

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RORY RIGGS and JOHN LEWIS, on behalf of :
themselves and all those persons similarly situated, :

U DISTRICT COURT SDNY

Plaintiffs, :

Case No. 03 Civ. 4014 (LLS)

-against- :

HENRI A. TERMEER, GENZYME CORPORATION, :
CONSTANTINE E. ANAGNOSTOPOULOS, :
DOUGLAS BERTHIAUME, HENRY BLAIR, :
ROBERT CARPENTER, CHARLES COONEY, :
VICTOR DZAU, CONNIE MACK III, and :
MICHAEL S. WYZGA. :

JURY TRIAL DEMANDED

Defendants. :
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AMENDED CLASS ACTION COMPLAINT

Rory Riggs and John Lewis ("Plaintiffs"), individually and on behalf of all those persons similarly situated, by their undersigned counsel, Boies, Schiller & Flexner LLP, for their Amended Class Action Complaint allege, upon personal knowledge of their own acts and acts taking place in their presence, and upon information and belief as to all other matters, as follows:

I. NATURE OF THE ACTION

1. By this action, Plaintiffs, individually and on behalf of all those persons (the "Class" or "Class Members") who owned shares of Genzyme Corporation Biosurgery Division common stock ("Biosurgery Stock") between December 19, 2000 and May 8, 2003 (the "Class Period"), seek to recover damages caused by (a) the material misstatements and omissions made by Defendants in connection with the December 2000 merger and acquisition by Genzyme Corporation ("Genzyme") of Biomatrix Inc. ("Biomatrix"), which led to the creation of the

Genzyme Biosurgery Division (“Biosurgery” or “Genzyme Biosurgery Division”); (b) insider trading committed by Genzyme and Termeer in connection with the forced sale and exchange on June 30, 2003 of all outstanding shares of the Biosurgery Stock for common stock of the Genzyme General Division (“Genzyme General”); and (c) breaches of common law and statutory duties owed to Biosurgery shareholders, including the manipulation of the share price and the fraudulent management of the earnings of Genzyme Biosurgery in connection with the forced June 30 sale.

2. Until July 1, 2003, Genzyme was composed of three, separately operated businesses: Genzyme General, Genzyme Biosurgery, and Genzyme Molecular Oncology Division (“Molecular Oncology”). Each Genzyme division was associated with a separate series of Genzyme Corporation common stock (“tracking stock”), which Genzyme represented in its SEC filings was designed to “track” the performance and value of that division, by contrast to the performance and value of Genzyme Corporation as a whole. The shareholders of the Genzyme General division represented in the aggregate the majority voting interest in Genzyme Corporation; its outstanding shares constituted more than 80% of all common stock of the corporation.

3. On May 8, 2003, Defendants announced that Genzyme’s Board of Directors had decided to effect a forced sale of all outstanding Biosurgery shares for shares in Genzyme General based upon a valuation of Biosurgery at \$1.36 per share. This forced sale price corresponded to the lowest share prices in the history of Biosurgery, and the forced sale was deliberately timed to occur prior to the disclosure of material positive information — information in the possession of Genzyme and Termeer when they set the forced sale price and which they deliberately withheld until after they did so. This action was part of a management strategy to

drive down the share price of Biosurgery: (i) in order to benefit the majority of Genzyme shareholders who held stock in Genzyme General, including Defendants themselves (ii) by maximizing the disparity between the share prices of Biosurgery and Genzyme General (iii) through the mechanism of a forced sale made at a small fraction of Biosurgery's fair market value.

4. Biosurgery was created through the merger, on December 19, 2000, of an independently held company, Biomatrix, with two other Genzyme divisions. Prior to the merger, Biomatrix had been a profitable biomaterials company with a blockbuster product, Synvisc, which treats osteoarthritis.

5. The merger was structured as follows: Genzyme agreed to (a) pay \$245 million for 28.38% of the Biomatrix shares outstanding; and (b) a one-for-one exchange of the remaining Biomatrix shares for shares in the newly created Biosurgery Division. Had Genzyme acquired Biomatrix outright for cash, based upon the per share price of the 28.38% of the Biomatrix shares acquired, the cost would have been \$800 million.

6. What Genzyme could not do — and what Biomatrix shareholders never agreed to — was to provide share ownership in the Genzyme General division, by contrast to Biosurgery stock, as consideration for the merger. Indeed, the opposite was true. The tracking stock structure, through which Biomatrix shareholders were entitled to 100% of the returns on investments made with the assets of that company (including 100% of the performance of Synvisc), was critical to the formation of Genzyme Biosurgery.

7. At all relevant times, Termeer and Genzyme represented Genzyme Biosurgery to be a distinct, separately managed division with an entirely different business strategy than Genzyme General. Genzyme General was and is focused on developing treatments for certain

genetic diseases suffered by small numbers of patients, principally through the development of so-called “orphan” drugs approved by the Food and Drug Administration. Because the markets for such products are small and research and development costs high, it has been Genzyme General’s and Termeer’s business strategy to acquire unrelated businesses that generate short-term revenue for the purpose of funding the division’s orphan drug research and development costs.

8. At all relevant times, Termeer and Genzyme represented to the public and to the Class Members that Biosurgery would have a different business model. Biosurgery was, in the words of its President, Earl M. Collier, Jr., “the leading biomaterials business with a dominant market position,” through sales of osteoarthritis treatments such as Synvisc, as well as the Sepra line of surgical adhesion products. In public filings and in public statements, Genzyme and Defendants represented Biosurgery as a self-sustaining operating company that would be managed to generate near-term profits. As set forth in the registration statement of Genzyme and Biomatrix, dated October 27, 2000 (“Registration Statement”), which includes the joint proxy statement and prospectus for the merger (“Proxy-Prospectus”), Genzyme represented the following: “SELF-SUSTAINING PROGRAM....Genzyme believes that combining Biomatrix’ positive cash flow from product sales with the financial resources of the two Genzyme divisions has the potential to create in Biosurgery a self-sustaining business capable of supporting a full product research and development program.”

9. In agreeing to the merger (and in thereafter selling Biosurgery shares), Plaintiffs and the Class Members relied upon the representation that the newly created Genzyme Biosurgery would be managed in accordance with this strategy, and that Defendants, in operating Biosurgery, would seek to maximize Biosurgery shareholder value on this basis. As Plaintiff

Riggs told the *Wall Street Reporter Magazine* in September 2000, well after the merger agreement had been executed: “as long as we continue to focus on revenue growth through broadening the application of current products and quickly getting new products to the market, we can successfully keep revenue growth, fiscal constraint and earnings growth and that’s what our model is. I think that merging with this new company will only allow us to accelerate these characteristics.” Genzyme presentations used during road shows and employee meetings to induce the Class Members to purchase Biosurgery shares were to the same effect, adopting, for example, the statements of one analyst who stated that “revenues and earnings growth [of Biosurgery] will never be faster than they will be in the coming 3-5 year period.”

10. It was the tracking stock structure that made this model attractive to Plaintiffs and the Class Members. By “tracking” Biosurgery, shareholders could invest in the specific short-term profit strategy of the Biosurgery Division. In its Registration Statement, Proxy, and Prospectus for the merger, Genzyme reiterated: “Unlike typical common stock, each of Genzyme’s tracking stocks is designed to track the financial performance of a specified subset of its business operations and its allocated assets, rather than operations and assets of the entire company.”

11. Senior Genzyme personnel have reaffirmed the same point both prior and subsequent to the merger. In January 2001, Collier, President of Biosurgery, stated in an interview published in the *Wall Street Transcript* for prospective investors that “one of the nice parts about Genzyme Biosurgery being a tracking stock within the corporation is that we’ll have stock options for the employees that are specifically tied to the performance of the division.” Defendant Termeer, in the same forum, made the same point: “We think that tracking stocks for these kinds of companies are very, very attractive” because they helped retain personnel with

“fire in the belly” so as to maximize “ongoing entrepreneurial activities.” A senior Genzyme executive, Gail Maderis, said in the *Wall Street Transcript* in September of 2002 that “[t]he tracking structure provides more transparency and more visibility to investors than the average corporate structure” and thus Genzyme divisions published not only “divisional financial statements” but also provided “detailed knowledge of what is important and material to [each] division.”

12. The representations that Genzyme would operate Biosurgery as a self-sustaining company made by Termeer and Genzyme management made in the Registration Statement and Proxy-Prospect, was false and misleading. Genzyme and Termeer did not, in fact, intend to operate Biosurgery as a profitable, growth enterprise. It did not, in fact, seek to maximize the value of the Biosurgery assets for the benefit of Biosurgery shareholders. Rather, over the course of 2001 through May 2003, Genzyme and Termeer deliberately mismanaged Biosurgery in order to drive down its share price to historic lows.

13. This was accomplished by diverting capital expenditures to long-term research and development projects at the expense of the very short-term revenue growth necessary to make the business sustain itself. For instance, in 2002, Genzyme and Termeer caused Biosurgery’s research and development expenditures to exceed the guidance given the prior year. But the expenditures were not made on improving existing revenue-generating products such as Synvisc. Instead, Termeer and Genzyme invested heavily in speculative cell and gene therapy trials, which, as Genzyme management acknowledged, would yield clinical products, if at all, no sooner than six to ten years. Genzyme and Termeer devoted most of Biosurgery’s research and development expenditures to the benefit of its cardiothoracic business unit. As with long term research and development that, too, cut into the ability to generate short term revenues. Only

after Biosurgery had ceased to exist did Genzyme sell the unit.

14. At the same time, Termeer and Genzyme delayed efforts to secure regulatory and reimbursement approval for Synvisc in Japan; refused to apply to the FDA to expand the U.S. labeling to reflect the fact that the product had proven effective in relieving pain up to one year after administration; passed up an opportunity to sell Synvisc in the VA system. As a result of these and similar decisions, Synvisc revenues actually declined in Q4 2002, as compared with the previous quarter and Q4 2001, and as compared with the reports after the trading period upon which the forced sale was based.

15. The result of this strategy to drive down near-term Biosurgery revenues was that Biosurgery consistently missed its earnings guidance. Its share price dropped consistently throughout its existence as a result.

16. It is not difficult to understand why Genzyme management acted to minimize Biosurgery shareholder value: Doing so, though not in the interest of the corporation as a whole, did benefit Genzyme's majority shareholders — those who held stock in Genzyme General, including Defendants.

17. Under the Genzyme Articles of Organization, Genzyme Biosurgery shareholders could be forced to exchange their shares for those of Genzyme General at an exchange ratio that divides the fair market value of Biosurgery shares, defined as the average closing price (plus a 30% premium) of Biosurgery stock during a given twenty-day trading period (commencing on the 30th business day prior to the date the transaction is publicly announced) by the average closing price of Genzyme General stock for that same period. The resulting number is the number of new Genzyme General shares required to be issued to Biosurgery shareholders as part of the combined enterprise.

18. This formula created incentives for Defendants to generate disparities between on the one hand (1) the share price of Biosurgery and its fair value, and, on the other hand, (2) the share price of Biosurgery and the share price of Genzyme General. The lower the share price of Biosurgery relative to its fair value, the greater the potential benefit to Genzyme General shareholders, including Genzyme's senior management, from implementing a forced sale. Similarly, the lower the share price of Biosurgery relative to the share price of Genzyme General, the greater the benefit to Genzyme General shareholders. If, for example, the average price of the two shares were equal, Genzyme would be required to issue 1.3 new shares of Genzyme General stock for each share of Biosurgery stock relinquished. That, in turn, would be guaranteed to dilute Genzyme General's share price through the addition of 52.8 million shares to Genzyme General's 200 million shares outstanding. Earnings per share would plummet as a result. On the other hand, if the share price of Genzyme General were, for example, twenty times that of Biosurgery, the formula would mandate that Genzyme issue a mere 0.052 shares of Genzyme General stock for each share of Biosurgery stock relinquished. In this second scenario, the dilution risk of Genzyme General's earnings per share would be substantially diminished because Genzyme General would be required to issue only slightly less than 1/20th of the number of new shares required in the first.

19. Thus, in order to lump the assets of Biosurgery into the financial picture that Genzyme General presented to the market, without placing in jeopardy the share value of Genzyme General, Defendants had a structural incentive to minimize Biosurgery's share price. Put another way, because Genzyme General shareholders had no right to the performance or returns on the assets allocated to the Biosurgery Division (including Synvisc), the Genzyme General share price did not reflect the value of the Biosurgery assets. To obtain that value without

diluting Genzyme General's earnings per share, Genzyme had to effect an exchange at the lowest ratio possible.

20. And that is exactly what Defendants did. Contrary to the representations in the Registration Statement and Proxy-Prospectus, Termeer and Genzyme did not operate Genzyme Biosurgery as a "self-sustaining" entity. Rather, from the day Biosurgery was formed, Termeer and Genzyme always sought to manipulate the share price of Biosurgery in order to create an opportunity to exercise the forced sale provision that would allow Genzyme General shareholders to acquire all rights to the value of the assets allocated to Biosurgery shareholders for a fraction of the fair market value of those rights.

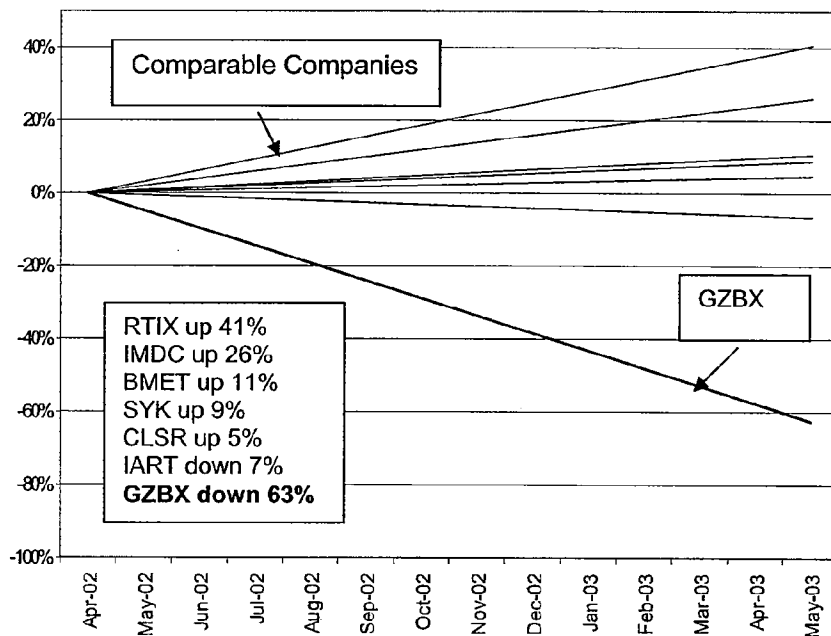
21. In or about mid-April 2002, Termeer made the decision to exercise the forced sale provision. As of that time, however, the formula set forth in the Articles of Organization would have lowered Genzyme General's earnings per share substantially. (The exchange ratio would have required that Genzyme issue nearly four times the number of new Genzyme General shares that it ended up issuing in connection with the June 30, 2003 forced sale.) Accordingly, Termeer and the other Defendants decided (to paraphrase a Genzyme senior manager and friend of Termeer's who possessed personal knowledge of the decision) that the "timing was not yet right."

22. To make the timing right, Genzyme and Termeer devoted the next twelve months to driving down Biosurgery's stock price more than 60% to historic lows. During the very same period, however, the share prices of comparable biomaterial companies all either gained ground or dropped only slightly. For example, Regeneration Technologies, Inc. (tissue-based implants to heal bone) was up 41%. Inamed Corp. (plastic surgery devices and collagen implants) was up

26%.¹ Biomet, Inc. (orthopedic implants; bone growth stimulation devices) was up 11%.

Stryker Corp. (orthopedic implants; trauma and spinal systems; bone growth/protein) was up 9%.

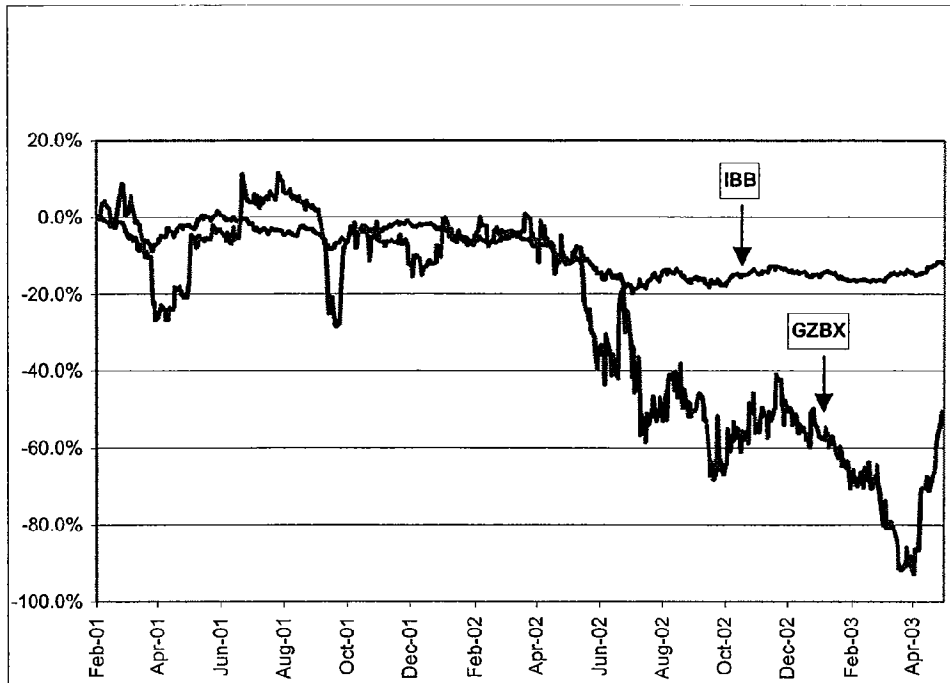
Closure Medical Corp. (tissue adhesion products) was up 5%. Integra Life Sciences (collagen-based products for use in dental surgery and spinal injuries) was down 7%. Thus:



23. During the same thirteen month period Biosurgery also underperformed as measured by the NASDAQ Biotechnology Index (“IBB”). The IBB measures the share price of companies (including Genzyme General) primarily engaged in using biomedical research for the discovery of development of treatments or cures for human disease. Expressed in standard logarithmic formulation, Biosurgery’s share price plummeted after April 1, 2002, while that of the IBB remained essentially constant.

¹Inamed has held since at least 2000 the worldwide distribution rights to the Biosurgery product Hylaform, which originated with Biomatrix.

Comparison of Genzyme Biosurgery and NASDAQ Biotechnology Index
 Percentage Change in Logarithm of Stock Price²



24. It was at this same time, April-May 2002, that Genzyme senior management began to reduce their personal holdings in Biosurgery and increase those in Genzyme General. Thus, the Biosurgery options granted to Alan E. Smith, Genzyme’s Chief Scientific Officer dropped by 40% in May 2002, while those at the same time in Genzyme General doubled. Defendant Termeer, who had previously lauded tracking stock as producing a “fire in the belly” entrepreneurial spirit, reduced his Biosurgery options in May 2002 by 125,000 shares, while increasing those in Genzyme General by 100,000 shares over the previous year. The option incentive package of Duke Collier — the President of Biosurgery and the person who told investors in January 2001 that one of the benefits of the tracking stock structure was that compensation could be “specifically tied to the performance of the division” — was turned on its

² The IBB was created in February 2001.

head in May of 2002: Collier's Biosurgery option grants decreased more than 50%; his Genzyme General grants increased nearly 800%.

25. On March 13, 2003, with Biosurgery shares trading at historic lows and upon Termeer's recommendations, a Capital Structure Formation Committee of the Board (consisting of all members of the Board other than Termeer) met and set May 8 as the time for announcement of the forced sale. That decision, under the Articles of Organization, had the immediate effect of locking in the trading period at which the forced sale would be valued (the average of the closing prices on March 26 through April 23), locking in the exchange prices of the shares of each division, and, accordingly, the ratio between them. On that date, March 13, Genzyme General closed at \$33.53 per share; Biosurgery closed at \$1.65 per share. Applying the formula set forth in the Articles of Incorporation on that date, the forced sale exchange would have been .07447.

26. That ratio turned out to be almost *twice* the ratio at which the forced sale subsequently took place. On May 8, 2003, Termeer announced that Genzyme's Board had decided to require the forced sale of all outstanding Biosurgery shares for Genzyme General shares at a ratio based upon a valuation of Biosurgery at \$1.36 per share, with Genzyme General at \$35.98 per share. This price yielded an exchange ratio of .04914 General shares for each Biosurgery share, requiring the issuance of a mere two million new Genzyme General shares.

27. In announcing the sale, Genzyme assured Genzyme General shareholders that prior earnings per share guidance for Genzyme General would not change. In other words, the issuance of the new shares as a result of the sale would not dilute the value of Genzyme General stock. This was accomplished even though the sale would result in an effective tax rate increase from 25% to 30% for Genzyme for the second half of 2003.

28. To ensure that Biosurgery's stock price stayed low enough to generate an exchange ratio that benefited Genzyme General shareholders, Termeer, with the approval of each member of the Board, deliberately withheld material positive information until after Genzyme had locked in the sale price. Specifically, Termeer and the Board Members knew on or before March 26, 2003, (the beginning of the trading period) but did not disclose until late in or after the trading period, the following information:

- Synvisc revenues were up dramatically.
One week before establishing the trading period, on March 5, Genzyme had stated that Synvisc sales for the fourth quarter of 2002 had been down 16% from the fourth quarter 2001 and down 38% from the third quarter 2002. What Genzyme and Termeer knew on and before March 26, 2003 (three business days before the close of the quarter) but did not disclose to the market at all, was that on-going quarter-to-date performance for Synvisc revenues had jumped significantly, and that quarterly performance would materially improve. And what the Genzyme and Termeer knew on April 1, 2003 (the day after the quarter closed) but did not disclose to the market until April 16 (with only five days remaining in the trading period) was that Synvisc sales for the first quarter of 2003 in fact were up 32% from the first quarter of 2002 — more than doubling prior growth estimates — and up 56% from the fourth quarter 2002.
- Genzyme would cease unprofitable investments in its cardiothoracic business.
What Genzyme and Termeer knew well before March 26, but did not disclose to the market until May 8 (after the close of the trading period) that they were “well on the road of activating the divestiture of that business” and that they would do so by year-end. What Genzyme and Termeer knew well before March 26, but did not disclose to the market until May 8 was that such a sale would result in annual savings of millions of dollars and one-time revenues approaching \$50 million.
- Genzyme obtained FDA approval that would allow Biosurgery to expand the label for Synvisc and double the current U.S. market for the product.
Genzyme had announced previously its hopes to commence clinical trials of Synvisc in the hip in 2003. But what Genzyme and Termeer knew on or before March 26 but did not disclose to the market until April 16 was that Genzyme had in fact obtained conditional approval from the FDA to conduct the trials, and that completion of the trials would allow Genzyme to expand the label for Synvisc, doubling the size of the U.S. market for Synvisc.

- Genzyme had developed a “pretty substantial third generation” of Synvisc that “would actually modify the disease of osteoarthritis itself.”

Genzyme had announced previously that it was trying to develop other applications of its products and hoped to develop disease modify products. But what Genzyme and Termeer knew on or before March 26 but did not disclose to the market until May 8 was that Genzyme had developed a third generation of Synvisc that would go to clinical trials in Europe and possibly the U.S. as early as this year. What Defendants also knew on or before March 13 but did not disclose to the market until May 29, was that the third generation Synvisc product would have the ability to “actually modify the disease of osteoarthritis itself,” as opposed to merely relieving pain.

29. Had Genzyme disclosed any of these facts when they became known to Genzyme, the disclosures would have materially affected the Biosurgery share price during the March-April trading period. Indeed, the trading price of Biosurgery increased 21% and the trading volume increased 190% from April 15 following the announcements on April 16 regarding Synvisc earnings and FDA approval, indicating that the disclosures were both new and material. The May 8 announcement disclosing the existence of a third generation of Synvisc and the May 29 announcement that this third generation would modify the disease of osteoarthritis itself were material because they disclosed the existence of a product that would alter the way osteoarthritis will be treated, further expanding Synvisc. The sale of the unprofitable cardiothoracic business was material because by itself it was enough to move Biosurgery to profitability.

30. The forced sale announced on May 8 simply took the value of the Biosurgery Stock from Biosurgery shareholders and transferred that value to the majority Genzyme General shareholders without payment of anything like the fair market value the latter had been promised. Biosurgery’s shareholders had invested in Biosurgery according to a stated business plan that, if implemented, would yield a fair return on investment. That plan was entirely different from the one that Termeer and Genzyme senior management had developed, and ultimately used, to run Biosurgery. With the May 8 forced sale, Genzyme General acquired the value of the assets of

Biosurgery and the rights to all returns from those assets for all purposes, including payment of dividends and financial reporting — benefits that Genzyme General did not obtain in the merger with Biomatrix, and for which Biosurgery shareholders have not been compensated. The only way that Genzyme General was able to take these benefits, and acquire the rights to returns from the Biosurgery assets was through Defendants' stock price manipulation and earnings management of Biosurgery. The value of Biosurgery's stock price could not therefore have been "fair" because Defendants' stock manipulations and earnings management robbed that stock of value.

31. Defendants benefited personally from the forced sale. The Genzyme Board of Directors, Termeer, even the President of Biosurgery, Collier, all owned substantial holdings of Genzyme General stock. These holdings materially affected their decisions regarding the management of Biosurgery and the forced share exchange. At the time the forced sale was announced, Termeer owned more than \$109 million of Genzyme General stock and approximately \$1.5 million of Biosurgery stock. The other Genzyme directors owned about \$25 million of Genzyme General stock and about \$500 thousand of Biosurgery stock. Neither Termeer nor any Genzyme director, including all directors on the "Special Committee" that recommended the elimination of the tracking stock structure, owned stock in Biosurgery that is worth more than 2% of the value of his interest in Genzyme General. Genzyme had no disinterested Director to evaluate the fairness of the substance and timing of the forced sale.

32. The effect of Genzyme's stock price manipulation, management of earnings, and nondisclosures of material information was to depress Biosurgery's near-term profitability and performance, leading, as intended by Termeer, to share prices for Biosurgery that did not accurately reflect either the underlying or the relative value of Biosurgery, by contrast to the

share price of Genzyme General. The June 30 sale based upon the average closing price of Biosurgery shares (at \$1.36) plus 30% (yielding \$1.77) for the March-April trading period places the value of Biosurgery's entire business at about \$55 million. This valuation of Biosurgery is: (a) based upon an average of past trading prices that were the lowest in Biosurgery's entire history; (b) less than Genzyme's guidance for Biosurgery's research and development expenses in 2003 alone; (c) less than the amount of revenue that Biosurgery anticipated to realize from sales of just one of its products, Synvisc, which is growing at about 30%, in 2003 alone; (d) only 20% of Biosurgery's projected 2003 revenues, where acquisitions of growing biosurgical companies are typically made — as Collier stated in a Biosurgery earnings call on March 7, 2002 — at multiples of 6 times revenues; and (e) only 20% higher than the value at which Genzyme was able to sell Biosurgery's consistently unprofitable cardiothoracic business alone.

33. But for Genzyme's manipulation of Biosurgery share prices and earnings management of Biosurgery to depress near-term profitability, the closing prices for Biosurgery stock during the March-April trading period would have been at least \$20 per share and likely much higher. Indeed, on or about May 14, 2003 the Chairman of Genzyme's Audit Committee, Defendant Berthiaume, acknowledged to Whit Gardner, a principal of Gardner Lewis Asset Management and partner of Plaintiff Lewis, that Biosurgery shares could be valued at \$20 per share. Termeer admitted to Gardner on the same day that the Biosurgery Stock is worth far more than the share price that Genzyme General will pay in the forced sale.

34. By eliminating the tracking stock structure, however, Termeer, every member of the Genzyme Board of Directors, and all Genzyme General shareholders who collectively owned the majority of the company's outstanding shares obtained, without any earnings per share dilution, the value of a business worth at least \$1.5-2 billion for just \$72 million of stock.

II. JURISDICTION AND VENUE

35. This action arises under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k, 77l(a)(2), and 77(o), Sections 10(b), 14(a), 18, and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b), 78n(a), 78r, and 77t(a), and Rules 10b-5 and 14a-9 thereunder, 17 C.F.R. §§ 240.10b-5, 240.14a-9, and common law.

36. This Court has subject matter jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §§ 1331 and 1332. The amount in controversy exceeds the sum or value of \$75,000 for each of the Plaintiffs, exclusive of interest and costs. The Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

37. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391. Many of the transactions, acts, practices and courses of business alleged herein took place within the Southern District of New York, including, but not limited to, use of the mails and other interstate facilities to communicate with and disseminate false and misleading statements to investors. The shares of Genzyme Corporation are publicly traded in Manhattan on the National Association of Securities Dealers Automated Quotation System (NASDAQ) stock market. The Biosurgery Stock was publicly traded on the NASDAQ. The Defendants have carried out the acts described herein by the means and instrumentalities of interstate commerce, including, but not limited to, use of United States mails, interstate telephone communications, and the facilities of national securities exchanges. In addition, Plaintiff Rory Riggs resides in this district.

III. THE PARTIES

38. Plaintiff Rory Riggs (“Riggs”), former President of Biomatrix, owned Biosurgery securities during the Class Period. As of December 19, 2000, Riggs owned 1,276,993 shares of Biosurgery Stock. As of May 8, 2003, Riggs owned approximately 745,134 shares. Riggs resides in this district.

39. Plaintiff John Lewis (“Lewis”), President of Gardner Lewis Asset Management, owned Genzyme Biosurgery securities during the Class Period. Lewis now owns approximately 1,100,000 shares of Biosurgery tracking stock and as of May 8, 2003, owned at least 102,148 shares.

40. Defendant Henri A. Termeer (“Termeer”) is the Chief Executive Officer, President, and Chairman of the Board of Genzyme Corporation, and, in that role, was the Chief Executive Officer of Biosurgery with fiduciary responsibilities to the Biosurgery shareholders. Termeer signed the Registration Statement, which included the Proxy-Prospectus. On May 8, 2003, Termeer held approximately 2,795,933 shares of Genzyme General stock worth over \$109 million and 668,433 shares of Biosurgery tracking stock with a trading price of about \$1.68 million. Termeer resides in Massachusetts.

41. Defendant Genzyme Corporation is a corporation organized under the laws of Massachusetts and headquartered in Cambridge, Massachusetts. Prior to July 1, 2003, Genzyme Corporation was composed of the three separately-operated divisions represented by three separate series of Genzyme common stock that, according to Genzyme, were designed to “track” the financial performance of each division and reflect its value to its shareholders, including the Biosurgery Stock. There was a single Board of Directors of Genzyme Corporation common to all operating divisions.

42. Defendants Constantine E. Anagnostopoulos (“Anagnostopoulos”), Douglas Berthiaume (“Berthiaume”), Henry Blair (“Blair”), Robert Carpenter (“Carpenter”), Charles Cooney (“Cooney”), Victor Dzau (“Dzau”), and Connie Mack III (“Mack”) are members of the Board of Directors of Genzyme Corporation (“Director Defendants”), and together constitute the Special Committee of the Board that, on May 8, 2003, recommended the June 30, 2003 elimination of Genzyme’s tracking stock structure and forced sale of all Biosurgery Stock for Genzyme General Division common stock. Two of the Director Defendants, Blair and Carpenter, are not “independent” directors as that term is used in Genzyme’s internal corporate governance policies. Each of the Director Defendants, except for Dzau and Mack, signed the Registration Statement and Proxy-Prospectus, and each of the Director Defendants, except for Mack, was a director when the Registration Statement went effective and when the merger between Genzyme and Biomatrix was completed on December 19, 2000. Anagnostopoulos resides in Missouri; Berthiaume, Blair, Carpenter, Cooney, and Dzau reside in Massachusetts; and Mack resides in Florida.

43. Defendant Michael S. Wyzga (“Wyzga”) is the Chief Financial Officer and a Senior Vice President of Genzyme Corporation. Wyzga signed the Registration Statement and Proxy-Prospectus, the Post-Effective Amendment No. 1 to the Registration Statement, dated November 9, 2000, and the Form 8-K, dated May 8, 2003, reporting Genzyme’s decision to exchange all outstanding shares of the Biosurgery Stock and its Genzyme Molecular Oncology Division common stock for shares of its Genzyme General Division common stock. Wyzga resides in Massachusetts.

44. As of May 8, 2003, the Director Defendants held shares in Genzyme General and Biosurgery in approximately the following amounts: Carpenter, 279,372 shares, or \$10.9

million, of Genzyme General stock, and 38,901 shares of Biosurgery stock trading at \$97,641; Berthiaume, 110,200 shares, or over \$4.3 million, of Genzyme General stock, and 47,069 shares of Biosurgery stock trading at \$118,143; Anagnostopoulos, 77,100 shares, or over \$3 million, of Genzyme General stock, and 33,218 shares of Biosurgery stock trading at \$83,377; Blair, 72,700 shares, or over \$2.8 million, of Genzyme General stock and 27,594 shares of Biosurgery stock trading at \$69,260; Cooney, 47,736 shares, or over \$1.8 million, of Genzyme General stock and 37,359 shares of Biosurgery stock trading at \$93,771; Mack, 20,000 shares, or \$782,600, of Genzyme General stock and 10,000 shares of Biosurgery stock trading at \$25,100; and Dzau, 18,000 shares, or \$704,340, of Genzyme General stock and 10,000 shares of Biosurgery stock trading at \$25,100. Collectively, based on May 8 trading prices, the Director Defendants owned approximately \$24.28 million of Genzyme General stock and no more than \$0.51 million of Biosurgery stock.

IV. CLASS ACTION ALLEGATIONS

45. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired the publicly-traded Biosurgery Stock during the Class Period. Included in the class are those persons who purchased or otherwise acquired Biosurgery Stock in connection with the Registration Statements and Prospectuses issued during the Class Period. Excluded from the Class are the defendants herein, members of the immediate family of each of individual defendants, any entity in which any defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded person or entity.

46. There is a well-defined community of interest in the questions of law and fact

involved in this case. Questions of law and fact common to the Class Members which predominate over questions that may affect individual class members include:

- (a) Whether Defendants violated the Securities Act and Exchange Act;
- (b) Whether Defendants omitted and/or misrepresented material facts;
- (c) Whether Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether Defendants knew or recklessly disregarded that their statements were false and misleading;
- (e) Whether Defendants breached the common law fiduciary duties and duties of good faith and fair dealing owed to the Class Members;
- (f) Whether the price of the Biosurgery Stock was depressed by Defendants' actions;
- (g) The extent of damage sustained by the Class Members and the appropriate measure of damages.

47. Plaintiffs' claims are typical of those of the Class because Plaintiffs and the Class Members sustained damages arising out of the same wrongful conduct by Defendants.

48. Class Members are so numerous that joinder of all them is impracticable. As of the close of business on June 30, 2003, the date of the forced sale there were more than 40.6 million shares of Biosurgery Stock outstanding held by, at least, thousands of holders of record. The exact number of Class Members is unknown to Plaintiffs at this time. Upon information and belief there are tens of thousands of Class Members who owned Biosurgery Stock during the Class Period, and that the Class Members are geographically dispersed.

49. Plaintiffs will fairly and adequately protect the interests of the Class and are aware of no difficulty in the management of this action as a class action. Plaintiffs have retained counsel who are experienced and competent in securities and class action litigation. Finally,

Plaintiffs have no interest that is contrary to or in conflict with the interests of the prospective Class Members whom they seek to represent.

50. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all Class Members is impracticable.

Furthermore, because the damages suffered by individual Class Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for such class members to seek redress for the wrongful conduct alleged. There will be no difficulty in the management of this action as a class action.

V. FACTUAL BACKGROUND

A. Biomatrix's Development of Synvisc

51. Prior to merging with Genzyme on December 19, 2000, Biomatrix developed, manufactured, marketed, and sold a series of proprietary viscoelastic products made of biological polymers called hylans. Hylans are chemically modified forms of the naturally occurring molecule hyaluronan, also known as hyaluronic acid or sodium hyaluronate, which is found in the body and present in all tissues, particularly in joint tissues and synovial fluid. Hylans recreate the role of hyaluronan in the body to protect, augment, supplement, separate, regulate, and control the environment of cells. Biomatrix engineered and optimized the physical properties of hylans, such as molecular size, viscosity, elasticity, pseudoplasticity, and solidity, to create fluids, gels, and solids for use in therapeutic medical applications and skin care. The Biomatrix hylans have significantly enhanced physical properties compared to naturally occurring hyaluronan.

52. Biomatrix's leading product was Synvisc (Hylan G-F 20), a viscosupplementation treatment for relieving knee pain caused by osteoarthritis that cannot be adequately treated with painkillers or physical therapy. Synvisc is made of hylan A and hylan B biological polymers

manufactured from hyaluronan that is sourced from chicken combs. Synvisc is injected into osteoarthritic knees to replace diseased synovial fluid, which may have low elasticity and viscosity. Due to its greater molecular weight, Synvisc has superior shock-absorbing and lubricating properties to, and remains in the joint longer than, hyaluronan.

53. Synvisc was researched and developed by Biomatrix over a period of nearly 20 years, at an estimated cost of to \$100 million. The Synvisc hylan A/hylan B molecule was developed in 1985, and went through further years of rigorous clinical trials and testing before it was brought to market. In 1997, the FDA first approved the labeling of Synvisc as a synovial fluid supplement for applications involving the knee, and sales of Synvisc in the United States began thereafter. Biomatrix distributed Synvisc in the United States and Germany through a marketing relationship with Wyeth-Ayerst Pharmaceuticals, and worldwide through a network of relationships with major pharmaceutical manufacturers, including Rhone-Poulenc Rorer, Boehringer Ingelheim, Bayer AG, Novartis Pharma AG, and Hoffman-La Roche. The Biomatrix contracts required both up-front payments and milestone payments as sales of Synvisc increased. Synvisc was manufactured by Biomatrix in its state-of-the-art plant in New Jersey, which was ISO 9001 certified in 1998 and FDA certified in 1999, and in Quebec, Canada.

54. Synvisc is the only viscosupplementation product with physical properties comparable to those of the healthy synovial fluid found in 18-27 year old humans. There are no directly substitutable products for Synvisc. Synvisc has an average molecular weight several times that of any competing hyaluronate product, which leads to longer-lasting efficacy (and reduced need for injections) for treatments with Synvisc. Because of this, Synvisc, unlike all other viscosupplementation products, has been approved and certified with a unique reimbursement code (J7320) for Medicare insurance purposes. Further, by contrast to general

anti-inflammatories such as Vioxx and Celebrex, Synvisc actually addresses the source of the pain, diseased synovial fluid, associated with osteoarthritis of the knee. It is widely recognized that the development of the entire class of second-generation viscoelastic products like Synvisc is due to the work of Biomatrix and its founder, former CEO and Chief Scientific Officer, Dr. Endre Balazs.

55. While Synvisc was approved by the FDA solely for applications involving treatment of the knee joint, the product is expected to have broad uses in other joints as well. Early clinical trials indicated that Synvisc would prove effective in hip applications as well as other joints, and Biomatrix obtained Wyeth's approval in 1999 to launch U.S. clinical trials on hip applications. Biomatrix had developed other hylan products of substantial value, including Hylaform, a tissue augmentation product that had been approved for marketing in many countries including Israel, Canada, and Australia, and that had been approved for clinical trials in the United States, and a series of anti-adhesion products, such as Hylasine, all of which were expected to be successful in their intended applications.

56. Prior to the merger with Genzyme and the creation of the new Genzyme Biosurgery entity and tracking stock, Biomatrix had recorded four consecutive years of profitability. Biomatrix reported net income of \$18.6 million for 1999, with gross margins in excess of 70%. Biomatrix was recognized in that year by *Fortune Magazine* as one of America's 100 Fastest-Growing Companies. By the time of the merger in 2000, Synvisc had become the fifth-largest prescription product for the treatment of arthritis in the United States.

B. Genzyme's Merger with Biomatrix and Issuance of the Biosurgery Stock

57. Notwithstanding the successes and growth of Biomatrix as a stand-alone entity, Biomatrix management believed that a merger with a larger corporation would allow Biomatrix

to accelerate both its growth and profitability, allowing increased investments and economies of scale in marketing, research and development, and the regulatory processes of obtaining FDA and worldwide approvals for new hylan products and for Synvisc in new applications. For these reasons, Biomatrix management, was prepared to consider a combination with a larger biotechnology company if a structure could be created that would allow the Biomatrix shareholders to retain and realize the value of the Biomatrix research and development and, in particular, the value of the Synvisc products.

58. After hiring an investment bank, Lehman Brothers, to explore various options, Biomatrix entered into discussions in late 1999 with Genzyme Executive Vice President, Duke Collier, about a combination of Biomatrix with the then-existing Genzyme Surgical Products division ("Surgical Products"). Based on these discussions, Biomatrix believed Surgical Products could be a suitable merger partner into a new company for two basic reasons. First, the biotechnology products of Surgical Products, such as Septrafilm, were complementary to the Biomatrix products. Second, the merger would enable Biomatrix to reach its objective of increased growth and profits through synergistic operations with Surgical Products, including access to Genzyme marketing and regulatory approval support. Collier described that mix as unbeatable, asserting that the merger would quickly create the dominant player in the fast-growing sector known as "biomaterials".

59. Collier and Termeer told Biomatrix representatives, on multiple occasions from November 1999, through the merger, that Genzyme could offer a solution that would, on the one hand, provide Biomatrix shareholders with the growth opportunities possible through affiliation with a large biotechnology corporation, but, on the other, ensure that the Biomatrix shareholders

would retain a direct interest in the performance of Synvisc and other Biomatrix products and research.

60. Genzyme's proposal was a merger between Biomatrix, Surgical Products and another Genzyme division, Tissue Repair ("Tissue Repair"), into a new Genzyme division, division, Biosurgery.

61. The business strategy by which Termeer and Collier persuaded Biomatrix to agree to merge, which is reflected in the Registration Statement and Proxy-Prospectus, and upon which Plaintiffs and the Class Members relied in acquiring their Biosurgery shares, was one in which Biosurgery would attempt to generate near-term profits but maintain the potential for long-term growth.

62. What Biomatrix did not seek, however, was to merge with Genzyme General. Termeer had established a well-known model to grow the Genzyme General division. As Termeer told *The Wall Street Transcript* in January 2000, the "focus" of that division was certain serious "[g]enetic diseases, [such as Gaucher disease, Fabry disease, Pompe disease] where a relatively specialized sales organization can make a global impact." The model relied upon the FDA's orphan drug program, which provides tax and other financial incentives to companies that develop medicines to treat ailments suffered by fewer than 200,000 patients in the United States.

63. To fund research and development for these specialized drugs, Genzyme General made acquisitions in unrelated businesses that provided short term infusions of cash. In 1989, for example, Genzyme acquired 69% of I.G. Labs, a diagnostic testing services company. In 1996, Genzyme acquired Genetrix, a privately held genetic testing laboratory. In the 1990s alone, these two businesses generated hundred of millions of dollars in revenue. As *Fortune*

Magazine recently reported, this revenue was used to fund Genzyme General's long term orphan drug research.

64. But Biosurgery, as Termeer and Collier represented, was to be built on a different strategy: using revenues from Synvisc and other existing products to generate earnings. Those earnings would then be used to support research and development of biotechnology products, such as cell and gene therapies with long term value.

65. In Genzyme's letters presenting bids to Biomatrix to conclude the merger, dated January 24, February 7, and February 28, 2000, Collier represented the following: (1) that Genzyme intended to "bring its significant resources to bear in leveraging Biomatrix's proprietary technology to expand the portfolio of products offered by both companies"; (2) that "the combination will allow the combined enterprise to better leverage its manufacturing capabilities, its established supplier, distribution, and marketing relationships, and its financial products across product offerings"; (3) that "Genzyme will hire all [Biomatrix] employees at closing" ... "on at least the same basis (with respect to salaries, wages, and benefits) as they are employed by Biomatrix." Genzyme's promise to retain all Biomatrix employees was material not only because of the commitment of Biomatrix management to their employees but because Biomatrix believed, among other things, that its research and development team was indispensable to developing and commercializing the extensive pipeline of Biomatrix products.

66. During merger negotiations, Collier repeatedly promised that Genzyme would take actions to maximize short term revenue. He committed that Genzyme would increase marketing and accelerate regulatory approvals in Japan, promptly pursue U.S. hip joint studies and new FDA labeling for Synvisc, accelerate the marketing and clinical trials of Hylaform, and continue the research and development of Biomatrix's anti-adhesion products.

67. The Merger Agreement was entered into on March 6, 2000. In the merger, Genzyme agreed to pay \$245 million for 28.83% of the Biomatrix shares outstanding. The remaining 71.17% of Biomatrix shares would be exchanged, one-for-one, for shares in the new Biosurgery Division. The cash value of the merger was approximately \$800 million.

68. In a press release issued on March 6, 2000, jointly with Biomatrix, Genzyme featured Synvisc and Carticel (a Genzyme product used for cartilage repair) as “two of the defining products” in the market for biotherapeutics. It further stated that the “global sales and marketing leverage” of those products combined with potential growth from biotechnology research and development would “create a self-sustaining enterprise with substantial financial resources to support future development and growth.”

69. At the time the Merger Agreement was executed in March 2000, the proposed Biosurgery Division had an initial market value of about \$1.3 billion based upon the price of Biomatrix stock and the tracking stock of Surgical Products and Tissue Repair, and taking into account the liabilities that Biosurgery would assume in cashing out 28.83% of the Biomatrix shareholders. Genzyme and Collier represented to Biomatrix management that the assets and expected performance of Surgical Products and Tissue Repair adequately supported their market valuations. Genzyme and Collier also represented that certain contingent liabilities of these Divisions, such as a potential \$20 million liability of Tissue Repair to Genzyme General in connection with Diacrin, another product, were not likely to materialize. Those representations were critical to the goal of ensuring that the new merged entity, Genzyme Biosurgery, after combining the operations of Biomatrix, Surgical Products, and Tissue Repair together, would have a per-share value approximately equal to the pre-merger per-share value of Biomatrix — an objective important to the Biomatrix shareholders in approving the merger.

70. In Article 3.2 of the Merger Agreement, and incorporated into the Registration Statement and Proxy-Prospectus, Genzyme agreed to adopt revised Management and Accounting Policies Governing the Relationship of Genzyme Divisions (“Management and Accounting Policies”). Biomatrix had insisted that Genzyme adopt the Management and Accounting Policies to ensure, as Genzyme had promised in order to induce Biomatrix to agree to the merger, that Genzyme would operate and grow the Biosurgery Division as a distinct company with its rights and obligations to specifically-allocated assets, income, expenses, and research and development costs of the Genzyme Corporation.

71. The Management and Accounting Policies were incorporated into the Registration Statement and Proxy-Prospectus as Annex E. In adopting them Genzyme represented that: “The purpose of Genzyme Biosurgery is to create a business with a comprehensive approach to the field of biosurgery by developing and commercializing a portfolio of products for the treatment and prevention of serious tissue injury ... and a portfolio of devices, biomaterials, biotherapeutics and other products for the field of biosurgery; these products and services include ... the products and services offered or under development by Biomatrix as of ... 2000 and included in the Descriptive Memorandum furnished by it to Genzyme.”

72. The Biomatrix products in the Descriptive Memorandum, which Genzyme had committed to develop and commercialize, include, among others: Synvisc, Hylaform, the HylaShield, Hylafilm, and Hylagel products, HsS, Gelvisc Vet, Hylasine, Artelan, OmniVisc, and hylan solids for matrix and tissue engineering to yield new reconstructive surgery products. Genzyme further agreed in the Management and Accounting Policies that revenues, expenses, and assets would be properly allocated to Biosurgery. These representations and policies were

consistent with and supported the business model on which Genzyme sold Biosurgery Stock, as a self-sustaining company with a distinct value to be tracked by the newly issued stock.

73. Following execution of the agreement, Genzyme prepared Power Point presentations for use at road shows to investors and in employee meetings between March and October 2000 in order to, *inter alia*, persuade Biomatrix shareholders to approve the merger. These materials emphasized the same strategy. Genzyme represented Biosurgery as a “clear strategic focus” on “substantial markets” (specifically persons suffering from orthopedic disease and heart disease). It touted “break-through products” already in and past the manufacturing stage. It stated that it expected to “break-even on an operating basis in 2001”. It identified Biosurgery as a “unique investing opportunity”, quoting one analyst who had stated “we think revenues and earnings growth will never be faster than they will be in the coming 3 to 5 year period.”

74. In these same documents, Genzyme emphasized that the product portfolio of Biosurgery was built on “high growth early life cycle products.” That is, Biosurgery already had products that could be sold in markets with millions of potential patients — as of 2000, osteoarthritis affected approximately 25 million Americans. But those products could be improved and their marketability widened, their labels expanded to cover joints other than the knee for example, through expenditures in research and development.

75. Thus, revenues generated over the short term would be used, according to Biosurgery’s business plans provided to investors in 2000 to induce purchases of Biosurgery Stock, in two ways: (1) to generate yet additional short term revenues by developing later-stage versions of osteoarthritis (and heart disease) products and devices; and (2) to make longer term investments in biotechnology programs, such as those involving gene therapy and cell therapy, in

the hope of developing new Biosurgery products with long term value. It was through this continuous infusion of cash from Biosurgery products already on the market, such as Synvisc, that Biosurgery would both quickly obtain operating profits and be able to sustain itself over the long term.

76. Riggs, in his capacity as Biomatrix's President, summarized Biosurgery's business plan to an interviewer with the *Wall Street Reporter Magazine* in the fall of 2000:

We think the best strategy for maximizing shareholder value is to get our products to market as quickly as possible to approve the applications of our current products as quickly as possible so that we can continue our strategy of growth with profitability I think that as long as we continue to focus on revenue growth through broadening the application of current products and quickly getting new products to the market, we can successfully keep revenue growth, fiscal constraint and earnings growth and that's what our model is. I think that merging with this new company will only allow us to accelerate these characteristics. The consolidation of all these products into one company will allow greater focus, faster time to market and the ability to be a leader quicker in the all the major areas we think are important in this whole new field of bio-surgery.

77. Consistent with the representations quoted and summarized above concerning Biosurgery's business strategy that Termeer, Collier and Genzyme consistently had made throughout 2000, Genzyme represented in the Registration Statement and Proxy-Prospectus the following: "SELF-SUSTAINING PROGRAM....Genzyme believes that combining Biomatrix' positive cash flow from product sales with the financial resources of the two Genzyme divisions has the potential to create in Biosurgery a self-sustaining business capable of supporting a full product research and development program."

78. In the Merger Agreement, incorporated into the Registration Statement and Proxy-Prospectus as Annex A, Genzyme specifically represented that the new series of Biosurgery tracking stock was being issued "to reflect the value and track the performance of the

[Biosurgery] Division.” The tracking stock structure was critical to ensuring that Biosurgery shareholders could obtain the value of their investments. Biomatrix would not have agreed to a merger, and Riggs and other Class Members would not have agreed to exchange their Biomatrix shares, based upon an exchange of those shares for interests in Genzyme Corporation as a whole, because the interests of the Biomatrix shareholders in the value of Biomatrix products would have been too diluted.

79. As noted above, senior Genzyme personnel recognized the value of tracking stock. Both Termeer and Collier stated publicly in January 2001 that tracking stock created incentives for management because it constituted a targeted mechanism for tying executive compensation to the performance of discrete business segments. Tracking stock, in the words of Termeer, helped attract employees with “fire in the belly.”

80. Collier’s compensation as President of Genzyme Biosurgery, was consistent with this business approach. In 2001, Collier earned \$627,000 in salary and bonus, received 21,000 options in Genzyme General, and 163,000 options in Biosurgery Stock. At the time of the Biosurgery’s creation, these options were worth millions of dollars.

C. Genzyme Deliberately Operated Biosurgery To Depress Near-Term Profitability And Share Price In A Manner Inconsistent With Its Statements To The Market In Order To Benefit Genzyme General Shareholders

81. Throughout 2001 and 2002 Collier, as he had done prior to the merger, continued to represent Biosurgery to shareholders as a business that quickly would make profits and maintain the potential for growth in the long term. As Collier stated in conference calls, to achieve these goals, Genzyme needed to balance long-term R&D expenditures against the resources necessary to grow the revenue-producing products.

82. This was reiterated as late as September 21, 2002. On that date, he told investors and analysts gathered in New York that the “business model” of Biosurgery was to “build a business with current revenue,” by emphasizing device and biomaterial products with “good growth characteristics.” The result was “a pipeline that is relatively lower risk than a cell or gene therapy pipeline.” Research into the latter areas, he emphasized, involved “longer range, higher-risk programs.” It was necessary to keep the pipeline in a “balance between” the biomaterials products, such as Synvisc, and the biotechnology programs, such as cell and gene therapy.

83. The “major driver” for this business model, as described by another Biosurgery manager at the same meeting, was Synvisc. As Collier had said in an early 2002 conference call, referring to Synvisc: “We’re sitting on a gold mine here, and any investor who is patient will be rewarded.”

84. According to statements made by Collier and Termeer during the merger negotiations and by Collier on behalf of Genzyme throughout 2001 and 2002, to generate sufficient revenues both to generate profits and to fund long-term R&D, Biosurgery needed to do at least three things effectively with the biomaterials products, such as Synvisc that were already in the market: (1) obtain expanded regulatory approvals as new uses and improvements are developed; (2) obtain reimbursement authorization in new markets and for new applications; (3) expand sales in existing markets and enter new markets. Collier repeatedly stated that Biosurgery would focus on these objectives in order, as he stated in the March 7, 2002 earnings call, to “move the business forward financially, to grow the revenue, improve the gross margin, control operating expenses consistent with appropriate and considered investments that we’re making in the future.”

85. But the facts — most notably in the crucial period commencing in the Spring of

2002, *see* paragraphs 22-26 *supra* — demonstrate that there was no intent to do these things.

86. Contrary to each of the representations made in the Proxy-Prospectus and Merger Agreement, Genzyme and Termeer never intended to run Biosurgery as a profitable growth enterprise. Contrary to these representations, Genzyme and Termeer never intended to operate Biosurgery as a “self-sustaining business.” Contrary to these representations, Genzyme and Termeer did not seek to maximize the value of Biosurgery assets for the benefit of Biosurgery shareholders. Rather, Genzyme and Termeer intended to and did operate Biosurgery in order to drive down the Biosurgery share price and enable a forced share that would yield the most favorable ratio for the benefit of Genzyme General shareholders, at the expense of Plaintiffs and the Class Members.

87. First, Termeer and Genzyme limited Biosurgery’s ability to obtain revenue from products already in the market.

88. Thus, for example, Termeer and Genzyme management failed to press during this time period to expand the labeling for Synvisc. In fact, they worked against that goal. They refused to present to the FDA a study that demonstrated Synvisc to be effective in relieving arthritic knee pain for one year after injection (a claim that none of Synvisc’s competitors can make). Had the FDA altered Synvisc’s labeling to reflect this one-year efficacy, Biosurgery immediately could have marketed Synvisc directly to patients, as opposed to doctors, which was significant because the demand for osteoarthritis treatments are driven heavily by requests from patients to doctors.

89. The study, an independent evaluation of the efficacy of Synvisc conducted by a highly regarded team of Canadian researchers, had been completed in the Fall of 1999, before the merger. The longest of its type yet done, it followed two groups of patients with osteoarthritis of

the knee in a one-year randomized trial. Both patient populations used all available osteoarthritis treatments; only one was given Synvisc. One year later, 70% of the latter group were still doing well after one treatment of Synvisc.

90. The FDA expressed to Biosurgery personnel its interest in reviewing the results of the study for purposes of expanding Synvisc's labeling. Despite the FDA's interest, Genzyme management, including Termeer, Collier, Ann Merrifield, Genzyme's Executive Vice President in charge of Orthopedics and Biospecialties, and clinical research head Dick Polisson, refused to submit the study to the FDA.

91. They did this even though, on November 21, 2002, Merrifield described the same study to investors as "a very powerful safety and efficacy study, as well as a comment on the pharmaco-economic utility of our product line." She went on to explain: "It demonstrates unequivocally the opportunity for further [market] penetration . . . It is a powerful comparison [of how Synvisc performs on pain relief-relief profile versus steroids] that speaks to the docs in the market place."

92. The same approach was taken regarding seeking regulatory approval for Synvisc in Japan. Until very recently, Genzyme had failed to seek that approval despite having promised to do so prior to the merger. Indeed, at the time of the merger, Biomatrix had already completed fully translated regulatory submissions for the Japanese market and was on track to submit those applications in 2001. Moreover, Genzyme has owned a successful Japanese subsidiary, Genzyme Japan KK, since 1987, which enjoys good relations with Japanese regulatory authorities.

93. But no application was made. As late as November 21, 2002, Merrifield stated "[w]e are not registered and have never pursued registration [in Japan]" for Synvisc. It did this

despite acknowledging at the same time that Japan “is about a \$300 million end-user market, about the same size as the U.S. market will be this year. It supports something like 18 million injections,” and “[t]here is no high molecular-weight product like Synvisc in Japan, so we think there is a substantial opportunity there.”

94. Similarly, during 2002, Genzyme and Termeer made it nearly impossible to expand Synvisc’s penetration of the European market. Genzyme’s European operation is made up of individual General Managers, each of whom is responsible for an assigned country. The European General Managers report directly to Termeer.

95. Despite the opportunities presented by the European market, Termeer instructed the General Managers that they need not concentrate their efforts on Synvisc. He did this even though Synvisc has European regulatory approval for use in both knee and hip and expanded labeling that indicates that it provides up to 12 months of pain relief in the knee (the longest duration claim of any viscosupplementation product in Europe), three times as much Synvisc is sold in the United States than in the entire continent of Europe.

96. In 2002, Genzyme management refused to participate in a process that would have resulted in the designation of Synvisc treatment as a mandatory step in the protocol for qualifying patients for total knee replacement surgeries in the U.S. Veteran’s Health Administration (“VHA”) hospital system nationwide. With 171 medical centers and 25.6 million patients, of whom approximately 16,000 undergo total knee replacement surgery each year, the VHA represented an enormous revenue opportunity. After two years of lobbying, Biomatrix had succeeded in adding a provision in an appropriations bill in the House of Representatives for the VHA that required that viscosupplementation therapy with Synvisc be attempted before a patient became eligible for total knee replacement surgery. This requirement was conditioned on review

and approval of viscosupplementation therapy by a VHA medical team.

97. The bill was enacted into law by 2001, and the medical review team was to begin its inquiry soon thereafter. The team would make its recommendation based on its review of clinical studies and other literature. Biosurgery's Vice President of Public Policy and Reimbursement, a holdover from Biomatrix, made numerous efforts to persuade Genzyme management that it should participate in the VHA review process. Despite her efforts, Genzyme management refused to provide any data to the VHA medical review team.

98. In the absence of any participation from Genzyme, the VHA team reviewed studies of a first-generation viscosupplementation called Artz. Artz is an older product with a lower molecular weight and inferior viscosity to Synvisc. Consequently, Artz is less efficacious than Synvisc in relieving arthritic knee symptoms. Based on its review of Artz — but not Synvisc — the VHA medical team concluded that viscosupplementation was ineffective and unnecessary as an intermediate step in the knee-replacement protocol.

99. Termeer fired or drove out nearly all the former Biomatrix employees with experience in such key Synvisc product management functions as regulatory approvals, reimbursements, and international sales — further hampering the strategy of, as Collier put it, “building a business with current revenue.” The company also terminated relationships that Biomatrix had developed with a panel of eminent orthopedic surgeons and immunologists, such as Dr. Larry W. Moreland, director of the Arthritis Clinical Intervention Program at the University of Alabama at Birmingham and an expert on rheumatoid arthritis therapy, and Dr. Charles Weiss, whose work on Synvisc in the treatment of osteoarthritis was instrumental in the development of Synvisc and its acceptance by the global medical community.

100. These actions were inconsistent with specific representations by Termeer and Collier made to induce the merger and by Collier thereafter. Rather than spend money on opportunities to expand Synvisc (and other products that produced short-term revenue), as they had represented they would do, Termeer and Genzyme devoted the bulk of capital expenditures to research and development for long term programs. These expenditures were not simply questionable business decisions. They were inconsistent with the business strategy on which Plaintiffs and the Class Members had relied in deciding to acquire Biosurgery shares: that Genzyme would attempt to develop a self-sustaining business. In fact, they made it impossible to achieve that goal.

101. Despite a continuous increase in research and development (“R&D”) expenditures, Biosurgery after the second quarter of 2001, did not make sufficient investments in expanding existing revenue-generating products, such as Synvisc, so as to reach its earnings guidance, let alone become profitable. Rather, R&D was concentrated heavily in the development of gene and cell therapy programs — which would yield revenue, if at all, nearly a decade later.

102. In 2001, Biosurgery spent \$47.2 million, or 24% of net product sales on R&D. In 2002, despite the fact that it booked a 2001 operational loss of \$48.7 million and despite the fact that Collier pledged to approach 2002 with a “strong commitment to a continuous strengthening of GZBX’s financial and operating integrity,” Genzyme management *increased* Biosurgery’s R&D budget by 11% to \$52.3 million.

103. But at least half and likely even more of Biosurgery’s R&D budget for 2002 was devoted to gene and cell therapy research on projects such as HIF-1 α , an angiogenic gene therapy to treat coronary artery disease and peripheral artery disease; and cardiac cell therapy, a

tissue regeneration program to treat congestive heart failure. HIF-1 α is not expected to enter the market until 2008-2010. The cardiac cell therapy program is not expected to be in the market until 2009.

104. Continuing this pattern, in July 2002, Genzyme bought an interest in the French biotech company, Myosix, which specializes in the development and commercialization of a certain autologous cell culture technology, referred to as Myosix technology, at a cost of \$1.9 million, which it allocated to Biosurgery. Genzyme management promptly began major Phase 2 trials in Europe, Canada and the U.S. to study a gene therapy treatment for heart disease, despite the fact that the Myosix technology had not achieved any technological feasibility for any application and would require significant future development before an application could be completed.

105. Biosurgery's Selling, General and Administrative ("SG&A") expenses cannot be squared with any notion of attempting to run a self-sustaining business. In 2001, SGA was \$122 million or 58% of net product revenues, improving slightly in 2002 to \$106.9 million or 50% of net product revenues. But these expenditures, too, were concentrated in support of long term programs, rather than short term products. Synvisc, Biosurgery's largest product, had virtually no selling expenses attributed to it because agreements with Wyeth to distribute the product provided that it, not Biosurgery, would bear all marketing costs. Wyeth employed a 95-person sales force to do just that.

106. All told, Genzyme operated Biosurgery in 2002 so that R&D expenses added to SG&A equaled 74% of net product sales. This left one-quarter of revenues from such sales for debt service, cost of goods, and all the other expenses for which the division was responsible.

107. Biosurgery's long term R&D investments were linked strongly to the work of its cardiothoracic devices business unit. As Collier recently stated in a July 1, 2003 press release, the cardiothoracic business was "fundamental to the growth of our extensive efforts to develop gene and cell therapies for heart disease." But the cardiothoracic unit was a money-losing venture. On March 31 2002, Biosurgery took a \$98 million operating loss for impaired goodwill of the cardiothoracic devices business unit.

108. In fact, even as it was deep into the process of arranging to sell that very business unit, Genzyme continued to spend money on it for long term R&D projects. In March 2003 — having already retained an investment banker for the sale and begun negotiating the material terms of the sale with the buyer (which occurred July 1, 2002, after Biosurgery Stock had been delisted) — Genzyme entered a collaboration with newly created biotech company focused on developing gene therapies for treating cardiac arrhythmias. The deal required Biosurgery to buy Excigen stock for \$2.3 million and to provide another \$2.3 million in funding for research, clinical, regulatory and manufacturing services. The Excigen expenses were then allocated to Biosurgery. In other words, Genzyme and Termeer were still spending millions on a business they had acknowledged internally had failed and were in fact preparing to sell.

109. What did not become clear to investors until Termeer and Genzyme issued the revised guidance on May 8 was that the divestiture of the cardiothoracic business, announced on that date, would have been sufficient to move Biosurgery to profitability for the full year and each quarter, including the first, of 2003. Based on the guidance issued on May 8 alone for revenues, research and development costs, SG&A, and the divestiture of the cardiothoracic business, Biosurgery would report a pro forma *profit* of \$30 million for the full year of 2003.

D. The June 30 Forced Sale: Genzyme Commits Insider Trading To Benefit The Genzyme Senior Management, The Genzyme Board And Genzyme General Shareholders At The Expense Of The Class

110. Genzyme's Restated Articles of Organization state that the Genzyme Board of Directors may declare that each outstanding share of Genzyme Biosurgery can be exchanged, on a date to be determined by the Board, for a number of Genzyme General shares equal to 130 percent of the fair market value of the Biosurgery shares divided by the fair market value of Genzyme General shares. The Articles define "fair market value" as the average of the daily closing prices for the 20 consecutive business days commencing on the 30th business day prior to the date of public announcement of the forced sale. The Articles further state that "in the event such Closing Prices are unavailable," fair market value is to be determined by the Board consistent with their fiduciary duties to Biosurgery shareholders.

111. In or about April 2002, Termeer made the decision to exercise the forced sale provision, but determined that the timing was not then right. On April 1, 2002, Biosurgery's stock price closed at \$6.70 per share. On that same date, Genzyme General's stock price closed at \$36.85 per share.

112. In or about early February 2003, the Board held its annual offsite strategic meeting. At that meeting, Termeer and other members of senior management, in accordance with Termeer's decision in April 2002 to exercise the forced sale provision, recommended to the Board that it set a timetable to effect a forced sale of Biosurgery Stock for stock in Genzyme General. At a meeting later in February, the Board appointed a "special committee" of the Board, consisting of all members of the Board other than Termeer (including those Board members, Blair and Carpenter, who were not "independent" under the Company's internal guidelines), to review the appropriateness of a forced sale. On February 3, 2003, the first

business day of that month, Biosurgery's stock price closed at \$1.94 per share. On that same date, Genzyme General's stock price closed at \$33.20 per share.

113. On February 4, 2003, Genzyme held a conference call to announce financial guidance for the fiscal year 2003. During the call, Genzyme provided a range for the projected 2003 full year of Synvisc revenues of between \$105 million to \$115 million. During the call Genzyme stated that it expected Synvisc to grow at twice the rate it had grown in 2002, which is approximately 15%, with the most growth occurring the second and third quarters. According to this guidance, Genzyme expected first quarter 2003 revenues for Synvisc to grow less than 16%. The company also stated that it expected an operating loss in 2003 for Biosurgery of \$9 million.

114. On March 5, 2003, Genzyme held a conference call at which it released disappointing results for Biosurgery for the year 2002 and for the fourth quarter of 2002. During the call, Genzyme announced a poor quarter for Synvisc, disclosing that Synvisc revenues for the fourth quarter of 2002 had declined 16% from the fourth quarter 2001 and declined 38% from the third quarter 2002. Genzyme also announced on the same call that it had missed its 2002 projections for Synvisc revenues and that the operating loss for Biosurgery had increased 200% from the previous quarter.

115. On or about March 13, 2003, the "special committee" of the Board recommended to the full Board — *i.e.*, to itself and to Termeer — that the forced sale take place on June 30, 2003 and that the forced sale be announced on May 8, 2003. As the CFO of Genzyme, responsible for determining the financial impact the forced sale would have on Genzyme's ongoing operations, Wyzga knew on March 13 of the recommendation to announce the sale on May 8. The selection of May 8 as the date on which to announce the forced sale mandated that the 20-day trading period, by whose closing prices the exchange ratio would be determined,

would take place between and including March 26 and April 23 (the “March-April trading period”). The selection of May 8 as the date on which to announce the forced sale had the immediate effect of creating an affirmative duty on behalf of Genzyme to disclose all material nonpublic information in its possession during the March-April trading period. On March 13, 2003, Biosurgery’s stock price closed at \$1.65 per share. On that same date, Genzyme General’s stock price closed at \$33.53 per share.

116. To ensure that the exchange ratio was as favorable as possible for Genzyme General shareholders — to ensure that the fewest number of Genzyme General shares would be issued in the forced sale by timing it to occur when Biosurgery shares were trading at the lowest possible price — Genzyme and Termeer deliberately withheld and delayed disclosing material information (or, at the very least, recklessly failed to disclose material information that was in the possession of Defendants Termeer and Wyzga) about the financial health of Biosurgery and the expected growth of Synvisc until near the end of, and after, the March-April trading period. Genzyme and Termeer deliberately withheld the material information despite an affirmative duty to disclose it to the public during the March-April trading period.

117. Genzyme and members of its senior management, including Termeer and Wyzga, knew on March 26, 2003 that on-going quarter-to-date performance for Synvisc revenues (and consequently the performance of Biosurgery as a whole) had jumped significantly, indicating that the quarter (which closed just five days later) would improve dramatically and exceed public expectations. However, Genzyme never disclosed the change to the public.

118. Genzyme and members of its senior management, including Termeer and Wyzga, knew on April 1, 2003 that Synvisc sales for the first quarter of 2003 were up 32% from the first quarter of 2002, more than doubling prior growth estimates, and up 56% from the fourth quarter

2002. Genzyme did not disclose this to the market until April 16 (with only five days remaining in the March-April trading period).

119. This information of the dramatic change in Synvisc revenues was both material and nonpublic. First, as discussed above, on February 4, 2003, Genzyme gave financial guidance to the public indicating that Synvisc revenues would increase by less than 16% in the first quarter 2003. Thus, the actual increase of 32% more than doubled guidance. Second, due to the seasonality of Synvisc revenues and its recent poor performance, the market had low expectations for Synvisc revenues and Biosurgery as a whole for the first quarter 2003. As Collier had stated on Biosurgery earnings calls and as understood by Wall Street and the rest of the public, Synvisc revenues are always weak in the first quarter. In addition, on March 5, just one week before the March-April trading period began, Genzyme announced that Synvisc revenues for the fourth quarter 2002 had been down 16% from the fourth quarter 2001 and 36% from the third quarter 2002. To make public expectations even worse, Genzyme also announced on the same call that it had missed its 2002 projections for Synvisc revenues and that the operating loss for Biosurgery had increased 200% from the previous quarter. In contrast, the 32% increase in Synvisc revenues in the first quarter 2003 enabled Biosurgery to decrease its operating loss approximately 90% year-over-year, from \$116.2 million to \$11.7 million, or a loss of \$2.49 per share to a loss of only \$0.29 per share. Third, the market reaction to the April 16 earnings announcement indicates that the dramatic increase in Synvisc revenues was both material and nonpublic. Following the April 16 announcement that Synvisc revenues had increased 32%, the trading price of Biosurgery stock increased 21% and the trading volume increased 190% from April 15, indicating that the disclose was both material and new. In fact,

one Wall-Street professional who followed Biosurgery stated on the April 16 earnings call that the increase in Synvisc revenues had come as a welcome surprise.

120. In addition, because Genzyme and its senior managers, including Termeer and Wyzga, received daily sales updates concerning Synvisc, and because Genzyme monitors the sales of its major products, including Synvisc, closely throughout each quarter and those results are communicated regularly to members of senior management (in the case of Termeer on at least a weekly basis and in the case of Wyzga on a daily basis), both Termeer and Wyzga knew when the March-April trading period began on March 26, 2003 — just five days until the end of the quarter — and on April 1, 2003, that Synvisc sales for the first quarter 2003 were up by a material amount.

121. Genzyme and members of its senior management, including Termeer and Wyzga, knew on March 26, 2003, that Genzyme would cease its unprofitable investments in and sell its cardiothoracic business. All material steps to the transaction (including obtaining an investment banker and negotiating the terms of the sale, and the obtaining of financing by the buyer) were completed prior to the March-April trading period. As Termeer openly acknowledged on May 8, Genzyme “was well on its way to divesting the business.”

122. This information was material because the sale of the cardiothoracic business would have been sufficient to move Biosurgery to profitability for the full year and each quarter, including the first, of 2003. Moreover, as set forth below, Genzyme’s own internal policies define as “material” “the proposed...sale of part of Genzyme’s business.”

123. Genzyme and members of its senior management, including Termeer, knew on or before March 26 that Genzyme had obtained conditional approval from the FDA to conduct trials for applications of Synvisc for the hip, and that completion of the trials would allow Genzyme to

expand the label for Synvisc, doubling the size of the U.S. market for Synvisc. This fact was both material and nonpublic. Genzyme had previously announced its hope to commence U.S. clinical trials of Synvisc in the hip in 2003, but had never disclosed that those trials had obtained conditional FDA approval. Despite the significance to Biosurgery of such approval, Genzyme did not disclose until April 16 (with only five days left in the trading period) that it had obtained the FDA approval or that the trials would commence.

124. Genzyme and Termeer knew on or before March 26 that Genzyme had developed a third generation of Synvisc that would go to clinical trials in Europe and possibly the U.S. as early as this year. Genzyme and Termeer also knew on or before March 26 that the third generation Synvisc product would have the ability to modify the disease of osteoarthritis itself, as opposed to merely relieving pain. These facts were both material and nonpublic. Genzyme had announced previously that it was trying to develop other applications for its products and hoped to develop disease modifying product, but, unlike its previous statements indicating that it was “hoping” and “trying” to develop new products, Genzyme did not disclose until May 8 that in fact it had developed a third generation of Synvisc that would go to clinical trials as early as this year, or until May 29 that this third generation of Synvisc would have the ability “actually modify the disease” of osteoarthritis itself.

125. All these material facts were known to Genzyme and Termeer prior to and during the March-April trading period but deliberately withheld from the market to ensure that the share price of the Biosurgery Stock would remain depressed. Had Genzyme disclosed these facts prior to the March-April trading period, the disclosures would have materially affected the Biosurgery share price, resulting in a valuation significantly greater than either Genzyme’s purported valuation of \$1.36 per share or the exchange price, after a 30% “premium,” of \$1.77 per share.

126. As part of its corporate insider trading policy, Genzyme has a mandatory “black out” period that prohibits directors and executive officers from trading in any of Genzyme’s securities during “the last two weeks of each calendar quarter (*i.e.*, the last two weeks of March, June, September and December) and the period from the end of the that quarter until” one full trading day after a routine quarterly financial release is made by Genzyme. This policy, which was approved and adopted by each of the Defendants in December 2001, exists because and recognizes that Genzyme’s executive officers and directors, including Termeer, Wyzga, and each of the Director Defendants, possess material, nonpublic information about earnings and revenues during the “black out” period. For that reason, trading by those persons during that period is prohibited.

127. The policy lists as examples of material, nonpublic information “earnings or losses that are significantly higher or lower than generally expected by the investment community”, “pending or proposed . . . sale of part of Genzyme’s business, and “new products or significant discoveries.”

128. The Genzyme black out period was in effect from March 17, 2003 through the close of trading on April 17, 2003, a period that included all but four days of March-April trading period. Termeer, Wyzga, and each of the Director Defendants thus locked in the price at which the forced sale would occur to take place during a period that Genzyme’s own insider trading prohibited them from trading because of the certainty that they would benefit from material, non-public information if they did so. Despite their knowledge of the policy, the fact that the policy recognized that they were in possession of material, nonpublic information, and the fact that the policy specifically identified the the information that Genzyme possessed as material, non-

public information, Termeer, Wyzga, and each of the Director defendants consciously disregarded the policy and failed each of the items discussed above.

129. On May 8, 2003, in announcing the forced sale, Genzyme reported that the elimination of the tracking stock structure — which would increase taxes during the second half of 2003 — would not affect the prior guidance for Genzyme General of \$1.25-\$1.35 earnings per share.

130. On June 30, 2003, the forced sale took place. Genzyme purchased from Plaintiffs and the Class Members the Biosurgery Stock, which was then retired. Simultaneously, Genzyme issued to Plaintiffs and the Class Members a total of approximately two million shares of Genzyme General common stock.

131. The aggregate value of the share price paid in Genzyme General stock to Plaintiffs and the Class Members was approximately \$72 million (\$1.36 per share, plus a 30% premium, multiplied by 40.6 million Biosurgery shares outstanding). On a conservative valuation, the assets of Biosurgery — now subsumed, from the perspective of the market, within the market's valuation of Genzyme General — are worth at least \$1.5-2 billion. Following the May 8 announcement, and in anticipation of the acquisition by Genzyme General of Biosurgery at a 95% or greater discount off the fair market value of the company, the market capitalization of Genzyme General increased by over \$1 billion.

132. The components of value of the assets obtained by Genzyme General include at least: (a) Synvisc, with projected revenues for the second half of 2003 at about \$64-66 million, or annual sales of over \$130 million, over 80% gross margins, 70% operating margins, over 30% growth in 2003 over 2002, about 70% market share, and an expected near-doubling of the end-user Synvisc market upon approval of the product in Japan; (b) Septrafilm, with annual revenues

of approximately \$45 million on slightly lower margins and comparable growth; (c) the value of the former Biomatrix Hylaform products, now in clinical trials; (d) the value of the former Biomatrix anti-adhesion products, which are in certain respects superior to Seprafilm; (e) the value of the cardiothoracic business, with annual revenues of approximately \$76 million, (which Genzyme sold the day after the forced sale was concluded); (f) the value of the research and other Biosurgery products, including those in pre-clinical and clinical trials, developed through the over \$125 million research and development expenditures incurred by Biosurgery at the direction of Genzyme.

133. The Synvisc and Seprafilm franchise alone is worth at least \$1.2 billion; Hylaform is worth at least \$200 million, as evidenced by the recent purchase by Medecis for \$185 million of just the U.S. marketing rights to the comparable product Restalane; the cardiothoracic business was in fact sold for \$40 million; and the current value of the third generation Synvisc and new Sepra products, now under clinical trials and final development, as well as other ongoing research and development investments by Biosurgery (which Genzyme has never disclosed to the market), is, on information and belief, at least \$500 million.

134. On the May 8 investor conference call at which Termeer first disclosed the forced sale, Wilbur Forbes, a Prudential Securities analyst, stated: “[W]hen you look at the timing of this, it gets highly suspicious when you look at the 30 day period that is the lowest 30 day period that it [Biosurgery] has traded at in the last three or four years.... And when you look at those things in combination, it looks like you’re trying to manipulate the price down so that you’re paying 70 odd m[illion] for two-thirds of something that you paid 400 m[illion] for one third of when it was a lesser company.” Similarly, Robert Moore, a CMJ Partners analyst, stated on the May 8 call: “I also think that the selected 30 day pricing period for Biosurgery stock

substantially undervalues that company.”

135. Rather than own stock the price of which was linked exclusively to the performance of the Biosurgery assets — the “gold mine” promised in early 2002 by Collier to those with “patience” — Plaintiffs and the Class Members now own massively diluted interests in Genzyme. In order to obtain in current share price the fair market value of the Biosurgery assets, the price of Genzyme would need to exceed \$500 per share.

CLAIMS

COUNT I

**(Section 11 of the Securities Act)
(Against Genzyme, Termeer, Wyzga, Anagnostopoulos,
Berthiaume, Blair, Carpenter, Cooney, and Dzua)**

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

137. Count I is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, against Defendants Genzyme Corporation, Termeer, Wyzga, and each of the Director Defendants, except Mack.

138. Plaintiffs assert this claim within one year of the date they discovered or should have discovered, through the exercise of reasonable diligence, the untrue statements and omissions of material facts alleged herein, and within three years after the Registration Statement became effective on October 27, 2000 and the public offering of Biosurgery tracking stock in December 2000.

139. In December 2000, Plaintiffs and other Class Members purchased securities from Genzyme in a public offering by exchanging shares of Biomatrix common stock for shares of the Biosurgery Stock. Lewis and other Class Members purchased additional shares of the Biosurgery

