased the following year; under GAAP, those transactions should have been recorded as financing. In 1999 and for parts of 2000 and 2001, Delphi improperly recorded the sale of unwanted materials to a third party, which boosted Delphi's pre-tax income by $60 million in 1999 and

$116 million in 2000. According to the Audit Committee's investigation, these sales were questionable because Delphi was obligated to buy the materials back; and,

d. In 2001, the Company improperly accounted for rebates given to customers to win future business, which inflated pre-tax income in 2001 by approximately $61 million. Delphi had recognized the payment or credit all at once, rather than amortizing it over several quarters. As a consequence of this overstatement, the Company later under-reported pre-tax income a total of $44 million in 2002, 2003, and the first three quarters of 2004. In 2002, the Company overstated its pre-tax income of $529 million by $23 million by deferring software expenses from 2002 until 2003.

310. The Audit Committee also revealed that it had met with supervisory employees and members of management who were involved with or knew about the transactions at issue "to evaluate the conduct and knowledge of these individuals, and to consider after carefully evaluating all of the findings of the investigation and the level of cooperation, what personnel changes or other steps, if any should be taken to strengthen the Company's internal controls and procedures over financial reporting and disclosure controls and procedures to prevent the future occurrences of similar errors."

311. Concurrent with this announcement and acknowledgment that it had met with culpable persons with knowledge or supervisory responsibility over these accounting manipulations and improper transactions, the Audit Committee announced the resignation of Dawes, Delphi's CFO and Vice-Chairman, because the Audit Committee "had expressed a loss

of confidence in him." Delphi's Chief Accountant and Controller, Free was also dismissed, and Blahnik, Vice President of Treasury, Mergers and Acquisitions, was demoted.

312. On March 5, 2005, Fitch downgraded Delphi's debt-rating to junk status. The revelation that Delphi had inflated its earnings and operating cash flow since 1999 sent Delphi's stock plummeting. Delphi's stock price plunged from $6.48 on March 3, 2005 to $5.15 on March 7, 2005 -- a drop of over 20% in two trading days.

313. On March 22, 2005, the Company disclosed that it was reviewing additional transactions, including one in which Delphi may have improperly accounted for a $237 million payment to GM in 2000. The payment supposedly was for a mixture of warranty, OPEB and pension expenses. Delphi booked more of the payment as OPEB and pension, rather than warranty expenses so that it could amortize the payment over time. The portion of the payment booked as a warranty expense would have had to be recorded as an expense immediately. The Audit Committee cautioned that investors should not rely on any of Delphi's financial statements for the previous four years and that these financial statements would have to be restated.

314. On March 30, 2005 the Detroit office of the Federal Bureau of Investigation confirmed that, together with the U.S. Postal Inspection Service, it had initiated a criminal investigation into Delphi's accounting.

315. On April 8, 2005, GM disclosed that it had received a subpoena for records related to Delphi transactions and that it had turned over unspecified documents to the SEC. BBK, later revealed to be a key partner with Delphi in orchestrating the fictitious inventory sales, disclosed that it too had been subpoenaed by the SEC and had furnished information.

316. On May 17, 2005, Delphi announced that two lower- and mid-level finance executives had resigned and a vice president was demoted in connection with the Company's

ongoing probe of improper accounting transactions. Atul Pasricha, Vice President and Executive Director of Business Lines, was demoted to a non-officer position. In response to this disclosure, Delphi shares fell another $0.29, or 7.6%, to $3.51 on the New York Stock Exchange.

317. On June 8, 2005, Delphi announced the resignation of Blahnik, as well as the Company's current Treasurer Pam Geller. On June 30, 2005, Delphi filed the Restatement (as defined in ¶ 115 above, as well as Form 10-Q/A amended Quarterly Reports for the three month periods ending March 31, 2004 and June 30, 2004, in which it restated its financial statements for those periods. In its Restatement, Delphi again admitted that its past years' financial statements were unreliable, stating:

> Delphi is the subject of an ongoing investigation by the Staff of the Securities Exchange Commission ("SEC") and other federal authorities involving Delphi's accounting for and disclosure of a number of transactions. The transactions include rebates or other lump-sum payments received from suppliers, certain off-balance sheet financings of indirect materials and inventory, and the payment in 2000 of $237 million in cash, and the subsequent receipt in 2001 of $85 million in credits, as a result of certain settlements between Delphi and its former parent company, General Motors. ***Delphi's Audit Committee has completed its internal investigation of these transactions and concluded that many were accounted for improperly.***

(Emphasis added).

318. Elaborating on its fraud, the Company admitted that it:

> … inaccurately disclosed to credit ratings agencies, analysts and the Board of Directors the amount of sales of accounts receivable from 1999 until year-end 2004…. [W]e also determined that our disclosure of operating cash flow measured on a non-GAAP basis as set forth in our earnings releases for the first and second quarters of 2003 were inaccurate. Specifically, we overstated this measure of operating cash flow by $30 million in the first quarter of 2003 and understated the measure by the same amount in the second quarter of 2003.

319. In the MD&A section of its 2004 Form 10-K, Delphi further admitted that its fraudulent transactions not only affected its financial statements for the years in which they happened, but also for subsequent years as those transactions were wound-up:

> Subsequent to the issuance of Delphi's consolidated financial statements for the years ended December 31, 2003 and 2002, and following an internal investigation conducted by the Audit Committee of its Board of Directors, ***Delphi management determined that its originally issued financial statements for those periods required restatement to correct the accounting for a number of transactions recorded in prior years.*** Such transactions included (i) rebates, credits and other lump sum payments from suppliers; (ii) disposition of indirect material and other inventories; (iii) warranty settlements with Delphi's former parent company; and (iv) certain other transactions.

(Emphasis added).

320. The Company also admitted that its internal controls were fatally inadequate, stating:

> Delphi is subject to stringent disclosure standards, and accounting, corporate governance and other securities regulations, including compliance with Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404"), as well as the listing standards of the New York Stock Exchange. Delphi management's assessment pursuant to Section 404 determined that Delphi had not maintained effective internal controls over financial reporting at December 31, 2004. In addition, management concluded that during such periods, Delphi's disclosure controls and procedures were also ineffective. Delphi has undertaken and is continuing to take actions to address material weaknesses in its internal controls over financial reporting and the deficiencies in its disclosure controls and procedures.

321. The Restatement purports to correct dozens of false and misleading figures from the Company's past filings. Among the categories it restated in its Consolidated Statements of Operations for the years ending December 31, 2002 and December 31, 2003 were: net sales, sales to GM and affiliates, sales to other customers, operating expenses, cost of sales, SG&A, depreciation and amortization, operating income, interest expense, other income, income (loss)

before income tax, minority interest, and equity income, income tax benefit (expense), net income (loss), basic and diluted earnings (loss) per share.

	2004	2003 Original	2003 Restated	2002 Original	2002 Restated	2001 Original	2001 Restated	2000 Original	2000 Restated
Net Sales	28,622	28,096	28,077	27,427	27,641	26,088	26,302	29,139	29,224
Net Income (Loss)	(4,753)	(56)	(10)	342	318	(396)	(428)	1002	817
Earnings (Loss) per share – basic	($8.47)	$(0.10)	(.02)	0.61	0.57	(0.71)	(0.76)	1.78	1.46
Retained Earnings	(3913)	1,241	997	1,454	n/a	1,343	1,003	1869	n/a

322. Among the categories in its Consolidated Balance Sheets for the year ending December 31, 2003, Delphi restated: cash and cash equivalents, accounts receivable (from GM and other customers), inventories (productive material, work-in-process and supplies, and finished goods), total assets, long-term assets (property, deferred income taxes, goodwill, other intangible assets, and other long-term assets). Correspondingly, it restated its current liabilities (notes payable and long-term debt, accounts payable, accrued liabilities), total liabilities, long-term liabilities (long-term debt, post-retirement benefits other than pensions), minority interest, additional paid-in capital, retained earnings, minimum pension liability, accumulated comprehensive loss, and total stockholders' equity.

323. The Restatement also restated the following metrics in its Consolidated Statements of Cash Flows for Fiscal Years 2002 and 2003: cash and cash equivalents at beginning of period, cash flows provided by (used in) operating activities, cash flows used in investing activities, cash flows provided by (used in) financing activities, net (decrease) increase in cash and cash equivalents, cash and cash equivalents at end of period.

VIII. FALSE AND MISLEADING STATEMENTS

324. The scheme to deceive Delphi's investors through the sham transactions orchestrated by the Scheme Defendants and Delphi's senior officers culminated in the reporting of false and misleading financial results and statements by Delphi and its officers and directors. In regular press releases and in periodic filings with the SEC, Delphi, its employees and Deloitte collectively made hundreds of materially false and misleading statements during the Class Period. Set forth chronologically below, these statements were false and misleading not only because they misstated Delphi's financial results, but also because they provided wholly false explanations to support the Company's improperly reported results, and failed to disclose that Delphi was engaging in a set of fraudulent accounting practices that rendered its financial reporting wholly unreliable, and concealed the sham transactions that the Scheme Defendants actively participated in with Delphi to artificially inflate Delphi's financial statements. Moreover, as the Class Period progressed, Delphi was forced to live with the consequences of its earlier lies, the same accounting tricks on which Delphi relied to boost its early Class Period results unwound and caused its later Class Period results to suffer.

325. On February 9, 2000, Delphi filed its Form 10-K for the year ended December 31, 1999 (the "1999 10-K"), which was signed by Battenberg. The 1999 10-K reported operating income of $1.7 billion and net income of $1 billion based on total net sales of $29 billion. In addition, the 1999 10-K reported:

a. Non-GM net sales of $6.9 billion;

b. Net cash used in operating activities of $1.2 billion;

c. Net inventories of $1.7 billion excluding inventories acquired through acquisition;

d. Notes payable and current portion of long-term debt of $117 million;

e. Total current liabilities of $6.8 billion;

f. Cash flow provided by financing activities of $2.9 billion; and

g. Total operating expenses of $27.5 billion.

326. The statements set forth in ¶ 325 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, operating income, earnings per share, cash flow from operating activities, total net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt total current liabilities, total expenses, and cash flow from financing activities.

327. Specifically, net income, operating income and earnings per share were materially overstated by, among other things: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI. C.1-3, *supra*); (ii) disguising financing transactions as sales of indirect materials (*see* Section VI.A, A.1-3, *supra*); and (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI. D, *supra*).

328. Further, by disguising financing transactions as sales of indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated cash flow from operations;

c. Materially understated cash flow from financing;

d. Materially understated inventory;

e. Materially understated current liabilities; and

f. Materially understated notes payable and current portion of long-term debt.

329. Analysts reacted positively to Delphi's disclosures regarding Delphi's 1999 financials. For example, on March 8, 2000, Credit Lyonnais Securities analyst Charles Brady initiated coverage of Delphi with a "Buy" rating, explaining that, "[s]ince achieving its independence from GM, DPH has managed to meet or exceed all stated 1999 goals as well as Wall Street expectations. This is true with respect to non-GM revenue growth, earnings growth, and cash flows. In our view, however, DPH's current market valuation does not appear to reflect this performance or the growth potential that lies ahead."

A. First Quarter 2000

330. On April 12, 2000, Delphi issued an earnings release, announcing its financial results for the quarter ended March 31, 2000 (the "1Q 2000 Press Release"). The 1Q 2000 Press Release was headlined "Delphi Automotive Systems Earnings Increase 13 Percent To $322 Million in First Quarter 2000, Sales to Customers Other than GM Soar a Record 30 Percent – Highlighting Success of Customer Diversification Efforts." The 1Q 2000 Press Release reported that "[o]n a pro forma basis, earnings per share for the period were $0.57, compared to $0.50 per share in the first quarter last year." And in what would be a theme repeated in every press release during the Class Period, Delphi boasted that "***operating cash flow*** in the first quarter was $495 million, building upon Delphi's strong 1999 performance ***in this key financial measure***." (Emphasis added).

331. On April 12, 2000, Delphi also filed its Form 10-Q for the quarter ended March 31, 2000 (the "1Q 2000 10-Q"), which was signed by Free. The 1Q 2000 10-Q reiterated the financial results reported in the 1Q 2000 Press Release. The 1Q 2000 10-Q reported operating

income of $466 million and net income of $290 million based on total net sales of $7.8 billion. In addition, the 1Q 2000 10-Q reported:

a. Non-GM net sales of $2.2 billion;

b. Net cash used in operating activities of $520 million;

c. Inventories, net of $1.8 billion, which represented a $71 million decline in net inventories during the quarter excluding inventories acquired through acquisition;

d. Notes payable and current portion of long-term debt of $1.3 billion;

e. Total current liabilities of $6.9 billion;

f. Cash flow from financing activities of $1.1 billion; and

g. Total operating expenses of $7.3 billion.

332. On April 12, 2000, Delphi also hosted an earnings conference call to discuss its financial results for the first quarter (the "1Q 2000 Conference Call"). During the conference call, Dawes reiterated the Company's financial results as disclosed in the 1Q 2000 Press Release and 1Q 2000 10-Q. Dawes also praised the Company's first quarter performance, stating:

> [W]e feel very good about Delphi's future from a number of standpoints. We've now reported five quarters in a row of solid earnings results, solid cash flow, you know we're establishing a record of consistency as we highlighted at the top. So the basic fundamentals of the business, we think we've proven, are running very well.

333. The statements set forth in ¶¶ 330-332 above were each materially false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, operating income, earnings per share, cash flow from operating activities, total net sales and non-GM net sales, and materially ***understated***

inventory, notes payable and current portion of long-term debt total current liabilities, total expenses, and cash flow from financing activities.

334. Specifically, net income, operating income and earnings per share were materially overstated by, among other things: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); and (iii) failure to record obligations and to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*).

335. Further, by disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated cash flow from operations;

c. Materially understated cash flow from financing;

d. Materially understated inventory;

e. Materially understated current liabilities; and

f. Materially understated notes payable and current portion of long-term debt.

336. Analysts reacted positively to Delphi's disclosures regarding the first quarter of 2000. For example, Morgan Stanley analyst Stephen Girsky commended Delphi's performance, noting that "[q]uarterly results were strong and continue to support our bullish investment case," and reiterated his "strong buy" recommendation. Further, Girsky stated, "[n]on-GM revenue continues to grow as a percent of total revenues, cash flow remained strong and operating margins were better than expected."

337. In response to the false and misleading statements in Delphi's 1Q 2000 Press Release, 1Q 2000 10-Q and 1Q 2000 Conference Call, Delphi's stock price rose nearly 10% to $19.50 on April 13, 2000 and nearly 20% to $21.13 on April 18, 2000 from $17.81 on April 11, 2000.

B. Second Quarter 2000

338. On July 17, 2000, Delphi published its earnings release for the quarter ending June 30, 2000 ("2Q 2000 Press Release"). According to the 2Q 2000 Press Release, Delphi had second quarter earnings of "$424 million, or $0.75 per share, in line with analyst consensus estimates." The release stated that "strong cash flow from operations generated $455 million in the second quarter" and that:

> For the first half of the year Delphi is on track to meet 2000 financial targets. Earnings for the first six months of 2000 rose 10 percent, excluding a one-time charge of $32 million in the first quarter, versus 1999 levels. Operating cash flow totaled $950 million, well on track for meeting the $1.5-$2.0 billion 2000 target.

339. In the 2Q 2000 Press Release, Dawes boasted that "[s]tructural cost reductions helped us achieve year-over-year net income improvements in every quarter since our independence. In addition, new business bookings in excess of $5 billion indicate top-line growth and margin improvements in future years."

340. On July 17, 2000, Delphi also filed its quarterly report with the SEC for the quarter ended June 30, 2000 ("2Q 2000 10-Q"), which was signed by Free. In its 2Q 2000 10-Q, Delphi reported operating income of $683 million and net income of $424 million. In the MD&A section of the 2Q 2000 10-Q, Delphi boasted that these earnings represented a 7.6% increase compared to the same reporting period in the previous year. Further, for the six months ended June 30, 2000, the 2Q 2000 10-Q reported operating income of $1.15 billion and net income of $714 million.

341. In addition, in its 2Q 2000 10-Q, Delphi reported:

a. Total net sales of $7.8 billion;

b. Non-GM net sales of $2.2 billion;

c. Net cash used in operating activities of $266 million;

d. Inventories, net of $1.8 billion, which represented a $66 million decline in net inventories during the quarter, excluding inventories acquired through acquisition;

e. Notes payable and current portion of long-term debt of $1.4 billion;

f. Total current liabilities of $7.3 billion;

g. Net cash provided by financing activities of $996 million; and

h. Total operating expenses of $7.1 billion.

342. On July 17, 2000, Delphi also conducted an earnings conference call to discuss the Company's financial results for the second quarter (the "2Q 2000 Conference Call"). During the 2Q 2000 Conference Call, Dawes reiterated the financial results reported in the 2Q 2000 Press Release and the 2Q 2000 10-Q. In doing so, Dawes commented that "cash flow remain[ed] quite strong" and that earnings per share were "up exactly 10 percent over the first sixth months of the year."

343. The statements set forth in ¶¶ 338-342 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, operating income, earnings per share, cash flow from operating activities, total net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt, total current liabilities, total expenses, and cash flow from financing activities.

344. Specifically, net income, operating income and earnings per share were materially overstated by, among other things: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); and (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*).

345. Further, by disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated cash flow from operating activities;

c. Materially understated cash flow from financing;

d. Materially understated inventory;

e. Materially understated notes payable and current portion of long-term debt; and

f. Materially understated total current liabilities.

346. Delphi's statement that its "manufacturing operations and engineering product teams have made improvements in inventory turns" was also false and misleading when made because the reported improvements in Delphi's inventory turns were the result of the Company's improper accounting for financing transactions as sales of inventory and indirect materials.

347. Analysts responded positively to Delphi's financial results for the second quarter 2000. On July 17, 2000, Robert W. Baird analyst David Leiker maintained his firm's "Market Outperform" rating for Delphi, emphasizing the Company's "cost-reduction efforts" and its

increased revenues, operating income, and EPS. On July 18, 2000, Raymond James analyst Greg Salchow recommended the Company as "strong buy," noting:

> Based on the company exceeding our expectations and stronger-than-anticipated improvements in Delphi's D&P segment, we are increasing our 2000 and 2001 EPS estimate slightly from $2.10 and $2.26 to $2.11 and $2.27, respectively.
>
> Despite six consecutive quarters of meeting or exceeding analyst expectations, we believe Delphi remains undervalued.

348. Similarly, on July 24, 2000, Donaldson, Lufkin & Jenrette analyst Wendy Beale Needham praised Delphi, stating:

> We believe Delphi is a core holding in the automotive sector. With its market leading positions in many products, particularly in the fast-growing automotive electronics sector, strong cash flow, solid balance sheet and growing business backlog, Delphi is well positioned, in our view, to dominate its sector for years to come. We expect earnings to grow about 11% annually over the long term. At its current valuation of just 7.4 times our 2000 EPS forecast, Delphi is a compelling value, we believe.

349. In response to Delphi's reported financial results for the second quarter, Delphi's stock rose from $15.38 on July 14, 2000 to $15.94 on July 19, 2000.

C. Third Quarter 2000

350. On October 11, 2000, Delphi issued an earnings release, announcing its financial results for the quarter ended September 30, 2000 (the "3Q 2000 Press Release"). The 3Q 2000 Press Release was headlined "Delphi Earnings Increase 9 Percent to $148 Million in Third Quarter – Year-over-Year Margin Improvement every Quarter since IPO – Mobile MultiMedia Product Line Sales up 777% Over Prior Year." In 3Q 2000 Press Release, Delphi reported third quarter earnings of "$148 million, or $0.26 earnings per share, in line with analyst consensus estimates. This represents a 9 percent increase in earnings over the same period last year."

351. In the 3Q 2000 Press Release, Battenberg commented on the Company's positive performance, stating:

> Today's results mark the seventh consecutive quarter since our IPO that we have achieved solid financial performance. We continue to deliver on the targets established at our independence to produce long-term value for our shareholders. We remain focused on targets of 5 percent net income margin by the end of 2002, year-over-year non-GM sales growth of more than 10 percent and return on net assets of 12.5 percent, while generating operating cash flow of $1.5-2.0 billion per year.

352. On October 11, 2000 Delphi also filed its Form 10-Q for the quarter ended September 30, 2000 (the "3Q 2000 10-Q"), which was signed by Free. The 3Q 2000 10-Q reiterated the financial results reported in the 3Q 2000 Press Release and reported operating income of $230 million and net income of $148 million. In the MD&A section of the 3Q 2000 10-Q, Delphi stated that "[n]et income totaled $148 million for the third quarter of 2000 compared to $136 million for the third quarter of 1999. This represents a 9% increase over 1999." For the nine months ended September 30, 2000, Delphi reported in its 3Q 2000 10-Q operating income of $1.38 billion and net income of $862 million. In addition, in its 3Q 2000 10-Q, Delphi reported:

a. Total net sales of $6.6 billion and non-GM net sales of $2.0 billion;

b. Net cash provided by operating activities of $226 million;

c. Inventories, net of $2.0 billion;

d. Notes payable and current portion of long-term debt of $1.2 billion;

e. Total current liabilities of $7.0 billion;

f. Net cash provided by financing activities of $789 million;

g. Total operating expenses of $6.4 billion; and

h. Post-retirement benefits other than pensions of $4.4 billion.

353. The statements set forth in ¶¶ 350-352 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, operating income, earnings per share, cash flow from operating activities, total net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt, total current liabilities, total expenses, cash flow from financing activities and post-retirement benefits other than pensions.

354. Specifically, net income, operating income and earnings per share were materially overstated by, among other things: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); and (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*).

355. Further, by disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated cash flow from operating activities;

c. Materially understated cash flow from financing;

d. Materially understated inventory;

e. Materially understated notes payable and current portion of long-term debt; and

f. Materially understated total current liabilities.

356. In addition, by improperly classifying a $202 million warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation and warranty expenses.

357. Delphi's false and misleading statements with regard to its 3Q 2000 financials had their intended effect on analysts. For example, PNC Advisors analyst James Fessel stated: "Given Delphi's proven ability to meet or beat expectations, strong operating cash flow, and the possibility of a major share repurchase announcement, we believe that the shares are undervalued at the current price."

358. In addition, PaineWebber analyst Gregory Kagay commented on October 12, 2000 that Delphi "posted favorable results in the quarter, despite facing many of the same cross currents that have generated numerous earnings realignments at other companies in the sector over the past few weeks." He went on to surmise that despite negative trends such as "expected and continued pressure from the weak euro and weak volumes at GM," Delphi "continues to post improving operating performance in the current environment, and it continues to present evidence that its longer term position . . . is becoming increasing[ly] entrenched." Similarly, Morgan Stanley Dean Witter analyst Stephen Girsky noted on October 11, 2000 that "Delphi's cash flow was healthy in the seasonally weak quarter."

359. On October 17, 2000, Wasserstein Perella Securities, Inc. analyst Mark Sylvester rated Delphi a "strong buy" and commented:

> We continue to believe that Delphi shares warrant a premium valuation compared to its peers, particularly as it continues to generate huge cash flow (we project $1.8 billion for 2000, on the heels of 1999's $2.5 billion), maintain its financial flexibility ($4.5 billion of debt capacity, according to the company) and meet earnings and cash flow expectations.

360. Likewise, on October 23, 2000, Salomon Smith Barney analyst Mathew Stover commented on the strength of the Company's balance sheet as disclosed, observing that Delphi's "Rock Solid Balance Sheet Provides Ballast in a Frothy Sea." In particular, Stover explained that Delphi's "most differentiating feature is the strength of [its] balance sheet" and noted the Company's manageable debt levels.

361. In response to Delphi's reported financial results for the third quarter, Delphi's stock rose 6% from $13.88 on October 10, 2000 to $14.75 on October 11, 2000, and still higher to $14.88 on October 14, 2000.

D. Fourth Quarter And Year-End 2000

362. On January 17, 2000, Delphi issued an earnings release, announcing its financial results for the quarter and year-ended December 31, 2000 (the "Year-End 2000 Press Release"). The Year-End 2000 Press Release announced: "Delphi Earns $200 Million on Revenues of $6.9 Billion in Fourth Quarter of 2000 – Sales to Non-GM Customers Hits Record $8.5 Billion in 2000 – Full Year Operating Cash Flow Exceeds $1.6 Billion." In its Year-End 2000 Press Release, Delphi announced fourth quarter earnings of "$200 million, or $0.36 EPS, on sales of $6.9 billion, exceeding industry analysts' consensus estimates of $0.32." For the year, Delphi reported $1.1 billion in net income, $1.6 billion in operating cash flow, and $1.94 earnings per share.

363. In the Year-End 2000 Press Release, Battenberg touted management's agile response to adverse market conditions stating: "[w]e were successful in moderating the impact of the rapid fourth quarter order decline through aggressive inventory management, workforce adjustments and other cost reduction initiatives."

364. On February 8, 2001, Delphi filed on Form 10-K405 its annual report for Fiscal Year 2000 ("2000 10-K"), signed by, among others, Battenberg, Dawes, Runkle and Free. The

2000 10-K reiterated the Company's financial results reported in the Year-End 2000 Press Release, including that, for the year ended December 31, 2000, operating income was $1.7 billion and net income was $1.1 billion on total net sales of $29.1 billion.

365. In addition, in its 2000 10-K, Delphi reported:

a. Non-GM net sales of $8.5 billion;

b. Net cash provided by operating activities of $268 million;

c. Inventories, net of $1.7 billion;

d. Notes payable and current portion of long-term debt of $1.6 billion;

e. Total current liabilities of $6.2 billion;

f. Net cash provided by financing activities of $1.1 billion;

g. Total operating expenses of $27.4 billion;

h. Post-retirement benefits other than pensions of $4.6 billion; and

i. Non-GM accounts receivable of $2.1 billion.

366. In addition, the MD&A section of the 2000 10-K stated with respect to Delphi's 2000 net income:

> Net income for 2000 totaled $1,062 million compared to $1,083 million for 1999. Excluding [one-time charges] our net income margin of 3.8% expanded from our 1999 margin of 3.7% as a result of ***aggressive inventory management***, implementation of lean manufacturing initiatives and other cost reduction initiatives.

(Emphasis added).

367. The statements set forth in ¶¶ 362-366 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, operating income, earnings per share, cash flow from operating activities, total net sales, non-GM net sales and non-GM accounts receivable, and materially ***understated*** inventory, notes payable and current portion of long-term debt, total current

liabilities, total expenses, net cash provided by financing activities and post-retirement benefits other than pensions.

368. Specifically, net income, operating income and earnings per share were materially overstated by, among other things, Delphi's: (i) disguising financing transactions as sales of inventory and indirect materials, including without limitation a $145 million financing transaction with SETECH, a $70 million financing transaction with BBK, a $200 million financing transaction with Bank One, and a $7 million financing transaction with an unknown third party (*see* Section VI.A.1-3, *supra*); (ii) improper accounting for rebates, credits and other lump sum payments from third-party vendors, including without limitation improper recognition of $19.5 million in credits received from REDACTED (*see* Section VI.C.1, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); and (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*).

369. Further, by disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results by:

a. Materially overstating total net sales and non-GM net sales;

b. Materially overstating cash flow from operating activities;

c. Materially overstating accounts receivable;

d. Materially understating cash flow from financing;

e. Materially understating inventories, net;

f. Materially understating notes payable and current portion of long-term debt; and

g. Materially understated total current liabilities.

370. In addition, by improperly classifying a $202 million warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation.

371. Specifically, based on the Restatement, the Company's originally reported net income for Fiscal Year 2000 was overstated by ***$245 million, or 30%***, and its GAAP earnings per share on a fully diluted basis were overstated by ***$0.43 or 30%.***

372. The market responded favorably to Delphi's year-end financial disclosures. On January 17, 2001, Credit Lyonnais analyst Charles Brady reiterated his firm's "buy" rating for Delphi. He noted that the Company had a "healthy" balance sheet and that it exceeded consensus estimates for quarterly and yearly EPS. He also stated that Delphi's improved net profit margin "was quite an achievement considering the sudden fourth quarter production schedule changes," adding that "this is clearly indicative of management's ability to react quickly through optimizing capacity and inventory management."

373. Salomon Smith Barney analyst Mathew Stover reiterated his previous assessment of Delphi's financial performance, declaring that "[c]ash flow and balance sheet remain rock solid providing flexibility in a transitional operating environment." Morgan Stanley Dean Witter analyst Stephen Girsky noted similarly that "[c]ash flow was strong in a weak quarter plagued with declining vehicle production."

374. Despite widespread difficulties within the automotive sector, Delphi's reported year-end financial results resulted in the Company's stock price remaining firmly within the (artificially inflated) range of $14.00 to $15.00.

375. In addition, the 2000 10-K contained an unqualified audit opinion signed by Deloitte, which stated that it had audited Delphi's financial statements in conformity with GAAS and that:

> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2000 and 1999 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States of America.

376. Deloitte's statements in the above paragraph relating to the 2000 audit were false and materially misleading because Deloitte had not conducted its audit in accordance with GAAS and because Delphi's financial statements were not prepared in conformity with GAAP.

E. Mid-Quarter Guidance – March 29, 2001

377. On March 29, 2001, Delphi gave downward guidance for the first quarter of 2001 in connection with a major restructuring plan that included a $400 million charge against earnings. In the same announcement, the Company touted other "separate" initiatives it claimed would increase productivity. Specifically, it highlighted the following efforts:

> - Utilizing web-based systems for procurement, logistics and inventory management to obtain greater savings in inventory and production support; and
>
> - Eliminating warehouses and other inventory storage and distribution points for greater value chain efficiency.

378. Dawes added that "[t]he actions outlined today should improve our ability to rebound decisively in more favorable automotive market conditions."

379. Delphi's announcement was false and misleading when made because it failed to state that the Company's restructuring charge would be applied against earnings that were materially overstated in violation of GAAP by, among other things, Delphi's: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see*

Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*); and (v) improperly recognizing warranty credits received from GM as a reduction to expenses (*see* Section VI.B.2, *supra*).

380. In addition, Delphi's announcement was false and misleading because it failed to disclose that the Company's reduced inventories and costs associated with inventories were the result of the Company's improper accounting for financing transactions as sales of inventory and indirect materials, in violation of GAAP (*see* Section VI.A.1-3 *supra*).

381. On March 30, 2001, Credit Lyonnais analysts Charles Brady and Joseph C. Amaturo revised their firm's quarterly earnings estimate downward from $0.20 to breakeven and maintained its "buy" rating for Delphi. Prudential analysts Michael Bruynesteyn and John Tomlinson also revised their firm's earnings estimates downward for the first quarter of 2001 from $0.17 to $(0.03). Nevertheless, they continued to rate Delphi a "hold" and stressed that the Company's restructuring represented an "opportunity."

F. First Quarter 2001

382. On April 19, 2001, Delphi issued an earnings release, announcing its financial results for the quarter ended March 31, 2001 (the "1Q 2001 Press Release"), reporting "$2 million of operating income and a consolidated net loss of $25 million, or $0.04 loss per share, excluding the impact of global restructuring and impairment charges announced on March 29, 2001. . . . Analyst consensus for the quarter as reported on First Call was $0.05 loss per share."

383. In the 1Q 2001 Press Release, Dawes stated that "[i]n spite of breakeven operating results, Delphi generated $102 million of operating cash flow during the period."

384. On April 19, 2001, Delphi also filed its Form 10-Q for the quarter ended March 31, 2001 (the "1Q 2001 10-Q"), which was signed by Free. In its 1Q 2001 10-Q, Delphi reiterated the financial results reported in the 1Q 2001 Press Release, and stated that "[i]n the opinion of management, all adjustments, consisting of only normal recurring items, which are necessary for a fair presentation have been included."

385. In addition, the 1Q 2001 10-Q reported:

a. Net sales of \$6.5 billion and non-GM sales of \$2.2 billion;

b. Operating loss of \$597 million;

c. Total operating expenses of \$7.1 billion;

d. Non-GM accounts receivable of \$2.0 billion;

e. Inventories, net of \$1.7 billion;

f. Notes payable and current portion of long-term debt of \$1.5 billion;

g. Post-retirement benefits other than pensions of \$4.7 billion.

h. Total current liabilities of \$6.5 billion; and

i. Net cash provided by financing activities of \$146 million.

386. In the Commitments and Contingencies section of the 1Q 2001 10-Q, Delphi discussed possible future warranty claims against the Company and noted that "[w]e settled certain pre-Separation warranty claims with General Motors . . . in September 2000."

387. The statements set forth in ¶¶ 382-386 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, earnings per share, operating income, total net sales, non-GM net sales and non-GM accounts receivable, and materially ***understated*** inventory, notes payable

and current portion of long-term debt, total current liabilities, total expenses, cash flow from financing activities and post-retirement benefits other than pensions.

388. Specifically, net income, earnings per share and operating income were materially overstated by, among other things, Delphi's: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*); and (v) improperly recognizing warranty credits received from GM as a reduction to expenses (*see* Section VI.B.2, *supra*).

389. By disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated accounts receivable;

c. Materially understated cash flow from financing;

d. Materially understated inventory;

e. Materially understated current liabilities; and

f. Materially understated notes payable and current portion of long-term debt.

390. Delphi's statement that it settled pre-Separation warranty claims with GM in September 2000 was false and misleading because it failed to disclose that Delphi had improperly classified and accounted for the $202 million payment to settle these warranty claims

as an adjustment to post-retirement obligations in violation of GAAP. Moreover, Delphi failed to disclose that by improperly classifying the warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation.

391. In its 1Q 2001 Press Release, the Company reported net liquidity at March 31, 2001 of $(2.7) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 1Q 2001 Press Release, it understated its negative liquidity by $334 million or 11.1%.

392. The market responded positively to Delphi's reported financial results. On April 19, 2001 Salomon Smith Barney analyst Matthew Stover maintained the firm's "attractive rating on Delphi with $18 price target" and noted that the "[b]alance sheet remains solid." Similarly, on April 19, 2001, Charles Brady of Credit Lyonnais reported that Delphi's earnings were "modestly better" than expectations for the first quarter and maintained his firm's "buy" rating for Delphi. In addition, on April 20, 2001, Credit Suisse First Boston analyst Wendy Beale Needham stated "[w]e maintain our 'Strong Buy' rating. Delphi's business plan is on track. The company is progressing on its strategy to streamline its portfolio."

393. In response to Delphi's reported year-end financial results, Delphi's stock price remained firmly within the (artificially inflated) range of $14.00 to $15.00.

G. Delphi Corporation Bond Offering June 5, 2001 (6.550%)

394. On or about June 5, 2001, Delphi issued $500 million of 6.55% notes due 2006 ("June 2001 Offering"). In connection with the June 2001 Offering, Delphi filed with the SEC a Form S-3 registration statement dated March 3, 1999, and filed prospectus supplements pursuant

to Rule 424(b)(5) on April 19, 2001, April 30, 2001, May 25, 2001 and June 4, 2001 (collectively, the "June 2001 Registration Statement").

395. The June 2001 Registration Statement was signed by, among others, Battenberg, Dawes, and Free.

396. The June 2001 Registration Statement incorporated numerous false and misleading statements by reference, including the:

a. Annual Report on Form 10-K for the year ended December 31, 2000;

b. Quarterly Report on Form 10-Q for the quarter ended March 31, 2001;

c. Proxy Statement dated March 16, 2001; and

d. Current Report on Form 8-K filed May 31, 2001.

397. Deloitte's audit opinion was included in Delphi's Annual Report on Form 10-K for the year-ended December 31, 2000.

398. Deloitte gave its written consent to incorporation of its audit report on Delphi's 2000 annual financial statements into the June 2001 Registration Statements.

399. In Exhibit 99 to the May 31, 2001 Form 8-K, Delphi claimed the following among its "Investment Highlights":

a. It had "in excess of $29 billion" in revenue for 2000;

b. It was "growing its non-GM business at 10% + per annum combined with a solid base of future GM business;"

c. Its "[o]perating cash flow continues to be healthy despite industry slowdown;"

d. It had a "Strong Balance Sheet;" and

e. For 2000, Delphi claimed sales of $29.1 billion; operating income of $1.7 billion; net income of $1.1 billion; EPS of $1.94; and operating cash flow of $1.6 billion.

400. For the reasons set forth in detail in ¶¶ 367-376, 387-390 above, the June Registration Statement was materially false and misleading.

H. Second Quarter 2001

401. On July 18, 2001, Delphi issued an earnings release, announcing its financial results for the quarter ended June 30, 2001 (the "2Q 2001 Press Release"). The 2Q 2001 Press Release reported "second quarter net income of $164 million, or $0.29 per share, in line with First Call consensus estimates."

402. On July 18, 2001, Delphi filed its Form 10-Q for the quarter ended June 30, 2001 (the "2Q 2001 10-Q"), which was signed by Free. The 2Q 2001 10-Q reiterated the financial results reported in the 2Q 2001 Press Release. The 2Q 2001 10-Q also reported a net loss of $265 million for the six months ended June 30, 2001.

403. In addition, the 2Q 2001 10-Q reported:

a. Total net sales of $6.9 billion;

b. Non-GM net sales of $2.2 billion;

c. Operating income of $303 million;

d. Total operating expenses of $6.6 billion;

e. Inventories, net of $1.8 billion;

f. Notes payable and current portion of long-term debt of $1.3 billion;

g. Total current liabilities of $6.5 billion;

h. Post-retirement benefits other than pensions of $4.8 billion; and

i. Net cash provided by financing activities of $121 million.

404. In the MD&A section of the 2Q 2001 10-Q, Delphi noted that:

> [N]et cash provided by financing activities was $0.1 billion and $1.0 billion for the six months ended June 30, 2001 and 2000, respectively. Cash provided by financing activities during the first six months of 2001 represented the net proceeds from the $500 million public debt offering partially offset by repayments of uncommitted lines of credit and commercial paper. The cash provided by financing activities for the first six months of 2000 included borrowings under our commercial paper program used to funs pension contributions and to make advances to GM for pension and other post-retirement obligations.

405. On July 18, 2001, the Company also hosted an earnings conference to discuss its financial results for the second quarter (the "2Q 2001 Conference Call"). On the 2Q 2001 Conference Call, Dawes reiterated the Company's financial results as reported in the 2Q 2001 Press Release and the 2Q 2001 10-Q. During the call, Dawes praised the Company's results for the quarter, stating that it was "some real solid improvement" as compared to the first quarter and "clearly demonstrates we got good traction on our cost reduction efforts."

406. The statements set forth in ¶¶ 401-405 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, earnings per share, operating income, total net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt total current liabilities, total expenses, cash flow from financing activities and post-retirement benefits other than pensions.

407. Specifically, net income, earnings per share and operating income were materially overstated by, among other things, Delphi's: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper

period (*see* Section VI.D, *supra*); (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*); (v) improperly recognizing warranty credits received from GM as a reduction to expenses (*see* Section VI.B.2, *supra*); and (vi) failure to recognize an obligation to an unidentified information technology provider (*see* Section VI.C, *supra*).

408. By disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated total net sales and non-GM net sales;

b. Materially overstated cash flow from financing;

c. Materially understated inventory;

d. Materially understated current liabilities; and

e. Materially understated notes payable and current portion of long-term debt.

409. Further, Delphi's statements regarding its net cash provided by financing activities was false and misleading because it failed to disclose that its net cash from financing activities was materially understated for the quarter and six months ended June 30, 2001 and for the six months ended June 30, 2000 (as discussed in ¶ 341 above), due to the Company's improper accounting for financing transactions as sales.

410. In its 2Q 2001 Press Release, the Company reported net liquidity at June 30, 2001 of $(2.7) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 2Q 2001 Press Release, it understated its negative liquidity by $374 million or 12.2%.

411. In addition, by improperly classifying a $202 million warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation.

412. On July 19, 2001, in response to Delphi's reported second quarter results, Raymond James analyst Greg L. Sachow stated, "[w]e have adjusted our fourth quarter EPS estimate higher based on indications of stronger profitability levels than originally expected. Overall, we are adjusting our 2001 EPS to $0.67 from $0.66, and increasing our 2002 EPS estimate $1.34 from $1.30."

413. Similarly, on July 19, 2001, CSFB analyst Wendy Needham stated, "Delphi was a strong cash generator in the quarter, with operating cash flow of $312 million excluding $92 million in cash restructuring charge."

414. In response to Delphi's reported financial results, Delphi's stock price remained firmly within the artificially inflated range of $16.00 to $17.00.

I. Third Quarter 2001

415. On October 16, 2001, Delphi issued an earnings release, announcing its financial results for the quarter ended September 30, 2001 (the "3Q 2001 Press Release"). The headline for the 3Q 2001 Press Release announced: "Delphi Earns $0.05 Per Share and Generates $111 Million of Operating Cash Flow in Third Quarter - Positive Progress Reducing Breakeven -- Despite Weaker Revenue - Lean Manufacturing Helps Delphi Uphold Customer Commitments." The 3Q 2001 Press Release reported "net income of $26 million, or $0.05 per share, in line with First Call consensus estimates."

416. In commenting on the Company's financial results for the third quarter, Dawes explained: "[t]he flexibility inherent in the Delphi Manufacturing System, combined with key business initiatives, helped Delphi meet our customer commitments while also protecting our

results for the quarter." Dawes added that "[g]iven the uncertain market, Delphi is increasingly focused on improving cash flow. Actions include: trimming structural costs in line with demand; efficiently managing working capital; limiting capital expenditures; and accelerating global restructuring plans. These steps allowed us to materially improve our cash flow, reduce our breakeven level and stabilize third quarter earnings."

417. On October 16, 2001, Delphi filed its Form 10-Q for the quarter ended September 30, 2001 (the "3Q 2001 10-Q"), which was signed by Free. In its 3Q 2001 10-Q, Delphi reiterated the financial results reported in the 3Q 2001 Press Release. Delphi also reported operating income of $81 million and, for the nine months ended September 30, 2001, an operating loss of $213 million and net loss of $239 million based on total net sales of $19.7 billion for the nine-month period.

418. In addition, the 3Q 2001 10-Q reported:

a. Net sales of $6.2 billion and non-GM net sales of $2.0 billion;

b. Net inventories of $1.8 billion;

c. Notes payable and current portion of long-term debt of $1.4 billion;

d. Total current liabilities of $6.5 billion;

e. Cash flow provided by financing activities of $213 million;

f. Total operating expenses of $6.1 billion; and

g. Post-retirement benefits other than pensions of $4.9 billion.

419. In the MD&A section of the 3Q 2001 10-Q, Delphi stated: "Consolidated net sales for the third quarter of 2001 were $6.2 billion compared to $6.6 billion for the same period of 2000." The Company explained this decline as follows:

> Consolidated net sales were moderately impacted by the September terrorist attacks. In addition, sales were affected by

> ongoing softening of U.S. and European aftermarket demand and year over year weaknesses in the euro. Net sales to GM declined by $0.4 billion, principally due to reduced vehicle production volumes in North America and our ongoing elimination of marginally profitable and unprofitable product lines.

420. The statements set forth in ¶¶ 423-427 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, earnings per share, operating income, net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt total current liabilities, total expenses, cash flow from financing activities and post-retirement benefits other than pensions.

421. Specifically, net income, earnings per share and operating income were materially overstated by, among other things, Delphi's: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors (*see* Section VI.C.1-3, *supra*); (ii) disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*); (iii) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); (iv) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*); (v) improperly recognizing warranty credits received from GM as a reduction to expenses (*see* Section VI.B.2, *supra*); and (vi) failure to recognize an obligation to an unidentified information technology provider (*see* Section VI.C, *supra*).

422. By disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated net sales and non-GM net sales;

b. Materially understated cash flow from financing;

c. Materially understated inventory;

d. Materially understated current liabilities; and

e. Materially understated notes payable and current portion of long-term debt.

423. In its 3Q 2001 Press Release, the Company reported net liquidity at September 30, 2001 of $(2.8) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 3Q 2001 Press Release, it understated its negative liquidity by $301 million or 9.8%.

424. In addition, by improperly classifying a $202 million warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation.

425. On October 16, 2001, in response to Delphi's reported financial results for the third quarter 2001, Salomon Smith Barney analyst Matthew Stover "maintain[ed] [an] 'Outperform' rating on Delphi with a $15 price target" and noted that "Delphi benefited from relative production stability at GM and the impact of cost reduction measures." Similarly, on October 16, 2001, Robert W. Baird analyst David Leiker maintained his firm's "market perform" rating for Delphi, noting that the Company's reported earnings were in line with First Call consensus. And on October 16, 2001, a Morgan Stanley analyst stated, "Operating cash flow came in at $111 million, substantially higher than previous guidance of $25 million. Operating cash flow last year was $161 million."

J. Fourth Quarter / Year End 2001

426. On January 17, 2002, Delphi issued an earnings release, announcing its financial results for the quarter and year ended December 31, 2001 (the "Year-End 2001 Press Release"). The Year-End 2001 Press Release was headlined: "Delphi Reports Ongoing Earnings of $55

Million on Revenues of $6.4 Billion in Q4." The Year-End 2001 Press Release reported that "net income for the quarter totaled $55 million, or $0.10 per share ... matching industry analysts' estimates as reported on Thomson First Call. On a GAAP basis, which does not exclude the impact of special charges, Delphi reported a net loss of $131 million during the quarter." The Company also touted its "strong operating cash flow" in the fourth quarter.

427. In commenting on the Company's performance, Battenberg stated:

> In the fourth quarter of 2001, we continued to take action to differentiate our performance from the remainder of the automotive supplier segment. While faced with declining customer production levels, recessionary economics and the impact of extraordinary national events, we've steadily implemented our strategies to transform our company by streamlining our portfolio, rationalizing excess capacity and reducing operating costs.

428. On February 12, 2002, Delphi filed a Form 10-K405 for Fiscal Year 2001 (the "2001 10-K"), which was signed by, among others, Battenberg, Dawes, Runkle and Free. The 2001 10-K reiterated the financial results as reported in the Year-End 2001 Press Release. For the year, the 10-K reported an operating loss of $284 million and yearly net loss of $370 million, based on total net sales of $26.1 billion.

429. In addition, the 2001 10-K reported:

a. Net sales of $26.1 billion and non-GM net sales of $8.5 billion;

b. Net inventories of $1.6 billion;

c. Notes payable and current portion of long-term debt of $1.3 billion;

d. Total current liabilities of $5.9 billion;

e. Net cash provided by financing activities of $13 million;

f. Total operating expenses of $26.4 billion;

g. Non-GM accounts receivable of $1.8 billion; and

h. Post-retirement benefits other than pensions of $4.7 billion.

430. In addition, the MD&A section of the 2001 10-K stated with respect to Delphi's 2000 net income:

> Net income for 2000 totaled $1,062 million compared to $1,083 million for 1999. Excluding [one-time charges] our net income margin of 3.8% expanded from our 1999 margin of 3.7% as a result of ***aggressive inventory management***, implementation of lean manufacturing initiatives and other cost reduction initiatives.

(Emphasis added).

431. The statements set forth in ¶¶ 426-430 above, were each false and misleading when made because, as described above, Delphi's reported financial results violated GAAP and materially ***overstated*** net income, earnings per share, operating income, net sales and non-GM net sales, and materially ***understated*** inventory, notes payable and current portion of long-term debt total current liabilities, total expenses, cash flow from financing activities, accounts receivable and post-retirement benefits other than pensions.

432. Specifically, net income, earnings per share and operating income were materially overstated by, among other things: (i) improper accounting for rebates, credits and other lump sum payments from third-party vendors, including, without limitation, improperly accounting for a $20 million rebate received from EDS; (ii) $18 million in credits received from EDS and $19.5 million in credits received from REDACTED (*see* Section VI.C.1-3, *supra*); (iii) disguising financing transactions as sales of inventory and indirect materials, including, without limitation, improperly treating $19 million in financing transactions with BBK as sales; (*see* Section VI.A.1-3, *supra*); (iv) failure to record obligations and failure to recognize adjustments and accruals in the proper period (*see* Section VI.D, *supra*); (v) improper classification and deferral of $202 million of expenses related to warranty obligations to GM (*see* Section VI.B.1, *supra*); (vi) improperly recognizing warranty credits received from GM as a reduction to expenses (*see*

Section VI.B.2, *supra*); and (vii) failure to recognize an obligation to an unidentified information technology provider (*see* Section VI.C, *supra*).

433. By disguising financing transactions as sales of inventory and indirect materials (*see* Section VI.A.1-3, *supra*), Delphi distorted its financial results as follows:

a. Materially overstated net sales and non-GM net sales;

b. Materially understated cash flow from financing;

c. Materially understated inventory;

d. Materially understated current liabilities;

e. Materially understated accounts receivable; and

f. Materially understated notes payable and current portion of long-term debt.

434. In addition, by improperly classifying a $202 million warranty settlement payment to GM as an adjustment to post-retirement obligations, Delphi materially understated its post-retirement benefit obligation.

435. Battenberg's statement claiming that Delphi had "steadily implemented our strategies to transform our company by streamlining our portfolio, rationalizing excess capacity and reducing operating costs" was false and misleading because Battenberg failed to disclose that operating costs were materially understated due to: (i) Delphi's improper accounting for credits received from in connection with warranty obligations; and (ii) the improper deferral of expenses relating to Delphi's purchase of "system implementation services."

436. Specifically, based on the Restatement, the Company's originally reported net loss for the year ended December 31, 2001 was understated by ***$58 million, or 13.6%*** and its loss per share on a diluted basis was understated by ***$(0.10), or 13.2%.***

437. Further, Delphi has provided specific information regarding its retained earnings at December 31, 2001. The Company has since admitted that, based on the following pre-tax components of its fraudulent scheme, its 2001 pre-tax retained earnings were overstated by $431 million ($265 million net of tax):

a. $86 million for improper recognition of payments and credits and failure to recognize liabilities associated with contracts for future information technology services;

b. $50 million for fictitious sales of indirect materials and inventories that should have been accounted for as financing activities;

c. $225 million for prematurely reducing expenses as a result of credits received from GM relating to warranty obligations;

d. $29 million for improperly recognizing obligations before they accrued and recording adjustments in the improper period; and

e. $41 million in other miscellaneous adjustments.

438. In its 4Q 2001 Press Release, the Company reported net liquidity at December 31, 2001 of $(2.6) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 4Q 2001 Press Release, it understated its negative liquidity by $193 million or 6.9%.

439. Delphi's 2001 10-K contained an unqualified audit opinion signed by Deloitte, which stated that it had audited Delphi's financial statements in conformity with GAAS and that:

> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2001 and 2000 and the results of its operations and its cash flows for each of the three years in the period ended

> December 31, 2001, in conformity with accounting principles generally accepted in the United States of America.

440. Deloitte's statements in the above paragraph relating to the 2000 audit were false and materially misleading because Deloitte had not conducted its audit in accordance with GAAS and because Delphi's financial statements were not prepared in conformity with GAAP.

441. In response to the false and misleading statements in Delphi's Year-End 2001 Press Release and 2001 10-K, Delphi's stock steadily increased by 11% from $14.11 on February 11, 2002 to $14.75 on February 13, 2002 to $15.49 on February 21, 2002, and, even higher, to $16.39 on February 26, 2002.

K. First Quarter 2002

442. On April 17, 2002, Delphi published an earnings release announcing its financial results for the quarter ended March 31, 2002 (the "1Q 2002 Press Release"). The headline for the earnings release stated: "Delphi Announces Improved First Quarter 2002 Financial Results - Reports the First Quarter-Over-Quarter Sales Increase in Seven Quarters - Initiates New Restructuring Plan and Charge to Earnings - Operating Cash Flow Remains Strong" According to the 1Q 2002 Press Release, Delphi reported:

> [P]ro forma first quarter earnings of $123 million, up from a pro forma loss of $20 million in Q1 2001.... Earnings per share for the quarter was $0.22 compared to analyst consensus as reported on First Call of $0.21 per share. On a GAAP basis, including the impact of special charges taken in the quarter, Delphi reported a loss of $51 million or $(0.09) per share versus a loss of $429 million or $(0.77) per share in Q1 2001.

443. On April 17, 2002, Delphi also filed its Form 10-Q for the quarter ended March 31, 2002 (the "1Q 2002 10-Q"), which was signed by Free. The 1Q 2002 10-Q reiterated the GAAP financial results reported in the 1Q 2002 Press Release. In addition, the 1Q 2002 10-Q reported operating loss of $32 million and operating expenses of $6.7 billion.

444. The statements referenced in ¶¶ 442-443 above were each materially false and misleading when made because, as described above, Delphi's reported financials violated GAAP and materially understated net loss, operating loss, loss per share, and operating expenses.

445. Specifically, net loss, operating loss, loss per share, and operating expenses were all understated by, among other things: (i) improperly deferring recognition of payments made for system implementation services; (*see* Section VI.C.3 *supra*); and (ii) improperly recording warranty credits as a reduction of expenses in 2002 rather than in later periods, when they were to be utilized (*see* Section VI.B.2 *supra*).

446. Net loss, operating loss, and loss per share, were all also understated by Delphi's improper failure to accrue for obligations at the end of the accounting period in which they were incurred (*see* Section VI.B.3 *supra*).

447. On April 17, 2002, Delphi hosted a conference call to discuss its first quarter 2002 earnings (the "1Q 2002 Conference Call"). Commenting upon Delphi's first quarter earnings, Dawes stated that Delphi was able "to report results of about $123 million profit which was up $143 million from pro forma results last year versus revenue increase of about $153 million. So the bottom line is that we are able to bring the revenue increases to the bottom line."

448. These statements were false and misleading when CFO Dawes made them because: Delphi's 1Q 2002 reported net loss was understated by: (i) the improper deferral of expenses relating to Delphi's purchase of "system implementation services" (*see* Section VI.C.3, *supra*); and (ii) Delphi's failure to record certain obligations incurred and to make certain accounting adjustments in the proper accounting period (*see* Section VI.D, *supra*).

449. In its 1Q 2002 Press Release, the Company also reported net liquidity at March 31, 2002 of $(2.6) billion. This was false and misleading because, as Delphi has since admitted,

it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 1Q 2002 Press Release, it understated its negative liquidity by $187 million or 6.7 %.

450. On April 18, 2002, Credit Lyonnais analysts Charles Brady and Joseph Amaturo raised their firm's rating for Delphi from "hold" to "add," citing, among other things, the Company's strong earnings.

L. Second Quarter 2002

451. As described more fully in Section XI below, beginning in or about mid-2002, the Company began to trickle bad news out to the market, through reports of declining earnings, reduced guidance, and massive restructuring costs, with concomitant adverse effects on its stock price. Having become increasingly unable (or by virtue of passage of the Sarbanes-Oxley Act in July 2002, disinclined) to engage in the same magnitude of accounting gimmickry as in prior periods, Delphi began to condition the market to expect leaner quarters going forward – "guidance" that was, ironically, driven in large part by the fact that the Company had improperly pulled forward earnings from the latter part of the Class Period in order to boost its report results in its early years as a stand-alone company. That said, the Company sought to put a facially positive spin on its struggling business model, continued to disseminate its fraudulent results from past reporting periods, and failed to disclose that its "success" to date as a stand-alone public company was attained primarily through elaborate fraudulent accounting. And while the degree of financial statement manipulations decreased going forward, the Company's reported financial results for much of the balance of the Class Period were nonetheless infected with vestiges of the fraud.

452. On July 17, 2002, Delphi published an earnings release, announcing its financial results for the quarter ended June 30, 2002 (the "2Q 2002 Press Release"), as well as its Form

10-Q for the quarter ended June 30, 2002, which was signed by Sheehan (the "2Q 2002 10-Q"). Among other false statements, the 2Q 2002 Press Release and 2Q 2002 10-Q reiterated the false financial results for prior periods. The Company also reported on its ongoing $262 million (pre-tax) restructuring effort, and cautioned investors that the outlook for future reporting periods should be tempered due to, among other things, the Company's anticipation that the "Delphi content per vehicle" was trending downward.

453. For the six months ended June 30, 2002, the 2Q 2002 10-Q reported operating income of $350 million, net income of $169 million, earnings per share of $0.30, and operating expenses of $13.7 billion. These statements were each materially false and misleading when made because, as described above, Delphi's reported financials violated GAAP and materially ***overstated*** net income, operating income and earnings per share, and materially ***understated*** operating expenses.

454. Specifically, net income, operating income and earnings per share were all ***overstated***, and operating expenses were ***understated*** by, among other things: (i) improperly deferring recognition of payments made for system implementation services; (*see* Section VI.C.3, *supra*); and (ii) improperly recording warranty credits as a reduction of expenses in 2002 rather than in later periods, when they were to be utilized (*see* Section VI.B.2, *supra*);

455. Net income, operating income, and earnings per share, were all also overstated by Delphi's improper failure to accrue for obligations at the end of the accounting period in which they were incurred (*see* Section VI.D, *supra*).

456. In its 2Q 2002 Press Release, the Company reported net liquidity at June 30, 2002 of $(2.9) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures

of net liquidity. Specifically, in the 2Q 2002 Press Release, it understated its negative liquidity by $313 million or 9.7 %.

457. On July 17, 2002, analyst David Leiker of Robert W. Baird reiterated his firm's "market perform" rating, noting that the Company had met earnings consensus estimates. Leiker reported an increase in net debt of $300 million for the quarter and $200 million for the year.

458. As more fully described in Section XI below, after the Company issued the 2Q 2002 Press Release, Delphi's stock price declined.

M. Third Quarter 2002

459. The third quarter of 2002 was the first quarter in which SEC filings were governed by the Sarbanes-Oxley Act. Under Sarbanes-Oxley, Delphi, like all publicly traded companies, had to comply with more stringent reporting obligations, including certifications from its CEO and CFO attesting to the accuracy of its reporting of financial information and the soundness of its internal controls. Faced with this heightened regulatory scrutiny, Delphi sought to present an appearance of conservatism and regulatory compliance, and it apparently curtailed its most egregious fraudulent practices. Nevertheless, the Company's quarterly and annual filings in the post-Sarbanes-Oxley era continued to contain substantial, materially false and misleading statements because Delphi and other Defendants elected to wind-up rather than own up to their longstanding fraudulent schemes.

460. On October 16, 2002, Delphi issued a press release announcing its financial results for the quarter ended September 30, 2002 (the "3Q 2002 Press Release"), and its Form 10-Q for the quarter ended September 30, 2002 (the "3Q 2002 10-Q"). Among other false statements, the 3Q 2002 Press Release and 3Q 2002 10-Q reiterated false financial results for prior periods. The Company also reported on its ongoing restructuring effort and, further, cautioned investors that due to, among other things, "industry headwinds", the Company

expected "the difficult market conditions experienced in the first three quarters of 2002 to persist in the fourth quarter …."

461. The 3Q 2002 Press Release also reported that the Company's quarterly operating income was $125 million and its operating expenses were $6.3 billion. For the nine months ending September 30, 2002, the Company reported operating income of $475 million, net income of $223 million, earnings per share of $0.40 and operating expenses of $20 billion.

462. The statements referenced in ¶¶ 459-461 above were each materially false and misleading when made because, as described above, Delphi's reported financials violated GAAP and materially ***overstated*** net income, operating income, earnings per share, and materially ***understated*** operating expenses.

463. Specifically, net income, operating income, and earnings per share were all ***overstated***, and operating expenses were ***understated*** by, among other things: (i) improperly deferring recognition of payments made for system implementation services; (*see* Section VI.C.3, *supra*); and (ii) improperly recording warranty credits as a reduction of expenses in 2002 rather than in later periods, when they were to be utilized (*see* Section VI.B.2, *supra*);

464. Net income, operating income, and earnings per share, were all also overstated by Delphi's improper failure to accrue for obligations at the end of the accounting period in which they were incurred (*see* Section VI.D, *supra*).

465. In its 3Q 2002 Press Release, the Company reported net liquidity at September 30, 2002 of $(2.7) billion. This was false and misleading because, as Delphi has since admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 3Q 2002 Press Release, it understated its negative liquidity by $290 million or 9.5 %.

466. The 3Q 2002 10-Q was signed by Sheehan, Battenberg and Dawes. Battenberg and Dawes also submitted Certification of Principal Executive Officer and Certification of Principal Financial Officer, respectively (collectively referred to as the "Officer Certifications"). In their Officer Certifications, Battenberg and Dawes, respectively, certified that:

> I, [Battenberg/Dawes], certify that:
>
> 1. I have reviewed this quarterly report on Form 10-Q of Delphi Corporation;
>
> 2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
>
> 3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
>
> 4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
>
> > a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
> >
> > b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
> >
> > c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

> 5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
>
> > a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
> >
> > b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
>
> The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

467. The 3Q 2002 10-Q also contained as exhibits sworn certifications by Battenberg and Dawes, as required by the Sarbanes-Oxley Act. In these sworn certifications, both Dawes and Battenberg again certified that "[t]he information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company."

468. As more fully explained in Section XI below, after the Company issued its 3Q 2002 Press Release, Delphi's stock price declined due to the partial corrective disclosures in that release.

N. Fourth Quarter/Year-End 2002

469. On January 17, 2003, Delphi issued a press release announcing its financial results for the quarter and Fiscal Year 2002 (the "Year-End 2002 Press Release"), and on February 18, 2003, Delphi filed its Form 10-K for Fiscal Year 2002 (the "2002 10-K"), which

reiterated the reported information in the Full Year 2002 Press Release. In addition, the 2002 10-K reported the following results for 2002:

a. Operating income of $690 million;

b. Net income of $343 million;

c. Earnings per share of $0.61; and

d. Total operating expenses of $26.7 billion.

470. The statements referenced in ¶¶ 469 above, were each materially false and misleading when made because, as described above, Delphi's reported financials violated GAAP and materially ***overstated*** net income, operating income, earnings per share, and materially ***understated*** operating expenses.

471. Specifically, net income, operating income, and earnings per share were all ***overstated***, and operating expenses were ***understated*** by, among other things: (i) improperly deferring recognition of payments made for system implementation services; (*see* Section VI.C.3, *supra*); and (ii) improperly recording warranty credits as a reduction of expenses in 2002 rather than in later periods, when they were to be utilized (*see* Section VI.B.2, *supra*).

472. Net income, operating income, and earnings per share, were all also overstated by Delphi's improper failure to accrue for obligations at the end of the accounting period in which they were incurred (*see* Section VI.D, *supra*).

473. Indeed, Delphi admitted that, for the year-ended December 31, 2002, based on the following components of its fraudulent scheme, its income was overstated by $59 million:

a. $22 million for improperly capitalizing system implementation services;

b. $20 million for prematurely reducing expenses as a result of credits received from GM relating to warranty obligations;

c. $14 million for improperly recognizing obligations before they accrued and recording adjustments in the improper period; and

d. $19 million in other improper adjustments.

474. In its Year-End 2002 Press Release, the Company reported net liquidity at December 31, 2002 of $(2.4) billion. This was false and misleading because, as Delphi has admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the Year-End 2002 Press Release, it understated its negative liquidity by $ 300 million or 11.1 %.

475. As set forth in the table below, the Company has since admitted that the impact, including all adjustments (i.e., related tax effects of $35 million) of Delphi's improper accounting of expenses for system implementation services; warranty obligation credits; and accruals and other adjustments: (i) overstated the Company's operating income, net income and earnings per share; and (ii) understated the Company's operating expenses by the following amounts:

	Originally Reported	Restated	Overstated/ (Understated)
Operating Expenses	$26.7 billion	$27 billion	$(266) million
Operating Income	$690 million	$638 million	$52 million
Net Income	$343 million	$318 million	$25 million

476. The 2002 10-K was signed by, among others, Sheehan, Battenberg, Dawes and Runkle. In addition, both Battenberg and Dawes submitted Officer Certifications, which certified, *inter alia,* that the 2002 10-K accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective. As required by the Sarbanes-Oxley Act of 2002, Battenberg and Dawes also signed certifications

(the "Sarbanes-Oxley Certifications") attached to the 2002 10-K, which asserted that the 10-K accurately presented, "in all material respects, the financial condition and results of operations of the Company."

477. The 2002 Form 10-K also contained an unqualified audit opinion by Deloitte, which was signed on January 16, 2003 and represented that it had audited Delphi's financial statements in conformity with GAAS and that:

> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2002 and 2001 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States of America.

478. Deloitte's statements in the above paragraph relating to the 2002 audit were false and materially misleading because Deloitte had not conducted its audit in accordance with GAAS and because Delphi's financial statements were not prepared in conformity with GAAP.

479. As more fully explained in Section XI below, after the Company issued its 2002 Year-End Press Release and 2002 10-K, Delphi's stock price declined due to the partial corrective disclosures in those documents.

O. First Quarter 2003

480. On April 16, 2003, Delphi issued a press release announcing its financial results for the quarter ended March 31, 2003 (the "1Q 2003 Press Release"), and its Form 10-Q for the quarter ended March 31, 2003 (the "1Q 2003 10-Q"). Among other false statements, the 1Q 2003 Press Release and 1Q 2003 10-Q re-reported Delphi's previously issued financial results for the quarter ended March 31, 2002 and the year ended December 31, 2002. In fact, the 1Q 2003 10-Q specifically instructed that "this report should be read in conjunction with our 2002 Annual Report on Form 10-K."

481. The 1Q 2003 10-Q was signed by Sheehan, Battenberg, and Dawes. In addition, Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 1Q 2003 10-Q accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

482. The statements referenced in ¶¶ 480-481 above were each false and misleading because, as described above, Delphi's financial results reported materially overstated net income and earnings per share in violation of GAAP. Specifically, the results were inflated by the Company's admitted: (i) failure to recognize a $10 million warranty obligation to GM (*see* Section VI.B.3., *supra*); and (ii) improper accounting for accruals and other adjustments (*see* Section VI.D., *supra*). These components of Delphi's fraudulent scheme served to overstate the Company's income by $19 million, or 17.6 % for the quarter.

483. In its 1Q 2003 Press Release, the Company reported net liquidity at March 31, 2003 of $(2.0) billion excluding off-balance sheet sales of accounts receivable. This was false and misleading because, as Delphi has admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 1Q 2003 Press Release, it understated its negative liquidity by $974 million or 33 %.

484. Lastly, Delphi's statements regarding its previously reported financial results for first quarter of 2002 were false and misleading. Indeed, as explained above, the statements regarding Delphi's first quarter 2002 financial results were false and misleading when initially made. Delphi re-reported those results without disclosing their false and misleading nature. Accordingly, these statements were false and misleading for the same reasons set forth above.

485. Significantly, Delphi also touted "its track record of solid cash flow generation" – a record that had of course been built largely through the fraudulent manipulations described herein.

486. Analysts responded positively to the Company's unusually bullish comments for the first quarter and its continued misrepresentations regarding its current and historical financial results. For example, on April 21, 2003, JP Morgan issued an analyst report which stated:

> Overall, our outlook on Delphi is improving. We were pleased with Delphi's first quarter operating results, reported last week (4/16). And we were impressed that the company did not guide down earnings expectations for the second quarter, as we had expected.

487. As more fully explained in Section XI below, after the Company issued its 1Q 2003 Press Release, Delphi's stock price declined due to the partial corrective disclosures in that release.

488. After the Company issued its extremely positive 1Q 2003 Press Release and 1Q 2003 10-Q, Delphi's stock price trended up over the ensuing weeks. It would not be long, however, before Delphi was constrained to concede to the market that its bullishness was not warranted.

P. Delphi Revises Its Earnings Estimates Downward For The 2003 Second Quarter

489. On June 12, 2003, Delphi issued a press release revising its earnings outlook downward for the quarter ended June 30, 2003 (the "2Q 2003 Earnings Revision Press Release"). The 2Q 2003 Earnings Revision Press Release reported that,

> [T]he company has revised its earnings outlook for Q2 2003, attributing the reduced forecast to a combination of events that include weakness in market demand and production volumes – notably suspended operations at General Motors' Oklahoma City facility – as well as an adverse legal judgment and timing of

portfolio-related actions such as facility closures and employee separations.

490. Dawes further explained, "[t]he collective effect of these events during the current quarter will drive earnings below previous guidance."

491. The statements in the 2Q 2003 Earnings Revision Press Release were false and misleading because, as set forth above, Delphi failed to disclose the negative impact that the unwinding of the Company's prior fraudulent accounting was having on its second quarter 2003 financial results.

492. As more fully explained in Section XI below, after the Company issued its 2Q 2003 Earnings Revision Press Release, Delphi's stock price declined due to the partial corrective disclosures in that release.

493. In fact, on the next trading day, the price of Delphi stock declined over 10% on over three times typical trading volume.

Q. Second Quarter 2003

494. On July 17, 2003, Delphi issued a press release announcing its financial results for the quarter ended June 30, 2003 (the "2Q 2003 Press Release"), which stated that the Company had met the reduced expectations announced a month earlier.

495. On July 17, 2003, Delphi filed its Form 10-Q for the quarter ended June 30, 2003 (the "2Q 2003 10-Q"). The 2Q 2003 10-Q reiterated Delphi's financial results as reported in the 2Q 2003 Press Release and represented that "in the opinion of management, all adjustments, consisting of only normal recurring items, which are necessary for a fair presentation have been included."

496. The 2Q 2003 10-Q also re-reported its previously issued financial results for the three and six months ended June 30, 2002 and the year ended December 31, 2002. In fact, the

2Q 2003 10-Q specifically instructed that "this report should be read in conjunction with our 2002 Annual Report on Form 10-K."

497. The 2Q 2003 10-Q was signed by Sheehan, Battenberg, and Dawes. In addition, Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 2Q 2003 10-Q accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

498. The statements referenced in ¶¶ 494-497 above were each false and misleading because, as described above, the fraudulent transactions in earlier periods materially misstated the Company's financial results. Specifically, the results were misstated by the Company's admitted: (i) premature recognition of rebate income (*see* Section VI.C.1-3., *supra*); (ii) improper accounting of payments made to and credits received from GM for warranty and pension obligations (*see* Section VI.B.1-3., *supra*); (iii) improper accounting for accruals and other adjustments (*see* Section VI.D., *supra*); and (iv) off-balance sheet financing transactions involving indirect materials (*see* Section VI.A.1-3., *supra*). Indeed, Delphi's second quarter 2003 financial results reflected the Company's earlier fraudulent accounting practices.

499. In its 2Q 2003 Press Release, the Company reported net liquidity at June 30, 2003 of $(1.9) billion excluding off-balance sheet sales of accounts receivable. This was false and misleading because, as Delphi has admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 2Q 2003 Press Release, it understated its negative liquidity by $980 million or 34 %.

500. Delphi's statements regarding its previously reported financial results for the three and six months ended June 30, 2002 and Fiscal Year 2002 were false and misleading. Indeed, as

explained above, the statements regarding Delphi's financial results for these periods were false and misleading when initially made. Delphi re-reported those results without disclosing their false and misleading nature. Accordingly, these statements were false and misleading for the same reasons set forth above.

501. In the 2Q 2003 Press Release, Battenberg commented:

> Although we experienced a number of unusual items concurrently in the quarter -- most notably an adverse legal judgment, timing of portfolio actions and general weakness in market demand and production volumes -- we met the targets we set for ourselves within the context of these events while keeping our operating performance on track.
>
> While the pattern of production levels is impacting the second half of the Year, we remain confident that Delphi will meet our CY2003 guidance and is on the right path for future growth and profitability.

502. The reasons given by Battenburg for the Company's struggles were false and misleading because they omitted to disclose that the Company's results for the second quarter had been adversely affected by Delphi's fraudulent accounting earlier in the Class Period, namely, by the scheme whereby the Company had improperly pulled forward to earlier periods within the Class Period earnings that should not have been recognized in this quarter.

503. As more fully explained in Section XI below, after the Company issued its 2Q 2003 Press Release, Delphi's stock price declined due to the partial corrective disclosures in that release.

R. Delphi Corporation Bond Offering July 25, 2003 (6.500%)

504. On or about July 25, 2003, Delphi issued $500 million of 6.55% notes due 2013 (the "July 2003 Offering"). In connection with the July 2003 Offering, Delphi filed with the SEC a Form S-3 registration statement dated November 26, 2002, and filed a prospectus on

December 16, 2002 and prospectus supplements pursuant to Rule 424(b)(5) on July 22, 2003 and July 23, 2003 (collectively, the "July 2003 Registration Statement").

505. The July Registration Statement was signed by, among others, Battenberg, Dawes, Runkle and Sheehan.

506. Barclays, Citigroup and BAS served as the Joint Bookrunners of the July 2003 Offering.

507. The July 2003 Registration Statement incorporated by reference the following documents:

a. Annual Report on Form 10-K for the year ended December 31, 2002;

b. Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2003;

c. Current Reports on Forms 8-K including Reports dated January 17, 2003 and June 12, 2003; and

d. Deloitte's audit opinion was included in Delphi's Annual Report on Form 10-K for the year ended December 31, 2002.

508. Deloitte gave its written consent to incorporation of its audit report on Delphi's 2002 annual financial statements into the July 2003 Registration Statement.

509. The July 2003 Registration Statement included Delphi's materially false and misleading financial results for Fiscal Years 2000, 2001 and 2002, including, among other financial data:

a. For Fiscal Year 2000:

i. Net sales of $29.1 billion;

ii. Operating income of $1.7 billion;

iii. Net income of $1.1 billion;

iv. Cash provided by operating activities $268 million; and

v. Cash provided by financing activities $1.1 billion.

b. For Fiscal Year 2001:

i. Net Sales of $26.1 billion;

ii. Operating loss of $284 million;

iii. Net loss of $370 million;

iv. Net cash provided by operating activities of $1.4 billion; and

v. Net cash provided by financing activities of $13 million.

c. For Fiscal Year 2002:

i. Operating income of $690 million;

ii. Net income of $343 million; and

iii. Net cash used in financing activities of $791 million.

510. For the reasons set forth above, the July 2003 Registration Statement was materially false and misleading.

S. Third Quarter 2003

511. On October 16, 2003, Delphi issued a press release announcing its financial results for the quarter ended September 30, 2003 (the "3Q 2003 Press Release"), which reported another massive restructuring charge, this one quantified at over a half-billion dollars (pre-tax). Delphi attributed the charge to employee and production line costs and said that "[e]xcluding the charge, the company reported net income of $3 million during the quarter, in line with guidance and First Call consensus."

512. In the 3Q 2003 Press Release, the Company reported net liquidity at September 30, 2003 of $(2.5) billion excluding off-balance sheet sales of accounts receivable. This was false and misleading because, as Delphi admitted, it did not disclose certain factoring facilities as

sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 3Q 2003 Press Release, it understated its negative liquidity by $770 million or 27.8 %.

513. Also on October 16, 2003, the Company filed its 10-Q Quarterly Report (the "3Q 2003 10-Q"), signed by Sheehan. The 3Q 2003 10-Q reiterated Delphi's financial results as reported in the 3Q 2003 Press Release.

514. The 3Q 2003 10-Q also reiterated the company's financial performance for the three month and nine month periods ending September 30, 2002, as presented in the 3Q 2002 10-Q, and relied on these prior reported figures for comparison with the third quarter of 2003. The 3Q 2003 10-Q states: "[T]his report should be read in conjunction with our consolidated financial statements and notes thereto included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission."

515. The 3Q 2003 10-Q was signed by Sheehan, Battenberg, and Dawes. In addition, Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 3Q 2003 10-Q accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

516. The statements referenced in ¶¶ 511-515 above, were each false and misleading because, as described above, they materially misstated the Company's financial results by continuing to conceal and failing to account for the improper accounting for Delphi's fraudulent transactions in earlier periods. Specifically, the results were misstated by the Company's earlier admitted: (i) premature recognition of rebate income (*see* Section VI.C.1-3., *supra*); (ii) improper accounting of payments made to and credits received from GM for warranty and pension obligations (*see* Section VI.B.1-3., *supra*); (iii) improper accounting for accruals and other

adjustments (*see* Section VI.D., *supra*); and (iv) off-balance sheet financing transactions involving indirect materials (*see* Section VI.A.1-3., *supra*).

517. As Delphi has admitted, the third quarter financial results were materially false and misleading because they reflected the Company's surreptitious attempt to unwind its earlier fraud, rather than disclose it.

518. As more fully explained in Section XI below, after the Company issued its 3Q 2003 Press Release and 3Q 2003 10-Q, Delphi's stock price declined due to the partial corrective disclosures in those documents.

T. Delphi Trust I Offering October 21, 2003 (8.25 %)

519. On or about October 21, 2003, Delphi Trust I issued $250 million of 8.25% trust preferred securities, guaranteed by Delphi (the "Trust I Offering"). In connection with the Trust I Offering, Delphi filed with the SEC a Form S-3 registration statement dated September 3, 2003, and filed prospectus supplement pursuant to Rule 424(b)(5) on October 21, 2003 (collectively, the "September 2003 Registration Statement").

520. The September 2003 Registration Statement was signed by, among others, Battenberg, Dawes, Runkle and Sheehan.

521. Merrill, Lynch, Pierce, Fenner & Smith acted as representative underwriter for the offering. Other underwriters included Morgan Stanley & Co., Inc., UBS Securities LLC, Wachovia Capital Markets, LLC, Banc of America Securities LLC, Comerica Securities, Inc., and Deutsche Bank Securities Inc.

522. The September 2003 Registration Statement incorporated numerous false and misleading statements by reference, including the:

a. Annual Report on Form 10-K for the year ended December 31, 2002;

b. Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2003;

c. Current Reports on Forms 8-K including Reports dated January 17, 2003 and June 12, 2003; and

d. Deloitte's audit opinion was included in Delphi's Annual Report on Form 10-K for the year ended December 31, 2002.

523. In the October 22, 2003 prospectus supplement, Delphi stated that its net sales for 2002 were $27.4 billion and its net income for 2002 was $343 million.

524. As stated above, the 2002 10-K reported the following results for 2002:

a. Operating income of $690 million; and

b. Earnings per share of $0.61; and

c. Operating expenses of $26.7 billion.

525. For the reasons set forth in detail above, the above statements, the 2002 10-K, the Quarterly Reports for the quarters ended March 31 and June 30, 2003, the September 2003 Registration Statement, and the October 22, 2003 prospectus supplement were materially false and misleading.

U. Delphi Trust II Offering November 11, 2003 (6.197%)

526. On or about November 14, 2003, Delphi Trust II issued $150 million of adjustable rate (6.197% initial rate) trust preferred securities, guaranteed by Delphi (the "Trust II Offering"). The Company filed a Preliminary Prospectus Supplement pursuant to Rule 424(b)(5) on November 17, 2003 for 150,000 adjustable rate trust referred securities, with a liquidation amount of $1000 per security (the "Delphi Trust II Offering").

527. The September 2003 Registration Statement was signed by, among others, Battenberg, Dawes, Runkle and Sheehan.

528. Citigroup and Merrill Lynch were joint representatives of the Trust II Offering. Other underwriters included Credit Suisse First Boston, JPMorgan, Morgan Stanley, and UBS Investment Bank.

529. The September 2003 Registration Statement incorporated numerous false and misleading statements by reference, including the:

a. Annual Report on Form 10-K for the year ended December 31, 2002;

b. Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2003;

c. Current Reports on Form 8-K dated January 17, 2003, May 9, 2003, May 23, 2003, June 12, 2003, and July 25, 2003; and

d. Deloitte's audit opinion was included in Delphi's Annual Report on Form 10-K for the year ended December 31, 2002.

530. In the November 14, 2003 prospectus supplement, Delphi repeated that its net sales for 2002 were $27.4 billion and its net income for 2002 was $343 million.

531. As stated above, the 2002 10-K reported the following results for 2002:

a. Operating income of $690 million;

b. Earnings per share of $0.61; and

c. Operating expenses of $26.7 billion.

532. Delphi has since admitted that, for Fiscal Year 2002, based on the following components of its fraudulent scheme, its income was overstated by $75 million:

a. $22 million for improperly capitalizing system implementation services;

b. $20 million for prematurely reducing expenses as a result of credits received from GM relating to warranty obligations;

c. $14 million for improperly recognizing obligations before they accrued and recording adjustments in the improper period; and

d. $19 million in other improper adjustments.

533. The statements referenced in above were each materially false and misleading when made because, as described above, Delphi's reported financials violated GAAP and materially ***overstated*** net income, operating income, earnings per share, and materially ***understated*** operating expenses.

534. Specifically, net income, operating income, and earnings per share were all ***overstated***, and operating expenses were ***understated*** by, among other things: (i) improperly deferring recognition of payments made for system implementation services; (*see* Section VI.C.3 *supra*); and (ii) improperly recording warranty credits as a reduction of expenses in 2002 rather than in later periods, when they were to be utilized (*see* Section VI.B.2 *supra*);

535. Net income, operating income, and earnings per share, were all also overstated by Delphi's improper failure to accrue for obligations at the end of the accounting period in which they were incurred.

536. For the reasons set forth in detail above, the 2002 10-K, the Quarterly Reports for the quarters ended March 31 and June 30, 2003, the September 2003 Registration Statement and the November 14, 2003 prospectus were materially false and misleading.

V. Fourth Quarter/Full Year 2003

537. On January 20, 2004, Delphi issued a press release, announcing the Company's financial results for the quarter and Fiscal Year 2003 (the "Year-End 2003 Press Release"), and on January 28, 2004, the Company filed its 10-K Annual Report for Fiscal Year 2003 (the "2003 10-K"). The 2003 10-K was signed by, among others, Battenberg, Dawes, Runkle and Sheehan.

538. Rather than disclose Delphi's earlier fraudulent accounting practices, the Year-End 2003 Press Release and 2003 10-K instead touted the Company's consistent growth since its inception and its ability to execute long-term strategy and, further, disseminated anew false financial results for prior reporting periods. The filings also failed to disclose that the Company's reported performance for the fourth quarter and Fiscal Year 2003 had been adversely affected because the Company had improperly pulled earnings forward to earlier periods in the Class Period.

539. These filings were each false and misleading because, as described above, they materially misstated the Company's financial results by continuing to conceal and failing to account for the improper accounting for Delphi's fraudulent transactions in earlier periods. Specifically, the results were misstated by the Company's earlier admitted: (i) premature recognition of rebate income (*see* Section VI.C.1-3, *supra*); (ii) improper accounting of payments made to and credits received from GM for warranty and pension obligations (*see* Section VI.B.1-3, *supra*); (iii) improper accounting for accruals and other adjustments (*see* Section VI.D., *supra*); and (iv) improperly omitted financing transactions involving indirect materials (*see* Section VI.A.1-3., *supra*).

540. Moreover, as Delphi has admitted, the 2003 10-K financial results were materially false and misleading because they reflected the Company's surreptitious attempt to unwind its earlier fraud, rather than disclose it.

541. In addition, in the 2003 10-K Company reported a change in its inventory accounting from Last-In-First-Out ("LIFO") to First-In-First-Out ("FIFO") method, stating in pertinent part:

> The FIFO value of inventories valued at LIFO amounted to approximately $633 million and $725 million at December 31,

> 2001 and 2000, respectively. The effect of the LIFO method of accounting was to increase operating income by $41 million in 2001, including the $7 million effect of deflation. The effect of the LIFO method of accounting was to increase Delphi's 2000 operating income by $96 million, net of the effect of inflation of $34 million....

542. This statement was materially false and misleading because it omitted to disclose facts necessary to make it not false and misleading, namely, that the Company's fraudulent inventory disposal transactions in 2000, described above, created the Company's LIFO liquidation gains for that year, and artificially inflated increased its 2000 operating income for that year.

543. Finally, the Company reported net liquidity at December 31, 2003 of $(2.4) billion excluding off-balance sheet sales of accounts receivable. This was false and misleading because, as Delphi has admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, it understated its negative liquidity by $215 million or 8.4 %.

544. Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 2003 10-K accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

545. The 2003 10-K also contained an unqualified audit opinion signed by Deloitte on January 26, 2004, which stated that it had audited Delphi's financial statements in conformity with GAAS and that:

> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2003 and 2002 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America.

546. Deloitte's statements in the above paragraph relating to the 2003 audit were false and materially misleading because Deloitte had not conducted its audit in accordance with GAAS and because Delphi's financial statements were not prepared in conformity with GAAP.

W. First Quarter 2004

547. On April 16, 2004, Delphi issued a press release announcing its financial results for the quarter ended March 31, 2004 (the "1Q 2004 Press Release"), as well as its 10-Q Quarterly Report (the "1Q 2004 10-Q"). In the release, Dawes touted the Company's past history of performance, saying, "Once again, Delphi extended its <u>track record</u> for strong cash generation...." (Emphasis added).

548. The filings also re-reported Delphi's previously issued financial results for the quarter ended March 31, 2003, and the year ended December 31, 2003. In fact, the MD&A section states: "The following management's discussion and analysis of financial condition and results of operations (MD&A") should be read in conjunction with the MD&A included in our Annual Report on Form 10-K for the year ended December 31, 2003."

549. The 1Q 2004 10-Q was signed by Sheehan. In addition, Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 1Q 2004 10-Q accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

550. The statements referenced in ¶¶ 547-549 above were each false and misleading because, as described above, they materially misstated the Company's financial results by continuing to conceal and failing to account for the improper accounting for Delphi's fraudulent transactions in earlier periods. Nowhere in its 1Q 2004 Press Release or 1Q 2004 10-Q does Delphi disclose that its results for the quarter were affected by frauds it had committed in earlier periods. Specifically, its results were misstated by the Company's earlier admitted: (i) premature

recognition of rebate income (*see* Section VI.C.1-3., *supra*); (ii) improper accounting of payments made to and credits received from GM for warranty and pension obligations (*see* Section VI.B.1-3., *supra*); (iii) improper accounting for accruals and other adjustments (*see* Section VI.D., *supra*); and (iv) off-balance sheet financing transactions involving indirect materials (*see* Section VI.A.1-3., *supra*).

X. Second Quarter 2004

551. On July 16, 2004, Delphi issued a press release announcing its financial results for the quarter ended June 30, 2004 (the "2Q 2004 Press Release"), as well as its Form 10-Q for the quarter ending June 30, 2004 (the "2Q 2004 10-Q"). In the release, Dawes again stressed the Company's historic performance, saying "Delphi maintained its <u>track record</u> of strong operating cash flow generation, demonstrating our operational strength...." (Emphasis added).

552. The 2Q 2004 10-Q also re-reported its previously issued financial results for the quarter and six month-period ended June 30, 2003, as well as the year ended December 31, 2003. In fact, the MD&A section states: "The following management's discussion and analysis of financial condition and results of operations (MD&A") should be read in conjunction with the MD&A included in our Annual Report on Form 10-K for the year ended December 31, 2003."

553. The 2Q 2004 10-Q was signed by Sheehan. In addition, on July 16, 2004, Battenberg and Dawes submitted both Officer Certifications and the Sarbanes-Oxley Certifications, which certified, *inter alia,* that the 2Q 2004 10-Q accurately portrayed the Company's financial condition and that each had inspected the Company's internal controls and found them to be effective.

554. The statements referenced in ¶¶ 551-553 above, were each false and misleading because, as described above, they materially misstated the Company's financial results by continuing to conceal and failing to account for the improper accounting for Delphi's fraudulent

transactions in earlier periods. Nowhere in its 2Q 2004 Press Release or 2Q 2004 10-Q does Delphi disclose that its results for the quarter were affected by frauds it had committed in earlier periods. Specifically, its results were misstated by the Company's earlier admitted: (i) premature recognition of rebate income (*see* Section VI.C.1-3., *supra*); (ii) improper accounting of payments made to and credits received from GM for warranty and pension obligations (*see* Section VI.B.1-3., *supra*); (iii) improper accounting for accruals and other adjustments (*see* Section VI.D., *supra*); and (iv) off-balance sheet financing transactions involving indirect materials (*see* Section VI.A.1-3., *supra*).

555. In its 2Q 2004 Press Release, the Company reported net liquidity at June 30, 2004 of $ (2.3) billion excluding off-balance sheet sales of accounts receivable. This was false and misleading because, as Delphi has admitted, it did not disclose certain factoring facilities as sources of short-term liquidity in its non-GAAP measures of net liquidity. Specifically, in the 2Q 2004 Press Release, it understated its negative liquidity by $571 million or 19.9%.

Y. Third Quarter And Fourth Quarter 2004

556. Between September 29, 2004 and the close of the Class Period, Delphi was presented with several opportunities to level with investors about its earlier accounting manipulations. Facing scrutiny by the SEC for its IT rebate accounting chicanery, Delphi should have disclosed publicly the full extent of its accounting irregularities. Nevertheless, despite knowing that grave troubles were just beyond the horizon, Delphi carefully orchestrated a series of press releases intended to reassure investors. The result was that its stock price remained at inflated levels through the remainder of 2004 and the rest of the Class Period.

557. On September 29, 2004, Delphi filed a Form 8-K Current Report (the "September 2004 8-K"), signed by Sheehan, announcing, in pertinent part:

> In late July 2004, Delphi Corporation (the "Company") received a subpoena from the Securities Exchange Commission (the "Commission") requesting information regarding the Company's agreements with Electronic Data Systems Corporation ("EDS"), a long time supplier of information technology services to the Company. In August 2004, the Company received a copy of the formal order of investigation from the Commission indicating that the staff of the Commission ("the Staff") had commenced a non-public fact-finding inquiry regarding transactions between Delphi and EDS, including the accounting treatment of payments made and credits given by EDS to Delphi during 2000 and 2001, and certain payments made and credits given by EDS to Delphi during 2000 and 2001, and certain payments made by Delphi to EDS for system implementation services in 2002 and in early 2003. The Staff has subsequently advised that they are also reviewing the accounting treatment of payments received by Delphi from other suppliers of information technology services....

558. This statement was materially false and misleading because it omitted to state facts necessary to make it not materially false and misleading. Specifically, the Company omitted to disclose the full extent of its fraudulent accounting for transactions with EDS and other suppliers of information technology, as explained in detail above in Section VI.C. Moreover, Delphi failed to disclose in the September 2004 8-K its other improper and fraudulent activities, as explained in detail above in Section VI.

559. Moreover, the Company sought to assuage investors by falsely stating at the end of the release that "[u]ntil the Staff's investigation and our review are complete, we are not able to predict the potential effect they will have on Delphi." This statement was false because the Company and its officers knew full well that their practice of engaging in accounting manipulations in order to mislead investors about Delphi's financial results had been discovered and would inevitably be more fully illuminated.

560. On October 5, 2004, the Company issued a press release (the "October 5, 2004 Press Release") which revised downward its guidance for the third quarter that had just closed the week before. By attributing the reduced guidance to certain operational challenges, the

Company's release was false and misleading because it did not disclose that those "challenges" were in fact attributable in large part to the Company's fraudulent accounting earlier in the Class Period.

561. After the Company issued the October 5, 2004 Press Release, Delphi's stock price declined almost 10% over the next two weeks, on higher than usual trading volume, due to the partial corrective disclosures in that release.

562. On October 18, 2004, Delphi filed a Form 8-K Current Report, (the "October 18, 2004 Press Release"), signed by Sheehan, which noted that the Company had met the revised earnings guidance announced two weeks earlier.

563. Battenberg stated, "As we discussed on Oct. 5, the third quarter was a more challenging environment than we experienced in the first half of 2004, with increased commodity pressures, low production volumes, product launch issues and lower attrition...." Dawes referred to "near-term headwinds" that posed challenges for the Company.

564. Also on October 18, 2004, the Company filed a separate Form 8-K Current Report (the "October 2004 Financial Release") containing financial and other information for the three and nine months ended September 30, 2004. The Company reiterated the financial results set forth in the October 18, 2004 Press Release, and explained that it was filing the October 18, 2004 Financial Release instead of a quarterly report on Form 10-Q because:

> The interim financial statements contained in a Form 10-Q are required to have been reviewed by an independent registered public accounting firm pursuant to Rule 10-01(d) of the Securities and Exchange Commission's Regulation S-X. Deloitte & Touche LLP ("Deloitte"), the Company's independent registered public accounting firm, has informed us that due to the ongoing status of an internal review by the Audit Committee of the Board of Directors into the accounting treatment accorded to certain transactions with suppliers, including those for information technology services, it has not completed its review of the

> unaudited Consolidated Financial Statements included herein for the three and nine months ended September 30, 2004. The internal review was initiated in response to an investigation commenced by the staff of the Securities and Exchange Commission that was disclosed on a Form 8-K filed on September 29, 2004....
>
> The Company has therefore determined to file financial and other information for the third quarter without the review having been completed. The Company is making this filing on Form 8-K in order to provide information to the investing public about the third quarter while the investigation continues....
>
> The Company has not included the disclosure relating to "Controls and Procedures" in this Form 8-K which would normally be found under Part I, Item 4 of a Form 10-Q because, due to the ongoing investigation, the evaluation of such controls and procedures is ongoing. Additionally, the Company has not provided any of the certifications, which would be required in the filing of a Form 10-Q.

565. The foregoing statements by Delphi on October 18, 2004 were materially false and misleading because they omitted to state facts necessary to make them not materially false and misleading. Specifically, the Company omitted to disclose the full extent of its fraudulent accounting for transactions with EDS and other suppliers of information technology, as explained in detail in Section VI.C. above. Moreover, Delphi failed to disclose its other improper and fraudulent activities, as explained in detail in Section VI above.

566. On November 10, 2004, the Company filed a Form NT 10-Q, Notification of Late Filing of Form 10-Q (the "November 2004 NT 10-Q"). In the November 2004 NT 10-Q, the Company reiterated that it was unable to file a 10-Q quarterly report for the third quarter of 2004 based on the ongoing status of the SEC's investigation into its transactions with EDS, the Audit Committee's investigation, and Deloitte's inability to complete its review of the Company's unaudited financial statements for the quarter.

567. Delphi's November 2004 NT 10-Q was materially false and misleading because it omitted to state facts necessary to make it not materially false and misleading. Specifically,

Delphi omitted to disclose the full extent of its fraudulent accounting for transactions with EDS and other suppliers of information technology, as explained in detail Section VI.C above. Moreover, Delphi failed to disclose its other improper and fraudulent activities, as explained in detail in Section VI above.

568. Throughout the third and fourth quarters of 2004, Delphi successfully prevented the investing public from learning the full extent of the fraudulent scheme by issuing the foregoing Forms 8-K.

IX. <u>DELPHI'S FINANCIAL STATEMENTS FAILED TO COMPLY WITH GAAP AND SEC REGULATIONS PROHIBITING FALSE AND MISLEADING PUBLIC FILINGS</u>

569. GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. Those principles are the official standards accepted by the SEC and promulgated in part by the American Institute of Certified Public Accountants ("AICPA"), a private professional association, through three successor groups it established: the Committee on Accounting Procedure; the Accounting Principles Board (the "Board"), and the Financial Accounting Standards Board (the "FASB") with the permission of the SEC (Accounting Series Release 150).

570. The SEC requires that public companies prepare their financial statements in accordance with GAAP. 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). Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a). Management is

responsible for preparing financial statements that conform with GAAP. As noted by AICPA auditing standards ("AU"), § 110.02:

> Financial statements are management's responsibility. ... [M]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal controls that will, among other things, record, process, summarize, 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.

571. The SEC also regulates statements by companies "that can reasonably be expected to reach investors and the trading markets, whoever the intended primary audience." SEC Release No. 33-6504, 3 Fed. Sec. L. Rep. (CCH) 23,120, at 17,095-3, 17 C.F.R. § 241.20560 (Jan. 13, 1984). Under SEC regulations, the management of a public company has a duty "to make full and prompt announcements of material facts regarding the company's financial condition." SEC Release No. 34-8995, 3 Fed. Sec. L. Rep. (CCH) 23,120A, at 17,095, 17 C.F.R. § 241.8995 (Oct. 15, 1970). The SEC has emphasized that "[i]nvestors have legitimate expectations that public companies are making, and will continue to make, prompt disclosure of significant corporate developments." SEC Release No. 18271, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) 83,049, at 84,618 (Nov. 19, 1981).

572. In Securities Act Release No. 6349 (Sept. 8, 1981), the SEC stated that:

> [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.

573. In Accounting Series Release 173, 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.

574. Item 7 of Form 10-K and Item 2 of Form 10-Q, Management's Discussion and Analysis of Financial Condition and Results of Operations, require the issuer to furnish information required by Item 303 of Regulation S-K [17 C.F.R. § 229.303].

575. On May 18, 1989, the SEC issued an interpretive release (Securities Act Release No. 6835 -May 18, 1989) which stated, in relevant part:

> The MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future. As the Concept Release states:
>
> The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long term analysis of the business of the company. The Item asks management to discuss the dynamics of the business and to analyze the financials.

576. The SEC has thus 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."

577. SEC Staff Accounting Bulletin No. 101 ("SAB 101"), Revenue Recognition in Financial Statements, drawing from Regulation S-K, Article 303, and Financial Reporting Release No. 36, also reiterated the importance of the MD&A in financial statements:

> Management's Discussion & Analysis (MD&A) requires a discussion of liquidity, capital resources, results of operations and other information necessary to obtain an understanding of a

> registrant's financial condition, changes in financial condition and results of operations. This includes unusual or infrequent transactions, known trends, or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase or decrease. The Commission stated in Financial Reporting Release (FRR) 36 that ***MD&A should "give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects for the future."***

(Emphasis added; footnotes omitted).

578. Delphi's accounting during the Class Period violated fundamental principles of GAAP and the disclosures by management contained in its financial statements were misleading and failed to comply with the SEC regulations identified above.

579. As set forth more fully below, Delphi's accounting violated the following fundamental principles of GAAP:

a. The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions. (FASB Statement of Financial Accounting Concepts "FASCON" No. 1).

b. The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events, and circumstances that change resources and claims to those resources. (FASCON No. 1).

c. The principle that financial reporting should provide information about an enterprise's financial performance during a certain time 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 enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance. (FASCON No. 1).

d. The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements. (APB No. 28, ¶10).

e. The principle that the quality of reliability and, in particular, of representational faithfulness leaves no room for accounting representations that subordinate substance to form. (FASCON No. 2).

f. The principle that information should be reliable as well as relevant is a notion that is central to accounting. (FASCON No. 2).

g. The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions. (FASCON No. 2).

h. The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent. (FASCON No. 2).

i. The principle that revenue should not be recognized until it is realized or realizable and earned. (FASCON No. 5).

j. The principle that gains should not be accrued without sufficient certainty of their collectibility. (FASCON No. 5)

k. The principle that a full set of financial statements should show cash flows during the period. (FASCON No. 5).

l. The principle that the statement of cash flows directly or indirectly reflects an entity's cash receipts classified by major sources and its cash payments classified by major uses during a period, including cash flow information about its operating, financing, and investing activities. (FASCON No. 5).

m. The principle that expenses have to be matched with revenues as long as it is reasonable to do so. (FASCON No. 6).

580. In violating these basic requirements of GAAP, along with more specific principles listed below, and in issuing, or omitting material information from its MD&A disclosures, Delphi's internal controls were wholly lacking. As admitted by Delphi's Audit Committee, the Company was completely deficient in internal controls which could have prevented the accounting manipulations and machinations that inflated Delphi's financial results. Delphi's Audit Committee identified the following critical failings in Delphi's internal controls during the Class Period:

a. "Insufficient numbers of personnel having appropriate knowledge, experience and training in the application of GAAP at the divisional level, and insufficient personnel at the Company's headquarters to provide effective oversight and review of financial transactions;"

b. "Ineffective or inadequate accounting policies to ensure the proper and consistent application of GAAP throughout the organization;"

c. "Ineffective or inadequate controls over the administration and related accounting treatment for contracts;" and

d. "An ineffective 'tone' within the organization related to the discouragement, prevention or detection of management override, as well as inadequate emphasis on thorough and proper analysis of accounts and financial transactions."

581. These gross deficiencies in internal controls over Delphi's accounting revealed by the Audit Committee allowed Delphi's management to intentionally and willfully distort Delphi's financial results through the following accounting manipulations and fraudulent transactions:

a. inflating Delphi's earnings by immediately recognizing rebates and credits received from suppliers in the periods in which these payments were received rather than over the period during which the services were performed or products purchased;

b. improperly deferring the recording of the expense for payments made for system implementation services with the effect that Delphi's expenses were materially understated and earnings materially overstated in 2002;

c. inflating cash flow from operating activities and income through the fictitious "sales" of assets and inventories to, among others, Defendants SETECH, BBK, Bank One, with which Delphi, through related transactions, had reciprocal, and undisclosed, arrangements to repurchase the same assets and inventories;

d. misclassifying a $202 million dollar payment to GM in 2000 as an adjustment for post-retirement obligations, which could be amortized over time, deferring expenses, when in fact the payment was for warranty liabilities that should have been immediately expensed, as well as accelerating recognition of substantial portions of an $85 million warranty credit received from GM in 2001 and 2002, instead of recognizing those credits when utilized. The effect of these accounting manipulations was to artificially inflate Delphi's earnings between 2000 and 2002; and

e. improperly failing to accrue for obligations and recording adjustments in the wrong period in the amount of $69 million, during the Class Period, thus inflating Delphi's EPS.

582. Each of these accounting manipulations had the immediate effect of boosting Delphi's earnings and EPS and misleading investors about the true financial performance of Delphi. Moreover, as set forth below, each of the accounting manipulations identified above involved departures from fundamental principles of GAAP.

A. Delphi's Failure To Maintain Adequate Internal Controls Violated SEC Regulations

583. Delphi's Audit Committee investigation revealed that during the Class Period, Delphi's internal controls were fraught with material weaknesses that were wholly insufficient to ensure that Delphi's accounting was conducted in compliance with GAAP. Yet, in each of Delphi's Forms 10-K filed with the SEC during the Class Period, Delphi's senior managers certified that they had reviewed Delphi's internal controls and that these controls were adequate. For example, in a signed statement set forth in the 2000 Form 10-K, filed with the SEC on

February 9, 2001, Battenberg, Dawes, and Free signed the following statement regarding the effectiveness of Delphi's internal controls:

> The Board of Directors, through the Audit Committee (composed entirely of outside Directors) is responsible for assuring that management fulfills its responsibilities in the preparation of the consolidated financial statements. The Audit Committee selects the independent auditors and reviews the scope of the audits and the accounting principles being applied in financial reporting. ***The independent auditors, representatives of management, and the General Auditor meet regularly (separately and jointly) with the Audit Committee to review the activities of each, to ensure that each is properly discharging its responsibilities, and to assess the effectiveness of internal control. It is management's conclusion that internal control at December 31, 2000 provides reasonable assurance that the books and records reflect the transactions of Delphi and that the businesses comply with established policies and procedures.*** To ensure complete independence, Deloitte & Touche LLP has full and free access to meet with the Audit Committee, without management representatives present, to discuss the results of the audit, the adequacy of internal control, and the quality of financial reporting.

(Emphasis added).

584. Battenberg, Dawes, and Free signed the following statement regarding the effectiveness of Delphi's internal controls and Deloitte's access and review of Delphi's financial results in Delphi's 2001 Form 10-K, filed with the SEC on February 12, 2002:

> The Board of Directors, through the Audit Committee (composed entirely of outside Directors) is responsible for assuring that management fulfills its responsibilities in the preparation of the consolidated financial statements. The Audit Committee selects the independent auditors and reviews the scope of the audits and the accounting principles being applied in financial reporting. The independent auditors, representatives of management, and the General Auditor meet regularly (separately and jointly) with the Audit Committee to review the activities of each, to ensure that each is properly discharging its responsibilities, and to assess the effectiveness of internal control. ***Each quarter, the Audit Committee meets with management and privately with the independent auditors in advance of the public release of operating results, and filing of annual or quarterly reports with the Securities and Exchange Commission. It is management's***

> ***conclusion that internal control at December 31, 2001 provides reasonable assurance that the books and records reflect the transactions of Delphi and that the businesses comply with established policies and procedures.*** To ensure complete independence, Deloitte & Touche LLP has full and free access to meet with the Audit Committee, without management representatives present, to discuss the results of the audit, the adequacy of internal control, and the quality of financial reporting.

(Emphasis added).

585. In a signed statement set forth in Item 8 of the 2002 10-K, Battenberg, Dawes, and Sheehan signed the following statement regarding the effectiveness of Delphi's internal controls and Deloitte's access and review of Delphi's financial results:

> The Board of Directors, through the Audit Committee (composed entirely of independent Directors) is responsible for assuring that management fulfills its responsibilities in the preparation of the consolidated financial statements. The Audit Committee selects the independent auditors (subject to shareholder ratification) and reviews the scope of the audits and the accounting principles being applied in financial reporting. ***The independent auditors, representatives of management, and the Vice President of Audit Services and Corporate Auditor meet regularly (separately and jointly) with the Audit Committee to review the activities of each, to ensure that each is properly discharging its responsibilities, to review any significant findings or recommendations, and to assess the effectiveness of internal controls. Each quarter, the Audit Committee meets with management and privately with the independent auditors in advance of the public release of operating results, and filing of annual and quarterly reports with the Securities and Exchange Commission. It is management's conclusion that internal controls at December 31, 2002 provide reasonable assurance that the books and records reflect the transactions of Delphi and that the businesses comply with established policies and procedures.*** To ensure complete independence, Deloitte & Touche LLP has full and free access to meet with the Audit Committee, without management representatives present, to discuss the results of the audit, the adequacy of internal control, and the quality of financial reporting.

(Emphasis added).

586. Each of these statements by Battenberg, Dawes, Free and Sheehan was materially false and misleading because, as confirmed by the Audit Committee's investigation in connection with the Restatement, Delphi's internal controls were, in fact, wholly lacking and essentially non-existent. Thus, in representing to shareholders that they had conducted a review of internal controls and assessed them to "provide reasonable assurance that the books and records reflect transactions of Delphi and that the businesses comply with established policies and procedures," these officers made false statements knowingly or with reckless disregard of their truth, as any review of Delphi's internal controls should have revealed severe deficiencies in Delphi's internal controls.

587. As noted by AU § 110.02:

> [M]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal controls that will, among other things, record, process, summarize, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements . . . the fair presentation of financial statements in conformity with Generally Accepted Accounting Principles is an implicit and integral part of management's responsibility.

588. In failing to establish and maintain adequate internal controls, Delphi's management created an environment that allowed them to easily control the improper accounting for certain transactions and to fraudulently create others in order to manipulate the Company's earnings.

B. Delphi's Accounting For IT Service Provider And Non-IT Supplier Rebates

589. During the Class Period, as described more fully above, Delphi artificially inflated its income and earnings by prematurely recording payments and credits received, and failing to receive liabilities, in connection with service contracts it maintained with information technology service providers. In addition, during the Class Period, Delphi manipulated its

income and earnings by improperly accounting for rebate payments and credits received from its inventory suppliers.

590. Delphi's accounting for IT service supplier and non-IT supplier rebates violated two basic principles of GAAP: "matching" and "proper revenue recognition." GAAP's "matching principle" is described in FASCON No. 6 and requires that associated revenues and expenses be recorded in the same period.

591. The "revenue recognition principle" is described in FASCON No. 5. GAAP's revenue recognition principle requires companies to record revenue when realized or realizable and earned, not when cash is received. According to FASCON No. 5, paragraph 83(b):

> An entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues. [Footnotes omitted].

592. SEC Staff Accounting Bulletin No. 101 affirms the application of the matching principle and revenue recognition principles to financial statements filed with the SEC. Statement of Financial Accounting Standards ("FAS") No. 5, *Accounting for Contingencies*, states in ¶ 17, that "contingencies that might result in gains usually are not reflected in the accounts," and that "adequate disclosure shall be made for contingencies that might result in gains, but care shall be exercised to avoid misleading implications as to the likelihood of realization."

593. Delphi's accounting for IT service supplier and non-IT supplier rebates violated FASCON No. 6, FASCON No. 5 and SFAS No. 5 because in both types of transactions, Delphi improperly accelerated the recognition of income from payments and/or credits by recognizing

these payments when received rather than over the period during which the services for which these payments and/or credits were performed or products purchased.

594. With respect to liabilities incurred relating to Delphi's IT service provider contracts, Delphi failed to accrue for these liabilities during the periods in which the service relating to these liabilities was performed. SFAS 5 requires that an expense be recorded when it is probable that an expense has been incurred and when the amount can be reasonably estimated.

595. Delphi's accounting for IT service supplier and non-IT supplier rebates also violated the GAAP requirements that revenue should not be recognized unless it is "collectible." Under basic GAAP guidelines, when collectibility of revenue cannot be reasonably assured, revenue recognition should be deferred until actual receipt of the payment. *See* APB Opinion No. 10. FASCON No. 5 states that if "collectibility of assets received for product, services, or other assets is doubtful, revenues and gains may be recognized on the basis of cash received." Similarly, under Accounting Research Bulletin ("ARB") No. 43, a profit may not be realized unless circumstances are such that the collection of the sale price is reasonably assured.

596. In violation of these basic GAAP provisions governing the collectibility of revenues, Delphi recognized income from credits against future services where there was no reasonable assurance that these credits would ever be earned.

597. The net effect of these accounting manipulations was to boost income and earnings prior to December 31, 2001 to the detriment of reduced earnings in subsequent years. As such, Delphi's originally reported pre-tax income for Fiscal Year 2001 and prior periods was inflated by approximately $86 million over the actual restated amounts, while its pre-tax income in 2002 and 2003 was understated by $15 and $8 million respectively.

C. Warranty Settlements And Pension Obligations

598. Delphi's admitted misclassification of a $202 million warranty expense as a pension obligation in the fourth quarter of 2000 was fraudulent and clearly designed to understate Delphi's expenses, thus inflating income, for Fiscal Year 2000. Had Delphi properly recorded the $202 million payment to GM for what it was – a settlement of a warranty claim and ***not*** a payment under a pension settlement agreement – GAAP's matching principle set forth in FASCON No. 6 would have required that the payment be recognized immediately rather than deferred and amortized over time.

599. By intentionally misclassifying this payment, however, Delphi spread the expense out over future periods instead of immediately recognizing the bulk of the expense in 2000. The effect of Delphi's accounting manipulation was to overstate income in 2000 by $202 million. Had Delphi properly recognized the $202 million payment as a warranty expense, Delphi would have had to record an immediate expense, thus reducing pre-tax income by this amount.

600. Delphi has also admitted to receiving $85 million in warranty credits from GM in 2001, substantial portions of which were improperly recorded as a reduction in expenses in 2001 and 2002. In this case, Delphi violated the matching principle by improperly using the credits to reduce expenses for warranty obligations that had yet to be incurred. Under GAAP's matching principle, set forth in FASCON No. 6, these credits should have been recognized only when the corresponding warranty obligations were utilized. By intentionally recognizing substantial portions of the $85 million credit as a reduction in expenses in 2001 and 2002, Delphi was able to inflate its income substantially for 2001 and 2002.

601. In the first quarter of 2003, Delphi failed to recognize a $10 million warranty obligation to GM. Under GAAP, pursuant to SFAS 5, ¶ 8, an estimated loss shall be accrued by a charge to income when available information indicates that it is probable that a liability has

been incurred at the date of the financial statement and the loss can be reasonably estimated. As with Delphi's other GAAP violations, Delphi's failure to accrue for this expense, when it was probable and estimable, in the first quarter of 2003 allowed it to inflate its income in that quarter by $10 million.

D. Improperly Deferring Expenses From System Implementation Services

602. Delphi has admitted to improperly deferring the recording of expenses for payments made for system implementation services in 2002. Of the total payments of $40.5 million for system implementation services paid in 2002, Delphi improperly deferred the recognition of $22 million of this amount that should have been immediately recorded as an expense in Fiscal Year 2002.

603. As with Delphi's other failures to record expenses when incurred, such as its failure to record its $10 million warranty obligation to GM in Q1 2003, Delphi's failure to record its system implementation expenses also violated SFAS No. 5. Pursuant to this principle, Delphi was required to record a loss (or expense) when it was probable that the expense had been incurred and when the loss could be reasonably estimated.

604. In addition to violating the clear requirements of SFAS No. 5, Delphi's failure to record the expenses for its system implementation services also violated the specific GAAP applicable to software implementation expenses, namely EITF 97-13: *Accounting for Costs Incurred in Connection with a Consulting Contract or an Internal Project that Combines Business Process Reengineering and Information Technology Transformation,* and Statement of Position ("SOP") 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use.*

605. Under EITF 97-13, the cost of business process reengineering activities, whether done internally or by third parties, is to be expensed "as incurred." The rule also applies "when

the business process reengineering activities are part of a project to acquire, develop, or implement internal-use software." SOP 98-1 provides explicit guidelines on how costs associated with computer software developed or obtained for internal use should be recorded and in what circumstances such expenses may be capitalized. It specifically states that such costs should be expensed "when incurred."

606. In this case, Delphi clearly incurred a system implementation expense of $22 million in 2002, but rather than recognize this expense immediately, elected to boost its pre-tax income by failing to record the expense when it was incurred. The effect of Delphi's improper deferral of expenses was to artificially inflate Delphi's pre-tax income in 2002 by $22 million. Delphi finally recognized the expense in 2003 thereby artificially reducing its pre-tax income by $22 million.

E. Indirect Material Dispositions/Asset Dispositions

607. Between 1999 and 2002, Delphi improperly recorded income from the disposal of inventories and indirect materials transactions that were nothing more than financing arrangements which served to inflate Delphi's income and earnings and cash from operating activities while also artificially reducing assets and inventories that Delphi carried on its balance sheet. In sum, as explained more fully in Section VI.A.1-3, Delphi entered into illicit agreements with BBK, Bank One and SETECH, among others, wherein Delphi sold unneeded, obsolete, or excess indirect materials (such as raw materials and metals) or inventory to these companies with an agreement that Delphi would repurchase these inventories or materials at a later date. The money that Delphi received for these purported dispositions was falsely recorded as income from operating activities, which inflated Delphi's net income during the time period while the removal of these indirect materials and inventory from Delphi's balance sheet created the perception that the Company was efficiently and effectively managing excess assets and inventories.

608. In 2000 and 2001, Delphi aggressively pushed efforts aimed at reducing its inventories. In fact, Delphi's 2000 10-K touted that Delphi's gross margin improved to 15.1% in 2000 compared to 14.2% in 1999. According to Delphi's MD&A Section, "the improvement reflects the results of our continuing cost reduction efforts and lean manufacturing initiatives that are being implemented in response to industry pricing pressures and ***aggressive inventory management***." (Emphasis added).

609. Delphi's disclosure, or lack thereof, violated the SEC's requirement under Item 303 of Regulation S-K [17 C.F.R. § 229.303] that a Company's Form 10-K (Item 7) and Form 10-Q (Item 2) "provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations." As noted above, the MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future.

610. Delphi's MD&A nonetheless failed to disclose that much of its cost reduction efforts and inventory management was the result of financing arrangements that only temporarily removed Delphi's assets and inventories from Delphi's balance sheets. Nowhere did Delphi disclose that it had a corresponding obligation to repurchase these assets and inventories at later dates, and that these arrangements were nothing more than financing arrangements secured by the inventory and assets that were purportedly "sold."

611. In addition, Delphi violated the SEC's MD&A disclosure requirements by failing to disclose the substance of its inventory disposal and asset disposal transactions. Delphi's

accounting for these transactions were flagrant violations of GAAP and point to an intentional effort on the part of Delphi's management to inflate earnings and deflate inventories and assets.

612. GAAP, specifically FASCON No. 2, prohibits accounting representations that subordinate substance over form. Moreover, FASCON No. 2 requires that financial reporting be reliable in that it represents what it purports to represent and that nothing should be left out of the information that may be necessary to insure that it validly represents underlying events and conditions.

613. In addition to these general principles and as set forth above in ¶98, SFAS 49 provides specific criteria for determining when an arrangement involving the sale of inventory is, in substance, a financing arrangement. It states, "a product financing arrangement is a transaction in which an enterprise sells and agrees to repurchase inventory with the repurchase price equal to the original sale price plus carrying and financial costs, or other similar transactions." Under this standard, "if a sponsor sells a product to another entity and, in a related transaction, agrees to repurchase the product . . . the sponsor shall record a liability at the time the proceeds are received from other entity to the extent that the product is covered by the financing arrangement. ***The sponsor shall not record the transaction as a sale and not remove the covered product from its balance sheet.***" SFAS No. 49 at ¶ 8 (Emphasis added).

614. Despite these explicit GAAP requirements, Delphi recorded a $200 million sale of precious metals to Bank One in the fourth quarter of 2000, and repurchased these materials in January 2001. As stated above, this transaction had the desired effect of boosting Delphi's 2000 earnings and operating cash flow.

615. Again in the fourth quarter of 2000, Delphi engaged in a transaction similar to the Bank One transaction. In this deal, Delphi recorded a $70 million sale of inventory to BBK, with

which it had pre-arranged to buy-back the inventory at a later date. BBK was also a counter-party to a $10 million fictitious inventory sale in the first quarter of 2001, and a $9 million sale in the fourth quarter of 2001. Like the Bank One transaction, the BBK transactions allowed Delphi to manipulate its financials to appear more profitable, to eliminate inventory from its balance sheets, and to obtain additional cash from financing activities without alerting the securities markets to its increased debt load.

616. A third company, SETECH, also entered into deals with Delphi that permitted the Company to remove approximately $145 million in unwanted assets from its books and to inflate its cash flows from operating activities. As explained above, the two companies agreed that Delphi would buy back the "indirect materials" at a later date, with SETECH receiving a premium for its services. The sham nature of these apparent "sales" is further supported by accounts of former Delphi employees, who indicated that the value of the goods transferred from Delphi to SETECH bore little relation to the cash amounts that SETECH paid to Delphi.

617. As a result of the fraudulent transactions with Bank One, BBK, and SETECH, Delphi also violated the provisions of SFAS No. 95, *Statement of Cash Flows*, which requires that a statement of cash flows report the cash effects during a period of an enterprise's operations, its investing transactions, and its financing transactions. SFAS No. 95 further states that borrowing money and repaying amounts borrowed are financing activities.

618. Delphi has admitted that it improperly accounted for the transactions with Bank One, BBK, and SETECH as asset dispositions when they should have been accounted for as financing transactions. As a result, Delphi overstated cash flows from operations and understated cash flows from financing in 1999 and 2000 by $138 million and $233 million, respectively, and

understated cash flows from operations and overstated cash flows from financing in 2001 by $200 million.

619. Delphi's fraudulent inventory disposition transactions, as explained above, also enabled the Company to recognize approximately $100 million in "paper" income from Last-In-First-Out ("LIFO") gains in the fourth quarter of 2000. To explain, the book value of inventories used in the manufacturing process are deducted from revenue as the cost of sales of producing that revenue. Where identical inventory is used over time to manufacture the same product, and the cost of the inventory has increased over time, LIFO accounting requires that the cost of sales be determined by the newer, more expensive, inventory. That is, the cost of the last inventory purchased by the manufacturer is used to determine the cost of sales. Delphi's fraudulent inventory dispositions in the fourth quarter of 2000 allowed the Company to reduce inventory levels enough so that it was able to recognize a gain of over $100 million in the fourth quarter of 2000 from improved margins resulting from lower priced, older inventories being used to determine cost of sales. As a result, pre-tax income for the fourth quarter was inflated by over $107 million from the combination of a fictitious asset sale and a resultant LIFO gain.

F. Delphi Failed To Write-off Obsolete Inventory

620. With regard to Delphi's restatement adjustments relating to the improper indirect material dispositions, the Company admitted that in 2002 and 2003, they repurchased the indirect materials purported to be sold, and a portion of the material repurchased was immediately written-off. Based on Lead Plaintiffs' investigation and interviews with former Delphi employees, it has been revealed that the inventory and materials that were the subject of the undocumented financing arrangements were primarily obsolete inventories. Delphi violated GAAP by not properly writing down the value of the inventory to their proper market value beginning in 1999. Under ARB 43, Chapter 4, Statement 5:

> [I]n accounting for inventories, a loss should be recognized whenever the utility of goods is impaired by damage, deterioration, obsolescence, changes in price levels, or other causes. The measurement of such losses is accomplished by applying the rule of pricing inventories at cost or market, whichever is lower. This provides a practical means of measuring utility and thereby determining the amount of the loss to be recognized and accounted for in the current period.

621. Delphi purposefully disposed of obsolete inventory through staged financing transactions to avoid having to take a charge to its current expenses for this obsolete inventory. Instead of recording the fraudulent dispositions of the materials and inventories, Delphi should have written off obsolete materials of up to $145 million in 1999 and 2000 and inventories of up to $277 million in the fourth quarter of 2000 and in 2001, as well as any additional obsolete inventories not subject to the staged financing agreements uncovered through the investigation and Restatement.

G. Omitted Period-End Accruals And Other Out Of Period Adjustments

622. Delphi's Restatement identified obligations that were not properly accrued for at the end of an accounting period, and other accounting adjustments that were not recorded in the proper period.

623. The omission or improper recording of these transactions was a clear violation of FASCON No. 6, which requires that expenses and/or losses be recorded in the same period as the associated revenue. GAAP requires that expenses be recorded in the same period in which the income from the service or product that resulted in the expense is recorded. Additionally, Delphi violated SFAS No. 5, which requires that an expense be recorded when it is probable that a loss contingency has been incurred and when the amount can be reasonably estimated.

624. These omitted or improper adjustments overstated originally reported pre-tax income by $14 million and $34 million in 2002 and 2003, respectively.

625. Delphi restated its financial statements for Fiscal Years 2002, 2003 and the first and second quarters of 2004, in addition to its originally reported retained earnings from December 2001. This constitutes an admission that the financial statements issued for each of these periods, as described above, were false and that the overstatements of income were material. GAAP provides that financial statements should only be restated in limited circumstances; that is, when there is a change in the reporting entity, there is a change in accounting principles used, or to correct an error in previously issued financial statements. Accounting Principles Board ("APB") No. 20. Delphi's Restatement was not due to a change in reporting entity or a change in accounting principles, but rather was released to correct errors in previously issued financial statements. Therefore, the Restatement is an admission by Delphi that its previously issued financial results and its public statements regarding those results were materially false.

X. DELOITTE KNOWINGLY AND RECKLESSLY CERTIFIED THAT DELPHI'S FINANCIAL STATEMENTS COMPLIED WITH GAAP

626. Deloitte was Delphi's "independent auditor" prior to and during the Class Period. Deloitte also served as the auditor for GM, Delphi's former parent. In accordance with GAAS, Deloitte was charged with the responsibility of opining upon whether Delphi prepared its financial statements in accordance with GAAP. As evidenced by the Company's restatement, however, Delphi's financial statements failed to comply with GAAP in many respects. Moreover, as Delphi has admitted, during the Class Period, it failed to maintain even minimal internal controls to ensure that its accounting complied with GAAP.

627. Deloitte, a worldwide firm of certified public accountants, auditors and consultants, knew or recklessly disregarded that Delphi's financial statements were materially overstated and not presented in accordance with GAAP. Specifically, Deloitte knew, or but for

its reckless disregard should have known that, among other fraudulent accounting practices, Delphi, in violation of GAAP: (i) materially understated its expenses and its post-retirement obligations by improperly classifying its warranty settlement with GM as an adjustment to post-retirement obligations (*see* Section VI.B.1., *supra*); (ii) improperly recognized income and materially overstated its earnings by accounting for financing transactions as sales of assets (*see* Section VI.A.1-3., *supra*); and (iii) improperly recognized income and earnings by prematurely recognizing rebates and credits from third party vendors such as EDS (*see* Section VI.C.1-3, *supra*). Deloitte also knew, or but for its reckless disregard should have known, that Delphi's internal controls were wholly inadequate during the Class Period and that Delphi's then senior officers created a culture of fraudulent accounting, where there was an "ineffective 'tone' within the organization related to the discouragement, prevention or detection of management override."

628. Indeed, as set forth below, Deloitte was well aware of many of the improper accounting practices that the Company was engaging in. REDACTED as well as statements from former Delphi employees evidence Deloitte's knowledge of Delphi's accounting improprieties. Numerous red flags signaling Delphi's accounting improprieties also existed and were readily apparent had Deloitte conducted its audits in accordance with GAAS. Moreover, Deloitte was highly motivated to approve Delphi's improper accounting practices and certify its financial statements. As detailed below, Deloitte was greatly compensated for the consulting and audit services it provided to Delphi and, as such, Deloitte's ability to objectively and independently evaluate the Company's accounting practices was severely – if not, entirely – impaired. The Company was an indispensable client for Deloitte and, as demonstrated herein, Deloitte was willing to do whatever was necessary, including certifying false statements, to

retain Delphi's business. Deloitte participated in the wrongdoing alleged herein and issued materially false and misleading statements to protect the lucrative fees it received from Delphi.

629. Thus, in certifying that Delphi's Class Period financial statements fairly represented the Company's financial condition and results of operations in conformity with GAAP, Deloitte knowingly or recklessly ignored accounting improprieties, numerous red flags and material internal control deficiencies, which should have alerted it to the fact that Delphi's financial reporting practices violated GAAP and its financial statements were materially false and misleading.

A. Deloitte's Materially False and Misleading Statements During the Class Period

630. Despite the numerous GAAP violations evident in Delphi's financial statements during the Class Period, Deloitte issued unqualified opinions, representing that the Company's financial statements were presented fairly, in all material respects, and in accordance with GAAP for each of the years ended December 31, 1999 to December 31, 2003. The specific false and misleading statements for which Deloitte is charged with liability under Section 10(b) are as follows:

631. In its audit report dated January 16, 2001, Deloitte reported on Delphi's 1999 and 2000 financial statements, stating:

> We have audited the accompanying consolidated balance sheets of Delphi Automotive Systems Corporation ("Delphi"), as of December 31, 2000 and 1999, and the related consolidated statements of operations, of stockholders' equity (deficit), and of cash flows for each of the three years in the period ended December 31, 2000...
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States of America....
>
> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of

> December 31, 2000 and 1999 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States of America.

632. In its audit report dated January 16, 2002, Deloitte reported on Delphi's 2000 and 2001 financial statements, stating:

> We have audited the accompanying consolidated balance sheets of Delphi Automotive Systems Corporation ("Delphi"), as of December 31, 2001 and 2000, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2001...
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States of America...
>
> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2001 and 2000 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States of America.

633. In its audit report dated January 16, 2003, Deloitte reported on Delphi's financial statements for the years ended December 31, 2001 and December 31, 2002, stating:

> We have audited the accompanying consolidated balance sheets of Delphi Corporation ("Delphi"), as of December 31, 2002 and 2001, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2002...
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States of America...
>
> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2002 and 2001 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States of America.

634. In its audit report dated January 26, 2004, Deloitte reported on Delphi's financial statements for the years ending December 31, 2002 and December 31, 2003, stating:

> We have audited the accompanying consolidated balance sheets of Delphi Corporation ("Delphi") as of December 31, 2003 and 2002, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2003. Our audits also included the financial statement schedule listed in the Index at Item 15...
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States of America...
>
> In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Delphi as of December 31, 2003 and 2002 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements of Delphi taken as a whole, presents fairly, in all material respects, the information set forth therein.
>
> As discussed in Note 1 to the consolidated financial statements, in 2003 Delphi changed its method of determining the cost of certain inventories from the last-in, first-out method to the first-in, first-out method. The consolidated financial statements presented for 2002 and 2001 have been adjusted to give retroactive effect to the change.

635. As set forth below, contrary to Deloitte's representations, the statements set forth in ¶¶ 324-568 above were materially false and misleading in numerous respects, including that (i) Delphi's financial statements for fiscal years 1999 through 2003 were not prepared in accordance with GAAP; and (ii) Deloitte's audits of Delphi's financial statements for these years had not been performed in accordance with GAAS.

B. Deloitte Knew Or Recklessly Disregarded That Its Audits Of Delphi's Class Period Financial Statements Were Not Conducted In Accordance With GAAS

636. In certifying Delphi's financial statements, Deloitte falsely represented that its audits were conducted in accordance with GAAS. In fact, Deloitte violated GAAS in numerous respects during the course of its audits of Delphi's financial statements.

637. The AICPA's Auditing Standards Board has developed Statements on Auditing Standards, which serve as "interpretations of generally accepted auditing standards." AU § 110.01 states:

> The objective of the ordinary audit of financial statements by the independent auditor is the expression of an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with generally accepted accounting principles. The auditor's report is the medium through which he expresses his opinion or, if circumstances require, disclaims an opinion. In either case, he states whether his audit has been made in accordance with generally accepted auditing standards. These standards require him to state whether, in his opinion, the financial statements are presented in conformity with generally accepted accounting principles and to identify those circumstances in which such principles have not been consistently observed in the preparation of the financial statements of the current period in relation to those of the preceding period.

638. When an auditor represents that a company's financial statements conform in all material respects with GAAP, the auditor "indicates [his] belief that the financial statements taken as a whole are not materially misstated." AU § 312. Indeed, "[f]inancial statements are materially misstated when they contain misstatements whose effect, individually or in the aggregate, is important enough to cause them not to be presented fairly, in all material respects, in conformity with [GAAP]." AU § 312.

639. Deloitte's statements were materially false and misleading because its audits represented an extreme departure from GAAS and, therefore, Deloitte, had no reasonable basis to

support its opinions that Delphi's financial statements fairly presented the Company's financial position and results of operations in conformity with GAAP. In issuing unqualified audit opinions on Delphi's financial statements despite Delphi's consistent GAAP violations throughout the Class Period, Deloitte either acted knowingly, or was reckless, in failing to comply with the professional standards dictated by GAAS (AU § 150) including:

a. General Standard No. 1, which requires an audit be performed by a person or persons having adequate technical training and proficiency as an auditor;

b. General Standard No.2, that requires that an auditor possess an independence in mental attitude in all matters related to the assignment;

c. General Standard No. 3, which requires that due professional care is to be exercised in the performance of the audit and the preparation of the report;

d. Standard of Field Work No. 1, which requires that the auditor's work be adequately planned and audit staff properly supervised;

e. Standard of Field Work No. 2, which requires the auditor gain a sufficient understanding of internal controls in order to plan the audit, including accounting, financial and managerial controls, to determine whether reliance thereon is justified, and if such controls are not reliable, to expand the nature and scope of the auditing procedures to be applied;

f. Standard of Field Work No. 3, which requires sufficient competent evidential matter be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit;

g. Standard of Reporting No. 1, which requires an audit report to state whether the financial statements are presented in accordance with GAAP;

h. Standard of Reporting No. 3, which requires informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report; and

i. Standard of Reporting No. 4, which requires that, when an opinion on the financial statements as a whole cannot be expressed, the reasons therefore must be stated.

640. Deloitte acted with scienter in violating these most fundamental principles of GAAS, and in expressing its materially false and misleading unqualified audit opinions regarding Delphi's financial condition.

641. In conducting its audits of Delphi's financial statements, Deloitte had access to the files and key employees of the Company at all relevant times. As a result of the auditing and other services it provided to Delphi, Deloitte personnel were frequently present at Delphi's corporate headquarters throughout each year, and had continual access to and knowledge of Delphi's confidential internal corporate, financial, operating, and business information, and had the opportunity to observe and review the Company's business and accounting practices, and to test the Company's internal accounting information and publicly reported financial statements as well as the Company's internal controls and structures. In addition, Deloitte retained their workpapers at Delphi, and maintained offices at the Company.

642. Based on this level of presence, access and involvement, Deloitte's failure to (i) act on the improprieties it identified during its audits of Delphi as described in internal Deloitte and Delphi documents and Deloitte's workpapers; (ii) uncover Delphi's numerous other

improper accounting practices; and detect Delphi's severely deficient internal controls can only be the product of actual knowledge or severe recklessness as to whether Delphi's financial statements complied with GAAP. Indeed, Delphi has admitted that its financial statements during the Class Period did not comply with GAAP. The June Restatement establishes a pervasive dereliction by Delphi's management in complying with the basic requirements of GAAP. Therefore, Deloitte's unqualified opinions during the Class Period, stating that Delphi's financial statements did comply with GAAP, were simply false, and violated of GAAS Standard of Reporting No. 1.

643. Deloitte disregarded its duty to exercise independence and perform proper audits of Delphi, and failed to take any reasonable steps to ensure that its audit opinion was accurate. Deloitte failed to consider the sufficiency of Delphi's internal controls; it did not modify its audit procedures as a result of actual improprieties and red flags that warned of potential problems with Delphi's accounting; and it failed to plan its audits and review necessary evidential matter to detect instances of fraud. Deloitte also failed to act with an independent and impartial attitude. For these severely reckless and/or knowing failures, Deloitte violated the securities laws.

1. Deloitte's Auditing Independence Was Compromised By Its Lucrative Consulting Engagements With Delphi

644. Deloitte's hugely profitable and longstanding relationship with Delphi undermined Deloitte's ability to conduct its audits with an independent and critical viewpoint, as required by GAAS. Lured by the exorbitant fees it was receiving for its services and the prospect of realizing such fees for years to come, Deloitte was willing to – and did – turn a blind eye to Delphi's numerous accounting machinations.

645. Deloitte's relationship with Delphi dates back to the Company's inception as an independent company and encompassed all aspect of Delphi's business. For instance, in 1999

and 2000, in advance of, and continuing through its split from GM, Deloitte was retained to develop Delphi's financial reporting system through the installation of an SAP management program. In this regard, Deloitte was responsible for establishing accounting procedures for the new Company based on its institutional knowledge of GM. In mid-1999, shortly after the separation, Deloitte performed reviews of Delphi's internal control and reporting protocols. This review of Delphi's internal controls included inventory accounting. In addition, Delphi hired Deloitte to provide it with independent accounting, business consulting and auditing services. Deloitte gave Delphi accounting advice and consultation regarding the Company's annual and quarterly reports, which were filed with the SEC and publicly distributed. Thus, Deloitte's role at Delphi was extensive and permeated throughout the organization.

646. Deloitte was so concerned with increasing the amount of non-audit services to the Company, that it attempted to use the knowledge obtained from its role as independent auditor to Deloitte's advantage. For example, REDACTED Nicholas Difazio ("Difazio"), Deloitte's lead client service partner for Delphi,

REDACTED Deloitte felt that, owing to the Company's historical relationship with EDS (EDS was also a spin-off company from GM), Deloitte Consulting was not being afforded reasonable opportunity to competitively bid on Delphi's engagements. Deloitte felt that they were losing business because of internal budget constraints on the Company's part.

REDACTED

647. For its services to Delphi, including both audit and non-audit services, Deloitte was highly compensated. In fact, based on revenues, Delphi was ranked as Deloitte's 5th largest

client in 2000. In that year, Deloitte was retained for several wide-ranging million dollar plus engagements,

REDACTED

648. For these engagements, Deloitte earned $6.6 million in auditing fees and $50.8 million in other fees for fiscal year 2000. Deloitte also received substantial fees in 2001, 2002 and 2003. Specifically, for fiscal year 2001, Deloitte earned $6.7 million in audit fees and $20 million in other fees; for fiscal years 2002, Deloitte earned $7.8 million in auditing fees and $3.2 million in other fees; and for fiscal year 2003, Deloitte earned $9.2 million in auditing fees and $2.1 million in other fees. Thus, from 2000 through 2003, Deloitte was paid at least $30.3 million in auditing fees alone. While huge, those fees paled in comparison to the $76.1 million that Deloitte's parent collected for non-auditing fees, including fees from consulting arrangements.

649. Deloitte's motivation for issuing its unqualified audit opinions is clear. As mentioned above, in 2000 alone Deloitte collected over $50 million in non-audit services fees. The bulk of these fees stemmed from a two-year SAP implementation engagement which had been awarded months before the start of the Class Period in 1999.

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650. Deloitte's senior audit partner on the Delphi audit team was Duane Higgins ("Higgins"). Higgins reported to Difazio.

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652. In late 2000 however, Delphi

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653. Even before the consortium was fully implemented, Deloitte recognized that the issue of maintaining independence as Delphi's auditors would arise.

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654. Deloitte's involvement with the SAP engagements was not the only time that their independence as Delphi's auditors was called into question. In November 2001, the Kentucky State Carpenters Pension Fund ("Kentucky Carpenters") submitted a shareholder proposal to be included in the 2002 proxy statement for vote by Delphi shareholders. The proposal was a request that the Board of Directors adopt a policy whereby the accounting firm retained by Delphi to provide audit services (at all relevant time periods this was Deloitte), or any affiliated company, should not be retained to provide Delphi with non-audit services. The shareholder's concern was an actual and perceived lack of independence.

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the proposal was submitted in the shareholder proxy materials. REDACTED

656. Delphi, along with Deloitte's continued assistance, opposed the proposal in the shareholder proxy materials. In fact, Delphi's Board responded to the proposal by recommending that the Company's shareholders vote against the proposal.

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the Board placed significant emphasis on Deloitte's February 6, 2002 announcement that it was going to separate Deloitte Consulting from Deloitte's audit business. Delphi stated: "This action should go far in addressing the proponent's concerns with respect to Delphi."

657. Deloitte echoed Delphi's recommendation to vote against the proposal. In response to a written question, "What is Deloitte & Touche's view on the proposal – how should we vote?" Deloitte stated that it agreed "with the recommendation of management and the Audit Committee, which was summarized in the proxy." The shareholder's proposal went to a vote and did not pass. However, the separation of Deloitte Consulting from Deloitte & Touche did not take place voluntarily as the materials submitted to the shareholders represented it would. Deloitte Consulting separated from Deloitte's audit business only when legally required to do so.

2. Deloitte Knew Or Recklessly Disregarded Delphi's Fraudulent Accounting

658. Based on Lead Plaintiffs' investigation to date, including the review of the Lift Stay Document Production, it is clear that Deloitte's auditing team and its senior auditors were intimately involved in Delphi's accounting improprieties. The evidence gathered to date demonstrates that Deloitte was directly involved in Delphi's accounting for the GM Warranty transaction, the Bank One precious metals transactions, the BBK inventory sales, and the transactions with SETECH and EDS – all of which violated basic and fundamental provisions of GAAP. In addition, Deloitte was aware of Delphi's misreporting of the scope of the Company's European factoring facilities.

a. Deloitte's Review And Approval Of The Fraudulent GM Warranty Accounting

659. Deloitte's liability in connection with Delphi's accounting for the GM warranty settlement is based on its knowing approval of a scheme hatched by Delphi and GM that enabled each of them to treat the same transaction – settlement of a warranty claim – differently for accounting purposes. As explained in Section VI.B.1 above, GM accounted for the $237 million as payment for the warranty claim, allotting no value to the pension/OPEB provisions. In contrast, Delphi accounted for $202 million as payment on GM's pension/OPEB claim and $35

million as a warranty charge. Thus, Delphi and GM each recognized differently for accounting purposes what the parties – and Deloitte – knew to be a payment for the settlement of a warranty claim asserted by GM. Such asymmetrical accounting was clearly a violation of the accounting rules, but was signed-off by Deloitte to permit two of its most important clients each to enjoy the most beneficial accounting of this payment, regardless of its legality.

660. Deloitte was consulted with and approved Delphi's accounting for the GM warranty settlement even ***before*** the settlement was effectuated. For Delphi, key to disguising its payment of warranty claims to GM was its manufacturing an alternative reason to pay money to GM that would allow Delphi more favorable accounting treatment. The purported "true up" of outstanding pension obligations provided just such a ruse. At the time of the spin-off, Delphi and GM had entered into an agreement in which GM would bear the cost of pension benefits to Delphi employees who retired before January 1, 2000. Because this date was after the spin-off, Delphi and GM agreed that whatever payment GM had made to Delphi, in connection with this obligation, would be subject to a "true-up" when the actual financial obligation was determined.

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To realize its desired accounting treatment, however, Delphi simply disregarded the fixed-nature of these terms and the manner in which they were to be calculated – terms of which Deloitte was fully aware.

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665. Ultimately, Deloitte approved the fraudulent accounting.

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666. Of course, under the accounting rules, GM and Delphi's asymmetrical accounting for the same payment—and the invented rationale for such accounting—was highly unreasonable and clearly inappropriate,

REDACTED

667. When Deloitte discussed with the Delphi Audit Committee how Delphi was accounting for the settlement with GM, Deloitte failed to inform the Audit Committee that GM was accounting for the payment differently from the way Delphi was accounting for it. According to a member of the Delphi Audit Committee at the time, if Deloitte had informed the Audit Committee of the difference in accounting treatment between Delphi and GM, this would have precipitated extensive discussion within the Committee as to how such asymmetrical accounting treatment could be justified.

668. As set forth in ¶¶ 669-671 below, Delphi exploited its accounting treatment of the warranty payment to GM again when a mediator later determined that Delphi overpaid GM by $85 million and was therefore entitled to a credit for that amount. Having recognized only $30 million in expenses for warranty costs, Delphi was perplexed as to how to account for this

additional revenue given its earlier fraud. More fraud was the answer and Deloitte's complicity was essential.

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These entries were later restated.

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Clearly, therefore, the warranty credits that Delphi received from GM was a REDACTED

For Deloitte subsequently to have approved Delphi's accounting of these warranty credits as a reduction to unrecorded warranty expenses was extremely reckless.

671.

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b. Deloitte's Knowledge And/Or Recklessness Of Delphi's Fraudulent Accounting For The SETECH Transactions

672. Deloitte was intimately aware of and involved in the SETECH-Delphi arrangement. As set forth below, Deloitte understood the true nature of the SETECH-Delphi transactions and assisted in structuring the transactions to enable Delphi to recognize them as sales, and not as – what they actually were – a financing transactions under SFAS 49.

673. Deloitte's involvement in the SETECH-Delphi transactions began as early as 1999 and continued throughout the Class Period. For example,

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680. Indeed,

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681. However, Deloitte knew, or recklessly disregarded, that Delphi's accounting for these transactions as "sales" violated GAAP. In addition to the explicit terms of the contracts that contemplated the transactions as financing arrangements, Deloitte reviewed or, at a minimum, recklessly ignored, numerous signs (including memos and journal entries) demonstrating that Delphi – not SETECH – bore the risk of loss on the inventory.

682. Indeed, Deloitte knew or should have known as early as 1999 that a substantial portion of the "indirect materials" Delphi purported to sell to SETECH were in fact already worthless or obsolete and that Delphi, not SETECH bore the risk. For example,

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Ultimately, with Deloitte asleep at the wheel, it fell on Delphi to

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c. Deloitte's Knowledge And/Or Recklessness Of Delphi's Accounting For The BBK Transaction

690. As set forth *infra* at Section VI.A.2, to a diligent auditor Delphi's arrangement with BBK had conspicuous markers of fraud. The transaction: (i) was executed three business days before the year-end on December 27, 2000; (ii) involved BBK, a non-traditional counter-party who did not contribute a single penny towards the payment for inventories it was supposedly buying from Delphi; (iii) did not involve an actual transfer of inventory as the inventory never left Delphi's premises; and (iv) was reversed within weeks of the new year on January 12, 2001. The transaction was a cashless transaction from which BBK earned approximately $2 million and from which Delphi achieved its inventory targets.

691. Despite its apparent fraudulent nature, Deloitte signed off on Delphi's transaction with BBK without proper scrutiny or questioning. Had Deloitte exercised proper care in auditing this transaction, which, as set forth below, would have included investigating the circumstances underlying facts it knew, and obtained sufficient, competent evidence regarding this purported "sale," Deloitte would have undoubtedly learned that this was a financing transaction disguised as a "sale" to boost Delphi's year and quarter-end financial results. As set forth below, when Deloitte approved Delphi's accounting for this transaction, Deloitte knew or, at a minimum, recklessly disregarded numerous facts and glaring signals that warned that the transaction was a fraud.

692. Deloitte signed off on the transaction without ever analyzing the facts of the transaction. Deloitte's internal documents regarding the transaction demonstrate that, at most, Deloitte performed a cursory, perfunctory review of this transaction.

693. For example, during the fourth quarter of 2000, shortly before the end of the financial year,

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695. Similarly, Deloitte failed to

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697. Indeed, the extent of Deloitte's

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700. In fact,

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In fact, Louise Kelley confirmed that Duane Higgins spoke with Laura Marion about the accounting issues implicated by the BBK transaction. Despite Higgins' awareness of its impropriety, however, Deloitte simply turned a blind eye and approved the transaction.

702.

REDACTED

REDACTED

Even more telling, an Audit Committee member at the time had no recollection that Deloitte ***ever*** shared these thoughts with the Committee.

703. There is no question that by April 2001, Deloitte knew, or should have known, that the BBK transaction was not a "sale.

REDACTED

However, despite learning that the inventory had been repurchased by Delphi soon after the year-end, Deloitte failed to require Delphi to correct its improper accounting for the transaction, and continued to sign-off on Delphi's financial statements that included financial results based on accounting Deloitte knew to be in violation of GAAP.

704.

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705. There is simply no question that Deloitte, based on its audit procedures and conversations with Delphi employees, understood the complete story of the BBK arrangement during its second quarter, interim audit of Delphi's balance sheet. Notwithstanding its knowledge that Delphi had engaged in a round-trip transaction that book-ended critical financial reporting periods, Deloitte failed to require Delphi to correct its improper accounting for the transaction and continued to certify Delphi's financial statements.

d. Deloitte Either Knowingly Or Recklessly Approved Delphi's Accounting For The Bank One Transaction

706. Like the BBK Transaction, the Bank One transaction is precisely the type of transaction that is supposed to invite rigorous auditor scrutiny. The transaction (i) was executed two business days before the year-end on December 28, 2000; (ii) involved Bank One, a non-traditional counter-party who had no prior experience with precious metals; (iii) did not involve

the actual transfer of inventory as the precious metals remained at Delphi facilities (including facilities located in Europe) and continued to be used by Delphi in the manufacturing process; and (iv) was reversed within weeks of the new year on January 29, 2001. As set forth in Section VI.A.3, above, the transaction was a deceptive $200 million round-trip transaction that book-ended Delphi's critical financial reporting periods and served no legitimate purpose other than to inflate Delphi's 2000 financial results.

707. Despite its apparent fraudulent nature, Deloitte signed off on Delphi's transaction with Bank One without proper scrutiny or questioning. Had Deloitte exercised proper care in auditing this transaction and obtained sufficient competent evidence, Deloitte would have undoubtedly learned that this was a short term loan disguised as a "sale" to boost Delphi's year and quarter-end financial results. As set forth below, when Deloitte approved Delphi's accounting for this transaction, Deloitte knew or, at a minimum, recklessly disregarded numerous facts and glaring signals that warned that the transaction was a fraud.

708. Deloitte's knowledge of the details of the PGM transaction are hardly in question. REDACTED and Louise Kelley – who coordinated communications regarding the PGM deal in December 2000 – confirmed that Duane Higgins was an integral member of the PGM Deal Team. According to Kelley, Higgins was an active participant in the PGM Deal Team's in-person and telephonic meetings, assisting the team in crafting transaction language that would appear to pass muster under GAAP. REDACTED

REDACTED Kelley stated that, in fact, Laura Marion, Darryl Kaiser, Cathy Rozanski and other members of Delphi's FARS staff routinely "looped in" Deloitte - and Higgins in particular – seeking the audit firm's accounting expertise for all deals. She also confirmed that no one at Delphi ever instructed her to conceal *anything* from Higgins or Deloitte, and she in fact never attempted to do so.

709. Kelley recalled specifically that on or about Christmas Day 2000, the PGM Deal Team assembled at Delphi headquarters in Troy Michigan to discuss the details of the transaction. In attendance were Kelley, Higgins, Marion, Kelley's colleague Subbu Gokulamani, as well as Belans and Bank One's Muhling by telephone. Higgins was an active participant in this meeting, as he had generally been during the course of the PGM deal. Following the meeting, Higgins telephoned fellow Deloitte partner Difazio from Delphi's office to discuss accounting matters that arose during the call.

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710. As mentioned above in ¶702,

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711. Given the recognized red flags associated with the Bank One transaction, *i.e.*, it was orchestrated within days of the end of the quarter and year with an entity that was not a

traditional Delphi customer and which had no prior experience with precious metals, Deloitte's claim that it reviewed these transaction "carefully" is demonstrably false.

712. Indeed, in order to prevent the Audit Committee from scrutinizing the transaction, in discussing the transaction with the Committee Deloitte chose not to disclose that the counter party to the transaction was Bank One. According to a member of the Audit Committee at the time, if Deloitte had mentioned that it was Bank One this would have caused the Committee to ask questions about the transaction because Bank One was not an entity that had any apparent business need for precious metals.

713. Deloitte's audit of Delphi's transaction with Bank One amounted to no audit at all. For instance,

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However, Deloitte was required by GAAS to obtain sufficient competent evidence to confirm "delivery" and the location of the $200 million of precious metals inventory. Deloitte could have done so through inspection, observation or physical examination. Had it done so, Deloitte would have learned hat the precious metals remained on Delphi plant floors and were still being used in Delphi's manufacturing process.

714. Moreover,

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Despite knowing these terms, Deloitte failed to require Delphi to record the transaction as a short term loan rather than a "sale."

715. There is no question that Deloitte, REDACTED REDACTED , knew or, but for its reckless disregard, should have known, the fraudulent nature of the Bank One transaction. Notwithstanding its knowledge that Delphi had engaged in a round-trip transaction that book-ended critical financial reporting periods, Deloitte failed to require Delphi to correct its improper accounting for the transaction and continued to certify Delphi's financial statements. To the contrary, Deloitte took steps to prevent scrutiny into the transaction. According to a member of the Delphi Audit Committee at the time, Deloitte never even told the Audit Committee about the round-trip nature of the transaction.

e. Deloitte Knew Or Recklessly Disregarded That Delphi's Structure Of Rebates And Payment Obligations Associated With EDS Contracts Were Solely For The Purpose Of Boosting Income Earnings Goals

716. As described more fully above in Section VI.C.1-3, *supra*, Delphi artificially inflated its income and earnings by prematurely recording credits received and by deferring expense recognition, in connection with information technology service contracts the Company maintained with EDS. Deloitte knew or should have known that Delphi's manipulation of the EDS transactions was improper and in violation of GAAP principles.

717. As early as July 1999, Deloitte was fully aware of the relationship between EDS and Delphi. For example, and most likely due to Deloitte's interest in expanding Delphi engagements with Deloitte Consulting, Deloitte followed the Delphi/EDS service agreements closely.

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718. Additionally, Deloitte, in their role as independent auditor, was fully aware of Delphi's receipt of up-front payments from EDS. In particular,

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Deloitte did not undertake any other actions to determine whether this treatment was appropriate, such actions would have included reviewing work orders to determine if work had been performed. As explained above, GAAP only permitted Delphi to record the credits as a reduction of expenses *after* the work was performed and expenses were incurred.

719. Likewise,

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A thorough review of the relevant contracts and work orders would have revealed that immediate recognition was improper and that the payments should have been recognized ratably over the life of the related service agreements.

720. Moreover, Deloitte was not only aware that Delphi intended to treat EDS' fourth quarter 2001 $20 million loan as "income", it also advised Delphi on how best to achieve this result. Deloitte informed Cathy Rozanski, of Delphi, that in order for Delphi to treat the $20 million as income, there would need to be a written agreement among EDS and Delphi that made

clear the $20 million was not refundable and not tied to the

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In essence, Deloitte instructed Delphi on how to make the Company's GAAP violation look legitimate. This guidance resulted in the different variations on language in the side letter that Delphi drafted and sent to EDS for approval. And, most significantly, Deloitte approved the Company's accounting for this GAAP violation.

721. Finally, Deloitte

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723. Furthermore,

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3. Deloitte's Audit Failures Rendered Its Unqualified Audits Severely Reckless

a. Deloitte's Utter Failure To Assess The Sufficiency Of Delphi's Internal Controls

724. Delphi's Audit Committee investigated Delphi's internal controls as part of its investigation into Delphi's fraudulent accounting practices and concluded that, during the Class Period, Delphi's internal controls were rife with "material weaknesses." The Audit Committee concluded that:

> The Company's controls over the selection and application of GAAP are ineffective as a result of insufficient resources and technical accounting expertise within the organization to resolve accounting matters in a timely manner. Furthermore, accounting for transactions is performed across multiple business units and functions that are not adequately staffed or are staffed with

individuals that do not have the appropriate level of GAAP knowledge.

725. In addition, the Audit Committee stated that during the Class Period:

> The Company's accounting policies were inadequate or insufficiently comprehensive to ensure proper and consistent application throughout the organization and did not have effective controls related to the administration and accounting for contracts. In particular, the Company does not have adequate controls to identify and analyze the terms and conditions, both written and unwritten, of new contracts, or procedures to identify, analyze, and properly record the impact of amendments, supplement letters, or other agreements related to existing contracts.

726. Most damning was the Audit Committee's conclusion that Delphi's management did not set an effective "tone" within the organization "related to the discouragement, prevention or detection of management override, as well as inadequate emphasis on thorough and proper analysis of accounts and financial transactions."

727. This lack of internal controls at Delphi is evidenced by the blatant and obvious accounting manipulations that were rampant at the Company during the Class Period. For example, Delphi's senior management were able to misclassify a $237 million warranty payment to GM as an adjustment to a pension obligation to circumvent the immediate reduction to income rather than record a warranty expense. The millions of dollars in expenses that Delphi failed to accrue, improper deferrals of expenses, and improper income recognition, through various schemes, further underscore the lack of controls over Delphi's accounting.

728. Indeed, Delphi management's ability to manipulate inventory through fictitious asset and inventory disposal transactions and record millions of dollars in illusory income evidences further deficiencies in internal controls at Delphi and the ease with which senior management was able to circumvent what little internal controls existed. A simple review of the

contracts underlying these disposal transactions would have revealed that the accounting for these transactions was entirely manipulative.

729. Deloitte's reckless indifference to Delphi's utter lack of internal controls violated GAAS. Under GAAS, an independent auditor is obligated to gain a sufficient understanding of an entity's internal control structure in order to adequately plan the audit and to determine the nature, timing and extent of tests to be performed. *See* AU § 150.02. In all audits, the auditor should perform procedures to obtain a sufficient understanding of three elements of an entity's internal control structure: the control environment, the accounting system, and control procedures. AU § 319.02. The control environment, which includes management's integrity and ethical values, is the foundation of internal control and provides discipline, structure and sets the tone of an organization. After obtaining an understanding of an entity's internal control structure, the auditor must assess the entity's control risk. AU § 319.02. The control risk is the risk that a material misstatement in an assertion by management contained in a company's financial statements will not be prevented or detected on a timely basis by an entity's internal control structure policies or procedures. AU §319.29. The ultimate purpose of assessing control risk is to aid the auditor in evaluating the risk that material misstatements exist in the financial statements. AU § 319.61.

730. Under AU § 722.10, the auditor needs to have sufficient knowledge of a client's internal control as it relates to the preparation of both annual and interim financial information to: identify types of potential material misstatements in the interim information and consider the likelihood of their occurrence, select inquiries and procedures that will provide a basis for reporting whether material modifications should be made for the information to conform with GAAP.

731. Deloitte failed to adequately test internal controls at Delphi. This prevented it from having a sufficient knowledge of Delphi's internal controls to allow Deloitte to assess the likelihood and type of potential misstatement in the interim financial statements. Additionally, Deloitte failed to develop and perform adequate analytical procedures and inquiries (AU Section 722.13) designed to identify the need for material modifications to the interim financial statements.

732. It is apparent from the conclusions by Delphi's Audit Committee that any scrutiny of Delphi's internal controls would have revealed that such controls were wholly lacking at the Company. Yet, Deloitte, in the course of auditing Delphi's 1999 through 2003 financial statements, knowingly or recklessly disregarded weaknesses and deficiencies in Delphi's internal control structure. Had Deloitte complied with GAAS, it should have discovered that there were (a) insufficient numbers of personnel having appropriate knowledge, experience and training in the application of GAAP at the divisional level, and insufficient personnel at the Company's headquarters to provide effective oversight and review of financial transactions; (b) ineffective or inadequate accounting policies to ensure the proper and consistent application of GAAP throughout the organization; (c) ineffective or inadequate controls over the administration and related accounting treatment for contracts; and (d) ineffective "tone" within the organization related to the discouragement, prevention or detection of management override, as well as (e) inadequate emphasis on thorough and proper analysis of accounts and financial transactions.

b. Deloitte Failed To Consider Numerous "Red Flags" That Would Have Alerted Deloitte To Delphi's False And Misleading Financial Statements

733. Had Deloitte conducted its audits in accordance with GAAS, it would have discovered that Delphi's financial statements were materially false and misleading and failed to comply with GAAP. AU Section 316 requires auditors to consider and evaluate the risks that a

company's audited financial statements are free of material misstatements, whether by fraud or by error, and identifies various "red flags" that the auditors need to consider in determining audit risk relating to misstatements arising from fraudulent reporting. In addition to the lack of internal controls, described above, other red flags, should have alerted Deloitte to the potential of material misstatement arising from fraudulent financial reporting at the Company: These red flags included:

a. Management compensation incentives specifically tied to the Company' financial metrics and huge annual bonuses for achieving these measures of success;

b. Delphi's publicized adoption of an "aggressive inventory management" program in 2000 and other cost-cutting initiatives that allowed Delphi to meet earnings estimates in the face of a declining economy;

c. A failure of Delphi's management to display and communicate an appropriate attitude regarding internal controls and the financial reporting process;

d. The lack of effective accounting, information technology, or internal auditing staff;

e. Large transactions not in the ordinary course of business, such as Delphi's inventory and asset disposal transactions with SETECH, BBK and Bank One, all of which were reversed in relatively short periods of time (as short as two weeks), that contributed a significant portion of Delphi's quarterly income and helped meet earnings estimates;

f. Intentional misapplication of accounting principles in connection with an entity, GM, where the same Deloitte office audited both ends of the transaction, but saw different accounting treatment applied to the parties treatment of the transaction.

734. Each of these red flags should have alerted Deloitte to Delphi's fraudulent accounting practices.

735. Delphi's senior executives received huge bonuses, usually more than 100% of their annual income if the Company met or exceeded certain targeted financial metrics, including levels of earnings, earnings per share, operating income and numerous other metrics. The strong incentive for Delphi's management to meet or exceed these goals at all costs, and Delphi's consistent ability to meet earnings targets, should have served as a red flag to Deloitte to scrutinize the accounting supporting these indicators. This was particularly true because, from at least 2000 onwards, the auto industry was in decline and Delphi was facing a number of hurdles, which are described in detail above, that should have made it difficult or impossible for management to obtain the full compensation called for under the plan. Management's unwavering ability to do so is a substantial red flag.

736. Delphi's public filings and earnings reports touted new "aggressive" inventory management initiatives and other cost-cutting efforts that were allowing Delphi to meet financial targets despite a slowing economy. As revealed by Lead Plaintiffs' investigation and the restatement, much of this so-called aggressive inventory management and cost-cutting was achieved through fraudulent transactions—in which inventories were temporarily disposed - manipulating the receipt and recording of inventories, and by failing to accrue expenses in the proper reporting periods, or in some cases, at all. These transactions, involving hundreds of millions of dollars with counterparties BBK and SETECH, all were reversed within a relatively short period of time (usually less than a year). The number and significance of these transactions, and the fact that they were quickly reversed, served as a substantial red flag to Deloitte that there were issues in Delphi's accounting.

737. Significantly, at the very end of the fourth quarter of 2000, Delphi engaged in an enormous, illicit inventory disposal with Bank One involving precious metals that had the effect of more than quadrupling Delphi's cash flows from operations for the 4^{th} Quarter (from \$68 million to \$268 million) and also allowed Delphi to reduce inventory levels such that it was able to recognize a LIFO liquidation gain in pre-tax operating income of \$100 million. Moreover, this transaction was reversed only a few weeks into the new reporting period, during a time when Deloitte's audit of Delphi's 2000 financials should have been ongoing.. This rapid reversal of an enormous transaction that had a profound impact on significant reporting metrics was a huge red flag that should have put Deloitte on notice that there were problems with Delphi's accounting. Deloitte should have inquired into this transaction, and considered the implementation of Delphi's inventory management program, and in doing so it would have discovered that Delphi was engaged in fictitious "sale" transactions with numerous companies that were designed to merely move inventory off books while inflating income.

738. Deloitte's reckless failure to uncover Delphi's fraudulent inventory manipulation schemes is underscored by internal audit reports conducted by the Company that pointed to inventory manipulation at Delphi's factories in June 2004. The existence of highly negative internal audit reports in a critical area of Delphi's business was a substantial red flag. In auditing Delphi's financial statements, Deloitte should have reviewed evidence of any internal audits of Delphi's aggressive inventory management initiatives and absent such internal audits, inquired into the details of the program.

739. The Restatement concluded that there was an ineffective "tone" at the top regarding internal controls at Delphi. Lead Plaintiffs' investigation revealed that members of Delphi's finance department were routinely told by Dawes and Battenberg to find ways to make

the numbers work. Other employees were specifically prohibited from taking reserves or booking costs that were not within the annual budget. Interviews with Delphi finance personnel by Deloitte should have uncovered such concerns, or could have tested the adequacy of the training and supervision of the finance staff.

740. Delphi's transactions with GM also highlighted certain red flags that deserved additional scrutiny. GM was Delphi's former parent and Delphi's senior executives were all former GM employees with strong ties to that company. Delphi's payment to General Motors in the fall of 2000 of $237 million was a significant expense, critical to the Company's bottom line, and which Deloitte should have scrutinized to ensure proper accounting for the transaction. As we now know, Delphi fraudulently misclassified the transaction as a payment for pension obligations, recorded with almost no immediate income statement effect, rather than merely as a current charge for warranty obligations. Had Deloitte applied any scrutiny to Delphi's transactions with GM, it would have discovered Delphi's fraudulent accounting for this transaction.

741. This issue is particularly revealing since the same Deloitte office that audited Delphi also audited GM. GM had accounted for the payment differently than Delphi. The fact that two parties to a transaction were accounting for it in different manners, and both were audited by the same Deloitte office, should have been a substantial red flag to Deloitte that something was improper with Delphi's accounting.

c. Deloitte Failed To Adequately Plan Its Audit

742. Under GAAS, it is inherent in the planning process to have sufficient knowledge of the Company, the industry, the environment, areas of audit exposure, weaknesses in internal control and various other important matters in order to properly plan the audit. GAAS (AU § 311) states that auditor should:

a. Obtain a level of knowledge of the entity's business that will enable him to plan and perform his audit in accordance with generally accepted auditing standards. That level of knowledge should enable him to obtain an understanding of the events, transactions, and practices that, in his judgment, may have a significant effect on the financial statements. . . Knowledge of the entity's business helps the auditor in identifying areas that may need special consideration;

b. Assess conditions under which accounting data are produced, processed, reviewed, and accumulated within the organization;

c. Evaluate the reasonableness of estimates;

d. Evaluate the reasonableness of management representations; and

e. Make judgments about the appropriateness of the accounting principles applied and the adequacy of disclosures.

743. Moreover, the auditor is required to design the audit with professional skepticism (AU § 230) in order to provide reasonable assurance of detecting errors, material misstatements (AU § 312) or fraud (AU § 316).

744. Deloitte failed to comply with GAAS as it failed to design its audit plan to provide reasonable assurance of detecting material errors as required by AU § 312. Deloitte was required under GAAS to obtain knowledge of Delphi's business, to apply analytical procedures and to assess the risk of material misstatement in planning for its audit.

745. Deloitte failed to consider or overlooked the existence of the red flags identified herein, and other risk factors, or failed to properly design or modify its planned audit procedures to mitigate those risks. Despite these obvious issues, Deloitte failed to develop an adequate

strategy for the conduct and scope of the audit of the Company's inventory, warranty reserves, separation obligations to GM, and other accrued expenses.

746. Deloitte audited Delphi's financial statements and provided tax, consulting, and other services prior to and during the Class Period, for which it was paid handsomely, and had a thorough knowledge of the Company's financial history, accounting practices, internal controls, and business operations. Despite this intimate familiarity with Delphi's business practices, in auditing Delphi's financial statements, Deloitte either knowingly or recklessly failed to:

a. Identify areas that needed special consideration (such as transactions with GM, a former parent, out of the ordinary transactions that generated significant income for the company, and aggressive initiatives adopted by the Company) or identify such areas and audited them in a manner which was so deficient that it amounted to no audit at all, while making audit judgments that no reasonable auditor would have made if confronted with the same facts;

b. Assess the conditions under which accounting data was produced, processed, reviewed, and accumulated within the organization or assess such conditions and made audit judgments based upon said assessment that no reasonable auditor would have made if confronted with the same facts;

c. Evaluate the reasonableness of estimates and management's representations (such as its estimates of contingent losses and its representations regarding the nature of the Company's revenues, its related-party transactions, and its significant risks and uncertainties) or evaluated them in a manner which was so deficient that it amounted to no evaluation at all; and

d. Judge the appropriateness of the accounting principles applied and the adequacy of disclosures in the Company's financial statements (such as those required by FASB Statement No. 5, APB Opinion No. 28, SOP 94-6, and FASB Statement No. 57), or did so and arrived at judgments that no reasonable auditor would have arrived at if confronted with the same facts.

747. GAAS (AU § 311) states that audit planning involves developing an overall strategy for the expected conduct and scope of the audit. Accordingly, GAAS recognizes that the nature, extent, and timing of audit planning may vary with the size and complexity of the company, experience with the company, and knowledge of the company's business. In this regard, GAAS (AU § 311) provides that in planning the audit, the auditor should prepare a written audit program (or set of written audit programs) for every audit and that this audit program should set forth in reasonable detail the audit procedures that the auditor believes are necessary to accomplish the objectives of the audit. GAAS further states that, in developing the program, the auditor should be guided by the results of the planning considerations and procedures and, as the audit progresses, changed conditions may make it necessary to modify planned audit procedures.

748. In preparing this audit program, GAAS provides that the auditor should consider, among other things (AU § 311):

a. Matters relating to the entity's business and the industry in which it operates;

b. The entity's accounting policies and procedures;

c. The methods used by the entity to process significant accounting information;

d. Planned assessed level of control risk;

e. Preliminary judgment about materiality levels for audit purposes;

f. Financial statement items likely to require adjustment; and

g. Conditions that may require extension or modification of audit tests.

749. Had Deloitte properly planned its audit, it would have identified areas in which Delphi's internal control protocols were deficient and the areas of Delphi's accounting which were subject to manipulation. Delphi's management was able to use numerous one-time transactions which were not in the ordinary course, such as the installation of software in 2002, the sale of raw materials in 2000, a warranty payment in 2000, together with repeated transactions with entities such as BBK, SETECH and Bank One which were also not in the ordinary course, as a means to manipulate revenues. Deloitte's failure to adequately plan its audits under GAAS in order to asses the materiality of these one-time transactions on Delphi's income or EPS, was severely reckless and represented an extreme departure from the ordinary care required of an auditor by AU §230.

d. Deloitte Failed To Obtain Competent Evidential Matter

750. Deloitte violated Standard of Field Work No. 3, which requires sufficient competent evidential matter to be obtained through inspection, observation, inquiries and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. GAAS provides that accounting data alone is insufficient to support an opinion on financial statements. Before rendering an opinion on financial statements, the auditor must obtain sufficient, competent "evidential matter" to afford a reasonable basis for the opinion. "Evidential matter" consists of the underlying accounting data and all corroborating information

available to the auditor. (AU § 326.) Corroborating evidential matter includes both documentation obtained during the field work (e.g., checks, invoices, contracts, and independent confirmations) and information obtained from inquiry, observation, inspection and physical examination. (AU § 326).

751. Management's representations are not a valid substitute for the application of audit procedures to form a reasonable basis for an auditor's opinion of financial statements (AU § 333). Evidential matter that can be obtained from independent sources outside an entity provide greater assurance of reliability than any internally developed. Confirmation of accounts receivable is a generally accepted auditing procedure (AU § 330). GAAS AU § 330 provides that these confirmations are to be used to obtain evidence from third parties about financial statement assertions made by management, such as rights and obligations, and presentation and disclosure.

752. In the course of auditing Delphi's financial statements during the relevant time period, Deloitte either knew or recklessly disregarded facts that indicated that it had failed to obtain sufficient competent evidential matter to afford a reasonable basis for expressing unqualified opinions on Delphi's financial statements. Deloitte's staff was frequently present at Delphi's offices and had access to Delphi's internal corporate books and records particularly during its annual audits. In addition, Deloitte's staff had access to Delphi's private and confidential financial and business information. Given the availability of such records and information, Deloitte either obtained, through inspection, observations, inquiries, and other audit procedures, sufficient competent evidential matter to compel it to issue qualified or adverse opinions on Delphi's financial statements, or it recklessly failed to utilize the available records

and information in the performance of its audits and recklessly failed to issue qualified or adverse opinions on Delphi's financial statements.

753. GAAS (AU § 326) notes that underlying accounting data and all corroborating information available to the auditor (including books of original entry, the general and subsidiary ledgers, related accounting manuals, and records such as work sheets and spreadsheets supporting cost allocations, computations, checks, purchase orders, bills of lading, invoices, records of electronic fund transfers, invoices, contracts, minutes of meetings, and reconciliations) constitute evidence that should be subjected to inquiry, observation, inspection, confirmation, and physical examination during an audit. It is inconceivable that Deloitte could have inquired about, observed, inspected, confirmed and physically examined the available documentation and failed to detect Delphi's fraudulent activities and the associated concealment actions (as discussed above) undertaken by the Company's management. Accordingly, Deloitte either performed audits which were so deficient that they amounted to no audits at all, or it identified and ignored, or recklessly failed to investigate, extremely questionable transactions and documents, and made audit judgments that no reasonable auditor would have made if confronted with the same facts.

754. Indeed, had Deloitte reviewed contracts underlying the numerous income generating transactions of Delphi that were not in the ordinary course, it would have discovered that these transactions were nothing more than financing arrangements that should have never been recorded as sales.

XI. LOSS CAUSATION

755. Defendants' fraudulent scheme and their fraudulent and negligent misrepresentations and omissions concerning Delphi's financial performance, ability to meet its earnings estimates, and management of assets and inventories caused the price of Delphi's

securities to be inflated artificially when members of the Class purchased these securities. As the truth about Delphi's actual financial condition was gradually revealed, the inflation caused by these misrepresentations was methodically eliminated from the price of Delphi's securities.

756. The first stage of this decline began when Sarbanes-Oxley forced Delphi's management to cease their manipulation of Delphi's financial situation. Through deflated earnings and reduced guidance from the second quarter of 2002 on, management slowly fed bad news to the market to correct, covertly, its earlier misrepresentations. In September 2004, the first hints of Delphi's fraudulent accounting practices were initially disclosed, further correcting Delphi's stock price inflation as the market began to assimilate management's bad news. Finally, on March 3, 2005, the magnitude of Delphi's fraudulent accounting was laid bare, and the need for a restatement became clear. Delphi's share price swiftly declined by nearly 30%, and the inflation caused by years of misrepresentations was finally eliminated from the price of Delphi's securities, causing Class members' losses.

757. As stated above, the artificial inflation of Delphi's stock price was corrected gradually beginning in the second quarter of 2002. Sarbanes-Oxley, which came into effect on July 30, 2002, created heightened burdens on managers of public corporations to ensure that corporations' financial results were accurate and not misleading. Under Sarbanes-Oxley, Delphi's CEO, Battenberg, and CFO, Dawes were required, by July 30, 2002, to certify the accuracy of Delphi's financial statements or face civil and/or criminal sanctions if they negligently and/or willfully certified false financial statements. Faced with the implications of Sarbanes-Oxley, Delphi's management reduced their accounting manipulations. Indeed, the last fictitious inventory sale with BBK was conducted in the first quarter of 2002. While Delphi

regularly manipulated accounting and engaged in fictitious transactions to boost earnings, the Restatement identifies only one such transaction following Sarbanes-Oxley's effective date.

758. Delphi's trickle of bad news began during the second quarter of 2002, when it offered a mixed message to the market, causing its stock to begin a long, steady decline. As a result of the Company updating earnings guidance for the quarter and year on June 25, 2002, the market reacted strongly and negatively to Delphi's announcement. Delphi's stock price fell 20% from its close of $13.75 on June 24, 2002 on volume of 2.264 million shares, to its close of $11 on July 16, 2002 on volume of 3.22 million shares. The average daily trade volume during this period was over 4.26 million shares, more than double its Class Period average of approximately 2.08 million shares.

759. On July 17, 2002, Delphi filed the 2Q 2002 10-Q. In response to Delphi's announcement at the end of the second quarter of 2002, Delphi's stock price fell from a close of $13.16 on July 8, 2002 to a close of $9.8 on July 23, 2002. The average daily trade volume for this period exceeded 3.57 million shares, well above the Class Period average of approximately 2.08 million shares.

760. On July 24, 2002, Delphi's stock closed at $10.1 on volume of approximately 4.84 million shares. On July 30, 2002, Sarbanes-Oxley took effect, and Delphi's stock price continued its decline in the months that followed. By October 15, 2002, it had sunk to a close of $7.54 on trading volume of approximately 2.4 million shares – a 25% decline. The average daily trade volume during this period was 2.6 million shares, well above the average volume for the Class Period.

761. On October 16, 2002, in the first reporting period under Sarbanes-Oxley, Delphi announced its financial results for the third quarter of 2002. In response to the 3Q 2002 Press

Release, Delphi's share price fell from $7.54 to $6.89 between October 15 and October 20, 2002, representing an additional 8.6 % decline in value. In fact, Delphi's announcement, and its reduced guidance for the remainder of 2002, was nothing less than corrections of the earnings inflation that it had perpetrated in prior reporting periods. Thus, as Delphi was no longer able to meet earnings guidance through earnings fabricated by manipulative transactions and fraudulent accounting, its stock price began to decline in order to adjust to the reality of Delphi's actual earning potential.

762. Delphi's stock price stabilized between December 2002 and September 29, 2004. On September 29, 2004, Delphi first revealed that the SEC had initiated an investigation into Delphi's accounting of its transactions with EDS. At first Delphi downplayed the investigation but on October 18, 2004, the Company announced that the Audit Committee had commenced an investigation into the transactions identified in the SEC's inquiry. Again, the announcement minimized the scope of the SEC's inquiry and Delphi's stock price remained stable. However, on December 8, 2004, Delphi's Audit Committee revealed that its review of the transactions identified by the SEC had led it to additional problematic transactions with other technology supply companies. The Company stated that it would delay filing its Form 10-Q for the third quarter of 2004 in light of its ongoing investigation. In response to these announcements, and sudden indications of an unfolding fiasco at Delphi, Delphi's stock price fell 7% from September 29 to December 8, 2004.

763. On March 3, 2005, Delphi announced that Dawes was leaving the company and had resigned from the Board of Directors and strategy board after "the audit committee expressed a loss of confidence in him." Accompanying this announcement was the startling revelation that the Audit Committee's ongoing investigation had uncovered massive accounting

irregularities in Delphi's financial statements dating back to 1999, which would require the Company to restate its financial statements.

764. In response to the disclosure of serious accounting problems in Delphi going back to the very inception of the Company, Delphi's stock collapsed. Between March 1, 2005 and March 4, 2005, the stock fell from $6.89 to $4.89, representing a decline of almost 30%. Subsequent disclosures of Delphi's fraudulent conduct led to further declines in Delphi's stock price.

765. Delphi's stock price declined in stages due to the phased disclosure of Delphi's fraud. In the first phase, as Delphi was forced to readjust market expectations when it could no longer manipulate its revenues through illicit transactions and fraudulent accounting, it was forced to reveal something closer to its true financial situation through lowered earnings and lowered guidance. While unknown to investors at the time, Delphi's poor performance was a manifestation and product of the fraud that inflated its earnings in previous periods. The transactions that artificially boosted Delphi's 2000 and 2001 earnings artificially reduced them in 2002 and 2003. Where Delphi had accelerated income from service provider rebates in 2000 and 2001, it lost the benefit of those rebates in later years, when the rebates should have been booked. Where it should have expensed warranty payments to GM in 2000 and 2001, it now had to amortize those payments in 2002 and 2003. Inventories and materials Delphi had hidden in 2000 and 2001 with sham sales that boosted its early Class Period earnings now re-appeared as worthless assets that materially increased the Company's expenses and drained later Class Period earnings. Deterred by the stringent requirements of Sarbanes-Oxley from adopting new accounting gimmicks to increase earnings in 2002, Delphi was forced to record severe losses. In response, Delphi's stock declined causing investors who had purchased Delphi stock on false

earnings to suffer losses. Between May 2002 and November 2002, Delphi's stock price declined from approximately $17.00 per share to less than $7.00 a share.

766. Then in the second phase, beginning in September 2004, Delphi finally disclosed the first hint of the actual fraud that had inflated its earnings in prior periods. As these corrective disclosures regarding the impropriety of Delphi's accounting practices entered the marketplace, Delphi's stock price fell even more precipitously and the market came to know that the Company's financial performance was a sham. These declines in stock price, which corrected the inflation caused by Delphi's fraudulent accounting practices and manipulative transactions, caused Class members' losses. Between September 30, 2004 and March 9, 2005, as the details about Delphi's fraudulent practices were gradually disclosed, Delphi's stock price declined from approximately $9.00 per share to approximately $3.30 per share.

XII. PRESUMPTION OF RELIANCE – FRAUD ON THE MARKET

767. Lead Plaintiffs are entitled to a presumption of reliance on Defendants' material misrepresentations and omissions for the following reasons:

a. Delphi's publicly-traded securities were actively traded in an efficient market on the NYSE during the period in which Lead Plaintiffs bought and/or sold Delphi securities. The average daily trading volume of Delphi shares was more than 2,080,321 shares traded. The total number of shares traded during the Class Period was 2,658,650,300 shares;

b. As a regulated issuer, Delphi filed periodic public reports with the SEC;

c. Delphi 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;

d. The market reacted to public information disseminated by Delphi;

e. Delphi was followed by numerous securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective firms. Each of these reports was publicly available and entered the public marketplace;

f. The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of Delphi's shares; and

g. Without knowledge of the misrepresented or omitted material facts alleged herein, Lead Plaintiffs and other members of the Class purchased Delphi securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed.

768. In addition to the foregoing, Lead Plaintiffs are entitled to a presumption of reliance because, as more fully alleged above, Lead Plaintiffs relied on the truthfulness of Delphi's and Defendant Deloitte's statements concerning Delphi's business and its financial results throughout the Class Period, results which were further distorted by the conduct of the Scheme Defendants.

XIII. NO SAFE HARBOR

769. As alleged herein, the Defendants acted with scienter in that they knew, at the time they were issued, that the public documents and statements issued or disseminated in the name of Delphi were materially false and misleading or omitted material facts; knew that such statements or documents would be issued or disseminated to the investing public; knew that

members of the investing public were likely to reasonably rely on those misrepresentations and omissions; and knowingly and substantially participated or were involved in the issuance or dissemination of such statements or documents as primary violations of the federal securities law. As set forth elsewhere herein in detail, these Defendants, by virtue of their receipt of information reflecting the true facts regarding Delphi, their control over, and/or receipt of Delphi's allegedly materially misleading misstatements and/or their association with the companies which made them privy to confidential proprietary information concerning Delphi, which were used to inflate financial results and which the Defendants caused or were informed of, participated in and knew of the fraudulent scheme alleged herein. With respect to non-forward-looking statements and/or omissions, the Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public.

770. Defendants' false and misleading statements and omissions do not constitute forward-looking statements protected by any statutory safe harbor. The statements alleged to be false and misleading herein all relate to facts and conditions existing at the time the statements were made. No statutory safe harbor applies to any of Delphi's material false or misleading statements.

771. Alternatively, to the extent that any statutory safe harbor is intended to apply to any forward-looking statement pled herein, the Defendants are liable for the false forward-looking statement pled because, at the time each forward-looking statement was made, the speaker knew or had actual knowledge that the forward-looking statement was materially false or misleading, and the forward-looking statement was authorized and/or approved by a director and/or executive officer of Delphi who knew that the forward-looking statement was false or

misleading. None of the historic or present tense statements made by the Defendants was an assumption underlying or relating to any plan, projection or statement of future economic performance, as none was stated to be such an assumption underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by the Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

XIV. CLAIMS FOR RELIEF

COUNT I

Against BBK, Bank One and SETECH for Violations of Section 10(b) and Rule 10b-5 (a) and (c)

772. Lead Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein.

773. This Count is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 (a) and (c) against Defendants BBK, Bank One and SETECH on behalf of Lead Plaintiffs and other members of the Class who purchased and/or otherwise acquired Delphi securities during the Class Period, except for the July 2003 Offering. Lead Plaintiffs exclude from this Count and specifically do not make any allegation of fraud in connection with Delphi's July 2003 Offering or any securities issued by Delphi Trust I or Delphi Trust II.

774. During the Class Period, Defendants BBK, Bank One and SETECH, by use of the means or instrumentalities of interstate commerce, the mails, and/or the facilities of a national securities exchange:

a. Employed devices, schemes, and artifices to defraud; and/or

b. Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Lead Plaintiffs and others similarly situated in connection with their purchases of all Delphi securities, except for the July 2003 Offering, which is not included in this Count.

775. Defendants BBK, Bank One and SETECH knowingly or with reckless disregard for the truth employed devices, schemes, artifices to defraud, and/or engaged in acts, practices and/or courses of business, with the purpose and effect of misleading the investing public with respect to the true financial condition and performance of Delphi, and supporting the artificially inflated price of the publicly traded securities of Delphi, except for the July 2003 Offering, which is not included in this Count.

776. BBK, Bank One and SETECH carried out a plan, scheme and course of business that was intended to and did (1) deceive the investing public, including Lead Plaintiffs and other members of the Class, as alleged herein, (2) artificially inflate and maintain the market price of Delphi securities, except for the July 2003 Offering, which is not included in this Count; and (3) induce Lead Plaintiffs and other members of the Class to purchase or otherwise acquire Delphi securities, except for the July 2003 Offering, which is not included in this Count, at artificially inflated prices.

777. In furtherance of this unlawful scheme, plan and course of business, BBK, Bank One and SETECH are each sued as a primary participant in the unlawful conduct charged herein.

778. By virtue of the foregoing, BBK, Bank One and SETECH violated Section 10(b) of the Exchange Act and Rule 10b-5 (a) and (c), promulgated thereunder.

779. As detailed herein, Lead Plaintiffs and the other members of the Class have suffered damages because, in reliance on the integrity of the market, they paid artificially inflated prices for the publicly traded securities of Delphi, except for the July 2003 Offering, which is not included in this Count. Lead Plaintiffs and the other members of the Class would not have

purchased the securities of Delphi, except for the July 2003 Offering, which is not included in this Count, at the prices they paid, if at all, had they known that the market prices of those securities were artificially inflated by the fraudulent conduct alleged herein.

COUNT II

Against Defendant Deloitte for Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)

780. Lead Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein.

781. This Count is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b) against Deloitte on behalf of Lead Plaintiffs and other members of the Class who purchased or otherwise acquired Delphi securities during the Class Period, except for the July 2003 Offering. Lead Plaintiffs exclude from this Count and specifically do not make any allegation of fraud in connection with Delphi's July 2003 Offering or any securities issued by Delphi Trust I or Delphi Trust II.

782. Deloitte issued unqualified opinions for Delphi's financial statements for Fiscal Years 1999, 2000, 2001, 2002 and 2003, which, as described above, falsely stated that it had conducted its audits in accordance with GAAS and that, in its opinion, Delphi's financial statements were prepared in accordance with GAAP.

783. As set forth above, during the Class Period, Deloitte, by use of the means or instrumentalities of interstate commerce, the mails, and/or the facilities of a national securities exchange, engaged and participated in a continuous course of conduct to materially misstate Delphi's reported financial results, and made untrue statements of material fact and/or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.

784. By virtue of the foregoing, Deloitte violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder.

785. Lead Plaintiffs and the other members of the Class suffered damages because, in reliance on the integrity of the market, they paid artificially inflated prices for the publicly traded securities of Delphi, except for the July 2003 Offering, which is not included in this Count. Lead Plaintiffs and the other members of the Class would not have purchased the publicly traded securities of Delphi, except for the July 2003 Offering, which is not included in this Count, at the prices they paid, if at all, had they known that the market prices of those securities were artificially inflated by the unlawful actions and omissions by Deloitte.

COUNT III

Against Deloitte for Violations of Section 11 of the Securities Act in Connection with the June 2001 Offering

786. Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein.

787. This Count is brought pursuant to Section 11 of the Securities Act against Defendant Deloitte on behalf of all persons who purchased or otherwise acquired 6.55% Delphi notes pursuant or traceable to the June 2001 Offering. The notes were issued on or about June 5, 2001, by means of the June 2001 Offering Materials.

788. This count sounds in fraud, and involves deceit, manipulation or contrivance on the part of Defendant Deloitte and the Settling Parties, namely Delphi, Battenberg, Dawes, Free, Smith, Pearce, Losh, McLaughlin, Penske, Neto, Colbert, and Opie as alleged herein.

789. As alleged herein, the June 2001 Offering Materials were false and misleading, contained untrue statements of material fact and omitted to state facts necessary in order to make the statements made therein not misleading.

790. Delphi is the registrant of the securities issued in the June 2001 Offering, pursuant to the June 2001 Offering Materials. Settling Parties Battenberg, Dawes, Free, Smith, Pearce, Losh, McLaughlin, Penske, Neto, Colbert and Opie are signatories of the June 2001 Offering Materials.

791. Defendant Deloitte consented to the incorporation of its unqualified opinions regarding Delphi's financial statements into the June 2001 Offering Materials.

792. Settling Parties Bear Stearns and Credit Suisse were lead underwriters of the June 2001 Offering.

793. By reason of the foregoing, Defendant Deloitte is liable to Lead Plaintiffs and other members of the Class who purchased or otherwise acquired notes issued in the June 2001 Offering, pursuant to the June 2001 Offering Materials for violations of Section 11 of the Securities Act, each of whom has been damaged by reason of such violations.

COUNT IV

Against Deloitte For Violations of Section 11 of the Securities Act in Connection With the July 25, 2003 (6.50%) Bond Offering

794. Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein, except those allegations that sound in fraud. This claim does ***not*** sound in fraud and Lead Plaintiffs do not incorporate ***any*** allegation of fraud in connection with this Count.

795. This Count is brought pursuant to Section 11 of the Securities Act against Defendant Deloitte on behalf of all persons who purchased or otherwise acquired 6.50% Delphi notes pursuant or traceable to the July 2003 Offering. The securities were issued on or about July 25, 2003, by means of the July 2003 Offering Materials.

796. As alleged herein, the July 2003 Offering Materials were false and misleading, contained untrue statements of material fact and omitted to state facts necessary in order to make the statements made therein not misleading.

797. Delphi is the registrant of the securities issued in the July 2003 Offering pursuant to the July 2003 Offering Materials. Settling Parties, Battenberg, Dawes, Runkle, Sheehan, Opie, Brust, Colbert, Farr, Gottschalk, Irimajiri, Mclaughlin, Neto, Penske and Sweltz, are signatories of the July 2003 Offering Materials.

798. Defendant Deloitte consented to the incorporation of its unqualified opinions regarding Delphi's financial statements into the July 2003 Offering Materials.

799. Settling Parties Barclays, Citigroup and BAS were lead underwriters of the July 2003 Offering.

800. By reason of the foregoing, Defendant Deloitte is liable to Lead Plaintiffs and other members of the Class who purchased or otherwise acquired securities issued in the July 2003 Offering, pursuant or traceable to the July 2003 Offering Materials for violations of Section 11 of the Securities Act, each of whom has been damaged by reason of such violations.

COUNT V

Against Deloitte For Violations of Section 11 of the Securities Act in Connection With the October 21, 2003 Delphi Trust I Offering (8.25%)

801. Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein, except those allegations that sound in fraud. This claim does ***not*** sound in fraud and Lead Plaintiffs do not incorporate ***any*** allegation of fraud in connection with this Count.

802. This Count is brought pursuant to Section 11 of the Securities Act against Defendant Deloitte on behalf of all persons who purchased or otherwise acquired Trust I Notes

pursuant or traceable to the Trust I Offering. The notes were issued on or about October 21, 2003, by means of the Trust I Offering Materials.

803. As alleged herein, the Trust I Offering Materials were false and misleading, contained untrue statements of material fact and omitted to state facts necessary in order to make the statements made therein not misleading.

804. Delphi and Delphi Trust I are registrants of the securities issued in the Trust I Offering pursuant to the Trust I Offering Materials. Settling Parties Battenberg, Dawes, Runkle, Sheehan, Opie, Neto, Brust, Colbert, Farr, Gottschalk, Irimajari, Penske, and Sueltz, are signatories of the Trust I Offering Materials.

805. Defendant Deloitte consented to the incorporation of its unqualified opinions regarding Delphi's financial statements into the Trust I Offering Materials.

806. Settling Parties Merrill Lynch, Morgan Stanley, UBS and Wachovia were underwriters of the Trust I Offering.

807. By reason of the foregoing, Defendant Deloitte is liable to Lead Plaintiffs and other members of the Class who purchased or otherwise acquired notes issued in the Trust I Offering, pursuant to the Trust I Offering Materials for violations of Section 11 of the Securities Act, each of whom has been damaged by reason of such violations.

COUNT VI

Against Deloitte For Violations of Section 11 of the Securities Act in Connection With the November 11, 2003 Delphi Trust II Offering (Adjustable Rate)

808. Plaintiffs repeat and reallege each and every allegation above as though set forth fully herein, except those allegations that sound in fraud. This claim does ***not*** sound in fraud and Lead Plaintiffs do not incorporate ***any*** allegation of fraud in connection with this Count.

809. This Count is brought pursuant to Section 11 of the Securities Act against Defendant Deloitte on behalf of all persons who purchased or otherwise acquired Trust II Notes pursuant or traceable to the Trust II Offering. The notes were issued on or about November 11, 2003, by means of the Trust II Offering Materials.

810. As alleged herein, the Trust II Offering Materials were false and misleading, contained untrue statements of material fact and omitted to state facts necessary in order to make the statements made therein not misleading.

811. Delphi and Delphi Trust II are registrants of the securities issued in the Trust II Offering pursuant to the Trust II Offering Materials. Settling Parties Battenberg, Dawes, Runkle Sheehan, Opie, Neto, Brust, Colbert, Farr, Gottschalk, Irimajari, Penske, and Sueltz, are signatories of the Trust II Offering Materials.

812. Deloitte consented to the incorporation of its unqualified opinions regarding Delphi's financial statements into the Trust II Offering Materials.

813. Settling Parties Merrill Lynch and Citigroup were underwriters of the Trust II Offering.

814. By reason of the foregoing, Defendant Deloitte is liable to Lead Plaintiffs and other members of the Class who purchased or otherwise acquired notes issued in the Trust II

Offering, pursuant to the Trust II Offering Materials for violations of Section 11 of the Securities Act, each of whom has been damaged by reason of such violations.

XV. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Lead Plaintiffs and the other members of the Class against all Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Lead Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

XVI. JURY TRIAL DEMANDED

Lead Plaintiffs hereby demand a trial by jury.

Dated: October 26, 2007

Sullivan, Ward, Asher & Patton, P.C.

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