

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

DONALD LOMAX, Individually and On	)	
Behalf of All Others Similarly Situated,	)	<b>CIVIL ACTION NO.</b>
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CLASS ACTION</b>
	)	<b>COMPLAINT</b>
	)	<b>FOR VIOLATIONS OF</b>
	)	<b>FEDERAL SECURITIES</b>
THE SHAW GROUP, INC., TIM BARFIELD, JR.,	)	<b>LAWS</b>
J.M. BERNAHRD, JR., RICHARD F. GILL, and	)	
ROBERT BELK,	)	
Defendants.	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	

**NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the securities of The Shaw Group, Inc. (“Shaw” or the “Company”) between October 19, 2000 and June 10, 2004, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

**JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

4. Venue is proper in this District pursuant to § 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, the Company maintains a principal executive office in this District.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

## PARTIES

6. Donald Lomax (“Plaintiff”) as set forth in the accompanying certification, incorporated by reference herein, purchased Shaw securities at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Shaw is a Louisiana corporation with its principal place of business located at 4171 Essen Lane, Baton Rouge, Louisiana 70809.

8. Defendant J.M. Bernhard Jr. is the Company’s Chairman of the Board and Chief Executive Officer.

9. Defendant Tim Barfield Jr. has been the Company’s President, Chief Operating Officer, and Director since 2003.

10. Defendant Robert L. Belk is the Company’s Chief Financial Officer and Executive Vice President.

11. Defendant Richard F. Gill was until September 2003 the Company’s Vice President and Chief Operating Officer.

12. Defendants Bernhard, Barfield, Belk, and Gill are collectively referred to hereinafter as the “Individual Defendants.”

## PLAINTIFF’S CLASS ACTION ALLEGATIONS

19. Plaintiff brings 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 purchased or otherwise acquired the securities of Shaw between October 19, 2000 and June 10, 2004, inclusive (the “Class Period”) and who were damaged thereby. 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.

20. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Shaw’ securities were actively traded on the New York Stock Exchange (“NYSE”). 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 hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Shaw 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.

21. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

22. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations, and management of Shaw; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

24. 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 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.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

25. Shaw is a global provider of services to the power, process and environmental and infrastructure industries. The Company is a vertically integrated provider of engineering, procurement, pipe fabrication, construction, and maintenance services to the power and process industries. It also provides services to the environmental, infrastructure, and homeland security markets, including consulting, engineering, construction, remediation, and facilities management services to governmental and commercial customers. Effective February 28,

2003, the Company reorganized its operations into three operating segments: Engineering, Construction & Maintenance (ECM); Environmental and Infrastructure (E&I), and Fabrication, Manufacturing, and Distribution.

**Materially False And Misleading  
Statements Issued During The Class Period**

26. The Class Period commenced on October 19, 2000. At that time, Shaw announced a 77% increase in earnings from continuing operations to \$10.2 million, or \$0.60 per diluted share, for the three months ended August 31, 2000, compared to earnings from continuing operations of \$5.8 million, or \$0.47 per diluted share, for the three months ended August 31, 1999. Sales for the fourth quarter of fiscal 2000 increased to \$263.8 million compared to the prior year's fourth quarter sales of \$140.1 million. Commenting on the results, defendant Bernhard stated:

This has been an exceptional year to add to our solid track record of growth. Our management team was at its best, and our employees at every level should be commended for their commitment to our success. The integration of Stone & Webster is progressing as we had hoped, and we expect to begin adding projects from EntergyShaw into our backlog by the end of the calendar year. As we move into fiscal 2001, we will continue to act strategically and opportunistically, with an inherent focus on bringing additional value to our shareholders.

27. On November 29, 2000, Shaw filed its annual report with the Securities and Exchange Commission ("SEC") on Form 10-K. The Company's Form 10-K was signed by defendants Bernhard and Belk and reaffirmed the previously announced financial results. The Company, with respect to the acquisition of Stone & Webster, Inc. ("Stone & Webster"), the Company stated:

On July 14, 2000, the Company purchased substantially all of the operating assets of Stone & Webster, Incorporated ("Stone & Webster") for \$37,600,000 in cash, 2,231,773 shares of Common Stock (valued at approximately \$105,000,000 at closing) and the assumption of approximately \$685,000,000 of liabilities, subject to adjustment pending the resolution of certain claims arising from the Stone & Webster bankruptcy proceedings. The Company also incurred approximately \$6,000,000 of acquisition costs. Stone & Webster is a global provider of engineering, procurement, construction, consulting and environmental services to the power, process, environmental and infrastructure markets.

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The Company acquired a large number of contracts with either inherent losses or lower than market remaining margins primarily due to the effect that the financial difficulties experienced by Stone & Webster had on negotiating and executing the contracts. These contracts were adjusted to their fair value at acquisition date by establishing a liability of approximately \$83,700,000 which will adjust the gross margins recognized on the contracts as the work is performed. The amount of the accrued losses on assumed contracts was approximately \$36,300,000.

28. On January 11, 2001, Shaw announced a 109% increase in earnings to \$12.2 million, or \$0.31 per diluted share, for the first quarter ended November 30, 2000. This compared to \$5.8 million in earnings before a change in accounting principle, or \$0.22 per diluted share, for the three months ended November 30, 1999. These results reflected a two-for-one common stock split that was effective on December 15, 2000. The Company also announced an increase in sales for the first quarter of fiscal 2001 to \$418.8 million, representing a 178% increase over the prior year's first quarter sales of \$150.8 million. The Company's backlog reached a record \$2.1 billion at November 30, 2000, with approximately 81% relating to projects for the domestic market. This represented a 148% increase over the \$833 million backlog reported at November 30, 1999, and is also up from the \$1.9 billion backlog reported at August 31, 2000. Commenting on the results, defendant Bernhard stated:

With solid results posted for the first quarter, we have embarked on another exciting year for our employees, customers and shareholders. Recent events in California's power market reinforces the urgent need to bring power online quickly and efficiently. We expect to see heightened activity over the next several months as developers finalize project sites, negotiate contracts and move quickly into the construction phase of the project cycle.

29. On January 16, 2001, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results. With respect to the Stone & Webster acquisition, Shaw stated:

The Company acquired a large number of contracts with either inherent losses or lower than market remaining margins primarily due to the effect that the financial difficulties experienced by Stone & Webster had on negotiating and executing the contracts. These contracts were adjusted to their fair value at acquisition date by establishing a liability of approximately \$83,700,000 which will adjust the gross margins recognized on the contracts as the work is performed. The amount of the accrued losses on assumed contracts was approximately \$36,300,000. These adjustments will result in a net reduction of contract costs incurred in future periods. During the quarter ended November 30, 2000, cost of sales was reduced by \$41,114,000 as these reserves were reduced. During the quarter ended November 30, 2000, the Company provided additional contract reserves of approximately \$7,800,000 as adjustments to the fair value of the contracts acquired in the acquisition.

30. On April 11, 2001, Shaw announced a 68% increase in earnings before an extraordinary item to \$11.8 million, or \$0.28 per diluted share, for the three months ended February 28, 2001. This compared to earnings of \$7.0 million, or \$0.22 per diluted share, for the three months ended February 29, 2000. Sales increased 97% for

the second quarter of fiscal 2001 reaching \$340.3 million, compared to \$173.0 million for the second quarter of fiscal 2000. Shaw's backlog totaled \$3.1 billion at February 28, 2001 with approximately 39%, or \$1.2 billion, to be worked off during the next 12 months. Driven by strength in the domestic power market, this represented a 260% increase over the \$873 million backlog reported at February 29, 2000, and a 52% increase over Shaw's backlog at November 30, 2000, of \$2.1 billion. Commenting on this news, defendant Bernhard stated:

With a backlog exceeding \$3 billion and consistent financial results, we are extremely pleased with our current position[.]...In the tremendously robust market that we are experiencing today, we have the utmost confidence in the success of our business model, and the value that it brings to all of our stakeholders[.]...Our current focus[.]...is to increase capacity in order to successfully meet current demand, and we are actively pursuing opportunities to bring new talent to our team.

31. On April 26, 2001, Shaw announced that it had entered into an agreement to issue and sell on an overnight marketed basis \$377 million of 20-year zero coupon Liquid Yield Option Notes ("LYONs") in gross proceeds to Shaw. At closing, the LYONs would be issued on an original issue discount basis of \$639.23 per LYON providing the holders with a yield to maturity of 2.25% per annum. The LYONs would be convertible into Shaw common stock at a rate of 8.2988 shares for each \$1,000 face amount of LYONs or effectively at initial conversion price of \$77.03 per share (or a 23.5% premium to Wednesday's closing price on the New York Stock Exchange of \$62.37). The placement was expected to result in net proceeds of approximately \$366 million to Shaw. Commenting on the news, defendant Bernhard remarked:

In selecting LYONs, we decided to capitalize on the strong demand in the convertibles market as an opportunistic borrowing and leverage our strong financial position with relatively inexpensive capital at attractive terms while maintaining conservative financial ratios and a negative cost of carry. We believe it is advantageous to raise capital when market conditions are favorable in anticipation of future opportunities, even though we have no pressing need for the funds.

32. On April 30, 2001, Shaw announced that the initial purchaser of its April 26, 2001 offering of 20-year zero coupon LYONs exercised the option to purchase additional LYONs. Shaw would realize approximately \$124 million in net proceeds from this purchase. The terms of this purchase were identical to the original issue with the issue price representing a yield-to-maturity of 2.25%.

33. On June 20, 2001, Shaw announced that it knew of no specific reason internal to the Company for

the decline in the stock price over the past several days. Additionally, the Company noted continued strength in margins and growing backlog. Shaw expected to report third quarter results for 2001 on July 10, 2001. For the third quarter as well as the year ended August 31, 2001, the Company remained comfortable with analysts' estimates for earnings, backlog and margins.

34. On July 10, 2001, Shaw announced a 142% increase in earnings to \$17.9 million, or \$0.42 per diluted share, for the three months ended May 31, 2001. This compared to earnings of \$7.4 million, or \$0.23 per diluted share, for the three months ended May 31, 2000. Third quarter fiscal 2001 sales increased 125% reaching \$394 million, compared to \$175 million for the third quarter of fiscal 2000. Shaw's backlog totaled \$3.6 billion at May 31, 2001 with approximately 44%, or \$1.6 billion. Driven primarily by strength in the domestic power market, this represented a 313% increase over the \$878 million backlog reported at May 31, 2000, and a 15% increase over Shaw's backlog at February 28, 2001 of \$3.1 billion. Commenting on these results, defendant Bernhard stated:

Driven by continued growth opportunities in the domestic power market, we posted another quarter of solid performance both in our financial results and operationally. Backlog continues to increase at a steady pace and our capacity to execute this work has strengthened with the addition of qualified engineers and project managers to our team. On top of robust proposal activity, we are well positioned to move into fiscal 2002 and look for continued success in our future operations.

35. On July 16, 2001, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results. With respect to the Stone & Webster acquisition, Shaw stated:

The Company acquired a large number of contracts with either inherent losses or lower than market remaining margins primarily because Stone & Webster's financial difficulties had negatively affected the negotiation and execution of the contracts. These contracts were adjusted to their fair value at acquisition date and a liability (gross margin reserve) of approximately \$83,700,000 was established. This reserve is utilized to adjust the gross margins recognized on the contracts as the work is performed. The amount of the accrued losses on assumed contracts was estimated to be approximately \$36,300,000 and a liability (contract loss reserve) of such amount was established at the time of acquisition. These reserves are reduced as work is performed on the contracts and such reduction in the reserves results in a reduction in cost of sales. These cost of sales reductions increase gross profit. Since August 31, 2000, the Company has further adjusted its initial estimates of these contract reserves. This includes adjustments made during the third quarter to reduce the reserves established for anticipated cash losses on one project and increase the reserves related to gross margin adjustments for

certain projects based on the amount and timing of the future cash contract costs related to these projects

36. On September 5, 2001, Shaw announced that it expected diluted earnings per share for its fiscal year ending August 31, 2002, to be in the range of \$2.15 to \$2.25, exceeding the current First Call consensus estimate of \$1.83 per diluted share. For fiscal year 2003, Shaw expected diluted earnings per share to be in the range of \$2.65 to \$2.85. Included in fiscal 2002 earnings per share guidance was approximately \$0.19 per share that should result from the Company's adoption of Statement of Financial Accounting Standards Numbers 141 and 142. Shaw also announced that it anticipated revenues for its fiscal years 2002 and 2003 to be in the range of \$2.2 to \$2.4 billion and \$2.6 to \$3.0 billion, respectively. The Company reaffirmed its comfort with analysts' First Call earnings consensus estimate of \$0.44 per diluted share for the fourth quarter of fiscal 2000.

37. On October 9, 2001, Shaw announced an 89% increase in earnings to \$19.3 million, or \$0.45 per diluted share, for the three months ended August 31, 2001. This compared to earnings of \$10.2 million, or \$0.30 per diluted share, before an extraordinary item, for the three months ended August 31, 2000. Fourth quarter fiscal 2001 sales increased 46%, reaching \$385.7 million, compared to \$263.8 million for the fourth quarter of fiscal 2000. For the year ended August 31, 2001, the Company reported a 101% increase in earnings to \$61.2 million, or \$1.46 per diluted share, before an extraordinary item. This compared to earnings of \$30.4 million, or \$0.99 per diluted share, before an extraordinary item and cumulative accounting change, for the year ended August 31, 2000. Sales for the year ended August 31, 2001 increased 102% to \$1.5 billion, compared to \$763 million in sales for the year ended August 31, 2000. Shaw's backlog totaled \$4.5 billion at August 31, 2001 with approximately 42%, or \$1.9 billion, to be worked off during the next 12 months. Driven primarily by strength in the domestic power market, this represented a 137% increase over the \$1.9 billion backlog reported at August 31, 2000, and a 25% increase over Shaw's backlog at May 31, 2001 of \$3.6 billion. Commenting on the news, defendant Bernhard remarked:

This has been an extraordinary year of achievement and growth for our Company[.]...Our employees are to be commended for their success in placing us in a position to win. Beyond our record financial results, we are very pleased with the relationships we have formed with our customers and we are confident that they will provide a means for increasing shareholder value as they continue to develop and unfold over the next year.

38. On November 29, 2001, Shaw filed its annual report with the SEC on Form 10-K. The Company's Form 10-K was signed by defendants Bernhard and Belk and reaffirmed the previously announced financial results.

With respect to the Stone & Webster acquisition, Shaw stated:

Additionally, the Company acquired a large number of contracts in the Stone & Webster acquisition with either inherent losses or lower than market rate margins due to the effect of the financial difficulties experienced by Stone & Webster on negotiating and executing contracts prior to the acquisition. These contracts were adjusted to their fair value at acquisition date by establishing a gross margin reserve that reduces costs of sales for contracts as they are completed. Costs of sales was reduced by approximately \$70.1 million during fiscal 2001 through the utilization of this reserve, which is a non-cash component of income. Costs of sales was also reduced by approximately \$29.2 million due to the utilization of the reserve which represents net cash losses on contracts acquired in the Stone & Webster acquisition. The utilization of these reserves resulted in a corresponding increase in gross profit during fiscal 2001.

39. On December 12, 2001, Shaw announced that it had suffered no deterioration in its current business or backlog which would account for the recent decline in the stock price. The Company's backlog contained no projects from Enron or Calpine. Shaw expected to report first quarter results for 2002 on or about January 11, 2002. The Company remained comfortable with current analysts' consensus estimates for earnings, backlog and margins for fiscal 2002 and 2003.

40. On January 14, 2002, Shaw announced a 56% increase in earnings to \$19.0 million, or \$0.45 per diluted share, for the first quarter ended November 30, 2001. This compared to \$12.2 million in earnings, or \$0.31 per diluted share, for the three months ended November 30, 2000. The Company also announced an increase in sales for the first quarter of fiscal 2002 to \$453.6 million, representing an 8% increase over the prior year's first quarter sales of \$418.8 million. The Company's backlog remained strong at \$4.5 billion at November 30, 2001, with approximately 85% relating to projects for the domestic market. This represented an increase of over 110% over the \$2.1 billion backlog reported at November 30, 2000. Commenting on these results, defendant Bernhard stated:

The results of the first quarter are impressive given the events which occurred in September and the negativity that has saturated the power generation industry over the past several months[.]...We are confident that the need for additional power plants remains and that our customers will continue with their building plans. Furthermore, with the Company's diversity in other markets, such as process and environmental and infrastructure, Shaw is positioned to quickly capitalize on new opportunities.

41. Additionally, on January 14, 2002, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results. With respect to the Stone & Webster acquisition, Shaw stated:

The Company acquired a large number of contracts with either inherent losses or lower than market rate margins primarily because Stone & Webster's previous financial difficulties had negatively affected the negotiation and execution of the contracts. These contracts were adjusted to their estimated fair value as of acquisition date (July 14, 2000) and a liability (gross margin reserve) of \$121,815,000 was established, including adjustments of \$38,118,000 recorded during the allocation period. The amount of the accrued future cash losses on assumed contracts with inherent losses (contract loss reserve) was estimated to be approximately \$41,700,000 (including approximately \$5,400,000 of allocation period adjustments), and a liability of such amount was established. The adjustments to these reserves during the allocation period resulted from a more accurate determination of the actual contract status at acquisition date. Commencing with the initial recording of these reserves in the year ended August 31, 2000, the reserves have been reduced as work is performed on the contracts and such reduction in the reserve balances results in a reduction in cost of sales and a corresponding increase in gross profit.

42. On January 16, 2002, Shaw announced that it had signed a letter of intent with The IT Group, Inc. ("IT Group") to acquire substantially all of the assets and businesses of the IT Group for approximately \$105 million and the assumption of certain liabilities. Up to 50% of the purchase price was payable in Shaw stock at either party's option. The letter of intent also contemplated Shaw providing a secured revolving debtor-in-possession ("DIP") credit facility of up to \$75 million, with an initial commitment of \$25 million. The credit facility would provide IT Group with liquidity for operation of its businesses until the asset sale is finalized.

43. On April 15, 2002, Shaw announced an 81% increase in earnings to \$21.3 million, or \$0.51 per diluted share, for the second quarter ended February 28, 2002. This compared to earnings before an extraordinary item of \$11.8 million, or \$0.28 per diluted share, for the three months ended February 28, 2001. The Company also announced an increase in sales for the second quarter of fiscal 2002 to \$566.2 million, representing a 66% increase over the prior year's second quarter sales of \$340.3 million. Shaw's backlog at February 28, 2002 totaled \$4.5 billion, with approximately 86% relating to projects for the domestic market. This represented an increase of over 42% compared to the \$3.1 billion backlog reported at February 28, 2001. Commenting on the news, defendant Bernhard remarked:

Our results for the first six months of fiscal 2002 position us for another record year[.]...Our backlog remains firm, and upon the successful completion of the acquisition of The IT Group, we look forward to a major expansion into the environmental, infrastructure and homeland security sector that will diversify our business and bring even greater certainty to our growth going forward.

44. Additionally, on April 15, 2002, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results.

45. On April 23, 2002, Shaw announced that it had received court approval under Chapter 11 of the U.S. Bankruptcy Code for the acquisition of substantially all of the assets and the assumption of certain liabilities of IT Group. Commenting on the news, defendant Bernhard remarked:

We are delighted to add The IT Group to the Shaw family[.]... We believe that The IT Group has an extremely talented roster of dedicated professionals that are the best in their field. Upon consummation of the transaction, we will vigorously compete for new contracts and fully expect to execute at the level IT's customers have come to expect.

46. On May 3, 2002, Shaw announced that it had completed the previously announced acquisition of substantially all of the assets and the assumption of certain liabilities of IT Group. The successful bid was for a total of \$105 million, with Shaw to pay approximately \$52.5 million in cash and approximately 1.67 million shares of Shaw common stock, and the assumption of certain liabilities. On April 25, 2002, a court order was signed under Chapter 11 of the U.S. Bankruptcy Code approving the transaction.

47. On July 11, 2002, Shaw announced a 49% increase in earnings to \$26.7 million, or \$0.61 per diluted share, for the three months ended May 31, 2002. This compared to earnings of \$17.9 million, or \$0.42 per diluted share, for the three months ended May 31, 2001. Third quarter fiscal 2002 sales increased 129% reaching \$902.6 million, compared to \$394.2 million for the third quarter of fiscal 2001. Shaw's backlog totaled \$6.1 billion at May 31, 2002 with approximately 53%, or \$3.2 billion, to be worked off during the next 12 months. This represented a 68% increase over the \$3.6 billion backlog reported at May 31, 2001, and a 36% increase over Shaw's backlog at February 28, 2002 of \$4.5 billion. Commenting on the news, defendant Bernhard stated:

We are very pleased to report solid financial results on a consistent basis[.]...Our strong balance sheet, project execution skills and ongoing strategy to diversify our portfolio of work have all played a key role in allowing Shaw to maintain its track record of growth. Additionally, the integration of our newly acquired assets in the

environmental & infrastructure sector is progressing better than expected. We look for this division to be a major contributor to our success going forward.

48. On July 15, 2002, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results.

49. On August 5, 2002, Shaw announced that the Company was notified by NRG Energy, Inc. ("NRG") that, due to liquidity issues, NRG would not make the next scheduled payment on the LSP-Pike Energy, LLC ("Pike") project. The Company's subsidiaries, Stone & Webster, Inc. and Shaw Constructors, Inc., were performing work on this project. The Company had been in discussions with NRG regarding NRG's ability to make eventual payment as well as the performance of future work by the Company on the project. The parties had reached an agreement for Shaw to acquire substantially all of the assets of Pike in exchange for forgiveness of sums owed to the Company, and the payment of \$43 million by the Company to NRG. The agreement was subject to certain conditions and requisite approvals, among other things. Under the agreement, the Company would have the sole discretion to complete the project or otherwise dispose of the assets.

50. On October 14, 2002, Shaw announced a 62% increase in earnings to \$31.3 million, or \$0.70 per diluted share, for the three months ended August 31, 2002. This compared to earnings of \$19.3 million, or \$0.45 per diluted share, for the three months ended August 31, 2001. Fourth quarter fiscal 2002 revenue increased 224% reaching \$1.2 billion, compared to \$385.7 million for the fourth quarter of fiscal 2001. For the year ended August 31, 2002, the Company reported a 61% increase in earnings to \$98.4 million, or \$2.26 per diluted share. This compared to earnings of \$61.0 million, or \$1.46 per diluted share for the year ended August 31, 2001. Revenue for the year ended August 31, 2002 increased 106% to \$3.2 billion, compared to \$1.5 billion in revenue for the year ended August 31, 2001. Shaw's backlog totaled \$5.6 billion at August 31, 2002, representing a 25% increase over the \$4.5 billion backlog reported at August 31, 2001. Commenting on the news, defendant Bernhard stated:

Our strong balance sheet and project execution skills have allowed us to produce record results for another fiscal year[.]...Shaw's diversified portfolio, including our process and environmental & infrastructure operations, as well as our nuclear and other power services, provides a recurring revenue base and level of stability to our operations going forward. Shaw has completed the repurchase of approximately \$100 million of its common stock, authorized by its Board of Directors on September 14, 2001, totaling approximately 5.3 million shares. This includes approximately 3.2 million shares purchased in the first of quarter of fiscal 2003,

1.0 million shares in the fourth quarter of fiscal 2002 and 1.1 million shares purchased in previous quarters.

51. On November 27, 2002, Shaw filed its annual report with the SEC on Form 10-K. The Company's Form 10-K was signed by defendants Bernhard and Belk and reaffirmed previously announced financial results.

52. On October 16, 2003, Shaw announced financial results for its fourth quarter and fiscal year ended August 31, 2003. Earnings for the fourth quarter of fiscal 2003 were \$9.2 million, or \$0.24 per diluted share. This compared to earnings of \$31.3 million, or \$0.70 per diluted share, for the three months ended August 31, 2002. For the fourth quarter of fiscal 2003 revenues were \$765.4 million compared to \$1.2 billion in the prior year's fourth quarter. For the year ended August 31, 2003, the Company reported earnings of \$20.9 million, or \$0.54 per diluted share. This compared to earnings of \$98.4 million, or \$2.26 per diluted share for the year ended August 31, 2002. Revenues for the year ended August 31, 2003 increased to \$3.3 billion, compared to \$3.2 billion for the year ended August 31, 2002. Commenting on the news, defendant Bernhard stated:

There is no question that the protracted weakness in the power generation market and the subsequent financial instability of some of our energy clients presented challenges never before faced by our company[.]...However, I am extremely satisfied with the manner in which our organization has responded to these difficulties. We are pleased to report that with the near completion of the NEG projects and our recent settlement with NRG, we have made great strides in putting these negative issues behind us.

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Furthermore, we have kicked off our new fiscal year with several major awards and we are experiencing strong booking and bidding activity, especially for fossil and nuclear power EPC and maintenance work.

53. On October 20, 2003, Shaw filed its annual report with the SEC on Form 10-K. The Company's Form 10-K was signed by defendants Bernhard, Belk, and Barfield and reaffirmed the previously announced financial results.

54. On January 14, 2004, Shaw announced financial results for its first quarter ended November 30, 2003. The Company reported a net loss of \$49.6 million or (\$1.07) per diluted share versus earnings of \$16.5 million, or \$0.42 per diluted share, for its first quarter ended November 30, 2002. Results reflected \$74.2 million in pre-tax charges taken during the quarter, including \$44.8 million related primarily to increased costs on three power projects and a \$29.4 million depreciation charge related to legacy software systems, which were successfully replaced by a new

integrated systems platform. Revenues for the quarter were \$649.2 million versus \$996.9 million for the first quarter of fiscal 2003. The decrease in revenue for the period was primarily attributable to continued weakness in the domestic power market, which negatively impacted revenues and profitability from the Company's Engineering, Construction and Maintenance ("ECM") and Fabrication, Manufacturing and Distribution divisions. Commenting on the news, defendant Bernhard stated:

We are disappointed with our operational performance, primarily from our ECM division, and with the fact that we had to take additional project-related write-downs during the quarter. However, we believe we have laid the groundwork for improved operational performance in the second half of 2004 and well into fiscal 2005[.]...Our confidence is supported by the healthy booking and bidding activity we experienced across all business segments during the quarter, including over \$600 million in bookings by our Environmental and Infrastructure division and our Maintenance group, both of which provide a stable stream of revenues and earnings for the Company.

55. On January 14, 2004, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results.

56. On April 14, 2004, Shaw announced financial results for its second quarter ended February 29, 2004. The Company reported net income of \$2.2 million, or \$0.04 per diluted share versus a net loss of \$7.9 million, or (\$0.21) per diluted share, for the same period ended February 28, 2003. Results for the second quarter of fiscal 2004 included a \$2.6 million pre-tax unrealized currency translation loss. Excluding this charge, earnings would have been \$0.06 per diluted share. Results for the prior year's second quarter included a \$30 million pre-tax charge related to the settlement of project claims. Revenues for the quarter were \$691.2 million versus \$720.5 million for the second quarter of fiscal 2003. Revenues increased 6% over the \$649.2 million reported for the first quarter of fiscal 2004. Shaw's backlog totaled \$5.5 billion at February 29, 2004, a \$400 million increase over the \$5.1 billion recorded for the first quarter ended November 30, 2003 and a \$700 million increase over the \$4.8 billion recorded at August 31, 2003. Commenting on the news, defendant Bernhard stated:

Overall, we are pleased with our performance in the second quarter. Backlog continues to increase across all industry segments, and we are encouraged by the level of activity we have seen in several markets we serve. The energy sector is showing tangible signs of recovery, our maintenance group has achieved an impressive record in booking new work, our process technologies line is expanding internationally, and our environmental and infrastructure group has commenced work on projects in Iraq.

During the past year, The Shaw Group has taken decisive steps to position the Company for success in the improving domestic and global economies. We are streamlining our internal and external operations, creating innovative solutions and technologies, and targeting strategic markets and clients in the U.S and abroad.

57. On January 14, 2004, Shaw filed its quarterly report with the SEC on Form 10-Q. The Company's Form 10-Q was signed by defendant Belk and reaffirmed the previously announced financial results.

58. The statements contained in ¶¶ 26-57 were materially false and misleading when made because failed to disclose or indicate the following: (1) that the Company's earnings were materially lagging; (2) that because the Company earnings were lagging, the Company's creation of \$83,7 million reserve for contracts acquired from Stone & Webster and adjusted for fair market value, was solely done as a means for the defendants to manipulate the Company's margins and report positive financial results; (3) that the Company's practice of cannibalizing the reserves, created to adjust newly acquired contracts to fair value, had substantially depleted the gross margin reserves and resulted in an eventual earnings decline; (3) that as a consequence of this, the Company improperly recorded revenue and earnings in violation of its purported revenue recognition policy and General Accounting Principles ("GAAP"); and (4) that as a result of the above, the Company's financial results were materially inflated at all relevant times.

#### **The Truth Begins to Emerge**

59. On June 10, 2004, Shaw reported today that on June 1, 2004, Shaw was notified by the SEC that it was conducting an informal inquiry. The SEC had not advised the Company as to either the reason for the inquiry or its scope. However, the request for information appears to primarily relate to the purchase method of accounting for acquisitions, as presented in Shaw's Form 10-K for the fiscal year ended August 31, 2003.

60. The news shocked the market. Shares of Shaw fell \$1.53 or 12.4 percent on June 11, 2004, to close at \$10.75.

#### **SHAW'S VIOLATION OF GAAP RULES**

61. GAAP states that "revenue should not be recognized until it is realized or realizable and earned." FASB Concepts Statement No. 5, ¶ 83. The conditions for the recognition of revenue are met when "persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller's price is fixed or

determinable, collectibility of the sales price is reasonably assured and when the entity has substantially performed the obligations which entitle it to the benefits represented by the revenue.” Here, Shaw improperly recognized revenue when revenue from such transactions was not realizable and earned, which is in violation of GAAP.

62. Given these accounting irregularities, the Company announced financial results that were in violation of GAAP, the Company’s own announced revenue recognition policies, and the following principles:

(a) The principle that “interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements” was violated (APB No. 28, ¶ 10);

(b) The principle that “financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit, and similar decisions” was violated (FASB Statement of Concepts No. 1, ¶ 34);

(c) The principle that “financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events, and circumstances that change resources and claims to those resources” was violated (FASB Statement of Concepts No. 1, ¶ 40);

(d) The principle that “financial reporting should provide information about an enterprise’s financial performance during a period” was violated (FASB Statement of Concepts No. 1, ¶ 42);

(e) The principle that “completeness, meaning that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions” was violated (FASB Statement of Concepts No. 2, ¶ 79);

(f) The principle that “financial reporting should be reliable in that it represents what it purports to represent” was violated (FASB Statement of Concepts No. 2, ¶¶ 58-59); and

(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” was violated. (FASB Statement of Concepts No. 2, ¶ 95).

63. The adverse information concealed by defendants during the Class Period and detailed above was in violation of Item 303 of Regulation S-K under the federal securities law (17 C.F.R. 229.303).

### **ADDITIONAL SCIENTER ALLEGATIONS**

67. 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; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Shaw, their control over, and/or receipt and/or modification of Shaw allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Shaw, participated in the fraudulent scheme alleged herein.

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

69. During the Class Period and with the Company's stock trading at inflated levels, defendants were able to complete and raise \$490 million through the sale of LYONs.

70. Additionally during the Class Period, and with the Company's stock trading at inflated levels, defendants were able to sell 1,605,000 shares for proceeds totaling \$62,600,184.7. More specifically, defendant Bernhard sold 1,510,000 shares for proceeds of \$58,851,392.20. Defendant Belk, sold 35,000 shares for proceeds of \$1,463,836.50. Defendant Gill sold 60,000 shares for proceeds \$2,284,956.

### **FIRST CLAIM**

#### **Violation Of Section 10(b) Of The Exchange Act Against And Rule 10b-5 Promulgated Thereunder Against All Defendants**

74. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

75. 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 other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Shaw securities at

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

76. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Shaw securities 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.

77. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Shaw as specified herein.

78. These defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Shaw value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Shaw and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Shaw securities during the Class Period.

79. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other

data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

80. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Shaw operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations, and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

81. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Shaw securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Shaw publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiff and the other members of the Class acquired Shaw securities during the Class Period at artificially high prices and were damaged thereby.

82. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Shaw was experiencing, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Shaw securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

83. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

84. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

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

85. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

86. The Individual Defendants acted as controlling persons of Shaw within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial 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, including the content and dissemination of the various statements which Plaintiff contend 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 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.

87. 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.

88. As set forth above, Shaw 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 defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their

purchases of the Company's securities during the Class Period.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated:

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