

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE BISYS SECURITIES LITIGATION

Case No. 04-CV-3840 (LTS)

THIS DOCUMENT RELATES TO:  
04-CV-05668 (GRANT ACTION)

**AMENDED COMPLAINT**

1. Plaintiff Robert Grant, alleges the following based upon the investigation of plaintiffs' counsel, which included, without limitation, a review of certain United States Securities and Exchange Commission ("SEC") filings by The BISYS Group, Inc. ("BISYS" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, references to interviews with numerous former employees of BISYS and other individuals familiar with BISYS' operations and, in particular, its insurance operations, which interviews were conducted on a confidential basis by and on behalf of counsel to a class of investors in BISYS common stock who have commenced the other actions consolidated with the instant action, and communications with counsel to the common stock class confirming the interview process. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**I. NATURE OF THE ACTION**

2. This is a federal securities class action on behalf of all those who acquired non-publicly traded BISYS securities from the Company as part of a private equity transaction between October 23, 2000 and May 18, 2004 (the "Class Period") and who suffered damages

(the "Class"). This action is brought against BISYS and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the "Exchange Act").

3. BISYS describes itself as a leading provider of business process outsourcing services to the financial services sector, supporting more than 20,000 financial institutions and corporate clients with its products and services. BISYS operates primarily through three (3) principal business groups: BISYS Investment Services; BISYS Insurance and Education Services; and BISYS Information Services. The Insurance and Education Services group distributes life insurance and commercial property/casualty insurance. This group not only sells the policies, but provides administration for application processing and other sales support. BISYS is then generally paid a share of the premiums.

4. BISYS has restated its financial results for the fiscal years 2001, 2002 and 2003, and some interim results for 2004. BISYS now concedes that it originally overstated its revenues in these years by about \$80 million, and its earnings by almost \$59 million, or more than 23%, in violation of Generally Accepted Accounting Principles ("GAAP").

5. During the Class Period, BISYS made a practice of improperly recognizing revenue on insurance commissions immediately, when they should have recognized the revenue only as premiums were paid. The result of this was that BISYS recognized future revenue on policies that were often cancelled and the commission forfeited. In addition, BISYS improperly commingled recent sales by companies it had just acquired with BISYS' own sales, thus inflating revenue, rather than treating the acquired company's existing sales as part of the acquisition.

6. Because BISYS materially overstated its performance during the Class Period, each financial statement that reported or analyzed those results was materially false and misleading.

7. BISYS' false financial reporting was the result of intentional and reckless conduct by the Company and its senior officers and directors. As set forth below, BISYS' senior management was fully aware of the misreporting of revenues, assets and income, and, indeed, instructed that the falsified financial statements be published. This decision to violate the law was communicated directly to senior management by defendant Sheehan, who on one occasion simply decided, "We're a little short, let's accrue a little renewal money."

8. Several former BISYS employees, who previously held positions of responsibility at BISYS, have disclosed that the senior management had systematically adopted techniques to improperly accelerate revenue recognition in the insurance business. See ¶¶ 128-139 below. These witnesses describe company-wide directives to book revenue prematurely, using a variety of techniques which drew protest from BISYS employees who knew these practices to be improper. BISYS' senior management knowingly presented false financial statements that violated GAAP from 2000 to 2004, despite warnings that their financial statements were false.

9. Defendants were motivated to artificially inflate the price of BISYS stock. During the Class Period, BISYS raised \$300 million in a convertible note offering on advantageous terms. BISYS also used its inflated stock for consideration in the acquisition of two large companies, and used options as part of the consideration in more than a dozen other acquisitions.

10. In addition, BISYS needed the false results created by the fraud to maintain compliance with its lending covenants. After BISYS completed the restatements which corrected its financial reporting, it admitted that the corrected results put BISYS in violation of its credit facilities.

11. Defendants were also motivated to fraudulently inflate the Company's share prices so that insiders could sell their personal BISYS holdings at inflated prices. During the Class Period, BISYS insiders received more than \$60 million in insider trading proceeds from the sale of their BISYS shares.

12. BISYS' false financial reporting was exposed beginning on September 24, 2003, when its chief financial officer, Andrew C. Corbin, resigned abruptly. On the same day, BISYS reduced its quarterly and annual guidance by 20%-30%. BISYS shares lost more than 22% of their value the next day, falling from \$16.67 to close at \$12.95. BISYS attributed its guidance reductions "primarily" to shortfalls in its Insurance and Education Services Group.

13. Resignations of other top executives followed. Two weeks later, on October 9, 2003, Chief Executive Officer Dennis R. Sheehan resigned. He was replaced by Russell P. Fradin on February 2, 2004. On April 6, 2004, Jose Suquet, the president of the Insurance and Education Services Group, also resigned. BISYS shares lost 8% of their value in the two days following disclosure of Mr. Suquet's resignation.

14. On April 22, 2004, BISYS announced a pre-tax charge of \$24.7 million relating to "a change in estimated losses in the commissions receivable portfolio" in the Insurance and Education Services Group. BISYS shares lost 12% of their value in response to this news, falling nearly \$2 per share from \$15.58 to close at \$13.69 on April 23, 2004.

15. On May 17, 2004, after the close of trading, BISYS announced that this previously-reported \$24.7 million adjustment would be increased to roughly \$70-\$80 million and this adjustment would require the Company to make "a restatement of its financial results for each of the fiscal years ended June 30, 2003, 2002 and 2001, as well as its interim results for fiscal 2004." In response to this announcement, BISYS shares fell a further 8% from their May 17, 2004 closing price of \$14.10 to close on May 18 at \$12.97 per share.

16. Subsequently, BISYS increased the size of its financial restatement yet again, to slightly more than \$100 million (including both revenue recognition and goodwill issues). Further, the Company conceded that it suffered from material weaknesses in its internal controls. Additionally, BISYS disclosed that the SEC had begun an investigation into "the facts and circumstances" of BISYS' financial restatements.

## **II. JURISDICTION AND VENUE**

17. Jurisdiction is conferred by section 27 of the Exchange Act. The claims asserted herein arise under sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder.

18. Venue is proper in this District pursuant to section 27 of the Exchange Act, as many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. In addition, BISYS maintains its principal place of business within this District.

19. Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce in connection with the acts alleged in this complaint, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### III. THE PARTIES

20. Court-appointed Lead Plaintiff, Robert Grant, received options to purchase BISYS common stock as described in the certification previously filed with the Court, and was damaged thereby.

21. Defendant BISYS is a Delaware corporation with offices located in this District at 90 Park Avenue, New York, NY 10016.

22. Defendant Dennis R. Sheehan ("Sheehan") was the Company's Chief Financial Officer from February 1998 to August 2001, President and Chief Operating Officer from August 2001 to January 2003, and Chief Executive Officer and Chief Operating Officer from January 2003 to February 2004. During the Class Period, defendant Sheehan sold 251,664 shares of BISYS common stock for proceeds of \$11,233,708.

23. Defendant Lynn J. Mangum ("Mangum") served as the Company's Chairman and Chief Executive Officer from August 1989 to January 2003, at which time Mangum stepped down as Chief Executive Officer but continued as Chairman until September 2004. During the Class Period, defendant Mangum sold 732,746 shares of BISYS common stock for proceeds of \$37,921,847.

24. Defendant Andrew C. Corbin ("Corbin") served as the Company's Chief Financial Officer from August 2001 to September 2003. During the Class Period, defendant Corbin sold 21,736 shares of BISYS common stock for proceeds of \$812,919.

25. Defendant James L. Fox ("Fox") has served as the Company's Chief Financial Officer from September 2003 to the present.

26. Defendant Russell Fradin ("Fradin") has served as the Company's President and CEO from February 2004 to the present.

27. Defendant Kevin Dell ("Dell") is, and was at all relevant times, Executive Vice President, General Counsel and Secretary of the Company. During the Class Period, defendant Dell sold 188,844 shares of BISYS common stock for proceeds of \$7,137,768.

28. Defendant Mark J. Rybarczyk ("Rybarczyk") is, and was at all relevant times, Executive Vice President, Human Resources. During the Class Period, defendant Rybarczyk sold 91,000 shares of BISYS common stock for proceeds of \$3,744,592.

29. Because of the individual defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations and operational trends, financial statements, and present and future business prospects. They were aware of, or had access to, internal corporate documents (including such information as the Company's operating plans, actual sales and sales forecast) and had conversations and connections with other corporate officers and employees. For example, a weekly report known internally as the "revenue monitor," which aggregated the sales results for all offices, was mailed to the individual defendants. Many of the defendants attended management and Board of Directors meetings and committees thereof, and received reports and other information provided to them in connection therewith. More particularly, the individual defendants had immediate and continuous access to the Company's financial data through the BISYS intranet. Indeed, the intranet provided daily activity reports reflecting sales in each office.

30. The Insurance and Education Services division is a core component of BISYS' corporate structure. It also represented the highest profit margin of the three business units, producing between 24% and 26% of BISYS' originally reported revenue, but sometimes as much as 48% of its originally reported earnings. As such, the individual defendants, in their

capacities as key officers and/or directors of the Company, are deemed to have intimate knowledge of its operations.

31. Each of the above officers of BISYS, by virtue of his/her high-level position with the Company, directly participated in the management and day-to-day operations of the Company, and was privy to confidential proprietary information concerning the Company and its business, financial statements, and financial condition, as alleged herein. The individual defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

32. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the individual defendants each had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and financial statements, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based upon truthful and accurate information. The individual defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

33. The individual defendants participated in the drafting, preparation, and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein, the omissions therefrom, and their materially false and misleading nature. Because of

their Board membership and/or executive and managerial positions with BISYS, each of the individual defendants had access to the adverse undisclosed information about BISYS' financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about BISYS and its business issued or adopted by the Company materially false and misleading.

34. The individual defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each individual defendant was provided with copies of the documents alleged herein to be misleading before or shortly after they were issued and/or had the ability and/or opportunity to prevent them from being issued or cause them to be corrected. Accordingly, each of the individual defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

35. Defendant PriceWaterhouseCoopers ("PwC") is a firm of certified public accountants engaged by BISYS to provide independent auditing, examination and/or review of filings with the SEC, and non-audit services for which it received fees. PwC was engaged to and did perform these services so that BISYS' financial statements would be presented to stock purchasers, government agencies, the investing public and members of the financial community. PwC knew that its engagement was governed by Regulation S-X section 210.2-01. As a result of the services it rendered to BISYS, PwC's personnel were present at BISYS' corporate headquarters and financial offices frequently during the Class Period. PwC had continual and unrestricted access to BISYS' confidential corporate financial and business information. PwC

stated that it had performed an audit in accordance with generally accepted accounting standards ("GAAS"), and issued an unqualified opinion on BISYS' 2001, 2002, and 2003 financial statements, which did not conform to GAAP and have been restated. PwC permitted its unqualified or "clean" audit opinions for the years 2001, 2002, and 2003 to be appended to BISYS' annual reports filed with the SEC. PwC violated its obligation as a public watchdog to disclose that the Company's financial statements were materially false and misleading. PwC also failed to properly plan and perform its audit to detect fraud as required by GAAS. Because of the pervasive weaknesses in BISYS' internal controls, described below, PwC could not have performed a proper audit without uncovering the fraud.

36. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on acquirers of BISYS securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding BISYS' business, operations, management and the intrinsic value of BISYS securities; and (ii) caused plaintiffs and other members of the Class to purchase or otherwise acquire BISYS securities at artificially inflated prices.

#### **IV. CLASS ACTION ALLEGATIONS**

37. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who acquired non-publicly traded BISYS securities from the Company as part of a private equity transaction during the Class Period and who suffered damages. Excluded from the Class are defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest. Not excluded from the Class are beneficiaries, interest holders

or owners of companies in which BISYS at some point had a minority ownership interest and subsequently took complete control over through a purchase agreement offering equity or cash to those with the majority ownership interest prior to the BISYS offer.

38. The members of the Class are so numerous that joinder of all members is impractical. Throughout the Class Period, BISYS common shares were actively traded on the NYSE. Option contracts on BISYS stock traded throughout the Class Period on the American Stock Exchange and other exchanges. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are dozens of members in the proposed Class. Indeed, during the Class Period, BISYS had more than 120 million shares of stock outstanding. BISYS acquired at least 17 companies in private transactions, each of which is believed to have involved, in whole or in part, BISYS securities. The members of the Class may be identified from records maintained by BISYS or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

39. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and/or fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- a. Whether the Exchange Act was violated by defendants;
- 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 the prices of BISYS securities were artificially inflated as a result of defendants' misrepresentations and/or omissions; and

f. The appropriate measure of damages for Class members.

40. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' common course of wrongful conduct involving BISYS' SEC filings and defendants' other public statements concerning BISYS' financial results.

41. Plaintiff will adequately protect the interests of the Class and has retained counsel with extensive experience in class action securities litigation. Plaintiff knows of no interests he has which conflict with those of the Class.

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

#### **V. FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD**

43. During the Class Period, as detailed below in ¶¶ 44-77, BISYS reported quarterly and annual financial results in press releases and in Forms 10-Q and 10-K filed with the SEC. The Company has restated this financial information; there is no dispute that the financial results and financial statements contained in these press releases and SEC filings were materially false when issued. BISYS conceded this fact when it disclosed that it would have to restate these

financial results to correct errors, and to record more than \$100 million in downward adjustments to previously-reported income. Thus, the financial information in each of the SEC filings the press releases and statements to the media identified below in ¶¶ 44-77 was false and misleading.

**False and Misleading Statements During 2000**

44. On October 23, 2000, BISYS issued a press release entitled "BISYS Reports First Quarter Results;<sup>1</sup> Record Revenues Up 22% EPS in Line With Consensus," stating in part:

The BISYS Group, Inc. reported results today for the fiscal first quarter ended September 30, 2000.

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For the fiscal first quarter, BISYS reported net income of \$12,912,000 or \$0.22 per diluted share, as compared to net income of \$12,283,000 or \$0.22 per diluted share for the comparable fiscal 2000 quarter. Revenues for the fiscal first quarter increased to \$161,441,000, up 22% from \$132,313,000 in the same period last year.

Results for the first quarter of fiscal 2001 included a one-time write-off of \$2.6 million or \$0.045 per share, net of tax, directly related to the acquisitions of Pictorial and Ascensus. Excluding one-time charges, fiscal 2001 first quarter net earnings and earnings per diluted share would have been \$15,480,000 or \$0.27 per diluted share, an increase in EPS of 22% over the same period last year.

"In this first quarter, we again experienced strong growth in both revenues and earnings," said Lynn Mangum, BISYS chairman and chief executive officer. "All three of our major business groups contributed to the strong results."

The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

45. On November 14, 2000, BISYS filed its quarterly report for its first fiscal quarter of 2001, the period ended September 30, 2000, with the SEC. Defendant Sheehan signed

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<sup>1</sup> BISYS' fiscal year ends June 30.

the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

### **False and Misleading Statements During 2001**

46. On January 22, 2001, BISYS issued a press release entitled "BISYS Reports Fiscal Second Quarter EPS of \$0.32, Record Revenues Up 22%," stating in part:

The BISYS Group, Inc. reported results today for the fiscal second quarter ended December 31, 2000.

\* \* \*

For the fiscal second quarter, BISYS reported net income of \$18,902,000 or \$0.32 per diluted share, as compared to \$14,926,000 or \$0.26 per diluted share for the comparable fiscal 2000 quarter. Revenues for the period increased to \$168,303,000, up 22% from \$138,044,000 for the same period last year.

"In the second quarter, we again experienced strong growth in both revenues and earnings," said Lynn Mangum, BISYS chairman and chief executive officer. "We are especially pleased with our continued strong internal growth, strong cash flows, margin expansion and the continued growth of our Insurance and Education Services Group."

The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

47. On February 12, 2001, BISYS filed its quarterly report for its second fiscal quarter of 2001, ended December 31, 2000. Defendant Sheehan signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results

contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

48. On March 7, 2001, BISYS announced that it had raised \$250 million from investors by selling \$250 million in convertible bonds with a 4% interest rate. BISYS stated that proceeds from BISYS' sale of the bonds would "be used to repay all outstanding borrowings under BISYS' credit facilities and for general corporate purposes, which may include acquisitions." Several weeks later, BISYS filed a Prospectus with the SEC memorializing the terms of the offering (which had expanded to \$300 million).

49. On April 19, 2001, the Company issued a press release entitled "BISYS Reports Record Fiscal Third Quarter Results; EPS of \$0.41, Revenues up 22%," stating in part:

The BISYS Group, Inc., reported record revenues, record earnings, and record earnings per share today for the fiscal third quarter ended March 31, 2001.

For the fiscal third quarter, BISYS reported net income of \$24,655,000 or \$0.41 per diluted share, as compared to \$19,987,000 or \$0.35 per diluted share for the comparable fiscal 2000 quarter. Revenues for the period increased to \$177,359,000, up 22% from revenues of \$145,657,000 for the same period last year.

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According to Lynn Mangum, BISYS' Chairman and CEO, "We are extremely pleased with our fiscal third quarter. We generated record revenues, record earnings, and record cash flow during a generally unfavorable economic environment. This performance demonstrates the strength of BISYS' businesses in providing essential core services for financial institutions."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Mangum's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

50. On May 7, 2001, BISYS filed its quarterly report for its third fiscal quarter of 2001, ended March 31, 2001. The report was signed by defendant Sheehan and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

51. On July 30, 2001, the Company issued a press release entitled "BISYS Reports Record Fiscal Fourth Quarter Results - Revenue Increases 25% to \$194.7 Million; EPS Rises 20% to \$0.47," stating in part:

The BISYS Group, Inc., a leading provider of outsourcing services to the financial services sector, today reported record results for the fiscal fourth quarter and fiscal year ended June 30, 2001.

For the fiscal fourth quarter ended June 30, 2001, revenue increased 25% to \$194.7 million compared to \$155.4 million in the same period last year.

Net income rose 25% to \$28.7 million, or \$0.47 per diluted share compared to \$23.0 million, or \$0.40 per diluted share for the comparable fiscal 2000 quarter. Excluding the impact of the one-time gain in the fiscal 2000 fourth quarter, earnings per diluted share in the current quarter grew 20%.

"Our performance reflects our success in integrating recent acquisitions to complement our core strengths," commented Lynn Mangum, Chairman and Chief Executive Officer. "As a result, we are well positioned to provide a wide spectrum of non-discretionary core services to the financial services sector. We are very excited about the coming year and expect to continue to generate strong internal growth complemented by focused acquisitions."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Mangum's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

52. On September 28, 2001, BISYS filed its annual report for its fiscal year ended June 30, 2001 on Form 10-K with the SEC. Defendants Corbin and Mangum signed the report, and the report represented that the financial results were "prepared in conformity with generally accepted accounting principles and reflects the best judgment of management." The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

53. On October 1, 2001, the Company issued a press release entitled "BISYS Reaffirms Fiscal 2002 EPS Guidance; Revenue and EPS Growth to Exceed 20%," stating in part:

BISYS, a leading provider of outsourcing services to the financial services sector, announced today that it remains comfortable with Wall Street consensus earnings estimates for its first fiscal quarter ending September 30, 2001.

Lynn Mangum, Chairman and CEO commented, "Through the strength of our business model, especially our high recurring revenue base, coupled with reduced discretionary spending and lower variable costs, we expect to continue delivering our stated 20% EPS growth. However, as a result in large part to market conditions in the investment community as well as the September 11 tragedy, we anticipate a moderate and temporary slowdown in our internal revenue growth. Internal revenue growth for the September quarter should approximate 11.0% with total reported revenue growth including acquisitions totaling approximately 22%."

In addition, the Company has fine-tuned the previously announced non-recurring charge that will be taken in the first fiscal quarter ended September 30, 2001, to \$0.06 per share, net of tax. This non-recurring charge is due primarily to integration activities related to the Company's acquisitions of Universal Pensions, (UPI) and Boston Institutional Group (BIG) which were completed in the June 2001 quarter. Excluding the impact of this non-recurring charge, the Company currently anticipates reporting earnings per share of approximately \$0.37 per share.

In addition to the misstated financial statements and performance information contained in the press release and SEC filing, Mr. Mangum's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

54. On October 23, 2001, the Company issued a press release entitled "BISYS Reports First Quarter Results; EPS in Line With Consensus; Revenues Up 22%; Pro Forma EPS Up 23%," stating in part:

The BISYS Group, Inc., a leading provider of outsourcing services to the financial services sector, reported results today for the fiscal first quarter ended September 30, 2001.

For the fiscal first quarter, BISYS reported pro forma net income of \$22.9 million as compared to pro forma net income of \$17.4 million for the same period in fiscal 2001. Pro forma amounts exclude restructuring charges and goodwill amortization. Pro forma earnings per diluted share increased 23% to \$0.37 from \$0.30, and revenues for the fiscal first quarter increased to \$196.5 million, up 22% from \$161.4 million in the same period last year.

Actual results for the fiscal first quarters of 2002 and 2001 include restructuring charges of \$4.0 million or \$0.06 per diluted share net of tax and \$2.6 million or \$0.04 per diluted share net of tax, respectively, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity. Reported net income was \$18.9 million or \$0.31 per diluted share for the fiscal 2002 first quarter as compared to \$12.9 million or \$0.22 per diluted share for the comparable fiscal 2001 quarter.

The Company has adopted FAS 142, "Goodwill and Other Intangible Assets," effective July 1, 2001. FAS 142 requires that an intangible asset be amortized over its useful life and that goodwill not be amortized but evaluated for impairment. Accordingly, results for the fiscal first quarter ended September 30, 2001 do not include any goodwill amortization.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

55. On November 13, 2001, BISYS filed its quarterly report for its first fiscal quarter of 2002, the period ended September 30, 2001, with the SEC. Defendant Corbin signed

the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

### **False and Misleading Statements During 2002**

56. On January 22, 2002, the Company issued a press release entitled "BISYS Reports Second Quarter Results; Revenues Increase 25% to Record \$210 Million; EPS In Line With Consensus," stating in part:

The BISYS Group, Inc., a leading provider of outsourcing services to the financial services sector, reported results today for the fiscal second quarter ended December 31, 2001.

For the fiscal second quarter, BISYS reported net income of \$26.4 million or \$0.43 per diluted share as compared to net income of \$18.9 million or \$0.32 per diluted share for the same period in fiscal 2001. Excluding goodwill amortization, pro forma net income for the quarter ended December 31, 2000 was \$20.8 million or \$0.35 per diluted share. On a pro forma basis, diluted earnings per share increased 23% for the fiscal second quarter ended December 31, 2001 as compared to the same period last year. Revenues for the fiscal second quarter increased to \$209.9 million, up 25% from \$168.3 million in the same period last year.

Effective July 1, 2001, the Company adopted FAS 142, "Goodwill and Other Intangible Assets." FAS 142 requires that an intangible asset be amortized over its useful life and that goodwill not be amortized but evaluated for impairment. Accordingly, results for the fiscal second quarter and fiscal six months ended December 31, 2001 do not include any goodwill amortization.

"Our three divisions met the growth targets that we outlined in our previous quarter and we achieved margin expansion across the board," said Lynn Mangum, Chairman and Chief Executive Officer. "Insurance and Education Services again recorded the highest growth in revenues and margins and Information Services continued its steady growth. Investment Services, which was most impacted by the market downturn, has begun to regain sales

momentum. We remain very excited about the business opportunities before us"

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Mangum's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

57. On February 12, 2002, BISYS filed its quarterly report for its second fiscal quarter of 2002, the period ended December 31, 2001, with the SEC. Defendant Corbin signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

58. On April 17, 2002, the Company issued a press release entitled "BISYS Reports Third Quarter Results - Revenues Up 24% to Record \$221 Million; EPS in Line With Consensus," stating in part:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions to the financial services sector, today reported results for its fiscal third quarter ended March 31, 2002.

All per share amounts have been adjusted to reflect the results of a 2-for-1 stock split effected in the form of a dividend, payable on February 22, 2002 to stockholders of record as of February 8, 2002.

For the fiscal third quarter, BISYS reported net income of \$33.2 million or \$0.27 per diluted share, as compared to net income of \$24.7 million or \$0.20 per diluted share for the same period in fiscal 2001. Excluding goodwill amortization, pro forma net income for the quarter ended March 31, 2001 was \$26.7 million or \$0.22 per diluted share. On a pro forma basis, diluted earnings per share increased 23% for the fiscal third quarter ended March 31, 2002, as compared to the same period last year. Revenues for the

fiscal third quarter increased to \$220.5 million, up 24% from \$177.4 million in the same period last year.

Effective July 1, 2001, the Company had earlier adopted FAS 142, "Goodwill and Other Intangible Assets." FAS 142 requires that an intangible asset be amortized over its useful life and that goodwill not be amortized but evaluated for impairment. Accordingly, results for the fiscal third quarter and fiscal nine months ended March 31, 2002 do not include any goodwill amortization.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

59. On May 10, 2002, BISYS filed its quarterly report for its third fiscal quarter of 2002, the period ended March 31, 2002, with the SEC. Defendant Corbin signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to present fairly this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

60. On July 30, 2002, the Company issued a press release entitled "BISYS Reports Record Fiscal Fourth Quarter Results-Revenue Increases 23 Percent to \$239 Million-Record EPS of \$0.30," stating in part:

The BISYS Group, Inc., a leading national provider of business process outsourcing solutions for the financial services sector, today reported results for the fiscal fourth quarter and fiscal year ended June 30, 2002.

For the fiscal fourth quarter, BISYS reported net income of \$37.3 million or \$0.30 per diluted share, as compared to net income of \$28.7 million or \$0.23 per diluted share for the same period in fiscal 2001. Excluding goodwill amortization, pro forma net income for the quarter ended June 30, 2001 was \$30.9 million or \$0.25 per diluted share. On a pro forma basis, diluted earnings per share increased 20 percent for the fiscal fourth quarter ended June 30, 2002, as compared to the same period last year. Revenue for the fiscal fourth quarter increased to \$238.7 million, up 23 percent from \$194.7 million in the same period last year.

BISYS reported net income of \$115.9 million or \$0.94 per diluted share for the year ended June 30, 2002, as compared to net income of \$85.1 million or \$0.71 per diluted share for the year ended June 30, 2001. Actual results for the year ended June 30, 2002 and 2001 include restructuring charges of \$4.0 million or \$0.03 per diluted share net of tax, and \$2.6 million or \$0.02 per diluted share net of tax, respectively, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity. Excluding restructuring charges and goodwill amortization, pro forma net income for the year ended June 30, 2002 was \$119.8 million or \$0.97 per diluted share, as compared to pro forma net income of \$95.8 million or \$0.79 per diluted share for the same period last year, an increase in EPS of 23 percent. BISYS' annual revenue increased to \$865.7 million, up 23 percent over fiscal 2001 revenue of \$701.8 million.

According to Lynn Mangum, BISYS' chairman and chief executive officer, "We are extremely pleased with the strategic and financial results of our fourth quarter and fiscal year 2002, which marks the 13th consecutive year that BISYS has generated record revenue and record operating earnings."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Mangum's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

61. On September 24, 2002, the Company issued a press release entitled "BISYS Revises Earnings Guidance for September 2002 Quarter And Announces New \$100 Million Stock Buy Back Program," stating in part:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions for the financial services sector, today revised earnings guidance for its current September 30 fiscal quarter.

For the fiscal first quarter ending September 30, BISYS anticipates reporting earnings per diluted share of \$0.20 before restructuring charges as compared to \$0.19 per diluted share for the same period in fiscal 2002, up 5 percent.

In addition, BISYS has finalized the calculation of its previously announced restructuring charge. This charge will be \$0.06 per share, net of tax.

Finally, The BISYS Group, Inc. also announced that its Board of Directors has authorized a new stock buy-back program of up to \$100 million of its outstanding stock. Purchases will occur from time-to-time in the open market to offset the possible dilutive effect of shares to be issued under employee benefit plans, for possible use in future acquisitions and for other general corporate purposes. This new program supersedes the share purchase program previously authorized by the Board of Directors. Under the former program, BISYS has purchased 4,254,000 shares of its common stock at a total purchase price of approximately \$70 million.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

62. On September 27, 2002, BISYS filed its annual report for its fiscal year ended June 30, 2002 on Form 10-K with the SEC. Defendants Corbin and Mangum signed the report and represented that the financial results were "prepared in conformity with generally accepted accounting principles and reflect[ ] the best judgment of management." The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

63. On October 21, 2002, the Company issued a press release entitled "BISYS Reports Fiscal First Quarter Results - Revenue Increases 16 Percent to \$227 Million," stating in part:

BISYS, a leading global provider of business process outsourcing solutions for the financial services sector, today reported the results of its fiscal first quarter, ended September 30, 2002.

For the fiscal first quarter, BISYS reported net income of \$16.8 million or \$0.14 per diluted share, as compared to net income of \$18.9 million or \$0.15 per diluted share for the same period in fiscal 2002. Actual results for the fiscal first quarters of 2003 and 2002 include restructuring charges of \$7.5 million or \$0.06 per diluted share net of tax, and \$4.0 million or \$0.03 per diluted share net of tax, respectively, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity.

Excluding restructuring charges, pro forma net income was \$24.3 million or \$0.20 per diluted share for the fiscal 2003 first quarter,

as compared to \$22.9 million or \$0.19 per diluted share for the comparable fiscal 2002 quarter.

Revenue for the fiscal first quarter 2003 increased to \$227.3 million, up 16 percent from \$196.5 million in the same period last year.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

64. On November 14, 2002, BISYS filed its quarterly report for its first fiscal quarter of 2003, the period ended September 30, 2003, with the SEC. Defendant Corbin signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly state this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. Defendants Corbin and Mangum also signed a Certification attesting to the following:

1. I have reviewed this quarterly report on Form 10-Q of The BISYS Group, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a). designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us

by others within those entities, particularly during the period in which this quarterly report is being prepared;

b). evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c). presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):

(a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

### **False and Misleading Statements During 2003**

65. On January 22, 2003, the Company issued a press release entitled "Revenue Increases 11 Percent to \$233 Million, EPS Increases 9 Percent, Record Cash from Operations Generated," stating in part:

BISYS, a leading global provider of business process outsourcing solutions for the Financial services sector, today reported the results of its fiscal second quarter, ended December 31, 2002.

For the fiscal second quarter, BISYS reported net income of \$28.7 million or \$0.24 per diluted share, an increase of 9 percent from net income of \$26.4 million or 0.22 per diluted share for the same period in fiscal 2002. Revenue for the quarter was \$233.1 million, an increase of 11 percent from \$209.9 million in the same period last year. Cash from operations for the quarter reached a record-high of more than \$45 million.

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According to Dennis Sheehan, president and chief executive officer of BISYS, "Despite the challenges we faced from the continued sluggishness of the financial markets, we were able to generate modest internal revenue growth, and through expense management, deliver our targeted earnings per share."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Sheehan's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

66. On February 14, 2003, BISYS filed its quarterly report for its second fiscal quarter of 2003, the period ended December 31, 2002, with the SEC. Defendant Corbin signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly state this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. The 2003 second quarter Form 10-Q also contained Sarbanes-Oxley Certifications executed by defendant Sheehan and defendant Corbin, in the form set forth above in ¶ 64. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

67. On April 8, 2003, the Company issued a press release entitled "BISYS Updates Earnings Guidance for March and June 2003 Quarter," stating in part:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions for the financial services sector, today

updated its earnings guidance for its current March and June fiscal quarters.

For the fiscal quarter ending March 31, BISYS anticipates reporting earnings per diluted share of \$0.27, one cent lower than its previous guidance, and equal to that reported for the same period in fiscal 2002.

This reduction is due primarily to lower than anticipated insurance production in BISYS' "high-end" insurance business during the latter part of the March quarter, as well as continued softness in the education services market. Investment Services, Information Services, and BISYS' core insurance business all generally performed according to expectations.

Dennis Sheehan, president and CEO, commented, "The overall modest internal growth that BISYS has experienced during the last several quarters continued during the March quarter and is expected to continue into our June quarter as well. Based upon current projections, we anticipate modest, sequential earnings growth for our fourth fiscal quarter, ending June 30, with earnings per diluted share ranging from \$0.28 to \$0.30."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Sheehan's statement quoted above is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

68. On April 22, 2003, the Company issued a press release entitled "BISYS Reports Fiscal Third Quarter Results - Revenue Increases 11 Percent to Record \$245 Million; Record Cash from Operations Generated," stating in part:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions for the financial services sector, today reported the results of its fiscal third quarter ended March 31, 2003.

For the fiscal third quarter, BISYS reported net income of \$32.5 million or \$0.27 per diluted share, as compared to net income of \$33.2 million or \$0.27 per diluted share for the same period in fiscal 2002. Revenue for the quarter was \$244.8 million, an increase of 11 percent from \$220.5 million in the same period last year. Cash from operations for the quarter reached a record-high of more than \$56 million.

The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

69. On May 15, 2003, BISYS filed its quarterly report for its third fiscal quarter of 2003, the period ended March 31, 2003, with the SEC. Defendant Corbin signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly state this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. Defendants Sheehan and Corbin provided a certification with the report which attested to the following:

" . . . I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Form 10-Q of the Company for the fiscal quarter ended March 31, 2003 (the "Form 10-Q"), which this certification accompanies, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company."

Defendants Sheehan and Corbin also signed another certification, in the form set forth in ¶ 64 above. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

70. On July 29, 2003, the Company issued a press release entitled "BISYS Reports Fiscal Fourth Quarter Results - Revenue Increases to Record \$253 Million - Record Cash from Operations of \$61 Million," stating in part:

BISYS, a leading provider of business process outsourcing solutions for the financial services sector, today reported the results for its fiscal fourth quarter and the fiscal year ended June 30, 2003.

For the fiscal fourth quarter, BISYS reported net income of \$33.8 million or \$0.28 per diluted share, as compared to net income of \$37.3 million or \$0.30 per diluted share for the same period in fiscal 2002. Revenue for the quarter was \$253.2 million, an increase of six percent from \$238.7 million in the same period last

year. Cash from operations for the quarter reached a record of \$61.3 million.

BISYS reported net income of \$111.8 million or \$0.92 per diluted share for the year ended June 30, 2003, as compared to net income of \$115.9 million or \$0.94 per diluted share for the year ended June 30, 2002. Actual results for the year ended June 30, 2003 and 2002 include restructuring charges of \$7.5 million or \$0.06 per diluted share net of tax, and \$4.0 million or \$0.03 per diluted share net of tax, respectively, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity. Excluding restructuring charges, pro forma net income for the year ended June 30, 2003 was \$119.4 million or \$0.98 per diluted share, as compared to pro forma net income of \$119.8 million or \$0.97 per diluted share for the same period last year. BISYS' annual revenue increased to \$958.4 million, up 11 percent over fiscal 2002 annual revenue of \$865.7 million. Cash from operations for fiscal year 2003 was \$179.8 million, an increase of \$50.9 million, or 39 percent, over the previous year.

The company has included the above pro forma information concerning restructuring charges to assist investors in analyzing BISYS' results of operations. The company has elected to provide this information to enable investors to perform meaningful comparisons of past, present, and future operating results, and as a means to emphasize the results of core, ongoing operations.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

71. On September 19, 2003, BISYS filed its annual report for its fiscal year ended June 30, 2003 on Form 10-K with the SEC. Defendants Sheehan, Corbin and Mangum signed the report and, with respect to the financial reports contained therein, represented that "[t]he information was prepared in conformity with accounting principles generally accepted in the United States of America and reflects the best judgment of management." The 2003 Form 10-K also contained Sarbanes-Oxley Certifications executed by defendants Sheehan and Corbin. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

72. On September 24, 2003, the Company issued a press release entitled "BISYS Updates Earnings Guidance for September 2003 Quarter and June 2004 Fiscal Year; Schedules Conference Call for Thursday, September 25," stating in part:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions for the financial services sector, today updated its earnings guidance for its current September quarter and its fiscal year ending June 30, 2004.

For the fiscal quarter ending September 30, BISYS anticipates reporting earnings per diluted share of \$0.15, before restructuring and other charges, which is seven cents per share lower than its previous guidance and five cents per share lower than that reported for its September 2002 quarter.

This reduction in anticipated earnings is due primarily to lower than anticipated revenue from its life insurance business, and to a lesser extent continued softness in its education services division, and some delay in new client installations in its retirement services business.

The Company also announced that, absent an improvement in general market conditions that accelerates the internal growth of its life insurance and education services revenues and/or an acceleration of new business signings in its Investment Services group, earnings per diluted share for its fiscal year ending June 30, 2004, before restructuring charges, is likely to be in the range of \$0.80 to \$0.85.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

73. On October 21, 2003, the Company issued a press released entitled "BISYS Reports Fiscal First Quarter Results - Revenue Increases Four Percent to \$237 Million," stating in part:

BISYS, a leading provider of business process outsourcing solutions for the financial services sector, today reported the results of its fiscal first quarter ended September 30, 2003.

For the fiscal first quarter, BISYS reported net income of \$4.8 million or \$0.04 per diluted share, as compared to net income of \$16.8 million or \$0.14 per diluted share for the same period in fiscal 2003. Actual results for the fiscal first quarter of 2004

include restructuring, impairment, and other charges of \$0.11 per diluted share or \$13.1 million, including a net tax charge of \$0.5 million, primarily related to the integration, consolidation, and reorganization of certain business operations, particularly in the Company's European Fund Services division and the Insurance and Education Services group. Actual results for the fiscal first quarter of 2003 include restructuring charges of \$0.06 per diluted share or \$7.5 million, net of a tax benefit of \$4.5 million, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity.

Excluding restructuring, impairment, and other charges, pro forma net income was \$17.9 million or \$0.15 per diluted share for the fiscal 2004 first quarter, as compared to \$24.3 million or \$0.20 per diluted share for the comparable fiscal 2003 quarter.

Revenue for the fiscal first quarter 2004 increased to \$237.4 million, up four percent from \$227.3 million in the same period last year.

The above quoted language is materially misleading for the reasons set forth in ¶¶ 90-154 herein.

74. On November 12, 2003, BISYS filed its quarterly report for its first fiscal quarter of 2004, the period ended September 30, 2003, with the SEC. Defendant Fox signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly state this information." In addition, the report represented that the results contained therein were prepared in accordance with GAAP. Defendants Sheehan and Fox executed a Sarbanes-Oxley Certification attached to the 2004 first quarter Form 10-Q. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

#### **False and Misleading Statements During 2004**

75. On January 21, 2004, the Company issued a press release entitled "BISYS Reports Fiscal Second Quarter Results - Revenue Increases 13 Percent to Record \$263 Million — Internal Revenue Growth Improves Across All Business Groups - Net Cash Provided by Operating Activities Increases 29 Percent to \$58.8 Million," stating in part:

BISYS, a leading provider of business process outsourcing solutions for the financial services sector, today reported the results of its fiscal second quarter ended December 31, 2003.

For the fiscal second quarter, BISYS reported net income of \$20.0 million or \$0.17 per diluted share, as compared to net income of \$28.7 million or \$0.24 per diluted share for the same period in fiscal 2003. Actual results for the fiscal second quarter of 2004 include restructuring charges of \$1.4 million or \$0.01 per diluted share net of tax, primarily related to the implementation of the reorganization plan for certain business operations as announced in September 2003. Excluding restructuring charges, pro forma net income was \$21.4 million or \$0.18 per diluted share for the fiscal 2004 second quarter, in line with analysts' consensus expectations.

Revenue for the quarter was \$263.3 million, an increase of 13 percent from \$233.1 million in the same period last year. Net cash provided by operating activities was \$58.8 million, an increase of more than 29 percent from \$45.4 million in the same period last year.

BISYS reported net income of \$24.9 million or \$0.21 per diluted share for the six months ended December 31, 2003, as compared to net income of \$45.5 million or \$0.37 per diluted share for the six months ended December 31, 2002. Actual results for the six months ended December 31, 2003 include restructuring, impairment, and other charges of \$14.5 million or \$0.12 per diluted share net of tax, primarily related to the integration, consolidation, and reorganization of certain business operations, particularly in the Company's European Fund Services division and the Insurance and Education Services group. Actual results for the six months ended December 31, 2002 include restructuring charges of \$7.5 million or \$0.06 per diluted share net of tax, related to the integration, consolidation, and relocation of certain business operations, primarily as a result of acquisition activity.

The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

76. On January 29, 2004, BISYS filed its quarterly report for its second fiscal quarter of 2004, the period ended December 31, 2003. Defendant Fox signed the report and represented that "[t]he condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary to fairly state this information." In addition, the report represented that the results

contained therein were prepared in accordance with GAAP. Defendants Sheehan and Fox executed Sarbanes-Oxley certifications which were attached to the 2004 second quarter Form 10-Q. The foregoing statements were false and misleading for the reasons set forth in ¶¶ 90-154 herein.

77. On April 22, 2004, the Company issued a press release entitled "BISYS Reports Fiscal Third Quarter Results - Revenue Increases 11 Percent to Record \$272 Million," stating in part:

BISYS, a leading provider of business process outsourcing solutions for the financial services sector, today reported the results of its fiscal third quarter ended March 31, 2004.

For the fiscal third quarter, BISYS reported net income of \$3.2 million or \$0.03 per diluted share, as compared to net income of \$32.5 million or \$0.27 per diluted share for the same period in fiscal 2003. Revenue for the quarter was \$272.3 million, an increase of 11.2 percent from \$244.8 million in the same period last year.

Actual results for the third quarter of fiscal 2004 include an additional provision in the Life Insurance division of \$15.5 million or \$0.13 per diluted share net of tax for a change in estimated losses in the commissions receivable portfolio and restructuring, impairment and other charges of \$6.8 million or \$0.06 per diluted share net of tax, primarily for the integration, consolidation, and reorganization of certain business operations, particularly in the Company's European Fund Services division and the Insurance and Education Services group. Included in the aforementioned \$6.8 million charge is \$3.1 million net of tax, for estimated additional contractual obligations in the Life Insurance division. Excluding the additional loss provision and the restructuring, impairment and other charges, pro forma net income was \$25.5 million or \$0.21 per diluted share for the third quarter of fiscal 2004.

According to Russ Fradin, BISYS' president and CEO, "During our fiscal third quarter, we generated solid internal revenue growth of five percent compared to the year ago period and strong cash flow. Our largest business group, Investment Services, experienced strong revenue growth compared to the year ago period, and improved operating earnings on a sequential basis compared to our second fiscal quarter ended December 31, 2003. Our Information

Services group grew both revenue and operating earnings compared to the year ago period. While our Insurance and Education Services group has underperformed, principally because of the performance of our Life Insurance Services division, we are taking the actions necessary to position the division for future growth, and we expect our Life Insurance results to improve in fiscal year 2005. For the company in total, we believe that our strong revenue growth and consistent cash flows demonstrate the fundamental strength of our business, and that our sound strategic positioning will provide opportunities for future growth."

In addition to the misstated financial statements and financial performance information contained in the press release and SEC filing, Mr. Fradin's statement quoted above is materially misleading for the reasons stated in ¶¶ 90-154 herein.

## **VI. THE TRUTH EMERGES**

78. As detailed below in ¶¶ 79 to 100, the truth about BISYS' inflated commissions receivable, material weakness in internal controls, and inflated financial statements emerged, in stages, between September 24, 2003 and June 16, 2004. At first, in late 2003 and early 2004, BISYS disclosed senior executive resignations and profit warnings flowing from BISYS' Insurance and Education Services Group. Later, in April 2004, BISYS took a \$24.7 million charge against earnings for "a change in estimated losses in the commissions receivable portfolio" in the Insurance and Education Services Group. When questioned by analysts about the vaguely-worded press release disclosing this charge, BISYS admitted that the charge represented a "true up" for past revenues that had been prematurely recognized—the first acknowledgement of improper revenue recognition. In May 2004, BISYS admitted that this change required a restatement of its financial results throughout its 2001-2004 fiscal years that would reduce previously-reported earnings by \$70-\$80 million. And in June 2004, BISYS finally disclosed its full financial restatement of over \$100 million, and disclosed that the SEC was investigating "the facts and circumstances related to the restatement."

79. The first crack in BISYS' facade emerged publicly on September 24, 2003, when the Company issued press releases announcing the resignation of its Chief Financial Officer (Andrew C. Corbin) and a 20%-30% reduction in its financial guidance for the fiscal quarter ended September 30, 2003 (six days later) and for the fiscal year ending June 30, 2004. In its September 24, 2003 press release, BISYS attributed its guidance reductions "primarily" to shortfalls in its Insurance and Education Services Group:

The BISYS Group, Inc., a leading provider of business process outsourcing solutions for the financial services sector, today updated its earnings guidance for its current September quarter and its fiscal year ending June 30, 2004.

For the fiscal quarter ending September 30, BISYS anticipates reporting earnings per diluted share of \$0.15, before restructuring and other charges, which is seven cents per share lower than its previous guidance and five cents per share lower than that reported for its September 2002 quarter.

This reduction in anticipated earnings is due primarily to lower than anticipated revenue from its life insurance business, and to a lesser extent continued softness in its education services division, and some delay in new client installations in its retirement services business.

The Company also announced that, absent an improvement in general market conditions that accelerates the internal growth of its life insurance and education services revenues and/or an acceleration of new business signings in its Investment Services group, earnings per diluted share for its fiscal year ending June 30, 2004, before restructuring charges, is [sic] likely to be in the range of \$0.80 to \$0.85.

This statement is false and misleading as it fails to fully disclose the adverse financial information known to the defendants as set forth in ¶¶ 90-154.

80. Prior to the September 24, 2003 announcement, BISYS had previously predicted earnings per share of \$0.22 for the quarter (lowered to \$0.15 on September 24, 2003). Consensus estimates for BISYS' fiscal 2004 year were for earnings of \$1.08 per share (lowered

to \$0.80-\$0.85 per share on September 24, 2003). In response to the September 24, 2003 announcement (which included the CFO's resignation), BISYS shares fell from \$16.67 to close at \$12.95 on September 25, 2003, a loss of over 22%.

81. Sophisticated market professionals expressed concern over the meaning of these developments for BISYS and lowered estimates for BISYS stock. For example, Wachovia Securities analysts David Trossman and Christopher Gay, in a September 24, 2003 analyst report, demanded answers from Jose Suquet, President of the Insurance and Education Services Group:

**BISYS GROUP: New Lows for Insurance Business, Cutting Estimates, Maintain Market Perform**

BSG pre-released a huge miss for the September quarter guiding to \$0.15 vs. our \$0.21 estimate. A FY (June) 04 range was given of \$0.80-\$0.85 vs. our \$1.10 estimate... The big problem remains in insurance distribution... Our inability to get our arms around this business has been the source of our Market Perform rating. But the magnitude of the miss is greater than any scenario we had contemplated... Other items noted in the miss that are smaller in magnitude but perhaps more surprising are [] a departure of the CFO....

\* \* \*

MAYBE SOME ANSWERS THIS TIME? We think the most important job for management on this morning's conference call will be to give a credible story describing the causes of revenue deterioration and the strategic fixes planned for this insurance distribution business. Our preference could be to hear it from Jose Suquet, an outsider who was brought in as president of the division in April of this past year and who has been conspicuously "behind the scenes"... If the story remains murky, we think a further discount could be justified.

82. On a September 25, 2003 conference call with analysts, defendants Sheehan and Corbin denied that Corbin's resignation was related to "accounting issues." Defendants portrayed BISYS' reduced guidance as the result of general industry factors, and to

difficulty integrating newly-acquired companies. On the September 25, 2003 conference call, when asked about problems BISYS was having in integrating its acquisitions in the Insurance and Education Services Group, defendant Mangum expressed displeasure with defendant Sheehan and with BISYS' progress in integrating acquired companies into its Insurance and Education Services Group:

The Board is satisfied that Dennis [Sheehan] and Jose [Suquet] understand what the issues are and will make whatever changes are necessary to the staff within the areas of life insurance and education that are necessary... I would tell you that from the Board's perspective, I think they think that we believe — the Board thinks that we've — perhaps that Dennis [Sheehan] had taken his eye off the ball a little bit in the process.

83. Two weeks later, on October 9, 2003, BISYS issued a press release announcing that defendant Sheehan would resign as Chief Executive Officer.

84. This second consecutive departure of a senior BISYS executive, in conjunction with the warning that BISYS would miss its projected earnings, further unsettled investors. Wachovia Securities analysts David Trossman and Christopher Gay, in an October 9, 2003 analyst report, noted that BISYS' top two executives had departed and concluded, as their "Investment Thesis," that "we rate BISYS shares Market Perform as we continue to have questions surrounding the root cause of the significant deterioration in the company's insurance/education segment."

85. The multiple resignations of senior executives sparked serious worries among investors. An October 14, 2003 article published in the *American Banker* summarized investor concern and uncertainty regarding BISYS:

Carefully laid succession plans at the financial outsourcer Bisys Group Inc. fell into further disarray last week when its chief executive officer said he would step down, just 10 months after taking the post. The move came 15 days after the New York

company [] warned that its earnings would disappoint and that its chief financial officer was leaving to take another job.

\* \* \*

Mr. Sheehan... said his decision was unrelated to the earnings warning that BISYS issued Sept. 24, the same day that its CFO, Andrew C. Corbin, quit...

\*\*\*

The earnings warning and Mr. Corbin's departure triggered a wave of stock downgrades, with five analysts cutting their recommendations in the following two days....

\* \* \*

Mr. Burton of Smith Barney, a division of Citigroup Inc., said in a note to clients that he found the situation worrisome. "The resignation of the CEO, without naming a replacement," he wrote, "casts doubts on how effectively the company will deal with the continued problems in the insurance and education segment, not to mention lack of visibility into the business and the *potential that additional problems could be forthcoming...*" (emphasis added).

86. On an October 22, 2003 conference call with analysts, when BISYS announced its financial results for the first quarter of fiscal year 2004 (ended September 30, 2003), defendant Sheehan again denied that his departure was related to the earnings warning that had preceded it by two weeks, stating "I would like to reiterate that my actions [are] completely unrelated to the company's recent earnings disappointments..."

87. On January 20, 2004, BISYS announced that on February 2, 2004, Russell P. Fradin would succeed defendant Sheehan as BISYS' Chief Executive Officer.

88. On April 6, 2004, BISYS announced the third senior executive resignation, that of Jose Suquet, who had served as Group President of BISYS' Insurance and Education Services Group. Between April 6 and April 8, 2004, BISYS shares declined 8% to close on April 8, 2004 at \$15.52 per share.

89. As with the previous announcements of management resignations, Mr. Suquet's departure prompted negative comments about the Company. On April 7, 2004, Citigroup analyst Patrick Burton issued an analyst report in response to BISYS' April 6, 2004 press release. Burton noted the frequent management departures, their coincidence with BISYS earnings warning, and also questioned the Company's explanations for the hiring and resignation of the President of the Insurance and Education Services Group:

**BISYS Group: Insurance Unit Head Leaves, Our Concerns Remain**

BSG announced after the market close yesterday that Jose Suquet will be resigning as Group President of the Insurance and Education Services unit, after only one year in the position. CEO Russ Fradin will assume day-to-day leadership of the unit... The company described this as a need to change direction for the unit, in an effort to upgrade and improve the national scope of the sales and services organization, with a greater emphasis on P&L and operational responsibility and developing agent relationships. ***Mr. Suquet was hired by BSG almost exactly one year ago April 7, 2003 [] with the aim to improve strategic large carrier relations and building the national scale and presence of the life insurance business....***

We remain concerned about the frequent management departures, the declines in the Investment Services margins, and below industry average performance in the life insurance segment. ***Frequent Management Departures.*** Jose Suquet's resignation follows that of former CEO Dennis Sheehan in October 2003 for health reasons and former CFO Andy Corbin in September 2003 to pursue another career opportunity (but on the same day as a pre-announcement addressing a cut in guidance for FY04 due to weakness in the life insurance business). Following the September pre-announcement, Mr. Suquet, as head of the Insurance and Education Services business, was brought out to discuss initiatives to fix the life insurance business on analyst conference calls. ***This management turnover, without naming any executives with significant insurance industry experience, casts doubt on how effectively the company will deal with the continued problems in the Insurance segment and the integration of acquisitions. Mr. Suquet had been spearheading initiatives to remedy the situation in the Insurance business.... Management had aimed to have those initiatives implemented by the end of fiscal 4Q04....*** (emphasis added).

90. Two weeks later, on April 22, 2004, BISYS issued a press release announcing its financial results for the quarter ending March 31, 2004, and disclosed for the first time that it would take a one-time \$24.7 million charge (\$15.5 million after taxes; equivalent to \$0.13 per share) "for a change in estimated losses in the commissions receivable portfolio." This statement is false and misleading as it fails to fully and accurately disclose the adverse financial information known to the defendants.

91. During its April 22, 2004 conference call with analysts to discuss BISYS' earnings announcement, analyst questions forced BISYS to explain the \$24.7 million charge against earnings. BISYS said the \$24.7 million charge against earnings was a "true up" that was meant to counterbalance \$24.7 million in previously-reported revenues that had been prematurely recognized as "commissions receivable." This statement was the first, albeit veiled, concession that BISYS' revenue recognition was improper. However, it was false and misleading as it failed to fully and accurately disclose the adverse financial information known to the defendants.

92. Once again, market professionals responded to the bad news with pessimism about BISYS. Wachovia Securities Analysts David A. Trossman and Christopher M. Gay, in an April 23, 2004 analyst report, stated:

**BISYS Group: More Things to Worry About**

BISYS' FQ3 results were disappointing in that not only has the company not progressed in turning around its insurance distribution network (30% of profit), it now appears to have gotten worse – profits fell 42% yr/yr in the quarter. We were concerned that the company would have to find new leadership on the heels of the short-tenured reign of Jose Suquet. Now it also appears that there's a significant amount of internal sales heads to hire, significant systems overhaul needs, and that there were some bad apples in the acquired businesses that were overstating revenue

93. Similarly, Citigroup analyst Patrick M. Burton issued an April 22, 2004 report, which stated:

BISYS Group: Disappointing 3Q04, Insurance Unit Challenges Continue

BSG reported disappointing 3Q results that included two negative surprises: 1) a pre-tax charge of \$24.7 million (\$0.13 per share) for "estimated losses in the commissions receivable portfolio" from Insurance Services, *representing a "true up" for past revenues that were prematurely recognized In our opinion this calls into question the validity of the "turnaround" the unit "experienced" in 2Q04....*

\* \* \*

INVESTMENT THESIS. BSG is rated a Sell/Speculative with price target of \$13.50, on our concerns regarding poor track record, lack of visibility, unexpected drop-off in Investment Services operating margins, continued weakness in the Insurance segment, potential for future goodwill impairment on acquired insurance assets, higher leverage reducing flexibility, and recent and unexpected leadership changes... (emphasis added).

94. On May 17, 2004, BISYS announced that it would restate its three previous fiscal years. According to BISYS, the restatement was expected to reduce previously-reported earnings by approximately \$60-\$80 million. In a May 17, 2004 press release titled "BISYS Provides Update on Fiscal Third Quarter Results - Delays Filing of Third Quarter Form 10-Q; Will Restate Results of Certain Prior Periods; Reaffirms Guidance for Fourth Fiscal Quarter," BISYS disclosed:

BISYS, a leading provider of business process outsourcing solutions for the financial services sector, today provided an update on its previously reported results of operations for the quarter ended March 31, 2004.

Based upon a continuing review and analysis of commissions receivable in its Life Insurance division, BISYS has determined that the previously reported adjustment of \$24.7 million (\$15.5 million net of tax) to commissions receivable in its Life Insurance

division will be increased to approximately \$70 million to \$80 million (approximately \$44 million to \$50 million net of tax).

BISYS has also determined that the adjustment requires a restatement of its financial results for each of the fiscal years ended June 30, 2003, 2002 and 2001, as well as its interim results for fiscal 2004, to reflect the impact of the adjustment on each of the periods presented. The Company intends to file its Form 10-Q for the quarterly period ended March 31, 2004, as soon as practicable.

According to Jim Fox, BISYS' executive vice president and CFO, "The adjustment to commissions receivable in our Life Insurance division is larger than we had previously anticipated, and after further analysis requires that we restate our previously reported results to appropriately reflect the impact of the adjustment on prior periods. We look forward to presenting our restated historical financial results as soon as practicable, and expect the substantial majority of the final adjustment, including the \$24.7 million previously reported in our third fiscal quarter of 2004, to relate to fiscal years prior to 2003."

This statement is false and misleading as it fails to fully and accurately describe the adverse financial information known to defendants.

95. In response to this latest permutation of BISYS' problems, BISYS shares fell a further 8% from their May 17, 2004 closing price of \$14.10 to close on May 18 at \$12.97 per share.

96. On May 18, 2004, BISYS announced a delay in filing its Form 10-Q for the quarter ending March 31, 2004. In its May 18, 2004 Form 12b-25 explaining the delay, BISYS stated that a \$24.7 million one-time charge had grown into a \$70-\$80 million restatement of its previous three years of financial results, and admitted that the restatement of past results would involve "a significant change in results of operations":

Based upon a continuing review and analysis of commissions receivable in the Registrant's Life Insurance division, the Registrant has determined that the previously reported adjustment of \$24.7 million (\$15.5 million net of tax) to commissions receivable in its Life Insurance division will be increased to approximately \$70 million to \$80 million (approximately \$44

million to \$50 million net of tax). The Registrant has also determined that the adjustment requires a restatement of its financial results for each of the fiscal years ended June 30, 2003, 2002 and 2001, as well as its interim results for fiscal 2004, to reflect the impact of the adjustment on each of the periods presented.

\* \* \*

Although the overstatement of commissions receivable relates principally to periods prior to the Registrant's current fiscal year, as a result of the impact of the restatement on the corresponding periods of the prior fiscal year, ***the Registrant anticipates that there will be a significant change in the results of operations from the corresponding periods of the prior fiscal year....***

The foregoing statements are false and misleading as they fail to fully and accurately describe the adverse financial information known to defendants.

97. On June 16, 2004 BISYS finally filed its Form 10-Q for the quarter ended March 31, 2004 and issued a press release. BISYS disclosed a more detailed explanation of its problems: (i) the restatement of previously-overstated commissions receivable would total \$80 million (i.e., the maximum amount still within the range announced on May 17, 2004); (ii) the restatement of previously-overstated commissions receivable would necessitate a further restatement of \$21 million to reflect impairment of goodwill; (iii) the restatement of previously-overstated commissions receivable had put BISYS in breach of its financial covenants with its lenders; and (iv) the restatement of previously-overstated commissions receivable had occasioned an SEC investigation of BISYS.

98. Additionally, in its Form 10-Q filed on June 16, 2004, BISYS provided a summary of the impact of its restatement on previously reported net-income, reproduced in the table below. Originally-reported fiscal 2003 net income of \$111.8 million was reduced by \$13.6 million (12%) to \$98.2 million. Originally-reported fiscal 2002 net income of \$115.9 million

was reduced by \$27.2 million (23.5%) to \$88.7 million. Originally-reported fiscal 2001 net income of \$85.1 million was reduced by \$18 million (21.2%) to \$67.1 million.

99. Summary of BISYS' Restatement of Net Income

	6 months ended 12/31/03	Fiscal 2003	Fiscal 2002	Fiscal 2001	Pre - 2001	Total
Net Income Originally Reported <sup>2</sup>	24,857	111,823	115,861	85,120		
Pretax Adjustments						
Commissions Receivable	2,270	(11,738)	(36,060)	(23,880)	(10,567)	(79,975)
Goodwill and deferred taxes	-	(7,348)	(6,486)	(7,214)	-	(21,048)
Commissions Payable	(198)	(1,221)	(1,221)	-	-	(2,640)
Total Pretax Adjustments	2,072	(20,307)	(43,767)	(31,094)	(10,567)	(103,663)
Tax effect of Restatement Adjustment	772	(6,727)	(16,604)	(13,044)	(228)	(35,831)
Net Income, Restated	26,157	98,243	88,698	67,070		
Diluted EPS, Originally Reported	0.21	0.92	0.94	0.71		
Effect of Restatement	0.01	(0.11)	(0.22)	(0.15)		
Diluted EPS, Restated	0.22	0.81	0.72	0.56		

100. According to the restatement details disclosed by BISYS, BISYS reduced originally-reported net income for fiscal years 2001, 2002 and 2003 (totaling \$312.8 million) by \$58.8 million to \$254 million. By BISYS' own admission, the net income it falsely reported

<sup>2</sup> All figures in thousands.

during the fiscal years 2001, 2002 and 2003 overstated by more than 23% BISYS' actual net income during that time. As a result, during the Class Period, BISYS appeared to be very profitable, with margins in the 40% range. In fact margins were revealed to be in the 30% range, as BISYS' Chief Financial Officer admitted in a June 18, 2004 conference call with analysts discussing the restatement.

## **VII. PLAINTIFF'S ALLEGATIONS REGARDING BISYS' FALSE FINANCIAL REPORTING DURING THE CLASS PERIOD**

101. As alleged above, BISYS' financial results for its fiscal years 2001-2004 were included in Forms 10-Q and 10-K filed with the SEC. The results were also included in press releases disseminated to the public, as described herein.

102. Defendants' statements referenced above were materially false and misleading at the time that they were made because they failed to disclose the following facts, among others:

- a. that the Company had artificially inflated its commissions receivable in its Life Insurance Services division, as reported in the press releases and SEC filings detailed above, thereby artificially inflating its reported assets, revenues and income;
- b. that, contrary to the Company's express representations, BISYS' reported financial results were not prepared or presented in accordance with GAAP. Rather, they included artificially inflated assets and results of operations, such that the reported results did not accurately reflect BISYS' true operational results and financial condition at the time;
- c. that the Company suffered from material unreported deficiencies in their internal accounting controls;
- d. that the Company had failed to take an impairment charge for the loss of value to its investments; and
- e. that the Company had improperly recognized revenues by increasing goodwill by \$21 million.

Again, there is no dispute that the Company's financial statements and representations regarding accounting controls were false and misleading on the grounds set forth above in subparagraphs (a) through (e) because the Company has admitted such errors.

103. The market for BISYS' securities was open, well-developed and efficient throughout the Class Period. As a result of defendants' materially false and misleading statements and failures to disclose correct information regarding the Company's operations and financial results, BISYS common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until at least May 17, 2004. Plaintiff and other members of the Class purchased or otherwise acquired BISYS securities while relying upon the integrity of the market price of BISYS securities and market information relating to BISYS, and have been damaged thereby.

104. At all relevant times during the Class Period, defendants represented that BISYS' financial statements, when issued, were prepared in conformity with GAAP. GAAP are recognized by the accounting profession and the SEC as the uniform rules, conventions and procedures necessary to define accepted accounting practices at a particular time. The Company used improper accounting practices in violation of GAAP and SEC reporting requirements to falsely inflate BISYS' reported revenues, net income and earnings per share in the interim quarters and fiscal years during the Class Period.

105. In order to inflate the price of BISYS securities, defendants caused the Company to falsely report its operating results for the fiscal years beginning in 2001 and continuing through the first two reporting periods of 2004 via improper revenue recognition and valuation of its receivables. BISYS' materially false and misleading financial statements resulted from a series of deliberate decisions by senior management designed to conceal the truth

regarding BISYS' actual operating results. Specifically, defendants caused the Company to violate GAAP by, among other things, failing to properly account for commissions receivable, resulting in substantial overstatement of revenues.

**A. Provisions of GAAP Applicable to BISYS' Restatement**

106. During the Class Period, defendants represented repeatedly that the Company's financial statements were prepared in conformity with GAAP. These representations were materially false and misleading when made because defendants, in violation of GAAP, knowingly or recklessly employed improper accounting practices, which falsely inflated the Company's assets reported on the balance sheet, falsely overstated income, and understated expenses during the Class Period.

107. GAAP, as set forth in American Institute of Certified Public Accountants ("AICPA") Professional Standards in U.S. Auditing Standards ("AU") § 411.02, are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. As set forth in Financial Accounting Standards Board ("FASB") Statements of Concepts No. 1, one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity's financial performance during the period being presented. Statement of Concepts No. 1, ¶ 42, states:

Financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance.

108. Indeed, compliance with GAAP is a fundamental obligation for reporting companies. As set forth in SEC Rule 4-01(a) of SEC Regulation S-X, "[f]inancial statements

filed with the [SEC] which are not prepared in accordance with [GAAP] will be presumed to be misleading or inaccurate." 17 C.F.R. § 210.4-01(a)(1) (2004).

109. Management is responsible for preparing financial statements that conform with GAAP. As noted in AU § 110.03:

The financial statements are management's responsibility. The auditor's responsibility is to express an opinion on the financial statements. Management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, initiate, record, process, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements. The entity's transactions and the related assets, liabilities and equity are within the direct knowledge and control of management.

110. Defendants cannot and do not dispute that their financial statements failed to comply with GAAP. On May 17, 2004, BISYS announced that its prior three (3) years of financial statements contained a number of errors, detailed in ¶ 94, above.

111. BISYS' materially false and misleading financial statements resulted from a series of deliberate senior management decisions designed to conceal the truth regarding BISYS' actual operating results.

112. Restatements are necessary only in rare and unusual circumstances. GAAP dictates in Accounting Principles Board Opinion ("APB") No. 20 that restatements of financial statements are only to be used when there is a change in the reporting entity, when certain specifically identified changes in accounting principles are made, and for the correction of material errors in previously issued financial statements.

113. In the facts revealed by BISYS, there has been no change in the reporting entity, and none of the changes in accounting principles specifically identified by APB No. 20 were employed in the Company's financial reporting. The reasons for restating the financial

statements, as revealed in the 10-Q for the quarter ended March 31, 2004, were for the purposes of recording "adjustments for correction of errors resulting from various accounting matters described herein.... The adjustments fall into three general categories: adjustments to commissions receivable in the Life Insurance Division, adjustments relating to goodwill and deferred taxes established in acquisition accounting for certain acquired entities in the Life Insurance Division, and adjustments to agent commissions payable in the Life Insurance Division. Additionally, as a result of the restatement adjustments, adjustments to the computation of deferred tax assets and liabilities were also recorded." The reason for the restatement was correction of material errors in previously issued financial statements.

### 1. The Company Improperly Recorded Revenue

114. Based upon information contained in the 10-Q for the quarter ended March 31, 2004, the restatement affected net income as shown in the following table:

	Pre-2001	12 Mos Ended 6/30/01*	12 Mos Ended 6/30/02*	12 Mos Ended 6/30/03*	6 Mos Ended 12/31/03
Net Income as previously reported		\$85,120	\$115,861	\$111,823	\$24,857
Adjustment	(\$10,339)	(\$18,050)	(\$27,163)	(\$13,580)	\$1,300
Restated Net Income		\$67,070	\$88,698	\$98,243	\$26,157
Adjustment as a percent of Restated Net Income		(26.91)%	(30.62)%	(13.82)%	4.97%

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\* BISYS reports financial statement information using a fiscal year ending on June 30.

115. Eighty million pre-tax dollars (\$80 million), or roughly 77%, of the restatement, was the result of improper revenue recognition. According to disclosures in the Form 10-Q for the quarter ended March 31, 2004, incorrect assumptions were used to create first year estimates for bonus and commissions receivable in the Life Insurance division. Twenty-one million pre-tax dollars, or 20%, of the restatement was attributed to improper accounting for acquisitions in the Life Insurance division, which also affected reported revenues. BISYS disclosed that revenues relating to acquired entities, which were earned by the acquired entities prior to acquisition, were improperly recorded as revenues by BISYS. (The remaining 3% (\$2.6 million pre-tax) of the restatement was an adjustment to commissions payable, recorded by the Life Insurance division.)

116. As indicated in the chart above, the restatement did not report that amounts had simply been recognized in the wrong reporting periods. There is virtually no movement of amounts reported from one reporting period to another. In the first and second quarters of the fiscal year ending June 30, 2004, even though restated net income increased, as disclosed in the amended 10-Qs for those quarters, revenues as restated were lower than originally reported in other periods. Both revenue and net earnings were restated to lower figures. The distinctive characteristic of BISYS' restated revenues is that they never actually existed -- they were almost entirely fictitious. BISYS estimated that policies would pay premiums through the first year, when many were cancelled or lapsed.

117. The massive restatement required to correct the previously reported financial results shows that the company and its management failed to comply with section 13(b)(2)(A) of the Exchange Act which requires that issuers "make and keep books,

records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.” 15 U.S.C. § 78m(b)(2)(A) (2004).

118. Specifically, BISYS violated GAAP and improperly inflated revenues during the Class Period by recording revenue on certain first year, bonus and renewal commissions prior to the earnings process being complete. The inflation of revenues was achieved by a blatant and systematic violation of GAAP's fundamental principles of revenue recognition, i.e. that in order for revenue to be recognized, it must be "realized or realizable," and earned (Statements of Concepts No. 5, ¶ 83). The Statement of Concepts No. 5, ¶ 83 describes the concept of "earned" in relevant part as follows:

Revenues are not recognized until earned. An entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues.... (Statement of Concepts No. 5, ¶ 83(b)).

Further, the Statement of Concepts states:

The two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery) (Statement of Concepts No. 5, ¶ 84(a)).

The Statement of Concepts also states the following with respect to collectibility and revenue recognition:

If collectibility of assets received for product, services, or other assets is doubtful, revenues and gains may be recognized on the basis of cash received. (Statement of Concepts No. 5, ¶ 84 (g)).

Additionally, the SEC provided its views in applying GAAP to selected revenue recognition issues through the issuance of Staff Accounting Bulletin ("SAB") No. 101 - Revenue

Recognition in Financial Statements in December 1999. SAB 101 states, in relevant part, as follows:

The staff believes that revenue generally is realized or realizable and earned when all of the following criteria are met:

- Persuasive evidence of an arrangement exists,
- Delivery has occurred or services have been rendered,
- The seller's price to the buyer is fixed or determinable, and
- Collectibility is reasonably assured.

17 C.F.R. pt. 211 (2004)

119. As a result of accounting improprieties, defendants caused BISYS' reported financial results to violate, among other things, the following provisions of GAAP for which each defendant is necessarily responsible:

a. The principles that financial reporting should provide information that is useful to present and potential investors in making rational investment decisions and that information should be comprehensible to those who have a reasonable understanding of business and economic activities (Statement of Concepts No. 1, ¶ 34);

b. The principle of materiality, which provides that the omission or misstatement of an item in a financial report is material if, in light of the surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item (Statement of Concepts No. 2, ¶ 132) (SEC Staff Accounting Bulletin No. 99) 17 C.F.R. pt. 211 (2004);

c. The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners

(stockholders) for the use of enterprise resources entrusted to it. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (Statement of Concepts No. 1, ¶ 50);

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

e. The principle that financial reporting should be reliable in that it represents what it purports to represent. The notion that information should be reliable as well as relevant is central to accounting (Statement of Concepts No. 2, ¶¶ 58-59);

f. The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions (Statement of Concepts No. 2, ¶ 80);

g. The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (Statement of Concepts No. 2, ¶¶ 95, 97);

h. The principle that contingencies that might result in gains are not reflected in accounts since to do so might be to recognize revenue prior to its realization and that

care should be used to avoid misleading investors regarding the likelihood of realization of gain contingencies (FASB Concept No. 5, Accounting for Contingencies); and

i. The principle that financial statements disclose contingencies when it is at least reasonably possible (e.g., a greater than slight chance) that a loss may have been incurred (Statement of Financial Accounting Standards (“SFAS”) No. 5, ¶ 10) and that financial statements disclose significant risks and uncertainties associated with an entity's operations (AICPA's Statement of Position No. 94-6).

## **2. The Company Failed To Take Impairment Charges**

120. SFAS No. 141, Business Combinations, states that "an acquiring entity shall allocate the cost of an acquired entity to the assets acquired and liabilities assumed based on their estimated fair value at date of acquisition." SFAS No. 141, ¶ 35. It also states that the acquiring entity should "identify all of the assets acquired and liabilities assumed, including intangible assets that meet the recognition criteria in paragraph 39, regardless of whether they had been recorded in the financial statements of the acquired entity." SFAS No. 141, ¶ 35. APB No. 16, the GAAP predecessor to SFAS No. 141, contained these same principles. Any revenues which had been earned prior to acquisition and had not yet been collected should have been recorded as an account receivable, and reduced goodwill acquired. They should not have been recorded as revenues for BISYS. In other words, any revenues that were earned prior to acquisition and yet had not been collected, should have been recorded as an account receivable as of the date of the acquisition. BISYS, in failing to convert the acquired entities from cash to accrual accounting as of the acquisition, was able to inflate goodwill and recognize the acquirees' revenue as its own. Such revenue, because it was earned prior to acquisition, should not have been recorded as revenue for BISYS.

121. When the company disclosed that over \$20 million of the restatement, pre-tax, related to adjustments to goodwill, defendants did not disclose that the adjustment also was a reduction of improperly recorded revenues. BISYS disclosed that about \$80 million of the restatement, pre-tax, was an adjustment of revenues and that over \$20 million related to goodwill. That is only part of the truth. Actually, at least \$100 million of the restatement reduced previously recorded revenues. The goodwill had to be reduced as a result of the Company's failure to properly record accounts receivable at acquisition.

### **3. Lack of Internal Controls**

122. Management also had the responsibility to design, implement, and maintain a system of internal accounting controls that would provide accounting records that reflect the transactions that were consummated by the entity, as required by the SEC.

123. More particularly, section 13 of the Exchange Act requires that:

Every issuer which has a class of securities registered pursuant to Section 12 of this title and every issuer which is required to file reports pursuant to Section 15(d) of this title shall - -

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that - -

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

15 U.S.C. § 78M(b)(2) (2004).

124. Following the catastrophic accounting scandals in recent years, Congress enacted enhanced financial statement responsibilities for senior management with respect to those financial accounting systems and internal control systems utilized by public companies, as follows:

**Sec. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.**

**B.** Regulations Required.--The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

- (1) the signing officer has reviewed the report;
- (2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- (3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;
- (4) the signing officers --
  - (A) are responsible for establishing and maintaining internal controls;
  - (B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such

officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

- (C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and
  - (D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
- (5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)--
- (A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and
  - (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and
- (6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses. . .
- (c) Deadline.--The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

The Sarbanes-Oxley Act, 15 U.S.C. § 7241 (2004).

125. As discussed below, PwC could not have obtained the necessary understanding of internal controls without learning that pervasive weaknesses in internal control existed year after year during the Class Period. These weaknesses enabled management to fraudulently inflate revenues by more than 25% over a three-year period. As described below,

PwC violated the requirement in the Second Standard of Field Work of Generally Accepted Auditing Standards ("GAAS"), which requires that "a sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing and extent of tests to be performed." (AU § 150.02).

126. The Company's 2003 Form 10-K filing falsely states:

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports, filed pursuant to the Securities Exchange Act of 1934, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We carried out an evaluation as of June 30, 2003, under the supervision and with the participation of the Company's management, including the Company's effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective. There have been no changes in the Company's internal control over financial reporting during the fiscal quarter ended June 30, 2003, that has materially affected, or is reasonably likely to affect, our internal control over financial reporting.

127. Contrary to such assertions, BISYS' management disclosed in the restated 10-K/A for the year ended June 30, 2003 and the 10-Q for the quarter ended March 31, 2004 that *the restatements were the result of a material weakness of the internal controls of the Company*. This admission shows the failure of BISYS and its management to comply with section 13(b) of the Exchange Act, set forth above at ¶ 123.

## VIII. ADDITIONAL SCIENTER ALLEGATIONS

### A. Defendants Had Direct Knowledge That They And The Company Were Issuing Materially False Statements

128. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading. Defendants knew that such statements or documents would be issued or disseminated to the investing public; and defendants knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth herein, defendants, by virtue of their receipt of information reflecting the true facts regarding BISYS, their control over, and/or receipt and/or modification of BISYS' materially misleading statements and/or their associations with the Company which made them privy to confidential proprietary information concerning BISYS, participated in the fraudulent scheme alleged herein. Indeed, several former BISYS employees gave information to counsel for the common stock class on a confidential basis. The information provided by these sources demonstrates defendants' scienter.

#### 1. Improper Revenue Recognition

129. The individual defendants' direct knowledge of, and participation in, the accounting fraud leading to the restatement is substantiated by a former high-ranking finance department employee interviewed by counsel for the common stock class, identified herein as Confidential Witness No. 1. According to the witness, BISYS had a renewal stream of about \$2 million to \$3 million per month. But in 2001, BISYS executives changed the method by which the Company booked the renewal income. Rather than booking it when the checks came in from the carriers, BISYS began "accruing the renewal income," an action not permitted by GAAP or the Company's published internal revenue recognition guidelines.

130. This change was a deliberate decision made by defendant Sheehan, who communicated his decision to senior management (including the other individual defendants) by stating, "We're a little short, let's accrue a little renewal money." Further, senior management (including the individual defendants) ignored the protestations of finance department employees, who complained repeatedly that the practice of booking revenues early was improper. However, as Confidential Witness No. 1 relates, senior management "did their thing anyway." Ultimately, senior management simply stated that "we have to hit the numbers" promised to analysts. This course of conduct ultimately resulted in the overstatement of commissions receivable by approximately \$80 million over a three year period.

131. Defendants' knowledge of the materially misleading statements is confirmed by a former senior sales executive with the Company who headed a BISYS office in the South interviewed by counsel for the common stock class, and identified herein as Confidential Witness No. 2, who states that sales executives were pressured by BISYS management to report that every insurance policy or case was "placed," meaning that it would be shown as revenue, before BISYS was actually paid by the carriers. There was, in other words, a general corporate-wide practice, spearheaded by the individual defendants, to pressure sales representatives to artificially increase the amount of revenues booked from insurance policies. According to this witness, "there was a push at the end of every month to get as much placed as we could to show revenue [in violation of GAAP and internal accounting policies]. It really inflated revenue." This "push" came directly from BISYS management, including, among others, Dan Anderson, the Company's Eastern Regional Vice President.

132. Consistent with the reports of other witnesses, Confidential Witness No. 2 also indicates that if BISYS sold a policy that brought in \$100 per month in net revenue, BISYS

would show \$1,200 revenue in the month that policy was placed, which in effect booked all the revenue expected for one year in one month, even though the policies often lapsed and the remaining payments were never received. Furthermore, in connection with the acquisition of Confidential Witness No. 1's former employer, BISYS replaced the tracking system used by the witness' former employer with one that was far less detailed and severely hampered BISYS' ability to track the status of its policies. The former employer had the capability of running reports on policies sold by year, type of policy and by carrier, but, according to Confidential Witness No. 1, BISYS could not do that. BISYS could only track its policy by carrier and, therefore, was not able to tell whether the payment on the policy was or was not coming in within a certain time period.

133. Yet another former BISYS sales executive who spoke with counsel for the common stock class, identified herein as Confidential Witness No. 3, also reports that "there was pressure" to show revenue on policies "no matter what" in order to build up revenue for the month. BISYS offices were thus showing policies paid for "before they were actually approved by the carrier."

134. A former sales executive who was interviewed by counsel for the common stock class, identified herein as Confidential Witness No. 4, provides further support for those allegations. This witness indicates that sometimes BISYS showed a case paid in the system before the carrier actually paid BISYS. That witness explained that this was done, at least in part, so the Company would show better revenue numbers. In taking this action, and by engaging in the illicit behavior described throughout this Amended Complaint, defendants ignored the truism — as phrased by Confidential Witness No. 1— that "renewals build and fall at the same time," as some customers buy policies and others drop policies. Naturally, though, "the longer

you stay in business the bigger your renewal stream grows." Moreover, according to Confidential Witness No. 4, BISYS sometimes showed accounts as "paid" before the carrier actually paid BISYS so that employees would qualify for monthly bonus calculations. The pressure to book payments prematurely came from BISYS management, notably Mr. Anderson, the regional Vice President, who frequently sent e-mails to subordinates and otherwise communicated this pressure. As part of this pressure, throughout the Class Period, management kept raising the revenue targets for Confidential Witness No. 4's office to what the employees considered to be unreasonable goals. For example, between 2001 and 2003, revenue targets for this office rose from \$725,000 to \$1.5 million, even though there were no circumstances in the business generated by the office that would have justified such an increase.

## **2. Failure to Account Properly for Goodwill**

135. BISYS and the individual defendants also manipulated accounting policies in place at companies they acquired. Confidential Witness No. 1 recalls that many of the companies BISYS acquired had blocks of policies on their books which were already sold, and the companies (which generally used cash accounting) were waiting for the money to come in from the carriers before recognizing the revenue. But after BISYS acquired these companies, it converted them to accrual accounting, "which was an immediate boost to BISYS income." By changing to accrual accounting, BISYS claimed the already-sold policies as BISYS revenue, not assets of the acquired business. (Instead, BISYS should have converted the acquired company to accrual accounting for acquisition purposes, making the pending sales assets in the acquisition). The witness relaying this information reported directly to Steve Wevedau, BISYS Vice President of Corporate Finance.

136. Confidential Witness No. 1 further relates that the Company consistently overbooked goodwill following acquisitions. For example, this former employee complained to

senior executives that the goodwill relating to the acquisition of Acensus was unsupported by some \$4-\$5 million, but the inflated figure was used over his protest.

137. Confidential Witness No. 1 buttresses his assertions by stating that the Company and senior executives were using inflated goodwill as a systemic part of BISYS' acquisitions: "Why do you think they were going on this buying binge? They got the immediate income pickup - - it looks great on the books. When you pay too much (for a company) where do you dump it? Goodwill. They paid too much and everybody knew it, and they were doing it anyway because it overstated income and overstated receivables. I felt this was completely wrong." The employee complained to senior management, but his concerns were rejected.

### **3. Failure to Account for Commissions Properly**

138. Confidential Witness No. 1 also reported that BISYS, at the direction of Mr. Wevedau and defendant Sheehan, was falsifying commission payments to agents. This was done by manually changing the records of the Company's subsidiaries. "That's when I got angry. I knew they were falsifying the numbers they had to pay out," and were keeping the extra money at BISYS. This allegation is consistent with the small portion of the BISYS restatement which is described as adjustments to agent commissions payable in the Life Insurance division.

139. Confidential Witness No. 6, a former accounting employee interviewed by counsel for the common stock class, who worked in BISYS' commission and audit section was, for much of the Class Period, one of fewer than 20 employees who were charged with commission accounting at BISYS' insurance division. As part of Confidential Witness No. 6's job, Confidential Witness No. 6 deposited the checks received by BISYS from insurance carriers and spoke to up to 60 insurance agencies nationwide each day. Throughout the Class Period, BISYS frequently advanced commission to agents before payment was actually received for the policies from the insurance companies. (Confidential Witness No. 6 contrasted this practice with

practices at the witness' current employer, a major worldwide insurance company, which does not pay advances.) According to Confidential Witness No. 6, as a result of this practice, BISYS frequently had to return the advances when the policy was dropped. Confidential Witness No. 6 personally recalls this occurring on a daily basis. Clients would buy annuity policies and then cash them or roll them over for better rates. In those instances, the insurance carrier would take back all the money BISYS received for the policies.

#### **4. Lack of Internal Controls**

140. Defendants were also aware that BISYS lacked proper internal controls. A former fund accountant at BISYS, interviewed by counsel for the common stock class and identified as Confidential Witness No. 5, indicated that a SAS 70 review was a Sarbanes-Oxley review, and in order to be completed, "internal controls have to be met." The accountant also indicated that BISYS "will definitely fail" on the SAS 70 review.

#### **5. The Company Violated Its Own Internal Accounting and Corporate Conduct Policies**

141. In its 2003 Form 10-K, BISYS describes the following "critical accounting policy Revenue recognition - The Company records revenue as earned from services provided in the periods in which the services are performed. Future interpretations of existing accounting standards or changes in the Company's business practices could result in changes in the Company's revenue recognition accounting policies that could have a material effect on the Company's results of operations and business".

142. The Company further sets forth the following internal revenue recognition rules:

The Company records revenue as earned as evidenced by contracts or invoices for its services at prices established by contract, price list and/or fee schedule less applicable discounts.

\* \* \*

Commission revenue from insurance distribution operations is recognized when all placement services have been provided, protection is afforded under the insurance policy, ***and the premium is known or can be reasonably estimated and is billable.*** (Emphasis added.)

143. BISYS disclosed in its 10-K for the year ended June 30, 2001 that revenue was recognized in accordance with SAB 101. SAB 101 was adopted by BISYS in the fourth quarter of that year and was said to have no material impact on the company's financial statements. Each 10-K filed in subsequent years disclosed that revenue was being recognized in accordance with SAB 101. SAB 101 states that it "is not intended to change current law or guidance in the accounting literature."

144. Defendants also failed to comply with their Code of Ethics.

145. In addition to the foregoing policies, BISYS had a strict Code of Ethics for its chief executive and senior financial officers. The Company's Code of Ethics provides, among other things, as follows:

As a Senior Officer, you must not only comply with applicable laws. You also have a responsibility to conduct yourself in an honest and ethical manner and must abide by the Code of Business Conduct and other Company policies and procedures that govern the conduct of our business.

\* \* \*

You are required to comply with the laws, rules and regulations that govern the conduct of our business and to report any suspected violations in accordance with the section below entitled "Compliance With Code Of Ethics."

\*\*\*

It is Company policy to make full, fair, accurate, timely and understandable disclosure in compliance with all applicable laws and regulations in all reports and documents that the Company files with, or submits to, the Securities and Exchange Commission

and in all other public communications made by the Company. As a Senior Officer, you are required to promote compliance by all employees with this policy and to abide by Company standards, policies and procedures designed to promote compliance with this policy.

146. Despite the above stated policies of the Company, the individual defendants failed to comply with the Company's Code of Ethics.

**B. BISYS and the Individual Defendants Had Concrete Motives to Commit Fraud**

**1. The Individual Defendants Sold Huge Volumes of Shares**

147. Defendants were motivated to participate in the wrongful conduct alleged herein so that BISYS insiders could sell their own holdings of BISYS stock at artificially inflated prices. While defendants were making false and misleading statements about BISYS, which artificially inflated BISYS common stock, BISYS's top insiders were engaged in a massive insider bailout. Collectively, defendants sold 1,320,990 shares of BISYS common stock, resulting in staggering insider proceeds of \$60,850,834. Broken down, the insider sales demonstrate not only that these sales were suspicious in amount but that they were also suspicious in timing.

Insider	Date	Sha	Price	Amount
Lynn Mangum				
	11/08/00	42,000	\$46.4875	\$1,952,475
	11/17-11/20/00	155,700	\$44.7933-\$44.8705	\$6,978,709
	11/27/00	22,300	\$46.2927	\$1,032,327
	06/07/01	207,595	\$55.1000	\$11,438,485
	11/02/01	105,151	\$53.6600	\$5,642,403
	11/07-11/08/01	79,800	\$54.6900-\$54.9300	\$4,380,222
	11/12-11/14/01	120,200	\$53.2800-\$54.3300	\$6,497,226

TOTAL		732,746		\$37,921,847
Dennis Sheehan				
	11/08/00	8,000	\$46.4875	\$371,900
	11/17-11/20/00	28,700	\$44.7933-\$44.8705	\$1,286,378
	11/27/00	3,300	\$46.2927	\$152,766
	06/07/01	50,792	\$55.1000	\$2,798,639
	11/02/01	59,662	\$53.6600	\$3,201,463
	11/07-11/08/01	12,000	\$54.6900-\$54.9300	\$658,680
	11/12-11/14/01	18,000	\$53.2800-\$54.3300	\$972,950
	08/29/02	71,210	\$25.1500	\$1,790,931
TOTAL		251,664		\$11,233,708
Kevin Dell	11/07/00	28,532	\$46.0700	\$1,314,469
	11/17-11/20/00	25,402	\$44.2500-\$44.8700	\$1,136,602
	11/27/00	3,674	\$46.2900	\$170,069
	06/07/01	12,155	\$55.1000	\$669,741
	11/07-11/08/01	5,400	\$54.6900-\$54.9300	\$296,406
	11/12-11/15/01	12,972	\$53.2800-\$54.3300	\$697,651
	11/23/01	10,000	\$53.5000	\$535,000
	06/17/02	52,209	\$33.3100	\$1,739,082
	11/11/03	28,500	\$14.1526	\$403,349
	01/26/04	10,000	\$17.5400	\$175,400
TOTAL		188,844		\$7,137,768
Mark Rybarczyk				
	02/06/01	5,000	\$48.6250	\$243,125
	08/23/01	6,000	\$55.4400	\$332,640

	11/14/01	30,000	\$54.3877	\$1,631,631
	02/10-02/17/04	85,000	\$18.0000-\$18.0433	\$1,537,196
TOTAL		126,000		\$3,744,592
Andrew Corbin	08/24/01	7,000	\$55.1875	\$386,313
	04/22/02	5,528	\$32.8570-\$33.2000	\$182,844
	08/19-08/23/02	9,208	\$26.4300-\$26.5200	\$243,763
TOTAL		21,736		\$812,919

148. As reflected by the dates in the chart above, with few exceptions, the top insiders dumped their stock either just after the release of favorable information or just before the release of non-favorable information. The November 2000 sales closely followed the first false statement alleged herein. The June 2001 sales followed the filing of the false Third Quarter 2001 results. The November 2001 sales closely followed the release of results on October 23, 2001. The April 2002 sales closely followed the release of Third Quarter 2002 results. The August 2002 sales came after the release of Fourth Quarter 2002 results. The suspicious timing, together with the volume of the insider sales, raises a strong inference of scienter.

149. In addition to the proceeds achieved through insider sales, the individual defendants were motivated to inflate their compensation packages. Both the base salaries and the bonuses of the individual defendants were dependent upon the performance of the particular executive's business segment. The individual defendants were able to achieve the following earnings during the Class Period: (a) defendant Mangum netted in excess of \$5.5 million; (b) defendant Sheehan netted in excess of \$2.9 million; (c) defendant Rybarczyk netted in excess of \$1.5 million; (d) defendant Corbin netted in excess of \$1.2 million; (e) defendant Dell netted in

excess of \$1.1 million; (f) defendant Fox netted in excess of \$600,000; and (g) defendant Fradin netted in excess of \$500,000. But for the artificial inflation caused by defendants' materially false and misleading statements, these compensation packages would have been substantially smaller. The fact that their individual compensation packages were dependent upon performance levels incentivized the individual defendants to artificially inflate the Company's revenue.

150. An inference of scienter is further supported by the resignations of BISYS' Chief Executive Officer (Dennis R. Sheehan), Chief Financial Officer (Andrew C. Corbin), and President of the Insurance and Education Services Group (Jose Suquet) shortly before and/or coterminous with BISYS' disclosures of financial shortfalls, financial charges, improper accounting and financial restatements centered in BISYS' Insurance and Education Services Group.

151. Additionally, scienter is indicated by new-CEO Russell Fradin's admission, in statements published on June 17, 2004 in *American Banker*, that certain of BISYS' financial problems had been disclosed to him during the Class Period while he "was doing my due diligence." *American Banker's* June 17, 2004 article titled "BISYS CEO: Problem Under Control" stated:

When Russell P. Fradin became BISYS Group Inc.'s president and chief executive in February, he knew the financial services outsourcer had some financial problems to resolve... Mr. Fradin said he got the first indications of trouble in the insurance business [i.e., BISYS' Insurance and Education Services Group], where BISYS had made 16 acquisitions in recent years, "when I was doing my due diligence" before joining BISYS. ***"I knew about that before I joined. Maybe I didn't know the extent of it, but I haven't been surprised"*** (emphasis added).

**2. The Company Overstated its Financial Performance to Permit it to Obtain Preferable Credit Terms.**

152. The Company had further incentive to materially overstate its financial performance in order to satisfy its funding needs on advantageous terms by raising \$300 million in the convertible note offering. Had the Company accurately reported its financial condition at the time of the offering, it would have been obligated to pay a higher interest rate to purchasers of the notes.

153. On March 31, 2004, approximately 45 days prior to announcing the full scope of the restatement, the Company replaced an older \$300 million credit facility set to expire in June 2004 with a new senior unsecured credit facility. The \$400 million facility contains a \$300 million revolving line of credit and a \$100 million term loan. It is set to expire in 2008. The Company has since announced that as a result of the restatement, it was in breach of the terms of the new credit facility.

**3. The Company Used the Artificially Inflated Stock for Acquisitions.**

154. A major focus of BISYS' growth was the practice of acquiring complementary businesses as a means of supplementing its own earnings. BISYS acquired at least 17 during the Class Period, including several using BISYS stock as consideration. The artificially inflated stock price allowed the Company to make such acquisitions on more favorable terms.

**IX. PWC'S PARTICIPATION IN THE FRAUD AND VIOLATIONS OF GAAS**

155. The management of BISYS had the responsibility for preparing the above financial statements in accordance with GAAP. Defendant PwC had the responsibility to perform an audit of those annual financial statements and render an opinion regarding whether those financial statements were fairly presented in accordance with GAAP. Further, defendant PwC

had the responsibility to plan and perform the audit of those financial statements to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud. As further described below, PwC did not perform its audit in accordance with GAAS and did not have a reasonable basis for the false statements it made with respect to BISYS' financial statements. Due to the magnitude of the fraud, the nature of the fraud and the extended period over which the fraud occurred, PwC's purported audits must have amounted to no audit at all.

156. As part of the Company's 10-K<sup>3</sup>, PwC declared:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of income, stockholders' equity and cash flows present fairly, in all material respects, the financial position of The BISYS Group, Inc. and its subsidiaries at June 30, 2003 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2003 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

157. As set forth herein, there is no dispute that such opinion was without reasonable basis, as the Company's financial statements were not in compliance with GAAP. The

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<sup>3</sup> The PwC audit opinions contained in the Company's 2001 and 2002 Form 10-K's are substantially similar to the text quoted below from its 2003 Form 10-K.

responsibilities and functions of the Independent Auditor, as set forth in the AICPA's Professional Standards (in AU § 110.01) are as follows:

[T]he objective of the ordinary audit of financial statements by the independent auditor is the expression of an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with generally accepted accounting principles. The auditor's report is the medium through which he expresses his opinion or, if circumstances require, disclaims an opinion. In either case, he states whether his audit has been made in accordance with generally accepted auditing standards. These standards require him to state whether, in his opinion, the financial statements are presented in conformity with generally accepted accounting principles and to identify those circumstances in which such principles have not been consistently observed in the preparation of the financial statements of the current period in relation to those of the preceding period.

158. BISYS' 2004 revelations make clear that the financial statements for the years ended 2001, 2002 and 2003 were materially in error. These reported errors, and the allegations related to internal control violations, evidence PwC's gross recklessness in conducting its audit.

159. GAAS standards, each of which were violated by PwC, are set forth in AU § 150.02:

The generally accepted auditing standards (GAAS) as approved and adopted by the membership of the AICPA are as follows:  
General Standards

1. The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor.
2. In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors.
3. ***Due professional care is to be exercised in the performance of the audit and the preparation of the report.***

Standards of Field Work

1. The work is to be adequately planned and assistants, if any, are to be properly supervised.

2. *A sufficient understanding of internal controls is to be obtained to plan the audit and to determine the nature, timing and extent of tests to be performed.*
3. *Sufficient, competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.*

#### Standards of Reporting

1. *The report shall state whether the financial statements are prepared in accordance with generally accepted accounting principles.*
2. *The report shall identify those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.*
3. Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.
4. The report shall either contain an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where the auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking. (Emphasis added.)

160. Thus, PwC owed BISYS and its investors an obligation to act with reasonable care and competence in the performance of its accounting and auditing services for BISYS. Further, PwC was obligated to ensure that BISYS and its officers and directors did not accept any improper monetary benefit in their capacities as officers and/or directors, or to engage in any active or deliberate dishonesty. PwC was required to exercise professional skepticism, a process that requires a questioning mind. PwC was required to corroborate management representations and explanations concerning financial matters.

161. As a result of providing audit and other services for the Company, PwC personnel were frequently present at BISYS' corporate headquarters, as well as other BISYS offices both prior to and throughout the Class Period. As the independent accountant and auditor for BISYS, PwC had unlimited access to the Company's key personnel, accounting books and records and transactional documents at all relevant times. PwC had continual and unfettered access to, and knowledge of, BISYS' confidential internal corporate, business, operating and financial information and had ample opportunity to observe and review the Company's business and accounting practices. PwC had the ability to test the Company's internal and publicly reported financial statements by examining, for example, individual policy transactions.

162. PwC was required to incorporate in BISYS' annual Form 10-K a Statement on Auditing Standards ("SAS") No. 82, "Consideration of Fraud in a Financial Statement Audit." SAS No. 82 requires that the planning and performance of the audit include auditing for misstatements arising from fraudulent financial reporting. PwC failed to comply with SAS No. 82. During the course of its audit of BISYS' financial statements from fiscal 2001-2003 and reviews of the interim 2004 results, PwC should have discovered the irregularities which caused BISYS' earnings to be misstated. The risk of fraud due to senior management's ability to override the internal accounting controls required by section 13 of the Exchange Act was a material weakness which should have been reported to the Audit Committee. (This requirement is embodied in SAS Nos. 60, 78 and 87, which are codified in the AICPA Professional Standards Volume 1 as AU § 325.)

163. The magnitude of the overstatement of BISYS' financial statements further establishes the knowing or reckless conduct on the part of PwC.

164. Had PwC undertaken the performance of those audit procedures required by GAAS, it would have known that the fiscal 2001 through 2003 financial statements were materially false and misleading because: (1) these financial statements were not presented in accordance with GAAP; (2) the accounting principles applied did not have general acceptance; (3) the accounting principles were not appropriate under the circumstances; and (4) the financial statements did not accurately reflect the underlying events and transactions within any acceptable limit.

165. Throughout the Class Period, PwC should have known that the Company was in violation of SEC rules which required BISYS to devise and maintain a system of internal accounting controls sufficient to reasonably assure that its transactions were recorded so as to permit preparation of financial statements that conformed with GAAP. PwC also should have known that BISYS violated its obligation to keep books, records, and accounts, which in reasonable detail, fairly and accurately reflected all of the transactions of the Company.

166. As alleged herein, PwC's so-called "audits" amounted to no audit at all. PwC violated the most basic obligation of GAAS, that an auditor obtain personal knowledge of sufficient, competent evidence supporting the assertions in financial statements permitting reasonable assurance that such financial statements are free from material misstatements:

a. "Most of the independent auditor's work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements." AU § 326.02.

b. "The independent auditor's direct personal knowledge, obtained through physical examination, observation, computation, and inspection, is more persuasive than information obtained indirectly." AU § 326.21.

c. Representations from management "are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." AU § 333.02.

d. "[W]ithout adequate attention to the propriety and accuracy of the underlying accounting data, an opinion on financial statements would not be warranted." AU § 326.16.

167. PwC audited BISYS' financial statements for approximately ten years and had a thorough knowledge of the Company's financial history, accounting practices, internal controls, and business operations. Having this background, PwC failed to:

a. identify areas that needed special consideration, or identified such areas but audited them in a manner that was so deficient it amounted to no audit at all; and/or

b. assess the conditions under which accounting data was produced, processed, reviewed, and accumulated within the organization; and/or

c. evaluate the reasonableness of management's representations and the Company's estimates, or evaluated them in a manner which was so deficient that it amounted to no evaluation at all; and/or

d. judge the appropriateness of the accounting principles applied and the adequacy of disclosures in the Company's financial statements. In this regard, PwC failed to "recognize that management's selection and application of significant accounting policies, particularly those related to revenue recognition ... may be misused." (AU § 316A.19).

168. GAAS (AU § 325.21) states that reportable conditions involve matters that relate to:

significant deficiencies in design or operation of the internal control structure that could adversely affect the organization's

ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions must be reported by the auditor to the audit committee or to individuals with a level of authority and responsibility within a company equivalent to an audit committee, such as the board of directors.

169. GAAS (AU § 325.15) states that "material weaknesses in internal control" are a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

170. During its audits, PwC either recklessly failed to identify obvious reportable conditions such as failure of controls to prevent or detect misstatements of revenues, or identified and intentionally ignored the existence of these conditions. All material weaknesses should have been disclosed to investors by PwC and/or BISYS during the Class Period.

### **FRAUD ON THE MARKET DOCTRINE**

171. All of the BISYS securities obtained by Plaintiff and the members of the Class during the Class Period were valued by means of an efficient market. BISYS common stock, as alleged below, was traded in an efficient market throughout the Class Period. Each Class member relied on the price for BISYS common stock in this efficient market to value the BISYS securities that they received in private transactions.

172. At all relevant times, the market for BISYS securities was an efficient market for the following reasons, among others:

- a. BISYS common stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient market;
- b. As a regulated issuer, BISYS filed periodic public reports with the SEC and the NYSE;
- c. BISYS regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major news services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- d. BISYS was followed by securities analysts employed by many major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

173. As a result of the foregoing, the market for BISYS common stock promptly digested current information regarding BISYS from all publicly available sources and reflected such information in BISYS' stock price. BISYS options traded during the Class Period on the American Stock Exchange and other exchanges. In addition, options contracts are valued by methods which are sensitive to the price for the underlying stock and therefore the price of BISYS options is directly related to the price for BISYS common stock. Under these circumstances, all purchasers or acquirers of BISYS securities during the Class Period suffered similar injury through their purchase of BISYS securities at artificially inflated prices, and a presumption of reliance applies.

## **SAFE HARBOR DOES NOT APPLY**

174. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any materially false and misleading statement alleged herein. Many of the specific statements pleaded herein, such as operating results, are historical, and were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those statements because at the time each was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of BISYS who knew that such statement was false when made.

## **COUNT I**

### **Violation of Section 10(b) of the Exchange Act and Rule 10(b)-5 Promulgated Thereunder Against All Defendants**

175. Plaintiff incorporates ¶¶ 1 to 174 by reference.

176. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and members of the Class, through the dissemination and/or approval of false and misleading financial and other statements, which defendants knew to be misleading or the misleading nature of which they deliberately or recklessly disregarded; (ii) artificially inflate and maintain the price of BISYS securities; and (iii) cause plaintiff and other members of the Class to purchase or otherwise acquire BISYS securities at artificially inflated prices. In

furtherance of this unlawful scheme, plan and course of conduct, defendants, each of them, took the actions set forth herein.

177. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make certain financial and other statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers or acquirers of the Company's securities in an effort to maintain artificially high market prices for BISYS common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

178. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and Regulation S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's securities would be based on truthful, complete and accurate information.

179. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they purchased or otherwise acquired BISYS securities at artificially inflated prices. Plaintiff and the Class would not have purchased or acquired BISYS securities at

the price they did, or at all, if they had been aware that the market price had been artificially and falsely inflated by defendants' false and misleading statements and material omissions.

180. As a direct and proximate result of the defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of BISYS common stock during the Class Period.

## COUNT II

### **Violation Of Section 20(a) Of The Exchange Act Against The Individual Defendants**

181. Plaintiff incorporates ¶¶ 1-174 by reference.

182. The individual defendants acted as controlling persons of BISYS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By their high-level positions, their ownership and contractual rights, and their participation in and/or awareness of the Company's operations and/or intimate knowledge of the statements filed by the Company with the SEC and disseminated to the investing public, the individual defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company. The individual defendants had the power to influence or control the content and dissemination of the various statements which plaintiff contends are false and misleading. The individual defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be false and misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

183. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have

had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

184. As set forth above, BISYS and the individual defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the individual defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the individual defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of BISYS common stock at artificially inflated prices during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;
- B. Awarding plaintiff and the members of the Class damages, interest and costs, including attorneys' fees; and
- C. awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: New York, NY  
November 29, 2004

WOLF HALDENSTEIN ADLER  
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