1. Lead Plaintiff, by his attorneys, alleges the following based upon knowledge, with respect to his own acts, and upon other facts obtained through an investigation made by and through his attorneys, including a review of the public filings of EMCOR Group, Inc. ("EMCOR" or the "Company") with the United States Securities and Exchange Commission (the "SEC"), published reports, news articles, analyst reports, other publications, and interviews of former EMCOR employees. Based on the substantial facts already uncovered and alleged herein, Lead Plaintiff believes that additional substantial evidentiary support will exist for his allegations after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

2. This is a securities class action brought against EMCOR and three of the Company’s executive officers – Frank T. MacInnis ("MacInnis"), Leicle E. Chesser ("Chesser"), and Mark A. Pompa ("Pompa") (collectively, the “Individual Defendants”) – for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5. This action is brought on behalf of all persons, other than the defendants and related parties, who purchased or otherwise acquired the common stock or other publicly-traded
securities of EMCOR between April 9, 2003 and October 2, 2003, inclusive (the “Class Period”).

3. As set forth herein, throughout the Class Period, defendants made false or misleading statements in public filings, press releases, interviews and analyst conference calls regarding EMCOR’s revenue and earnings expectations for fiscal year 2003. Most notably, defendant MacInnis, EMCOR’s Chairman and Chief Executive Officer, repeatedly represented that the Company’s 2003 earnings guidance was not predicated on an expected improvement in private sector construction spending. Later statements by MacInnis, however, reveal the opposite – that the Company’s overly optimistic earnings estimates were explicitly conditioned upon the false hope that private sector construction spending would skyrocket.

4. For example, during a conference call on April 24, 2003, MacInnis reiterated the Company’s earnings guidance, which he stated was based on the assumption that private sector construction spending would not improve over its 2002 levels:

Two months ago, I provided 2003 revenue and earnings guidance to the market at levels of $4.4 to $4.6 billion of revenue and $4.25 to $4.60 earnings per share. Based on our current outlook, I’m pleased to reiterate that guidance today.

* * *

[M]y underlying assumption with respect to the lower end or base case per our guidance – that is, $4.4 billion of revenue and $4.25 per share – do not assume any improvement in the private sector for the remainder of this year.” (Emphasis added).

5. On July 24, 2003, EMCOR revised its earnings guidance downward to $2.90-$3.10 per share. Again, however, MacInnis explained that the Company’s expected earnings were not conditioned upon any expected increase in private construction spending:
Along with this overall growth [in the backlog] from about a billion dollars at the end of 1997 to an all time record level of $3.2 billion today, our contract backlog has become much more diverse and resistant to volatility in recent periods. Despite continued weakness in demand for continued construction for example, EMCOR’s overall backlog has grown steady due to our strength in growth markets like transportation, institutional work including educational facilities and healthcare.

* * *

We expect second half revenue to be similarly strong at levels of 2.2 to 2.4 billion dollars, and we reiterate full year 2003 revenue guidance of 4.4 to 4.6 billion dollars. We also expect our contract backlog balance to remain strong. Our previous guidance with respect to profitability was explicitly based on the maintenance of the status quo which existed at the end of 2002 with respect to both our public and private sector demand. That assumption did not materialize. We have, in fact, experienced a further deterioration in our private sector mechanical construction and service markets ... Although most economists expect a general economic recovery to take [root] in the second half of 2003 and to accelerate in 2004, we are unwilling to rely on any such general improvement in our overall markets. (Emphasis added).

6. In an analyst conference call that same day, MacInnis reiterated that the Company’s new earnings guidance was NOT based on any expected improvement in private sector construction spending:

MACINNIS: As I mentioned during the last conference call, my underlying assumptions with respect to the lower end or base case per our guidance - - that is $4.4 billion of revenue and 4.25 per share - - do not assume any improvement in the private sector for the remainder of this year. (Emphasis added).

7. Less than three months later, on October 3, 2003, EMCOR shocked the market by drastically lowering its earnings guidance, and announcing that the Company would earn just
over half of the profits it had “conservatively” predicted just three months earlier. In a truly amazing reversal, MacInnis now stated that his July 24, 2003 guidance was based on an assumption that private sector spending would improve during the second half of 2003:

[O]ur profit expectations for the remainder of 2003 and for the year as a whole represent a reduction from the profit levels which we estimated in midyear. For the third and fourth quarters of 2003, we expect cumulative diluted earnings per share to be between 90 cents and $1.01, and full year 2003 diluted earnings per share to be between $1.65 and $1.75 per share. ...

* * *

[T]he reduction of our gross margins from operations ... is a result of several factors which we discussed on our last earnings call. They are – firstly, recessionary impacts on our overall business. In a nutshell, our current portfolio of longer-term projects, on which we rely for basic levels of revenue production and coverage of interest charges and administrative costs, is overweighted towards public sector work, which is less profitable than private sector, commercial, and industrial projects.

* * *

And when I did that in July [i.e., revise earnings guidance] - - taking into account the reports from all the operational personnel, taking a look at the cash, looking at the investment that we had in various projects - - I could see, and stated this on the call, that the second half of the year would be substantially dependent on the recovery of the UK company; our acquisition of the high margin HVAC and electrical service work that we hadn’t gotten in the first half of the year, primarily due to both the economy and to weather-related effect; and also, the profitability - - the return to better performance of our mechanical operations overall, including the Midwest; and continuation of profitability of our Northeastern Electrical. Of those four criteria, the UK company, as I mentioned earlier, has not recovered as fast as I had hoped or expected. The mechanical operations will improve in the second half, substantially over the first half. The electrical will not. And the service work I have already spoken about at length. It materialized in part in terms of revenue, but at significantly lower margins than I expected, even as I was speaking in mid-July.
8. MacInnis disclosed on the October 3, 2003 analyst conference call that, in July, he “could see ... that the second half of the year would be substantially dependent upon . . . [EMCOR’s] acquisition of the high margin HVAC and electrical service work that [the Company] hadn’t gotten in the first half of the year.” MacInnis falsely stated that he had in fact disclosed such assumptions in the July 24, 2003 conference call when, in fact, he said exactly the opposite – that EMCOR’s earnings guidance did “not assume any improvement in the private sector for the remainder of this year.”

9. In fact, as described in detail below, at the time of the earlier July 24, 2003 conference call, EMCOR already had recognized its profitability was significantly impaired because its work was overweighted toward less profitable public sector and quasi-public sector work. In fact, defendant MacInnis would eventually admit after the end of the Class Period that the Company began a secret program in the middle of 2003 to “rebalance” its contract backlog toward private sector work in the desperate but implausible hope that this spending might materialize, and the Company might meet its 2003 earnings numbers. Specifically, in the May 2004 issue of Contractor, MacInnis expressly admitted that the Company had begun, in mid-2003, to manage its backlog in anticipation of an INCREASE in demand for higher-margin private sector work:

As a result of that shortage [i.e. a “severe shortage of private sector commercial work”], we acquired significantly more public sector work than would have been the pattern,” says Frank T. MacInnis, chairman and CEO. “In mid-2003 we began to intentionally manage down our public sector component of our construction backlog in order to prepare for improving times and to ensure that we had sufficient capacity to take on an manage higher margin private work when it
became available.” (Emphasis added)

Predictably, private sector construction spending did NOT improve, and EMCOR was left with excess capacity for work that never came.

10. Moreover, defendants made additional statements on July 24, 2003, clearly signaling that EMCOR’s earnings guidance did not rely in any way on an uptick in private sector construction spending. Defendants stated that “[l]ooking ahead, we see little evidence of any short-term improvement in the private sector commercial market” and that its purportedly “conservative” guidance was explicitly based upon the assumption that, with respect to private sector construction spending, including small fast turn projects under $250,000 (which are not included in EMCOR’s backlog and contribute disproportionately to earnings), “there won’t be an improvement for the remainder of the year and we nonetheless state our earnings [guidance].”

11. Throughout the Class Period, defendants knew, or were reckless in not knowing, that less lucrative public and quasi-public sector projects dominated EMCOR’s portfolio of pending contracts and that, based on both EMCOR’s new business plan as well as market forces, there was little likelihood of any increase in private sector construction spending. According to MacInnis’ own public statements, defendants actively monitored (and manipulated) the Company’s outstanding bids and proposals and contract backlog. Defendants were thus keenly aware, and in fact publicly stated their awareness, that the less profitable public and quasi-public sector construction projects far outweighed private sector work in EMCOR’s contract backlog.

12. In addition, and as explained fully below, during the Class Period, Defendants recklessly concealed from investors both the fact that its acquisition of Consolidated Engineering
Services, Inc. (“CES”) in late 2002 was rife with problems and that its affirmative statements regarding the success of the acquisition were false and misleading when made, and that senior management, including MacInnis, planned to sell the Company, which had posted over 30 consecutive profitable quarters, and knew that meeting earnings was imperative to finding a willing suitor.

13. Ultimately, the economic recovery that defendants were counting on (but publicly insisted they were not) predictably failed to occur. Defendants were then forced to admit what they knew all along – that the Company’s contract backlog was comprised of too many less profitable public and quasi-public sector construction projects and that CES was continuing to act as a drain on profits. As a result, on October 2, 2003, after the close of the market, Defendants belatedly announced that earnings for fiscal 2003 would be between $1.65 and $1.75 per share. On October 3, 2003, in direct response to this pronouncement, EMCOR’s stock price plummeted 20% to close at $34.79 per share, on very heavy trading volume.

14. As set forth below, each defendant is liable for: (1) making false or misleading statements throughout the Class Period; and (2) failing to disclose adverse facts known to him about Emcor. Defendants' fraudulent scheme(1) deceived the investing public regarding EMCOR’s prospects and business; (2) artificially inflated the prices of EMCOR's publicly traded securities; and (3) caused Lead Plaintiff and other members of the Class to purchase EMCOR’s common stock at artificially inflated prices.

JURISDICTION AND VENUE

15. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5. Jurisdiction is conferred by Section 27 of the Exchange Act, 15 U.S.C.
§ 78aa.

16. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of false and misleading information, occurred within this judicial district. In addition, EMCOR’s principal executive offices are located at 301 Merritt Corporate Park, Norwalk, Connecticut, which is within this district.

17. In connection with the misstatements and omissions alleged herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the mails, interstate telephone communications, and the facilities of the national securities exchange.

PARTIES

18. Mark Coffey (“Lead Plaintiff”) was appointed lead plaintiff pursuant to this Court’s June 29, 2004 Order. As detailed in his Certification, previously submitted to the Court in connection with his application for appointment, Lead Plaintiff purchased shares of EMCOR common stock in the open market during the Class Period, and suffered damages as a result of those purchases.

19. Defendant EMCOR is a Delaware corporation with its principal executive offices located in Norwalk, Connecticut. According to the Company, through its network of over 70 subsidiaries, EMCOR operates as one of the world's leading specialty construction and facilities services firms. The Company installs and maintains mechanical, electrical, plumbing, communications, and various other systems for both domestic and international organizations.
20. Defendant MacInnis is and has been since 1994 the Chairman of the Board of Directors and CEO of the Company. On February 26, 2004, following the resignation of Jeffrey M. Levy, MacInnis also assumed the duties of President and Chief Operating Officer. MacInnis is a 1971 graduate of the University of Alberta (Canada) Law School. MacInnis signed all of EMCOR’s public filings made with the SEC during the Class Period, including written certifications pursuant to sections 302 and 906 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 78m(a), 18 U.S.C. § 1350, for the March 31, 2003 Quarterly Report on Form 10-Q, filed with the SEC on April 24, 2003, and the June 30, 2003 Quarterly Report on Form 10-Q, filed with the SEC on July 24, 2003. MacInnis was also the chief spokesman for EMCOR, and was consistently quoted in Company press releases and interviews with the media, and spoke directly with analysts during quarterly and other periodic conference calls.

21. Defendant Chesser is and has been since 1994 the Executive Vice President and Chief Financial Officer ("CFO") of the Company. Chesser is a graduate of Oklahoma State University and was previously a Certified Public Accountant with Arthur Young & Co. Chesser signed all of EMCOR’s public filings made with the SEC during the Class Period. Chesser occasionally spoke during quarterly conference calls with analysts, and was present at every analyst conference call held during the Class Period.

22. Defendant Pompa was Vice President and Controller of the Company from 1994 through June of 2003, and currently serves as Senior Vice President – Chief Accounting Officer and Treasurer. Prior to joining EMCOR, he was a manager at Arthur Anderson, LLP. Pompa received his bachelor’s degree from Pace University, is a Certified Public Accountant, and is a member of the AICPA and the Connecticut State Society of Certified Public Accountants.
Pompa sometimes spoke during quarterly conference calls with analysts, and was present at every analyst conference call held during the Class Period.

23. EMCOR has a small cohesive group of senior management that closely monitors the Company’s operations. As MacInnis himself commented during the February 26, 2003 conference call with analysts, he “and most of the senior management who are here with me today [including Chesser and Pompa] are passing our ninth or tenth anniversaries in our roles at EMCOR.” Indeed, MacInnis and Chesser have been working together, at EMCOR and their previous employers, for over eighteen years; Pompa began working at the Company only four months after Chesser, and most of the Company’s remaining senior officers began their employment at EMCOR’s predecessor. In addition, the executives offices are not expansive; they are housed on just one floor of a Norwalk office building and, as of 1999, there were less than 100 people working at the Company’s executive offices.

24. During the Class Period, the Individual Defendants, as senior officers of EMCOR, had access to the adverse undisclosed information described herein regarding the Company’s business operations, financial condition, and present and future business prospects. The Individual Defendants knew and consciously and/or recklessly disregarded that said adverse undisclosed information had not been disclosed to, and was being actively concealed from, the investing public.

25. Since they were responsible for running the Company, it is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, and misleading and incomplete information contained in the Company’s public filings, press releases and other publications, as alleged herein, is their collective action. Each of the Individual
Defendants was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. These Defendants knew of the Company’s inability to meet revenue and earnings guidance, were involved in the drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware of or consciously/deliberately 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.

26. As officers, directors and controlling persons of a publicly held company whose securities were, and are, registered with the SEC pursuant to the Exchange Act, 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 promptly disseminate accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, earnings, and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company’s securities would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

27. Each of the Defendants is liable as a direct participant in, and co-conspirator with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their positions, are “controlling persons” within the meaning of section 20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct
complained of herein. Because of their positions of control, the Individual Defendants were able
to and did, directly or indirectly, control the conduct of the Company’s business.

28. The Individual Defendants, because of their positions with the Company,
controlled and/or possessed the authority to control the contents of the SEC filings, reports, press
releases, and presentation to securities analysts and through them, to the investing public. The
Individual Defendants were provided with copies of the Company’s reports and press releases
alleged herein to be misleading, prior to or shortly after their issuance, and had the ability and
opportunity to prevent their issuance or cause them to be corrected. Thus, each of the defendants
had the opportunity to commit the fraudulent acts alleged herein.

BACKGROUND AND SUBSTANTIVE ALLEGATIONS

A. Management’s Desire to Sell EMCOR

29. From late 1994 until the announcement of its results of operations for the third
quarter of 2003, EMCOR boasted a streak of 32 consecutive quarters in which its net income
exceeded that of the same quarter of the previous year. On November 16, 2000, EMCOR’s
common stock began trading on the NYSE under the ticker symbol “EME.” The share price rose
from $5.00 per share on December 15, 1994, when it was trading over-the-counter, to over
$53.00 per share during the Class Period.

30. Despite these successes, defendant MacInnis publicly complained that EMCOR
was not getting its proper recognition from the financial community. In a January 2001 article
for Industry Week, MacInnis expressed disappointment at the Company’s stock price: “If we
don’t get a positive market reaction, there’s no doubt in my mind our shareholders would be
better served if the company were taken private,” MacInnis said. In an interview for the
November, 2001 issue of Institutional Investor, MacInnis complained that “[w]e’re not given adequate credit, either for our past consistency or the diversity of ours services. We do not get enough credit for the professionalism of our management and the conservatism of our balance sheet.” Indeed, even during the July 24, 2003 conference call, MacInnis stated:

First of all, I think the stock is a buy. But then I thought it was a buy at 48 and also 52 dollars and I am not just joking. ... I think that if I do my job by the end of this year I will have convinced the market that a company with more than a billion dollars of [recurrent] business consisting of long-term contracts from multiple small tasks and substantial margins with blue chip customers is worth more than the multiple that we have currently – or historically been trading at in the market. So I think EMCOR stock was a buy before today. And I will certainly think it is a buy after today. (Emphasis added).

Unbeknownst to investors, however, EMCOR, in May of 2003, had retained the advertising firm, Linden, Alschuler & Kushen, in the hope that, by increasing EMCOR’s visibility, a suitor would become interested in purchasing the Company. Clearly, any diminution in EMCOR’s earnings or expected earnings would adversely affect this effort and any prospect for the Individual Defendants to profit from any acquisition. The belief that EMCOR’s decision to employ an advertising firm and engage in an advertising campaign to promote itself was widely viewed within the Company as part of an effort to improve EMCOR’s chances of being purchased.

B. The Nature Of EMCOR’s Business

Traditionally, EMCOR focused on two areas: electrical and mechanical construction and facilities management, which made up approximately 80% and 20%, respectively, of the Company’s annual revenue. This business model is referred to by EMCOR
as “Stability through Diversity.” According to an article in the December 30, 2002 Investor’s Business Daily, the acquisition of CES was part of this business model: “The shift to more management business is meant to offset the cyclical nature of [EMCOR’s] core construction business, which brings in about 75% of overall revenue.”

33. Within EMCOR’s construction sector, there are further divisions – big capital improvement projects versus smaller projects worth under $250,000, and projects in the private sector versus those in the public sector.

34. Private sector construction jobs are almost always more profitable than those in the public sector. As explained by MacInnis during a December 20, 2003 analyst conference call, public sector work “is net-net less profitable than comparable private sector work, specifically because of the absence of upside potential [for] bonuses for efficiency or for quality.” MacInnis reiterated this view during the July 24, 2003 analyst conference call: “[T]he opportunities for excess profits ... profits associated with efficiency, profits associated with value engineering do not occur with the same regularity on public sector projects as they do on private sectors.”

35. Another factor which causes public sector projects to be less profitable is the way in which fees are set. The fee for a private construction job, such as an apartment building or a retail store, is the result of negotiation with the project’s developer and the contract price may include a premium for the expertise brought to the project, the speed at which it is completed, or may reflect successful collaboration among the parties on previous projects. In contrast, the fee for a construction job in the public sector, such as the building of a government office complex, is usually the result of competitive bidding, pursuant to which the lowest bid gets awarded the
contract, and there is generally little or no premium. As MacInnis commented during an October 3, 2003 analyst conference call, “[i]f we deliver the Brooklyn Courthouse to the Department of Justice ... we get a firm handshake but no great big check.” Thus, profit margins are in general significantly higher for private sector jobs than for public sector jobs.

36. References to EMCOR’s “contract backlog” simply refer to the Company’s reserve of uncompleted work. In the analyst conference calls and elsewhere, the Company frequently emphasized, in dollar amounts, the size of its contract backlog, while at the same time explaining that conservative accounting prevented EMCOR from recognizing as revenue these backlog amounts until the project reached a certain portion of completion. Thus, the Company would effectively use the amount of its backlog as a measure of expected revenue.

C. The Individual Defendants’ Publicly-Stated Manipulation of EMCOR’s Contract Backlog

37. The Individual Defendants and other senior managers of EMCOR interact with each other and officers of the Company’s subsidiaries on a daily basis to stay abreast of current developments in the Company’s business. In discussing the process of arriving at annual revenue and earnings guidance during a December 20, 2002 analyst conference call, MacInnis described this interaction:

We communicate with each one of our some 70 company presidents about their assessment of their local market conditions and we will get as good a picture as we can of what they think local spending patterns are going to be, where are they going to come from, and we can characterize the nature of the new revenue that we are going to acquire in ’03 based upon the assessment by those presidents of likely spending patterns.

In response to a question during the July 24, 2003 analyst conference call about the ability to
monitor activity of EMCOR’s operating companies, MacInnis said “[i]t is not a matter of our subsidiaries reporting to us on a periodic basis. Our subsidiaries report to us all the time, literally every day they report to us on their cash flow characteristics.”

38. According to the April 7, 2003 issue of Fairfield County Business Journal, MacInnis held monthly staff breakfasts to discuss the latest developments at the Company. In the April, 2004 issue of Chief Executive, MacInnis also described the regular meetings he conducts with “all the CEOs of our operating companies” to keep everyone in the over 70 subsidiaries informed of each other’s activities.

39. Defendants also stated that they were in daily contact with each of the Company’s subsidiaries. Thus, Defendants had the ability to track and monitor (and in fact did track and monitor) proposals, bids, and contracts at any time in a financial cycle. As MacInnis stated during an October 3, 2003 conference call:

This is not one of those companies that waits for the fax machine to start humming at month-end and give us the results for the month, which are either surprises or not surprises, as the case might be. We are in constant communication with these companies, and comparing and triangulating what they’re telling us with the cash reports that we receive every day. I get about a 10-page report every afternoon at 3:00 talking about the operations of the company.

(Emphasis added).

40. Furthermore, defendants were able to manipulate the “mix” of contracts (i.e., private versus public sector projects) that were being entered into by the Company’s subsidiaries. In a December 20, 2002 analyst conference call, MacInnis referred to the ability to “rebalance” EMCOR’s backlog, and during the January 27, 2003 analyst conference call, touted “the
nimbleness of EMCOR companies in moving to sectors with demand ... .” Thus, the Individual
Defendants not only knew with some precision from what sources its revenues would be
generated, but in fact actively managed its backlog to sectors where demand was greatest.

During the April 24, 2003 analyst conference call, MacInnis also stated:

EMCOR’s contract backlog, consistently and conservatively
calculated, has risen from about $1 billion at the end of 1997 to
more than $3 billion today. This growth has been accomplished,
despite a major recession and its impact on the former flywheel of
our business, the private sector commercial market. Thorough
replacements and enhancements of overall contract backlog,
despite a major decline in commercial building construction, is
a statement of our versatility and of our success in accessing
strong markets like government and institutional work, healthcare, water and wastewater treatment and public
transportation.

(Emphasis added).

41. In fact, after the end of the Class Period, in the May 2004 issue of Contractor,
MacInnis revealed that the Company had begun, in mid-2003, to manage its backlog in
anticipation of an increase in demand for higher-margin private sector work:

As a result of that shortage [i.e., a “severe shortage of private
sector commercial work”], we acquired significantly more public
sector work than would have been the pattern,” says Frank T.
MacInnis, chairman and CEO. “In mid-2003 we began to
intentionally manage down our public sector component of our
construction backlog in order to prepare for improving times
and to ensure that we had sufficient capacity to take on and
manage higher margin private work when it became
available.” (Emphasis added).

42. The conflict between EMCOR’s public statements and its secret plans is apparent.
Although the Company claimed on July 24, 2003 that it did not base its earnings guidance for
2003 on an assumption of expected improvements in private sector construction spending,
MacInnis’ own statements make clear that at the same time EMCOR in fact pursued a secret plan to reduce public sector backlog so that it could take advantage of private sector work. Only later, on October 3, 2003, was it disclosed that, notwithstanding express denials to the contrary, EMCOR in fact relied upon the hope that private sector spending would increase so that the Company could meet its optimistic earnings forecasts.

**D. Pre-Class Period Statements Regarding EMCOR’s Purportedly Diverse Revenue Sources**

43. The impression that EMCOR’s expected 2003 earnings were to be based on a diverse source of revenues, and not on an implausible increase in private sector construction spending, was further bolstered by a series of statements made by MacInnis prior to the commencement of the Class Period. MacInnis repeatedly trumpeted the Company’s performance and provided the clear (albeit false and misleading) impression that EMCOR’s diversity placed it in prime position to meet its earnings guidance.

44. In a December 20, 2002 analyst conference call announcing the CES acquisition, MacInnis stated:

> Concerning 2002, clearly the CES transaction is occurring too late this year to have any significant effect on this year's results. I have previously advised the market that I expect 2002 revenues of approximately $4b to produce earnings per share in the range of $3.95-4.15 per share. And today I am reconfirming those estimates and that guidance. ... These results reflect an excellent year for EMCOR, the best earnings in our history. ...

> With respect to 2003, we have not provided guidance up till now on next year's earnings and would not customarily do so at this time due to the incomplete status of our budgetary process. However, there are a number of 2003 earnings estimates, which have been published previously by the industry analysts who cover our stock. And since we expect the CES transaction to be accretive
to our 2003 earnings, I think it appropriate to make some general comments to assist our listeners in assessing our prospects prior to the issuance of formal guidance in late January. ... However, notwithstanding these strengths, we are taking a more than usually cautious and conservative view of 2003 for the following reasons.

Firstly, our contract backlog, despite being very high is composed of a disproportionate quantity of relatively slow moving new construction projects in the public sector, meaning the backlog will contribute a lower percentage of our 2003 revenues than have been the case in past years.

Secondly, we have seen no sign of the kind of confident capital expenditures on private sector, commercial and industrial properties, which would signal a return to a more balanced portfolio of service opportunities for our company.

Lastly, although we have been aggressively reducing administrative costs and minimizing interest expense throughout this recession, we have experienced increases in cost areas, which are outside our control, notably in the area of insurance. The net result of the foregoing factors is downward pressure on our gross margins together with upward pressure on our administrative costs, with no sign so far of the resumption of the kind of high margin private sector work on which we thrive. It will come and when it does we will be ready, but we don't see it so far. Let me hasten to add that I am not preparing the market for a gloom and doom prediction when we provide guidance next month.

I fully expect that EMCOR's revenues and earnings per share in 2003 will exceed those of 2002, thereby setting new records. ...

* * *

I am however very cautious about 2003 and it goes back to and I am going to reiterate it for emphasis. It goes back to the fact that we have about a $1.5 [billion] or $1.75 [billion] revenue number can be derived from projects that will appear next year. They will appear in our facility service business in no small part as a result of our significantly expanded presence in that sector. It will appear in the construction sector. In the latter case, a lot depends on what part of the constructions sector it appears in. If it appears in the form of continued public sector in new constructions projects,
which are typical of recessionary spending patterns by government, then we will have a lot more of what we have already, which is relatively slow moving new construction projects which are not only promising in terms of advantageous close-outs for us when projects are over, because there is very little premium to be earned from public sector projects as compared to private sector customers are willing to pay for efficiency and quality. But there is also the impact of EMCOR's conservative accounting policies.

45. In addition, during a January 27, 2003 analyst conference call announcing revenue and earnings guidance for fiscal year 2003, MacInnis stated:

We see no signs of increased demand for services related to capital investments by the commercial and industrial sector, although there are some indications that the markets which declined sharply last year have stabilized. ... But the timing of the recovery is a factor in the achievement of the high end of our estimated earnings range. Once the recovery starts, we would expect EMCOR to benefit promptly from the re-assumption of rehabilitation, upgrading and restacking in the commercial markets, because of the relatively modest amount of over-capacity in high-end facilities. Profits from new, long term capital projects associated with economic recovery would not have any significant effect on EMCOR's 2003 results. Despite the general air of uncertainty surrounding the business climate in 2003, EMCOR brings a vital asset into the new year, more than $2.8 billion of contract backlog in a diverse array of market sectors. ... The achievement of this growth in very difficult circumstances is a testament to the effectiveness of our diversity model and an indication of the nimbleness of EMCOR companies in moving to sectors with high demand for our sectors.

* * *

We consider these revenue levels to be achievable without any improvement of private sector demand during 2003 above the levels experienced at the end of 2002. ... 

* * *

With respect to earnings, we estimate that EMCOR will report
between $4.25 and $4.60 per diluted share for 2003, including the contribution of 20 cents to 35 cents per share by CES and $4.05 to $4.25 by base EMCOR, compared to approximately $4.07 for 2002. The assumptions underlying this range of estimated earnings are the same as for our revenue estimates, that is a flat status quo market on the low end and a modest amount of second half private sector growth at the top end. (Emphasis added)

46. In addition, at the conclusion of his remarks during a February 26, 2003 analyst conference call announcing fourth quarter and fiscal year 2002 results, MacInnis reiterated “the 2003 revenue and earnings guidance that I provided about a month ago: revenues of 4.4 to 4.6 billion, and earnings per diluted share of 4.25 to 4.60.”

47. Moreover, in response to a question about budgetary constraints on government spending, MacInnis stated:

The pattern of EMCOR’s operational revenues and contract backlog over the last several years, as I commented to an earlier caller, has been an increase in the proportion of our business that is attributable to various public or quasi-public sources, like municipal water authorities, like federal or state transportation agencies, and the like, and you will have seen from the backlog chart that we have published today and that we publish every quarter that both our revenues and our backlog calculations have been impacted very positively by the move that we consciously made from the declining private commercial-industrial sector over to the public and quasi public sector as long as 2 or 2.5 years ago. (Emphasis added)

48. Thus, despite the dearth of private sector construction spending, EMCOR continued to emphasize its stable business model and continued financial success. For example, in a press release issued nationally by the Company, EMCOR reported the following information on March 18, 2003:

EMCOR Group, Inc. (NYSE:EME) today announced that it has recently been
awarded a number of projects in strategic markets expected to generate revenues of more than $220 million.

“These projects illustrate the continuing strong demand for EMCOR’s diverse array of services in strategic markets across the U.S.,” said EMCOR’s Chairman and Chief Executive Officer, Frank T. MacInnis.

Mr. MacInnis concluded, “Continued interest in healthcare facilities, power projects for electric utilities, and government and institutional facilities of all types continues to create strong business opportunities for EMCOR during this challenging economic environment. Our diversity model of geography, markets served and services offered continues to perform as customers ask us to provide the services they require to manage their facilities environments. From new construction, to retrofit and renovation, to operations and maintenance, to integrated facilities services, EMCOR has the skills that its customers need under all economic conditions.” (Emphasis added.)

49. Based upon these representations, immediately prior to the Class Period, Business Week published an exceptionally favorable article regarding the Company on March 31, 2003:

**EMCOR Group (EME) could be a stock for all seasons.** Despite a shaky economy, business is booming for the leader in mechanical and electrical construction services: In 2002, orders jumped 22%, to $2.9 billion, and earnings rose to $4.07 a share on sales of $3.9 billion, up from 2001's $3.40 on $3.4 billion. EMCOR stock was stuck at 20 when featured in this column on Feb. 21, 2000. But it surged to 64 by May 6, 2002, even as the market plunged. The stock slipped this year, to 46, as Iraq worries mounted. Bulls say now is the time to buy. Analyst Alex Rygiel of investment firm Friedman, Billings, Ramsey rates the stock outperform, and notes it trades at a 15% discount to its peers “despite a record of yearly 38% earnings growth and 12% sales growth.” He figures it will earn $4.60 a share in 2003 and $5.20 in 2004, and has a 12-month price target of 62.50.

“Neither a war nor slack in capital spending will slow our results,” says CEO Frank MacInnis. Emcor’s other business - - managing buildings for clients such as Bank One and Procter & Gamble - - offsets any weakness in construction, he says. (Emphasis added.)

50. As a result of these and other similar representations regarding EMCOR’s past performance and diversification, the investing public treated the Company’s securities as safe
and stable investments with predictable earnings. EMCOR’s common stock traded in a range from between $45.12 to $49.70 in the month preceding April 9, 2003 with the value of the common stock steadily rising during this period.

**MATERIALLY FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD**

51. On April 9, 2003, before the market opened, EMCOR issued a press release announcing its revenue and earnings expectations for the first quarter of 2003. Even though quarterly earnings were now being reported as significantly lower than anticipated, as well as compared to the first quarter of 2002, the Company explicitly reaffirmed its earnings guidance for 2003:

EMCOR Group, Inc. (NYSE:EME) today announced that it expects revenues for the first quarter of 2003 to be approximately $1.0 billion, compared to $810.3 million in the first quarter of 2002.

Net income and diluted earnings per share for the first quarter of 2003 are anticipated to be approximately $3.3 million and approximately $0.21 per diluted share, respectively. **The Company also reiterated its previously-issued revenue and earnings guidance for the full year of 2003.**

EMCOR Group’s anticipated 2003 first quarter results reflect solid revenue growth to record levels, including expected organic revenue growth of 3% to 4%, as well as improved gross margins versus the year-ago period. The Company’s anticipated results also reflect increased selling, general and administrative expenses, in part due to integration expenses associated with the Company’s acquisition of Consolidated Engineering Services, Inc. (“CES”) in December of 2002, as well as a shift in the Company’s revenue mix, a greater proportion of revenues from EMCOR Group’s facilities services operations, and increased interest expense as a result of the CES acquisition.

The Company anticipates contract backlog as of 03/31/03 of approximately $3.0 billion, versus $2.9 billion as of 12/31/02 and $2.5 billion at the end of the corresponding year-ago period.

**Based in part on newly acquired contract backlog and its analysis of business**
trends, the Company reiterated its previous financial guidance for the 2003 full-year period, with revenues in the range of $4.4 billion to $4.6 billion, and diluted earnings per share between $4.25 and $4.60.

Frank T. MacInnis, Chairman and CEO of EMCOR Group, commented, “As we have stated previously, our first quarter results are typically affected by negative seasonal factors, augmented in this quarter by challenging business conditions and the investment we are making to integrate the CES and EMCOR Facilities Services businesses. When integration is completed, we will leverage our $1 billion position in the growing facilities services market to drive revenue growth and operating efficiencies.”

Mr. MacInnis continues, “Our ability to generate organic growth reflected in both revenue and backlog speaks to the continued successful execution of our diversity model, which has resulted in growth despite the difficult macroeconomic environment. Our business remains on track, and we remain comfortable with the financial guidance we have provided for 2003.”

The Company expects to announce its financial results of the first quarter of 2003 before the market opens on Thursday, April 24, 2003. (Emphasis added.)

52. The statements set forth in ¶ 51 were materially false or misleading when made for at least the following reasons:

(a) By April 9, 2003, defendants knew or recklessly disregarded that EMCOR’s “newly acquired contract backlog” was significantly weighted toward less profitable public and quasi-public sector construction projects; and

(b) Defendants knew or recklessly disregarded that the Company was not capable of meeting its earnings projections absent a significant and expeditious increase in private sector construction spending, a trend the Company expressly stated was unlikely to occur given that the mix of EMCOR’s backlog consistently shifted between 2000 and 2003 from more profitable private sector construction contracts to less lucrative public or quasi-public construction contracts.
On April 24, 2003, EMCOR issued the following press release which confirmed its previous guidance with respect to the Company’s performance during the first quarter of 2003:

EMCOR Group, Inc. (NYSE:EME) today reported first quarter results.

Net income for the first quarter of 2003 was $3.3 million, or $0.21 per diluted share, directly in line with recent market guidance, compared with net income of $7.3 million, or $0.47 per diluted share, in the first quarter of 2002. **Revenues for the 2003 first quarter were $1.1 billion, an increase of 30.9% over revenues of $810.3 million in the year ago period. 2003 first quarter revenue levels reflect organic revenue growth of more than 6%**.

***

The Company’s backlog of construction and facilities management contracts as of March 31, 2003 was a record **$3.1 billion**, an increase of 23% compared with backlog of $2.5 billion on March 31, 2002 and up from $2.9 billion at the end of December 2002. EMCOR’s backlog at the end of March reflects year over year organic growth of 16%, as well as $166 million of backlog derived from the acquisition of CES.

Mr. MacInnis added, “However, the quarter also demonstrated the strength of our business model, as demonstrated by the growth in organic revenue and backlog, both of which surpassed our expectations. In addition, the benefits of EMCOR’s diversity model were apparent, notably in our facilities services businesses which demonstrated solid growth in revenue and profitability that offset seasonal slowdowns in our traditional construction businesses. The Facilities business is good: today we announced the award by British Airways of a three-year contract as the airline’s single-source provider of facilities management services for most of its UK property portfolio, including Heathrow and Gatwick Airports. This award exemplifies the versatility of EMCOR’s diversity model, in this case helping us to build on an already strong 11-year relationship with the leading international air carrier.” (Emphasis added.)

EMCOR confirmed these results in quarterly report (Form 10-Q) filed with the SEC on April 24, 2003, which was signed and the truth and accuracy of which was ascribed to by defendants MacInnis and Chesser.
55. The statements set forth in ¶¶ 53 and 54 were materially false or misleading when made for the reasons set forth in ¶ 52.

56. In a conference call with investors and research analysts on April 24, 2003, EMCOR’s senior management, including MacInnis, Chesser and Pompa, as well as additional participants, Bruce Scrawski, the Company’s Director of Communication and Sheldon Cammaker, the Company’s Executive Vice President and General Counsel, continued to ascribe the Company’s poor 2003 first quarter performance as reflecting merely seasonal trends and one-time charges, thereby assuring the investing public that there was no reason to be concerned about EMCOR’s performance during 2003. Defendants again failed to disclose that EMCOR’s marked fall in profitability (both in gross and absolute terms) from the first quarter of 2002 reflected a systemic change in the Company’s work to considerably less profitable contracts. In the April 24, 2003 conference call, Defendants reported the following information:

FRANK MACINNIS: The first quarter of 2003 is our 31st consecutive profitable quarter, a remarkable record of consistent performance through many industry changes and macro economic cycles. It was also another typically weak first quarter from an earnings standpoint, a pattern that we’ve replicated year after year, and which is a product of seasonal factors like weather related inefficiencies and customers’ budget allocation cycles, together with EMCOR’s conservative income recognition accounting policies.

Exacerbating these normal seasonal factors were continuing challenging conditions, notably in our private sector commercial markets, particular weakness in our UK operations, and overhead costs, assumed and expended, in connection with integration of CES.

* * * *

EMCOR’s contract backlog, consistently and conservatively calculated, has risen from about $1 billion at the end of 1997 to more than $3 billion today. This growth has been accomplished, despite a major recession and its impact on the former flywheel of our business, the private sector commercial market.
Through replacements and enhancements of overall contract backlog, despite a major decline in commercial building construction, is a statement of our versatility and of our success in accessing strong markets like government and institutional work, healthcare, water and wastewater treatment and public transportation.

*               *               *

This is the kind of long-term performance that our diversity model was designed to produce and it’s working. Two months ago I provided 2003 revenue and earnings guidance to the market at levels of 4.4 to $4.6 billion of revenue and $4.25 to $4.60 earnings per share. Based on our current outlook, I’m pleased to reiterate that guidance today. (Emphasis added.)

57. During the April 24, 2003 conference call, Defendants also continued to conceal the effect of the systemic and continuing change in the Company’s contract backlog that would undoubtedly impact its profitability and earnings absent a significant and immediate increase in private sector construction spending and/or a dramatic change in EMCOR’s success in obtaining such work:

ALEX RYGIEL: Second question - - you know, a couple months ago when you were talking about guidance for 2003 you did some simple math that talked about backlog that you would burn out in 2003, you talked about your facilities services revenue stream and then you talked about the unknown revenues coming from this fast track work, this short term, quick turn business, which usually represents about a third of your business. Now that we’re about four months into the year, can you talk a little bit about how that business is progressing, the business that doesn’t flow through backlog and what you expect over the next eight months or so?

FRANK MACINNIS: Well, the revenue that we need to book, whether short term or long term, is still a substantial number but we’re making excellent progress towards it. I think that our first quarter revenues were frankly a little higher than we expected. They showed very substantial organic growth, even though I will still say that the quick turn, small task, short term projects that make up a substantial part of that business and a substantial part of our profitability, are still not as strong as we would like, because a great many of those are associated with the private sector and the commercial buildings
market.

So despite that weakness, I think that the diversity model is working. **We’re extremely happy about the backlog evolution and clearly, we are booking work faster than we are burning it, despite record levels of burning it. And accordingly, I think that all the fundamentals are there to give me a confident feeling about the record revenue levels that I continue to project for 2003 of 4.4 to 4.6 billion.**

58. The statements set forth in ¶¶ 56 and 57 were materially false or misleading when made for at least the reasons set forth in ¶ 52, and for the additional reasons that:

(a) **EMCOR maintained sophisticated internal financial monitoring systems that enabled it to evaluate its contract backlog on a daily basis and defendants knew or recklessly disregarded that, based upon the contract backlog as of April 24, 2003, lower margins, profits and earnings could be expected from the Company’s construction business in 2003;**

(b) **MacInnis knew or recklessly disregarded that EMCOR’s earnings guidance was predicated upon a significant and material increase in “the quick turn, small, task, short term projects that make up a substantial part of [the Company’s] business and a substantial part of our profitability” even though the Company had experienced disappointing results in attracting such work during the first third of calendar year 2003; and**

(c) **MacInnis continued to equate “record revenue levels” with the earnings guidance that EMCOR had provided without regard for the “level” of profitability and earnings that the Company reasonably could predict based upon the information available to it at that time, including defendants’ knowledge regarding the low**
margin nature of its facilities management business and that its acquisition of CES had resulted in the acquisition of even lower margin work than anticipated.

59. During the April 24, 2003 conference call, MacInnis and Chesser also recklessly failed to disclose the extent of EMCOR’s reliance upon quick or fast turn projects to the Company’s bottom-line by materially understating EMCOR’s historical reliance upon these projects to generate 25% of earnings, as they admit later during the October 3, 2003 analyst conference call described below. Defendants instead attempted to persuade the investing public that EMCOR’s work in this highly profitable field had remained constant since 2000 even though it had slowed considerably during the first quarter of 2003. As of April 24, 2003, defendants had no reasonable basis to expect that the Company’s fast turn projects would increase during the remainder of 2003 (especially because such work is inextricably linked to EMCOR’s other private sector construction projects which were in decline):

JAMES CAPELLA, ANALYST, KERN CAPITAL: In the quarter do the bucket of revenue that’s 250,000 that’s fast turn projects, what percent of total revenue was that, and where was that last quarter?

* * *

LEICLE CHESSER: We have 250 million of increase in revenue over last year, of which 200 million of that came from acquisitions. I don’t recall any comment on fast turn work, quantifying that.

* * *

JAMES CAPELLA: Yeah, so you guys usually don’t put that in the backlog.

FRANK MACINNIS: Oh, oh, oh, oh, okay. The - - yes, the - - as I was mentioning on the previous question from Alex, I think that it’s fair to say that we’re still not seeing a substantial improvement in that kind of fast turn work. That is the kind of voluntary small under-the-radar capital spending that we frequently get from owners or end users of commercial buildings and it, like
the rest of the commercial buildings market, continues to be depressed....

JAMES CAPELLA: Okay, and could you quantify the percent of revenue derived from those 250 and under?

LEICLE CHESSER: No, we have not broken that down. **Historically it’s in that 20 percent range.**

JAMES CAPELLA: Right.

LEICLE CHESSER: And like you said, it’s probably a little bit livelier seeing a trend towards longer term projects, but it’s not a huge deviation.

JAMES CAPELLA: **Okay, and then related to that, when did you guys start seeing the weakness in the fast track business?**

FRANK MACINNIS: **In 2000.** (Emphasis added.)

60.  EMCOR reiterated its earnings guidance for 2003 (despite the Company’s poor performance during the first quarter and despite the fact that Defendants had no reasonable basis to expect such earnings in 2003) and, in fact, sought to persuade the investing public that the Company’s guidance was, in fact, conservative, by falsely claiming that both the Company’s earnings guidance did not assume any significant improvement in private sector construction spending and that the facilities management business was performing well when, according to several confidential witnesses, the facilities management business was performing poorly:

JAMES CAPELLA: ... **However, there seemed to be a disconnect for what the Street had to where you guys were coming in the quarter. Can you address any kind of linearity for the rest of the year in terms EPS target?**

FRANC MACINNIS: Well, as you know, just to reiterate it, my annualized guidance, I’ve said many times in the past that I think it’s unwise and unproductive to provide specific quarterly guidance and I’m very sympathetic with people whose jobs require them to do so because it’s a difficult task, particularly when you have a big company like ours with a small number of shares out with resulting sensitivity and volatility.
It goes without saying that by reiterating annualized guidance, my own view is that we will continue to perform well on a revenue line, that we will continue to show substantial performance on the gross margin level, that we will reduce the percentage of SG&A as it relates to revenue and that we will, with the advantage of better visibility than I had when I first provided it two months ago, I’m confident of our ability to make our guidance for the year.

With respect to any perceived shortfall that exists between what the analysts’ consensus used to be for our first quarter and what we have just announced, you are quite correct in pointing that out, but you have also, you’re also quite correct in pointing out that we didn’t ever guide to the first quarter and given the fact that in dollar terms the shortfall between the previous analysts’ consensus and our performance is something like $4 million on 1.1 billion, I don’t have much concern about our ability to make up that on a shortfall over the remaining 3.5 billion or so of revenue that we expect to report this year.

JAMES CAPELLA: Okay, and lastly, could you comment on where you think in the fourth quarter the gross margin or operating margin might rise up to?

FRANK MACINNIS: It is fair to say that the first quarter represented the replication of a pattern that we always reflect, and that is that our first quarter’s always weak in earnings terms for reasons that I went into at length on the call. Our second quarter improves; typically SG&A levels come down because of the absence of various prepayments and the development of revenues. Profitability improves, among other things, because of improved efficiency due to the lack of weather constraints. I don’t know if anybody noticed, but this was a Preeti [sic] bad winter in a great many areas of our business.

And the fact that as projects reach the 20 percent completion level, our conservative accounting policies permit us to begin booking income on those projects. So typically - - and I’m talking about year after year for the last eight years - - EMCOR Group has shown an acceleration of earnings performance as we go through the year, up to and culminating in the fourth quarter. So I have no reason to think that we won’t do that again this year.

* * *

PREETI DUBAY, ANALYST, STIFEL NICOLAUS HANIFEN IMHOFF, INC.: ... Okay. And so, when do you think you will be able to get back to your normal profitability trends there?

FRANK MACINNIS: Well, I think that we are going to get back to our normal profitability this year due to a number of factors, one of which will be
the good performance of our facilities service business, even if we continue to anticipate weakness in some sectors of the private market.

As I mentioned during the last conference call, my underlying assumptions with respect to the lower end or base case per our guidance -- that is $4.4 billion of revenue and 4.25 per share -- do not assume any improvement in the private sector for the remainder of this year. **That is status quo with what pertained at year end, whereas the upper end of the range that I reiterated this morning -- $4.6 billion of revenue and $4.60 per share -- assume a modest improvement in the private sector in the second half of this year....** (Emphasis added.)

61. For the reasons explained in ¶¶ 52 and 58, and especially in light of the systemic change in the “mix” of EMCOR’s “contract backlog,” the Company’s poor performance in obtaining “fast turn,” high profit contracts and EMCOR’s change in focus to a more stable revenue but lower profit margin facilities management business, defendants had no reasonable basis to expect the “status quo” in terms of net profit in 2003 and, therefore, issued false and misleading statements regarding EMCOR’s earnings guidance in 2003 when compared to its revenue guidance for that year.

62. In an interview broadcast on CNN on May 20, 2003, MacInnis continued to assert that EMCOR’s diverse business model could produce continued levels of profitability despite his acknowledgment that most of EMCOR’s projects were public sector in nature:

**PAT KIERNAN, CNNfn ANCHOR, THE MONEY GANG:** Let’s move on to a company that “BusinessWeek” called a possible stock for all seasons, even though it’s not a household name. It’s EMCOR a mechanical and electrical construction firm, it counts some like Heathrow Airport and Bank One among some of its clients.

**ALI VELSHI, CNNfn ANCHOR, THE MONEY GANG:** Frank MacInnis is EMCOR’s chairman and CEO.

Welcome back to THE MONEY GANG.
FRANK MACINNIS, CHAIRMAN & CEO, EMCOR: Thanks, guys.

VELSHI: Good to have you here. What do you think of that? Are you really a company for all seasons? Or maybe we should more accurately say for all economic climates.

MACINNIS: I think our record shows that. We just reported our 31st consecutive profitable quarter. “Fortune” magazine listed us as No. 15 for five-year earnings growth, meaning that we performed well in a good economy and a bad economy.

KIERNAN: You wrapped up an acquisition late last year of a firm in the facilities management business, and you’ve been increasing your own presence in that area. This is an initiative that gets you away from those individual contract wins that you have to get when you’re in the strictly construction side, and allows you an ongoing revenue flow that would carry the company through several years out of ongoing revenue. Is there an effort to diversify in that direction, to bring in something that happens after you’ve actually finished a project?

MACINNIS: Absolutely. That’s the EMCOR model in a nutshell, a combination of construction projects that, of course, have a beginning and an end, that take advantage of the economic cycles on the upside. But, at the same time, having long-term contractual relationships with facility management customers, like British Airways and like Bank One, relationships that extend over a term of years, usually three, but sometimes five, or even 10 years.

KIERNAN: As far as that construction revenue, is there one geographic area where you’re seeing a faster uptick?

MACINNIS: We’re seeing very small anecdotal increases in commercial spending in certain parts of the country, California maybe a little bit. And a little bit in New York City. But overall, we’re still reliant, primarily, on the public and quasi-public sector for our growth this year. (Emphasis added.)

63. On June 10, 2003, MacInnis, in an interview with CNBC, continued to project a positive outlook for EMCOR in terms of both revenue and earnings for 2003:

BRAD GOODE, CNBC ANCHOR: Of all the sectors that might signal an economic turnaround, one will literally rebuild business when contracting gives way to capital spending.

LIZ CLAMAN, CNBC ANCHOR: This morning, materials and construction industry leaders will gather for the Credit Suisse First Boston Engineering and
Construction Conference here in New York to discuss innovative blueprints to produce profits.

For his outlook, we’re joined now by conference presenter Frank MacInnis, Chairman and CEO of EMCOR Group. Good to see you and thank you for being here.

MACINNIS: We’ve had a real good run, both in good times and in bad, and this is not the way that construction companies are supposed to behave in recessionary times. We’ve done that through a very diverse group of service offerings that appeal to customers whether they are on the upside or the down side of their own economic cycles. And in recent years, we’ve been able to move aggressively into the public sector, into transportation projects and the like, which have not been severely affected by the recession, and also into general facility service offerings that are attractive to customers even when their businesses are poor.

CLAMAN: I want to talk quickly about a first quarter operating income decrease to about $7.6 million from $12.5 million year over year, with the operating margins cut by more than about a half. How did you plan or what have you done to at least make up for that lost chunk there and do you see that coming through right now?

MACINNIS: Well, the first quarter results were depressed over the year previous, but for a good reason. They had to do with our integration expenses associated with a major purchase that we made just before Christmas last year. We bought a company, or a group of companies called Consolidated Engineering Services --

CLAMAN: In December of 2002?

MACINNIS: That’s right -- which is a premier facilities services group that enabled us to bring our annualized revenues from the services business to more than a billion dollars. So we are proud of that and we’re spending money naturally to integrate those companies into broader operations, but that will be over soon. (Emphasis added.)

64. The statements set forth at ¶¶ 62-63 were materially false or misleading when made for at least the reasons set forth at ¶¶ 52, 58, and 61.

65. On July 24, 2003, two weeks after MacInnis dismissed poor first quarter earnings as related to the CES acquisition and effectively “ducked” the question of how EMCOR would
make up for those lost earnings, the Company was forced to admit that, for the second quarter of 2003, EMCOR had again met revenue expectations but had performed abysmally in terms of income or earnings (as a percentage of revenues and in absolute terms) and that the Company would need to revise its guidance for annual earnings per share of common stock. Specifically, in a press release issued nationally on July 24, 2003 before the market opened, the Company announced the following financial results for the second quarter of 2002:

EMCOR Group, Inc. Reports 2003 Second Quarter Results

**Net income for the second quarter of 2003 was $8.3 million, or $0.53 per diluted share, compared with net income of $14.8 million, or $0.96 per diluted share, in the second quarter of 2002.** Revenues for the 2003 second quarter were $1.1 billion, an increase of 16.0% over revenues of $986.4 million in the year ago period. Organic revenue growth was 4.4% in the second quarter of 2003 compared to the second quarter of 2002.

For the 2003 second quarter, gross profit rose to $123.3 million from $120.2 million in the second quarter of last year. **Gross profit was a percentage of revenues was 10.8% in the second quarter of 2003, compared to 12.2% in the second quarter of 2002.** The Company’s gross margins reflect decreased profitability in its mechanical business, primarily due to difficult economic conditions in the Midwest which, combined with a later than expected start of hot summer weather, resulted in an unexpected decline in higher-margin, discretionary work orders. Gross margins were also impacted by operating losses from the Company’s U.K. operations.

For the second quarter of 2003, the Company reported operating income of $16.6 million, versus operating income of $26.9 million in the second quarter of 2002. Operating income as a percentage of revenues was 1.5% versus 2.7% in the same quarter last year.

At June 30, 2003, the Company’s backlog of construction and facilities management contracts was $3.2 billion, an increase of approximately 14% versus backlog of $2.8 billion on June 30, 2002 and an increase of approximately 2% over its $3.1 billion backlog on March 31, 2003. Organic growth of the Company’s backlog versus the year ago period was approximately 8%.

For the first six months of 2003, the Company reported operating income of $24.2
million, compared with operating income of $39.5 million in the year-ago period. As a percentage of revenues, operating income for the 2003 first half was 1.1% compared with 2.2% last year.

Mr. MacInnis added, “Looking ahead, we see little evidence of any short-term improvement in the private sector commercial market. While we are comfortable reiterating revenue guidance for 2003 of between $4.4 billion to $4.6 billion, especially in light of our strong year to date revenue and backlog performance, we currently expect diluted earnings per share for the 2003 full-year period to be in the range of $2.90 - $3.10.” (Emphasis added.)

66. EMCOR repeated these results in a quarterly report (Form 10-Q) filed with the SEC on July 24, 2003, which was signed and the truth and accuracy of which was ascribed to by defendants MacInnis and Chesser.

67. The statements described at ¶¶ 65-66 were materially false or misleading when made for at least the reasons set forth at ¶¶ 52, 58, 61.

68. In direct response to these disclosures, on July 24, 2003, shares of EMCOR fell more than 17 percent to close at $42.03 per share, its lowest level in more than two years, on extremely heavy trading volume.

69. Nevertheless, defendants continued to offer a relatively rosy view and materially false or misleading information regarding EMCOR’s prospects for 2003. As reported by FD (Fair Disclosure) Wire, MacInnis made the following statements during a July 24, 2003 conference call with investors and analysts that followed EMCOR’s negative earnings announcement earlier that day in which MacInnis, Chesser and Pompa, as well as Mayva Heffler, the Company’s new Vice President of marketing and communications, participated:

FRANK MACINNIS: ... The second quarter of 2003 was the 32nd consecutive profitable quarter reported by EMCOR Group. The remarkable record of consistency and growth. We are proud of our history and the unique business model that made it possible. But our second quarter results were more
complicated and mixed than is usually the case in our company. As we discussed in this morning’s press release our second quarter revenues and midyear backlog set new records for the company and reflected strong organic growth. Clearly our markets and our strong position within those markets remain in tact and even growing. Both our electrical construction and our important facility business grew in revenue and profitability over the year-ago period. On the other hand, our mechanical and construction service businesses experienced a slight reduction in revenue and significant reduction in operating profit compared to 2002 for a number of coincident reasons.

*               *               *

Quarterly revenues of $1.14 billion were 16% higher than a year ago. A result of the December 2002 purchase of CES together with year over year organic revenue growth of 4.4%, Gross profits increased in dollar terms to $123.3 million to $120.2 million in the second quarter of last year but declined as a percentage of revenues as a result of mechanical sector and UK results just discussed to 10.8% of revenues from 12.2% in the year-ago period. General administrative costs rose in dollar terms due to the inclusion and integration of CES, but fell as a percentage of revenue 9.3% compared to 10.3% in the first quarter of 2003 and 9 poining[sic] 5 - - and 9.5 a year ago. Declining margins, as discussed reduced EBIT to $16.6 for the quarter compared to 26.9 million a year ago. Revenues for the first half of 2003 were $2.2 billion. 22.7% higher than a year ago including 5.2% growth from organic sources. Operating income and net income affected by the cost of CES integration together with the operational factors already discussed were $22.2 and $11.5 million respectively compared to 39.4 million and 22 million a year ago. Year to date diluted earnings per share were 74 cents compared to $1.43 in 2002.

*               *               *

This slide shows the intra-year and annual pattern of EMCOR’s revenue and EBIT over the last 7.5 years. Every year exhibits the same characteristics: a slow start, especially in EBIT terms due to seasonal impact on productivity and to our conservative accounting policies with respect to revenue recognition on multi period projects. As productivity improves and our income recognition policies permit, profitability increases significantly while revenues typically grow more slowly. We expect the same intra-year pattern to occur in the second half of 2003, albeit from a lower base in the case of our EBIT performance.

Our year to date revenues are in line with internal budget expectations, and our contract backlog is above budget, although it continues to be overweighted toward
longer term, slower burning projects of a larger than normal average size. We expect second half revenue to be similarly strong at levels of 2.2 to 2.4 billion dollars, and we reiterate full year 2003 revenue guidance of 4.4 to 4.6 billion dollars. We also expect our contract backlog balance to remain strong. **Our previous guidance with respect to profitability was explicitly based on the maintenance of the status quo which existed at the end of 2002 with respect to both our public and private sector market demand.** That assumption did not materialize. We have, in fact, experienced a further deterioration in our private sector mechanical construction and service markets, notably in the midwestern and northeastern U.S. For reasons and with results already presented and discussed. **Although most economists expect a general economic recovery to take route in the second half of 2003 and to accelerate in 2004, we are unwilling to rely on any such general improvement in our overall markets.**

Especially since it, too, was affected by the downward pressures on the demands and margins and we expect it to grow in both revenue and profit terms in the second half now that integration is essentially complete.

In light of the foregoing assumptions, we estimate second half fully diluted earnings per share to be in the range of $2.16 to $2.36. Weighted slightly toward the fourth quarter. Resulting in revised 2003 full year earnings per share guidance of $2.90 and $3.10. The corresponding net income, EBIT, EBITDA, and EPS are as follows, net income of 45 to $50 million. Ebit of 88 to 94 million. EBITDA of 111 to 117 million dollars and free cash flow of 50 to 55 million dollars.

**The second half and full year operating results will be the product of a number of moving parts, as usual. In order to explain the kind of analysis that leads to us our $3 range for full year guidance we offer the following general expectations:** $3 earnings per share requires that EMCOR produce about $67 million of EBIT from second half operations. If we assume the second half revenue was equal to the first half of 2.2 billion, as assumption by the way that I consider very conservative, then the following assumptions would produce the $3 result: second half gross margins at 12.3% compared to 12.6% for the last half of 2002. Second half, general administrative costs at 9.2% of revenues compared to the same percentage for 2002, and second half EBIT of 3.1% of revenue compared to 3.45% for 2002. In other words we don’t have to perform as well in the last half of this year as we did a year ago in similar market circumstances in order to achieve our $3 range for the year.

We consider this illustration and this scenario to be realistic, conservative, and achievable.  (Emphasis added.)
70. Although defendants now admitted that they had predicated their earlier, faulty guidance on an assumption that the “status quo” would be maintained in terms of profitability (despite their prior knowledge that, based upon the Company’s shift in contract backlog to less profitable work, a decline in the Company’s ability to obtain highly profitable fast turn projects, and the Company’s shift to less profitable and poorly performing facilities management services business, “status quo” levels could not be maintained), they still failed to reveal the true financial circumstances of EMCOR, which were then known to them, and continued to issue knowingly false and exceptionally reckless earnings guidance based upon gross margin and SG&A performance in the second half of 2003 that they knew were unattainable based upon the Company’s true financial circumstances.

71. Despite the fact that defendants knew or recklessly disregarded that EMCOR could not meet its revised earnings guidance absent a substantial and immediate improvement in its private sector construction contract backlog and fast turn projects, MacInnis continued to falsely assert that EMCOR’s revised earnings guidance was not based on any prediction or expectation of improved private sector earnings. At the same time, he in effect denied that EMCOR had systemically moved into markedly less profitable markets in order to retain and expand revenues:

FRANK MACINNIS: ... But I am not willing to guess publicly as to when that resurgence will be and I make no such assumption concerning that resurgence for the purpose of estimating 2003 or 2004 margins.

ANDREW WOLLACK: Right. And just to put this to bed, I mean, you don’t think, there has been any kind of permanent mix change downwards for this company as a result of what’s happened in the economy in your - - and your move toward more public sector?

-39-
FRANK MACINNIS: Absolutely not. We have reacted to what the markets are giving us. You can see from the backlog chart that the proportion of our backlog represented by private sector commercial construction is probably at 15 or maybe 16% right now....

*               *               *

RAYMOND CHEUNG: In terms of the backlog, can you comment on the margin associated with overall backlog dollars and also can you give us a rough sense how much of the backlog numbers are related to facility services?

FRANK MACINNIS: With respect to margins in backlog, I'll make a general comment that you might take in conjunction with one that I made in answer to an earlier question. Our backlog on the construction side consists of a larger than usual proportion of public and quasi public sector companies.

DAVID HERMAN: Thanks for taking my call. A couple quick questions. I guess the first thing is the backlog. Can you help me understand what it would look like about a year ago in terms of private versus public sector?

FRANK MACINNIS: A year ago. I don’t think they would be enough to worry about. What you’re missing perhaps is not in backlog at all. The revenue and more to the point the profit impact associated with this quarter’s results was from projects that typically don’t get into the backlog schedule because they are a small, fast moving project, under $250,000 that we typically don’t report as part of backlog, but that contribute disproportionately to the profitability of the company in ordinary times and didn’t contribute to the profitability of the company in the second quarter so that really is the crux of the message I am trying to get across. Our backlogs performed routinely.... The quarter I thought it was appropriate in all the circumstances. Leaving aside the uk. What I - - what affected us disproportionately was the absence of those contracts outside the backlog report. That typically SUPPLEMENTS our earnings from backlog projects.

FRANK MACINNIS: Yes. And I think that implicit - - and I’ll make it explicit it in - - in my au summings - - assumptions is there won’t be an improvement for the remainder of the year and we nonetheless state our earnings. (Emphasis added.)

72. During the July 24, 2003 conference call, MacInnis also falsely asserted that the CES integration had “gone very well” when exactly the opposite was true and the Company’s
facilities services division was suffering from a conflict between two executives (Phil Rogers from CES and Bill Rogers of EMCOR) which left that division with an utter lack of direction.

73. For the reasons stated above, these statements were false and misleading when issued and defendants either directly issued these statements or acquiesced to these misrepresentations by sitting idly by while they were in possession of material information that specifically contradicted these representations.

THE TRUTH ABOUT EMCOR BEGINS TO BE REVEALED

74. On October 2, 2003, EMCOR shocked the market by again lowering its earnings guidance for 2003. Specifically, in a press release issued after the market closed, the Company stated:

EMCOR Group, Inc. Announces Anticipated Results for the Second Half of 2003; Updates 2003 Full-Year Guidance

EMCOR Group, Inc. (NYSE:EME) today provided financial guidance for the second half of 2003 and updated its financial guidance for the 2003 full-year period.

Based on current market conditions, the Company expects revenue for the second half of 2003 to be between $2.25 billion and $2.35 billion, and diluted earnings per share to be between $0.90 and $1.01. The Company expects these results to be slightly weighted towards the 2003 fourth quarter. In light of these expectations, the Company’s guidance for the 2003 full-year period is for revenue of between $4.4 billion and $4.6 billion, in light with previous estimates, and diluted earnings per share of between $1.65 and $1.75. Contract backlog at September 30th, 2003 is anticipated to be approximately $3.1 billion versus $2.9 billion as of 9/30/02 and 12/31/02. EMCOR expects to release its financial results for the third quarter of 2003 on October 23, 2003.

The Company’s financial guidance reflects continued solid revenue growth as a result of its leading position in its markets, and profitable results from all the Company’s North American operations. However, gross profits continue to be restrained by the high proportion of public sector work within backlog, continued recessionary conditions in most of EMCOR’s markets, especially
in the Midwestern and Northeastern U.S., and a reduced level of private sector, discretionary, small project work, which typically generates higher gross margins than longer-term work. EMCOR’s expected results for the second half of 2003 also reflect the impact of the slower than anticipated return to profitability of the Company’s U.K. subsidiary, due to reorganization charges at that subsidiary and to U.K. market conditions.

Mr. Frank T. MacInnis, Chairman and Chief Executive Officer of EMCOR Group, stated, “This continues to be a challenging time for EMCOR and its entire industry. While we have been able to maintain our dominant position in many of our markets, mainly through awards of public sector projects, the contracting environment remains recessionary, with many of our private sector clients waiting for clearer signs of a full-fledged economic recovery. In addition, the anticipated recovery in small-project discretionary spending has been slower and less profitable than anticipated. In the U.K., our new management team has taken steps to enhance profitability, and although we expect profitable performance from these operations in the second half of this year, before reorganization costs, current conditions in the U.K. market together with reorganization costs will prevent us from attaining our previously announced profitability goals for this business until 2004.” (Emphasis added.)

75. As a result the shocking disclosure that EMCOR would earn just slightly more than half of the profits as compared to the amount that it had advised the investing public it would earn based upon purportedly conservative assumptions and data in the Company’s possession less than three months earlier, EMCOR’s common stock literally was hammered. As Investor’s Business Daily reported on October 6, 2003: “EMCOR dived 20% to 34.79 after the construction and facilities services company slashed its ‘03 profit forecast to $1.65-$1.75 a share from $2.90-$3.10... .”

76. In a conference call with securities analysts and investors later that day, EMCOR’s management team was unable to offer any credible explanation for this dramatic change in guidance after having already lowered earnings guidance in July 2004. As reported by FD (Fair Disclosure) Wire, Defendants admitted the following facts during the October 3, 2003
conference call which belied their prior assertions, as well as their representations regarding the
correction of certain sectors of their business to overall profitability:

(a) “[i]n a nutshell, [EMCOR’s] current portfolio of longer-term projects, on
which [the Company relies] for basic levels of revenue production and
coverage of interest charges and administrative costs, is overweighted
towards public sector work, which is less profitable than private sector,
commercial, and industrial projects” (Emphasis added);

(b) “[a] second major factor in [EMCOR’s] gross margin performance ... is
discretionary small-task private sector work, which is typically excluded from our
backlog because of its short-term nature ... and [is] disproportionately important to
our gross margin performance, [and] this work is not being performed at gross
margin levels that will significantly improve our overall margins”;

(c) “[w]hen EMCOR is deprived of access for a lengthy period of time to segments of
our markets which typically produce our highest gross margins, our profit
performance reversed, the level of which is what we expect for the remainder of
2003”;

(d) “[s]mall project work - - by which we mean projects under $250,000, which are
always outside of our backlog calculations - - in the past have represented about
25 or 26 percent of our overall revenues [and] [c]urrently, we are looking at that
sector producing about 21 percent or so of our revenues”;

(e) [the reason that these projects] provide disproportionate amounts of gross margins
to [EMCOR’s] financial results is that these small-task service operations - -
HVAC, service calls and the like - - are frequently provided at gross margins of 20 or 25 percent, as compared to the 10 or 11 percent baseline level of gross margins within the backlog projects - - the larger, longer, slower moving projects that provide our base revenue”;

(f) “[t]he public sector represents currently about - - between 60 and 65 percent [of contract backlog] ... between public and quasi-public entities”; and

(g) “[in December, 2002, the public sector component of contract backlog] would have been, probably, 5 percent less public [and] [i]f you went back to December 31, 2000, it would have been significantly less than 50 percent public.”

77. Perhaps most significantly, during the October 3, 2003 conference call, MacInnis explicitly admitted that EMCOR had based the earnings guidance provided on July 24, 2003 on assumptions that its earnings from high margin, private sector small projects or fast turn projects and other high margin private sector work would return “in a way that was going to significantly supplement [the Company’s] margins” even though MacInnis himself had specifically disclaimed any such assumptions of improved market conditions when he, along with other EMCOR senior managers, delivered earnings guidance for 2003 less than three months earlier.

78. MacInnis essentially admitted that defendants’ prior statements were knowingly or recklessly false and misleading when issued. In fact, in stark contrast to his statements on July 24, 2003, MacInnis now admitted that EMCOR had moved into sectors of work that fundamentally impacted the Company’s profitability:

FRANK MACINNIS: ... And the fact is that the prolonged recession gave sufficient time for the high-margin work that comprised a significant part of our backlog - - that is the long-term, substantially profitable commercial
work - to finally substantially disappear from our back log of work, to be replaced by lower-margin, predominately public sector work. And that is where we are today. We have established a different kind of base, if you will, for the bulk of our revenue production....

79. In this same call, MacInnis also admitted that EMCOR’s financial reporting system was sufficiently sophisticated so that the Company and its senior managers are able to review and monitor its financial condition on a daily basis and that, despite his specific disclaimers to the contrary on July 24, 2003, EMCOR’s revised earnings guidance for 2003 had been predicated upon the conscious decision to engage in a reckless bet that the Company’s acquisition of high profit work would somehow return in the second half of 2003 (even though Defendants had no reasonable basis to believe that it would as of July 24, 2003). In addition, MacInnis incorrectly stated that his July 24, 2003 guidance to investors was predicated on a “recovery” in private sector construction spending:

DAVID HERMAN: Okay. I guess the second question goes on to more - - the guidance process and the budgeting process. Two months ago you had reviewed - - revised guidance, which at the time seems conservative. Can you help me understand the process you went through at that time, and now the process you’re going through at this time to give guidance for 2004? Is there a bottoms-up approach that you did in July? How do we get comfortable? And what kind of internal reports do you guys get from your divisions? Is there a monthly P&L you’re getting from these guys? Is it monthly revenue? Is it daily cash? **How do we understand how you guys are giving guidance, and how do you sort of plan the business?** (Emphasis added.)

FRANK MACINNIS: Okay. First of all - - and that’s a multifaceted question, so let me give what I hope will be a comprehensive answer.

Everything we do at this company is bottoms-up. We are extraordinarily diverse and decentralized operation. We count on the intelligence and information developed from our field operations to flow efficiently from those more than 140 locations to a group level, where it is interpreted, matched with what we know to be the case from our daily cash reports that we receive, and compare with the operational reports which we’re
receiving all the time. *This is not one of those companies that waits for the fax machine to start humming at month-end and give us the results for the month, which are either surprises or not surprises, as the case might be. We are in constant communication with these companies, and comparing and triangulating what they’re telling us with the cash reports that we receive every day. I get about a 10-page report every afternoon at 3:00 talking about the operations of the company. And when you think about the nature of our balance sheet, the cash report is really crucial to an understanding of how we are doing, because with our relatively low depreciable asset base, and therefore relatively low depreciation amortization, cash flow – at least making allowance for season and other typical adjustments – ought to look a lot like P&L. So we can watch the cash, hear the operations reports, compare the two, and come up with a pretty good idea of how things are going.*

*And when I did that in July – taking into account the reports from all the operational personnel, taking a look at the cash, looking at the investment that we had in various projects – I could see, and stated this on the call, that the second half of the year would be substantially dependent on the recovery of the UK company; our acquisition of the high margin HVAC and electrical service work that we hadn’t gotten in the first half of the year, primarily due to both the economy and to weather-related effect; and also, the profitability – the return to better performance of our mechanical operations overall, including the Midwest; and continuation of profitability of our Northeastern Electrical.* Of those four criteria, the UK company, as I mentioned earlier, has not recovered as fast as I had hoped or expected. The mechanical operations will improve in the second half, substantially over the first half. The electrical will not. And the service work I have already spoken about at length. It materialized in part in terms of revenue, but at significantly lower margins than I expected, even as I was speaking in mid-July.

(Emphasis added.)

80. Defendants also were completely unable to offer a credible explanation of why a changeover in backlog to public sector work was not more predictable in light of their publicly-stated ability to monitor the business on a daily basis. When questioned on this subject, MacInnis simply offered more “double-talk” and unresponsive information by discussing private sector work that allegedly had performed “poorly” and lower margins that had been achieved in certain public sector projects:
JEFF ALLEN, ANALYST, SILVERCREST ASSET MANAGEMENT: Good morning, guys. You referred to the changeover in the backlog in the electrical segment to public work from more commercial-type work. I guess I’m just wondering - - why is that a surprise? And why couldn’t you have anticipated that when you gave guidance on the Q2 conference call?

FRANK MACINNIS: We had not contemplated that the public work - - and frankly, some of the private sector work that continued to be provided to our customers in the Northeast - - would proceed as poorly as it did. And it has everything to do with the preceding caller who asked about the inherent risks associated with public sector work. We have seen increasing degrees of intransigence on public sector projects from customers who are either budget-constrained or otherwise indisposed to provide the kind of flexibility and opportunity for earning of premiums that we had previously experienced in the public sector....

81. In the October 3, 2003 conference call, defendants also failed to disclose that, contrary to their Class Period representations, the CES integration had gone poorly and EMCOR’s newly expanded facilities management business had underperformed relative to expectations. During the Class Period, EMCOR failed to capture new business from clients, including Bank One, Washington Mutual, Cingular, CB Richard Ellis and Siemens, because of poor service and unexpectedly failed to obtain a new contract from T-Mobile as a result of the chaos and lack of direction within EMCOR. These failures had a material negative impact on EMCOR’s earnings during the first three quarters of 2003.

82. In sum, during the October 3, 2003 conference call, as evidenced by their unresponsive answers, inconsistent representations and selective memories, defendants did little more than confirm their culpability and liability for their material misrepresentations and omissions of fact during the Class Period.

ADDITIONAL SCIENTER ALLEGATIONS

83. In addition to defendants’ own admissions at the end of the Class Period, the
following allegations strongly support a finding that defendants knew or recklessly disregarded
EMCOR’s true financial condition during the Class Period.

84. Certain confidential witnesses (“CWs”), who are former employees of EMCOR and/or one of its operating subsidiaries before or during the Class Period, and who are knowledgeable about the facts and events that transpired during the Class Period, spoke to Lead Plaintiff on a confidential basis. The CW’s stated as follows:

a. CW1, an engineer for a subsidiary of EMCOR who left employment in December, 2003, stated that: (I) EMCOR was unable to obtain profitable private sector work (and lost bids for several important projects in this regard); (ii) when EMCOR incorporated CES’ business into its accounting software during the first and second quarters of 2003, it became apparent that CES’ business was not as profitable as EMCOR had anticipated; (iii) EMCOR was unable to obtain the volume of facilities management business that it had anticipated after acquiring CES because the margin in the business were extremely low (10%) and EMCOR regularly bid too high in an effort to avoid giving the job away; and (iv) senior management in CW1’s office was regularly in contact with EMCOR’s senior management in Connecticut and apprised them of these facts;

b. CW2, who worked as an engineer for EMCOR until April, 2004, stated that, during the Class Period, (I) EMCOR regularly was
unable to meet its commitments regarding service to major facilities management clients; (ii) as a result, EMCOR’s existing customers did not purchase new or expanded services to the extent anticipated by EMCOR; (iii) EMCOR experienced difficulties incorporating CES into its business model during 2003 because of a leadership fight between CES President, Phil Rogers and EMCOR Facilities Management President, Bill Rodgers, which left the facilities management business effectively rudderless throughout the Class Period; (iv) EMCOR’s senior management was well aware of these problems; and (v) EMCOR began an advertising campaign in the 3rd quarter of 2003 to increase its exposure in the hope the Company would be purchased;

c. CW3, a former human resources employee of EMCOR who left the Company in 2003, stated that during the Class Period (I) the integration of CES and EMCOR Facilities Management had gone poorly and was chaotic throughout 2003 (including the fact that individuals’ job titles kept changing and employees regularly did not know what they were responsible for and who they should contact with questions); (ii) there were major contract problems in the facilities management business that were affecting profits in an adverse manner; (iii) EMCOR’s senior managers in
Connecticut were well aware of these problems and were in constant contact with CW3’s office both in person and by telephone; and (iv) the chaotic nature of EMCOR’s facilities management business lead to substantial delays in the acquisition of Siemens’ facilities management business in 2003;

d. CW4, a former EMCOR employee who left employment in 2003, explained that EMCOR’s entire business model was faulty because it had expanded into low margin sectors and that, as a result of these low margins, there never was any realistic possibility that EMCOR would meet its projected number/earnings in 2003; and

e. CW5, a former accountant at EMCOR, explained that EMCOR’s facilities management business was struggling in April, May and June of 2003 and that, as a result, morale in this part of EMCOR’s business was quite low.

APPlicability of the fraud-on-the-market doctrine

85. Lead Plaintiff relies, in part, upon the presumption of reliance established by the fraud-on-market doctrine. The market for EMCOR common stock was, at all pertinent times, a liquid and efficient market for, inter alia, the following reasons:

a. EMCOR met the requirements for listing, and was listed on the NYSE, a highly efficient and liquid market;
b. As a regulated issuer, EMCOR filed periodic public reports with the SEC;
c. EMCOR’s securities trading volume was substantial during the Class Period;
d. EMCOR was covered by various securities analysts who wrote reports which were available through various automated data retrieval services;
e. EMCOR disseminated information on a market-wide basis through various electronic media services, and participated in open conference calls with stock analysts and investors; and
f. The market price of EMCOR securities reacted rapidly to new information entering the market.

86. The facts identified above reflect the existence of an efficient market for trading of EMCOR securities and make applicable the fraud-on-the-market doctrine. Similarly, Lead Plaintiff and the other members of the Class are entitled to a presumption of reliance with respect to the misstatements and omissions alleged in this Complaint.

NO SAFE HARBOR

87. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein 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 false forward-looking statements because at the time each of those
forward-looking statements was made, the particular Defendant who made the statement
knew that the statement was false, or it was authorized or approved by an Individual
defendant who knew that the statement was false when made.

LEAD PLAINTEIFF'S CLASS ACTION ALLEGATIONS

88. Lead Plaintiff brings this class action pursuant to Rule 23 of the Federal
Rules of Civil Procedure, on behalf of himself and all other persons who purchased or
otherwise acquired EMCOR common stock and/or other securities during the Class
Period (i.e., between April 9, 2003 and October 2, 2003, inclusive). Excluded from the
Class are EMCOR, its subsidiaries and affiliates, the Individual Defendants, members of
the immediate families of each of the Individual Defendants, any entities in which any
of the Defendants have a controlling interest, and the legal representatives, heirs,
successors, predecessors in interest, affiliates or assigns of any of the Defendants.

89. This action may properly be maintained as a class action as a result of the
following facts:

a. During the Class Period, millions of shares of EMCOR’s
common stock were issued and outstanding and were actively traded on the New York
Stock Exchange, a liquid, efficient and impersonal trading market. The members of the
Class for whose benefit this action is brought are located throughout the United States,
and are so numerous that joinder of all members of the putative Class is impracticable. Millions of EMCOR shares were publicly traded during the Class Period and, upon information and belief, there are hundreds or thousands of members of the Class;

b. Lead Plaintiff’s claims are typical of the claims of the other members of the Class, and Lead Plaintiff and all members of the Class sustained damages as a result of the defendants’ wrongful conduct complained of herein;

c. Lead Plaintiff is a representative party who will fairly and adequately protect the interests of the other members of the Class, and has retained counsel competent and experienced in class action securities litigation. Lead Plaintiff has no interests antagonistic to, or in conflict with, the Class he seeks to represent;

d. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein, because joinder of all members is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to separately redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote;

e. Lead Plaintiff anticipates no unusual difficulties in the management of this action as a class action; and

f. The questions of law and fact common to the members of the Class predominate over any questions affecting any individual members of the Class.

90. The questions of law and fact which are common to the Class include,
among others:

a. Whether the federal securities laws were violated by the defendants’ acts as alleged in this Complaint;

b. Whether the documents, press releases, reports and/or statements disseminated to the investing public and to EMCOR shareholders during the Class Period omitted or misrepresented material facts about the financial condition, business prospects, income and earnings expectations of EMCOR;

c. Whether defendants failed to correct previously issued statements that they knew to be false or for which they recklessly disregarded the truth or falsity of such statements;

d. Whether defendants failed to disclose material, adverse information at a time when they were in the possession of such information;

e. Whether defendants acted with knowledge or with reckless disregard for the truth in misrepresenting and omitting material facts;

f. Whether, during the Class Period, the market price of EMCOR common stock and other securities was artificially inflated due to the material misrepresentations and omissions complained of herein;

g. Whether defendants participated in and pursued the common course of conduct complained of herein; and

h. Whether the members of the Class have sustained damages and, if so, what is the proper measure thereof.
COUNT I:

VIOLATION OF SECTION 10(b) OF THE 
SECURITIES EXCHANGE ACT AND RULE 10b-5 THEREUNDER

91. Lead Plaintiff incorporates the preceding paragraphs of this Complaint as if set forth herein at length.

92. Throughout the Class Period, defendants, singly and in concert, directly or indirectly, engaged in a common plan, scheme and course of conduct described herein, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and a course of business which operated as a fraud upon Lead Plaintiff and the other members of the Class; made various false statements of material facts and omitted to state material facts to make the statements made not misleading to Lead Plaintiff and the other members of the Class, and employed manipulative or deceptive devices and contrivances in connection with the purchase and sale of EMCOR common stock and other securities.

93. The Individual Defendants, as executive officers and/or directors of EMCOR, had actual knowledge of the falsity of the material statements set forth above, and intended to deceive Lead Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth by failing to ascertain and disclose the true facts in the statements made by them or other EMCOR personnel to the SEC and the investing public, including Lead Plaintiff and other members of the Class.

94. The facts alleged herein compel a strong inference that defendants made material false and misleading statements to the investing public with scienter, in that
defendants knew that the public statements issued or disseminated in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements as primary violators of the federal securities laws.

95. As a result of the foregoing, the market price of EMCOR securities was artificially inflated during the Class Period. In ignorance of the falsity of the reports and statements, and the deceptive and manipulative devices and contrivances employed by defendants, Lead Plaintiff and the other members of the Class relied, to their detriment, on the reports and statements described above and/or the integrity of the market price of EMCOR securities during the Class Period in purchasing the Company’s securities at prices which were artificially inflated as a result of defendants’ false and misleading statements.

96. Had Lead Plaintiff and the other members of the Class known of the material adverse information which defendants failed to disclose and/or misrepresented, they would not have purchased EMCOR securities at the artificially inflated prices that they did.

97. Defendants’ dissemination of this false and misleading material information, and their failure to disclose material information that rendered their other statements false and misleading, served only to harm Lead Plaintiff and the other members of the Class who purchased EMCOR securities in ignorance of the financial risk to them as a result of such false and misleading information.
98. As a result of the wrongful conduct alleged herein, Lead Plaintiff and other members of the Class have suffered damages in an amount to be established at trial because, as a result of defendants’ false and misleading statements, they purchased shares of EMCOR at artificially inflated prices.

99. By reason of the foregoing, defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to Lead Plaintiff and the other members of the Class for the substantial damages which they suffered in connection with their purchase of EMCOR securities during the Class Period.

COUNT II

VIOLATION OF SECTION 20(a) OF THE SECURITIES EXCHANGE ACT

100. Lead Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if set forth herein at length.

101. During the Class Period, each of the Individual Defendants, by virtue of his or her office or offices at, and/or directorship of EMCOR and his or her specific acts, was a controlling person of the Company within the meaning of Section 20(a) of the Exchange Act.

102. Each of the Individual Defendants’ position made him or her privy to, and provided him or her with actual knowledge of, the material facts that EMCOR misrepresented and/or concealed from Lead Plaintiff and the other members of the Class during the Class Period.

103. Each of the Individual Defendants had the power and influence, and
exercised the same, to cause EMCOR to engage in the unlawful conduct and practices complained of herein by causing the Company to disseminate the false and misleading information identified above.

104. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

105. By virtue of the conduct described above, defendants are liable to Lead Plaintiff and the other members of the Class for the substantial damages that they suffered in connection with their purchase of EMCOR common stock and other securities during the Class Period.

WHEREFORE, Lead Plaintiff, on behalf of himself and the other members of the Class, demands judgment against defendants as follows:

a. Determining that this action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b. Certifying Plaintiff as the Class Representative and his counsel as Lead Class Counsel;

c. Declaring and determining that the defendants violated the federal securities laws by reason of their conduct as alleged herein;

d. Awarding monetary damages against all of defendants;

e. Awarding Lead Plaintiff the costs, expenses, and disbursements incurred in prosecuting this action, including reasonable attorneys’ fees and other recoverable expenses of litigation; and

f. Awarding Lead Plaintiff and the other members of the Class such
other and further relief as the Court may deem appropriate and just under all of the
circumstances.

JURY DEMAND

Lead Plaintiff demands a trial by jury.

Respectfully submitted,

The Lead Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2004, a copy of the foregoing was sent, via U.S. Mail, postage prepaid, to the following:

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