THIRD AMENDED COMPLAINT FOR
VIOLATION OF THE FEDERAL SECURITIES LAWS

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The named Plaintiffs (“Plaintiffs”), including Deka Investment GmbH (“Deka Investment”) and Deka International S.A., Luxembourg (“Deka International”) (together, “Deka” or “Lead Plaintiff”) by their attorneys, make the following allegations based upon all the facts set forth below, which were obtained through a detailed investigation made by and through Co-Lead Counsel. The investigation included, among other things, a review of: (i) the United States Securities and Exchange Commission (“SEC”) filings by GM and GMAC; (ii) press releases and other public statements issued by Defendants; and (iii) published credit rating agency reports, analyst reports and other reports and news articles regarding General Motors Corporation (“GM” or the “Company”) and related matters. In addition, Plaintiffs conducted interviews with former GM employees and others with knowledge of the automobile industry and GM’s financial reporting practices. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. SUMMARY OF CLAIMS

1. This is a class action on behalf of all persons who purchased or otherwise acquired the debt and/or equity securities of GM between April 13, 2000 and March 30, 2006, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”).

2. As detailed herein, during the Class Period, Defendants issued or caused to be issued materially untrue statements and omissions as to GM’s financial performance and condition. These statements created a materially false impression of GM’s business and financial condition, by, among other things, artificially inflating GM’s reported earnings, in the aggregate, by billions of dollars, and inflating GM’s cash flow from operations, in the aggregate, by tens of billions of dollars.

3. In summary form, these materially untrue statements and omissions included:
   
   (a) improperly accounting for supplier credits (rebates and incentives from suppliers)
with the result that net income and/or retained earnings were inflated in GM’s financial statements covering every year from 2000 through 2004;

(b) failing to (i) timely and adequately disclose the existence, nature and size of GM’s guarantee of legacy benefits to former GM employees who, in 1999, became employees of Delphi Corp. (“Delphi”), and (ii) failing to timely take an adequate charge for GM’s liability under the guarantee, with the result that GM’s income was overstated and GM’s liabilities were understated;

(c) misclassifying certain operating cash flows as investing cash flows, and certain investing cash flows as operating cash flows, with the consistent result that cash flows from operations were overstated during the entire period from the first quarter of 2002 through the third quarter of 2005;

(d) failing to properly account for two one-time transactions apportioning with Delphi the cost of past product recalls: in one instance, where the transaction generated revenue, by failing to report the revenue as a separate component of income; and, in the other instance, where the transaction generated a cost, by failing entirely to deduct the cost from income;

(e) failing to timely write-down the value of GM’s investment in Fuji Heavy Industries, Ltd., with the result that GM’s income and assets were both overstated.

A. **PLAINTIFFS’ CLAIMS UNDER THE SECURITIES ACT**

4. Under **Counts I through IV**, which Plaintiffs bring, in turn, under Sections 11, 12(a)(2) and 15 of the **Securities Act**, Plaintiffs allege that each defendant, except GMAC, is liable for his/its negligence regarding the untrue statements, to the extent that the untrue statements were made or incorporated into the registration statements and prospectuses for certain public offerings of debt securities made by GM during the Class Period, except that under Section 11, GM
is strictly liable, and except that the Officer Defendants are also liable as ‘control persons’ under Section 15.¹

5. Plaintiffs do not allege fraud as to any of their claims under the Securities Act.

6. The Class Period offerings as to which Plaintiffs bring their Securities Act claims are listed and described in the chart immediately below:

<table>
<thead>
<tr>
<th>Date Issued</th>
<th>Type of Security, and Amount Offered (as announced)</th>
<th>Dates of Registration Statement and Prospectus</th>
<th>Previous SEC Filings Incorporated into Registration Statement and Prospectus</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/14/2003</td>
<td>$1 billion 7.375% GM Senior Notes due May 15, 2048</td>
<td>02/28/03 Shelf Registration Statement, Amended 03/21/03; Prospectus 02/28/03; Supplemental Prospectus 05/16/03</td>
<td>2001 10-K 10-Q for First Quarter 2002 10-Q for Second Quarter 2002 10-Q for Third Quarter 2002 2002 10-K 10-Q for the First Quarter 2003</td>
</tr>
<tr>
<td>5/20/2003</td>
<td>$425 million 7.375% GM Senior Notes due May 23, 2048</td>
<td>02/28/03 Shelf Registration Statement, Amended 03/21/03; 02/28/03 Prospectus; 05/21/03 Supplemental Prospectus</td>
<td>2001 10-K 10-Q for First Quarter 2002 10-Q for Second Quarter 2002 10-Q for Third Quarter 2002 2002 10-K 10-Q for the First Quarter 2003</td>
</tr>
<tr>
<td>6/26/2003</td>
<td>$4 billion 6.25% GM Series C Convertible Debentures due 2033</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/27/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
<tr>
<td>6/26/2003</td>
<td>$1 billion 7.125% GM Senior Notes due 2013</td>
<td>06/09/2003 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
</tbody>
</table>

¹ GM’s failure to timely incur an adequate charge for its guarantee of Delphi workers’ legacy benefits, and GM’s materially untrue statements regarding Fuji are not relevant to Plaintiffs’ Securities Act claims, because these particular untrue statements and omissions occurred after the debt offerings on which the Securities Act claims are based. However, GM’s failure to timely and adequately disclose the existence, nature and size of GM’s guarantee of Delphi workers’ legacy benefits is relevant to Plaintiffs’ Section 11 claims, as are the other materially untrue statements and omissions summarized in ¶ 3.
<table>
<thead>
<tr>
<th>Date Issued</th>
<th>Type of Security, and Amount Offered (as announced)</th>
<th>Dates of Registration Statement and Prospectus</th>
<th>Previous SEC Filings Incorporated into Registration Statement and Prospectus</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/26/2003</td>
<td>$1.25 billion 8.25% Senior Debentures due 2023</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
<tr>
<td>6/26/2003</td>
<td>$3 billion 8.375% Senior Debentures due 2033</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
<tr>
<td>6/23/04</td>
<td>$650 million 7.50% GM Senior Notes due July 1, 2044</td>
<td>09/05/03 Shelf Registration Statement, Amended 03/18/04; 09/05/03 Prospectus; 06/24/04 Supplemental Prospectus</td>
<td>2002 10-K 10-Q for First Quarter 2003 10-Q for Second Quarter 2003 2003 10-K 10-Q for First Quarter 2004</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date Issued</th>
<th>Type and Amount Offered (as announced)</th>
<th>Date of Prospectus (for purportedly foreign offering)</th>
<th>Previous SEC Filings Incorporated into Prospectus</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/26/2003</td>
<td>€1 billion 7.25% Senior Notes due July 3, 2013</td>
<td>07/01/03 Offering Circular</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
<tr>
<td>6/26/2003</td>
<td>€1.5 billion 8.375% Senior Notes due July 5, 2033</td>
<td>07/01/03 Offering Circular</td>
<td>2002 10-K 10-Q for First Quarter 2003</td>
</tr>
</tbody>
</table>

7. As detailed in the above chart, from May 2003 through June 2004, GM made initial public offerings of nine distinct debt securities, offering a face value total in excess of $13.5 billion.

8. GM filed registration statements with the SEC and/or issued prospectuses, regarding each of these initial public offerings.

9. Each of the Officer Defendants and Audit Committee Defendants signed at least one of the materially untrue registration statements.

10. Defendant Deloitte consented to GM’s use of its unqualified “clean” opinions in GM’s registration statements filed with the SEC and disseminated to the investing public, and in
GM’s annual financial statements incorporated into the registration statements. Such consents were also incorporated into the prospectuses issued in connection with the registration statements.

B. **PLAINTIFFS’ CLAIMS UNDER THE EXCHANGE ACT**

11. Under **Counts V and VI**, which Plaintiffs bring under Sections 10(b), 20(a) and Rule 10b-5 of the Exchange Act, and only under such counts, Plaintiffs allege that each of the Officer Defendants, GM, GMAC and Deloitte committed fraud, by making some or all of the alleged materially untrue statements and/or omissions summarized above with knowledge—or reckless disregard—of their falsity, and that each of the Officer Defendants is a ‘control person’ under Section 20(a).

12. As a result of such defendants’ fraudulent acts and omissions, in violation of the Exchange Act, the prices of GM’s equity and debt securities were artificially inflated during the Class Period, Plaintiffs and the other Class members—each of whom purchased GM securities during the Class Period—purchased GM securities at prices inflated by such defendants’ fraudulent acts, and Plaintiffs and the other Class members suffered billions of dollars of losses, when the truth of GM’s financial condition was finally disclosed.

II. **JURISDICTION AND VENUE**

13. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2), and 15 of the Securities Act [15 U.S.C. §§ 77k, 77l(a)(2), and 77o], Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)], and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5].


15. Venue is proper in the Southern District of New York (the “SDNY”) pursuant to
Section 22 of the Securities Act and Section 27 of the Exchange Act. Many of the acts charged herein, including the preparation and dissemination of materially untrue information, occurred in substantial part in the SDNY. GM’s Treasury Office, charged with GM’s cash management, is in midtown Manhattan, at 767 Fifth Avenue. Defendant Walter G. Borst is GM’s treasurer and works out of GM’s Manhattan Treasury Office. GM’s debt securities were underwritten in the SDNY and its domestic debt and equity securities are traded on the New York Stock Exchange (“NYSE”), which is located in the SDNY. The prospectuses issued in connection with GM’s Class Period debt offerings state that the indenture and debt securities will be construed in accordance with New York law and “that any claims or proceedings in respect of the Indenture or the Offered Securities shall be brought and resolved in a federal or state court located in the State of New York.” The U.S. depository for the debt offerings was the Depository Trust Company, which is located in New York. GMAC loan offices are also located in the SDNY, as are many sizeable GM dealerships.

16. On April 21, 2006, the Judicial Panel on Multidistrict Litigation transferred this case to the Eastern District of Michigan “for coordinated or consolidated pretrial proceedings with the actions pending in that district.”

17. In connection with the acts alleged in this complaint, 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 New York Stock Exchange, Inc. (the “NYSE”).

III. PARTIES

A. LEAD PLAINTIFF

18. By an Order dated February 6, 2006, Judge Richard Berman of the United States District Court for the Southern District of New York appointed Deka as Lead Plaintiff in this action. As set forth in the certifications previously filed in this litigation by Deka, and incorporated
by reference herein, both Deka Investment and Deka International purchased GM securities during the Class Period.

19. Lead Plaintiff purchased GM debt securities in the following initial public offerings, or made purchases that were traceable to such offerings: 7.25% notes due July 3, 2013; 8.375% notes due July 5, 2033; 6.25% notes due July 15, 2033; and 8.375% notes due July 15, 2033.

B. ADDITIONAL NAMED PLAINTIFFS

20. Plaintiff CLAUDIA POLVANI purchased GM 7.25% notes due July 3, 2013, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

21. Plaintiff MATTHEWS FAMILY TRUST purchased GM 7.5% notes due July 1, 2044, and 7.375% notes due May 15, 2048 in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

22. Plaintiff COSTANTINO FORLANO purchased GM 7.125% notes due July 15, 2013, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

23. Plaintiff DAN CLEVELAND purchased GM 8.25% notes due July 15, 2023, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

24. Plaintiff VITO BATTISTA purchased GM 8.375% notes due July 5, 2033, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

25. Plaintiff FRANKFURT-TRUST INVESTMENT GMBH (“Frankfurt-Trust”) purchased GM 8.375% notes due July 5, 2033, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.

26. Plaintiff J BRYAN DEWELL purchased GM 7.5% notes due July 1, 2044, in the
initial public offering for that security, or made purchases during the Class Period that were traceable to that securities initial public offering.

27. **Plaintiff MAX MARCUS KATZ PENSION AND PROFIT SHARING PLAN, DATED 12/31/78**, purchased GM 7+3/8 preferred stock during the Class Period.

28. **Plaintiffs MARK AND RUTH KOPPELMAN, AS SUCCESSORS IN INTEREST TO THE BERENT REVOCABLE LIVING TRUST, UNDER AGREEMENT DATED APRIL 23, 1990 (“Mark and Ruth Koppelman”), purchased GM 7.375% notes due May 15, 2048, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering, and purchased GM 7.250% notes due February 15, 2052, in the initial public offering for that security, or made purchases during the Class Period that were traceable to that security’s initial public offering.**

29. Together with Lead Plaintiff Deka, Plaintiffs Polvani, Matthews Family Trust, Forlano, Cleveland, Battista, Frankfurt-Trust, Dewell, the Max Marcus Katz Pension and Profit Sharing Plan, and Mark and Ruth Koppelman, are collectively referred to as the “Plaintiffs.”

C. **CORPORATE DEFENDANTS**

30. **GENERAL MOTORS CORPORATION** has two core businesses: Automotive and Other Operations (“Auto and Other”), and Financing and Insurance Operations (“FIO”). GM’s Auto and Other includes four automotive regions: GM North America; GM Europe; GM Latin America/Africa/Mid East; and GM Asia Pacific. During the relevant period, GM marketed vehicles under the following nameplates: Chevrolet; Pontiac; GMC; Oldsmobile; Buick; Cadillac; Saturn; HUMMER; Opel; Vauxhall; Holden; and Saab. GM’s FIO operations primarily relate to GMAC.

31. **GENERAL MOTORS ACCEPTANCE CORPORATION (“GMAC”)** is a wholly-owned subsidiary of the Company. GMAC conducts substantial borrowing and investment activities, and provides a range of financial services, including consumer vehicle financing, automotive dealership and other commercial financing, residential and commercial mortgage
services, automobile service contracts, personal automobile insurance coverage and selected commercial insurance coverage.

D. **OFFICER DEFENDANTS**

32. Defendant PETER R. BIBLE served as GM’s Chief Accounting Officer throughout the Class Period.

33. Defendant WALTER G. BORST became GM’s Treasurer in February 2003. Prior to that, Borst was, at all relevant times, executive director of finance and chief financial officer for GM’s German subsidiary, Adam Opel AG.

34. Defendant JOHN M. DEVINE served as GM’s Chief Financial Officer and Vice Chairman of the Board of Directors from January 2001 through January 2006, when Devine relinquished his position as Chief Financial Officer. Devine also was a director of GMAC and served on GMAC’s Audit Committee.

35. Defendant G. RICHARD WAGONER, JR. has served as GM’s Chief Executive Officer, continuously, since June 1, 2000, and retains that position currently. In addition to being GM’s CEO, Wagoner also served as GM’s President from the beginning of the Class Period until May 2003, when Wagoner gave up the position of President, and became Chairman of the Board of GM—a position that he retains to this day, along with his position as CEO. Wagoner has been employed by GM since 1977. Prior to becoming CEO, he held the positions, in turn, of CFO, President of North American Operations, and, from 1999, President and Chief Operating Officer. In addition, at all relevant times Wagoner has been a director of GMAC.

36. Defendants Bible, Borst, Devine and Wagoner are collectively referred to herein as the “Officer Defendants.”

E. **AUDIT COMMITTEE DEFENDANTS**

37. Defendant ALAN G. LAFLERY served as a GM director and a member of GM’s Audit Committee in 2002 and 2003. Lafley resigned from GM’s Board of Directors in April 2005.
38. Defendant PHILIP A. LASKAWY served as a GM director and a member of GM’s Audit Committee from 2002 to the present.

39. Defendant ECKHARI PFEIFFER served as a GM director and a member of GM’s Audit Committee from 2001 until the present.

40. Defendants Laskawy, Lafley, and Pfeiffer are referred to herein as the “Audit Committee Defendants” and, collectively with the Officer Defendants, as the “Individual Defendants.” The Individual Defendants, GM and GMAC are referred to collectively herein as the “GM Defendants.”

F. AUDITOR DEFENDANT

41. DELOITTE & Touche LLP (“Deloitte”) has 670 offices in approximately 140 countries. Deloitte acted as the Company’s purportedly independent outside auditor. Deloitte audited GM’s materially untrue financial statements described herein and issued materially untrue opinions on those financial statements. Deloitte issued Independent Auditors’ Reports containing unqualified opinions regarding the financial statements in GM’s 10-K’s for each of the years 2000, 2001, 2002, 2003 and 2004. Additionally, Deloitte consented to GM’s use of Deloitte’s unqualified “clean” opinions in GM’s annual financial statements and registration statements filed with the SEC and disseminated to the investing public. Such consents were incorporated into the prospectuses issued in connection with the registration statements.

G. PLAINITIFF’S CONFIDENTIAL SOURCES

42. As expressly noted in specific instances, infra, Plaintiffs rely for certain allegations upon a number of Confidential Sources (“CS”) which includes former employees of GM, GMAC, and Delphi and current and former employees of certain GM suppliers and consultants.

43. CS No. 1 was a senior Delphi financial officer who worked at Delphi from 1995 until mid-2005. CS No. 1 provided information regarding Delphi’s relationship with GM, the upper-level sharing of information between GM and Delphi, and, in particular, the sharing of
information relating to Delphi’s precarious financial status after the spin-off.

44. CS No. 2 worked at General Motors for about twenty years. She left the company in 2005. CS No. 2, an accountant by training, spent the 2003 through 2005 working on Business Analysis in the Service & Parts Operations department. CS No. 2 explained that her position was “competitive intelligence” – in particular, analyzing Delphi’s business and financial data.

45. CS No. 3 was employed as a Financial Analyst by General Motors from 1997 until she was laid off in December 2003. She provided information regarding the Company’s close tracking of all Delphi’s invoices and certain cash flow accounting practices of GM.

46. CS No. 4 is a Manager at Collins & Aikman Corp. (“Collins & Aikman”), one of GM’s “Tier One” suppliers (i.e., suppliers of manufactured automobile parts). CS No. 4 has been employed at Collins & Aikman since 1999. CS No. 4 provided information regarding GM’s supplier credits program and the general state of Tier One suppliers.

47. CS No. 5 worked at Delphi from 1999 until May 2005. CS No. 5 was a Regional Finance Director for Delphi. Prior to joining Delphi, CS No. 5 was an employee of GM. CS No. 5 provided information regarding the nature of the automotive parts market, Delphi’s financial difficulties, Delphi-GM post-spinoff relationship, and supplier credits.

48. CS No. 6 is a former program purchasing manager of GM. CS No. 6 was employed at GM from the summer of 2001 until the summer of 2003. CS No. 6 provided information regarding supplier credits.

49. CS No. 7 is a former senior consultant of BBK, a consulting firm GM engaged as “turnaround crisis management consulting firm,” to deal with GM’s “troubled” suppliers. CS No. 7 provided information regarding the supplier credits issue.

50. CS No. 8 was the Controller for a Lear Corporation (“Lear”) manufacturing facility from 2001 until 2002. CS No. 8 provided information regarding GM’s supplier credits program and the general state of Tier One suppliers.
51. CS No. 9 is a twenty year veteran of the automotive industry, and during the Class Period, was a senior officer of two of GM’s suppliers, Peguform GmbH and Collins & Aikman. CS No. 9 provided information regarding GM’s supplier credit program and the active participation of GM senior management in the program.

52. CS No. 10 was employed by Delphi for over twenty years and also served as an officer of another Tier One supplier, Faurecia. CS No. 10 provided information regarding GM’s supplier credit program.

53. CS No. 11 was the former Assistant Controller at Lear. CS No. 11 was employed at Lear from 2000 through 2001. CS No. 11 provided information regarding GM’s pricing pressures and highlighted a significant and ongoing discrepancy between GM and Lear over GM’s pre-negotiated supplier credits.

IV. CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class (the “Class”) consisting of all persons who purchased or otherwise acquired the debt and/or equity securities of GM between April 13, 2000 and March 30, 2006, inclusive (the “Class Period”), and who were damaged thereby, seeking to pursue remedies under the Securities Act and/or the Exchange Act. Excluded from the Class are Defendants, the officers and directors of any Corporate Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any Defendant has or had a controlling interest.

55. Plaintiffs also bring the claims under the Securities Act—i.e., the claims in Counts I-IV below—on behalf of a subclass (the “Subclass”) consisting of all persons who purchased or otherwise acquired securities issued in or traceable to public offerings pursuant to the February 2003, June 2003 and/or September 2003 Registration Statements, described more fully in ¶¶ 332-35.
and ¶ 361 below, or who purchased or otherwise acquired securities pursuant to the May 16, 2003 prospectus, May 21, 2003 prospectus, June 27, 2003 prospectus, June 30, 2003 prospectus, July 1, 2003 prospectus, and/or June 24, 2004 prospectus, described more fully in ¶¶ 332-36 and ¶ 361 below.

56. The members of the Class and Subclass are so numerous that joinder of all members is impracticable. During the Class Period there were more than 560 million shares of GM common stock outstanding that were actively traded on the NYSE, tens of billions dollars of GM debt securities traded on the NYSE and Luxembourg Exchange, and approximately $13.5 billion of debt securities issued pursuant to the Registration Statements and Prospectuses relevant to the Subclass. While the exact number of Class members and Subclass members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least thousands of members in the proposed Class and also in the proposed Subclass. Record owners and other members of the Class and Subclass may be identified from records maintained by GM or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

57. Lead Plaintiff’s claims are typical of the claims of the other members of the Class and Subclass as all members of the Class and Subclass are similarly affected by a substantial portion of the illegal conduct complained of herein.

58. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and Subclass. Lead Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to prosecute this action vigorously. Lead Plaintiff is a member of the Class and the Subclass and does not have interests antagonistic to, or in conflict with, the other members of the Class or Subclass.

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

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

(b) for the Securities Act claims, whether the Registration Statement and/or Prospectuses contained material untruths or omissions of material fact;

(c) for the Exchange Act claims, whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and financial statements and condition of GM;

(d) for the Exchange Act claims, whether the statements at issue were made with scienter; and

(e) whether Defendants’ acts caused the Plaintiffs’ damages, and the proper measure of such damages.

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

V. SUBSTANTIVE ALLEGATIONS

A. GM IMPROPERLY ACCOUNTED FOR SUPPLIER CREDITS

1. GM Recognized Supplier Credits as Income Prematurely

61. Throughout the Class Period, including at all times relevant to the offerings, GM issued financial statements in which the numbers for “Income from Continuing Operations,” “Net Income,” and/or “Retained Earnings” were improperly inflated due to GM having prematurely
recognized supplier rebates, or “supplier credits,” as income.

62. Supplier credits are partial rebates of a supplier’s charges. Often, they are
supposedly based on cost savings by the supplier, resulting from the supplier selling a large volume
to the customer receiving the rebate.

63. GM’s suppliers who gave rebates to GM did so, as is typical, at the time when GM
agreed to make future purchases from the supplier, rather than waiting until GM had actually made
the purchases. GM improperly recognized these rebates—or credits—in the year in which GM
received them, rather than waiting to recognize them, as required by Generally Accepted Accounting
Principles (“GAAP”), in the subsequent years when the actual purchases by GM were made and the
credits were therefore “earned.”

64. As the SEC has taken pains to make clear, one of the most fundamental principles
under GAAP is that “revenue should not be recognized until it is realized or realizable and earned.”
Moreover, as stated by the Financial Accounting Standards Board in its Concepts Statements 5,
“Recognition and Measurement in Financial Statements of Business Enterprises” (“CON 5”) ¶ 83:

Revenues are not recognized until earned. An entity’s revenue-earning activities
involve delivering or producing goods, rendering services, or other activities that
constitute its ongoing major or central operations, and revenues are considered to
have been earned when the entity has substantially accomplished what it must do to
be entitled to the benefits represented by the revenues.

65. On November 9, 2005, GM filed a non-reliance Form 8-K with the SEC, in which
GM disclosed, for the first time, that, as a result of an ongoing “review” of its accounting for
supplier credits, GM had “erroneously recognized some supplier credits as income in the year in
which they were received rather than in the future periods to which they were attributable.”
(emphasis added).

66. GM’s November 9, 2005, non-reliance 8-K also stated:
GM anticipates that it will complete the review referred to above and take any appropriate action to correct previously reported financial statements prior to the filing of its annual report on Form 10-K for 2005. On November 8, 2005, the Audit Committee of the Board of Directors concluded that, due to the likelihood of a material restatement of GM’s financial statements with respect to 2001, investors should no longer rely on GM’s previously filed financial statements for that year, nor the related auditors’ reports thereon. (emphasis added).

67. The November 9, 2005, 8-K revealed that, as a result of the GM Defendants’ improper accounting, GM would be forced to restate downward its net income from continuing operations for 2001 by at least $300 - $400 million for improperly recorded supplier credits. The 8-K further disclosed that GM “will also restate financial statements for periods subsequent to 2001 that may be affected by the erroneous accounting.”

68. GM has yet to identify any of the suppliers from whom it has received these so-called “credits.” The SEC, however, has issued subpoenas to four of the Company’s largest parts suppliers: Delphi, Lear, Collins & Aikman, and Dana Corporation (“Dana”).

69. On March 28, 2006, after the market closed, GM filed with the SEC a Form 10-K/A restating GM’s financial results for the year ended December 31, 2004, which contained restated income from continuing operations (“ICO”) and restated net income, for the years 2000-2004, and, for each year, disclosed the amount of the change that was due to correction of the accounting for supplier credits. The following chart illustrates this restatement:

<table>
<thead>
<tr>
<th>Year</th>
<th>ICO as originally reported</th>
<th>Change in ICO Due to Correction of Accounting for Supplier Credits</th>
<th>Change in ICO Due to Other Factors</th>
<th>ICO as Restated</th>
<th>Consolidated Net Income as Originally Reported</th>
<th>Consolidated Net Income as Restated</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>3,639</td>
<td>(52)</td>
<td>(28)</td>
<td>3,559</td>
<td>4,452</td>
<td>4,372</td>
</tr>
<tr>
<td>2001</td>
<td>1,222</td>
<td>(405)</td>
<td>224</td>
<td>1,041</td>
<td>601</td>
<td>420</td>
</tr>
<tr>
<td>2002</td>
<td>1,975</td>
<td>(69)</td>
<td>(93)</td>
<td>1,813</td>
<td>1,736</td>
<td>1,574</td>
</tr>
<tr>
<td>2003</td>
<td>2,862</td>
<td>7</td>
<td>30</td>
<td>2,899</td>
<td>3,822</td>
<td>3,859</td>
</tr>
<tr>
<td>2004</td>
<td>2,805</td>
<td>(26)</td>
<td>25</td>
<td>2,804</td>
<td>2,805</td>
<td>2,804</td>
</tr>
</tbody>
</table>
70. GM’s 2004 10-K/A also restated retained earnings as they appear on GM’s balance sheet for each of the years 2003 and 2004.

71. Because net income from prior and current periods is an element of retained earnings, and because GM’s net income was inflated as shown in the chart above, GM’s retained earnings were inflated in GM's financial statements covering each of the periods from the first quarter of 2000 through the last quarter of 2004.

2. GM’s Restatement is an Admission that its Original Financial Statements Were Materially Untrue

72. To correct a material error or irregularity, GAAP requires that a company issue a restatement:

A major distinguishing feature of a correction of an error is that the financial statements of the affected prior period, when originally issued, should have reflected the adjustment . . . . The Board concluded that a correction of an error, as defined above, should continue to be reflected by restating the financial statements of the affected prior period.


73. GM’s restatement of its previously issued financial statements is an admission that its previously issued financial reports were materially untrue. Accounting Principals Board Opinion No. 20, “Accounting Changes” (“APB 20”) ¶¶ 13, 36 & 38 provide that financial statements are to be restated only if there was a material error that resulted from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the original financial statements were prepared. Under APB 20 ¶ 31, restatements based on information not available to the issuer at the time of the original filing are prohibited.

74. Moreover, the materiality of GM’s untrue statements resulting from its premature recognition of supplier credits is demonstrated by the fact that GM’s disclosure of these and other untruths in the 10-K/A for 2004 put GM at substantial risk of having violated its promises, under its
syndicated bank revolver and various of its leases, to deliver accurate financial statements, as
admitted by GM in its 10-K for 2005, which was filed at the same time as the 10-K/A for 2004.
This potential breach was so serious that it resulted in GM’s credit rating being downgraded by
Moody’s Investors Services (“Moody’s”) and placed on “CreditWatch with negative implications” by
Standard & Poor’s (“S&OP”).

75. Still further, the materiality of GM’s untrue statements resulting from its premature
recognition of supplier credits is demonstrated by the fact that GM restated these statements
despite the severe repercussion that followed—including GM’s now being potentially in breach of
its bank revolver and having its credit rating downgraded. If GM had not been required by the
materiality of these untruths to restate them, GM never would have done so.

76. Finally, the error that GM originally made in its statement of Consolidated Net
Income for the year 2001 was particularly huge, with approximately two-thirds of net income, as
originally reported, consisting of supplier credits that had been recognized prematurely.2

B. GM IMPROPERLY ACCOUNTED FOR THE DELPHI LEGACY GUARANTEE

1. The Delphi Legacy Guarantee

77. In May 1999, GM spun-off formerly wholly-owned parts supplier, Delphi.

78. One reason for the spin-off was that GM could not afford to continue paying Delphi
workers the same wages and benefits that GM was paying to other GM workers. Throughout the
automobile industry, independent parts suppliers who manufactured the same kind of parts made by
Delphi (e.g., batteries, air bags, radios) generally pay less to their workers than is paid by Original
Equipment Manufacturers (“OEM’s”) such as GM and Ford. As reported by BusinessWeek, in an

2 GM’s 2004 10-K/A also stated that GM “believes that a material weakness in internal controls
in the accounting for supplier credits existed in 2001” and that from 2002 through the third quarter
of 2004 there was a “significant deficiency” in such controls. This admission contradicted previous
statements in each of GM’s 10-K’s and 10-Q’s filed during the period from the beginning of 2001
through the end of 2004, that GM’s internal disclosure controls were free of any such deficiencies.
GM’s 2004 10-K/A thus admitted that these previous statements about the effectiveness of internal
disclosure controls were also materially untrue.
article published on August 2, 1999, “GM undertook [the spin-off] in part because nonunion rivals pay half the $20 an hour Delphi's 46,000 parts workers earn.” GM’s intention was that, after the spin-off, it would buy parts that would be cheaper because they would be manufactured by workers who were paid lower wages than GM had been paying to Delphi workers.

79. After the spin-off, with Delphi now an independent parts supplier, Delphi workers worried that they would not be able to maintain the previous level of their wages and benefits. Initially, the UAW was able to obtain from Delphi an agreement to keep its workers’ wages and benefits roughly at previous levels. However, it was unpredictable whether Delphi would be able to survive while paying such high wage rates. As a result, Delphi workers feared that their pensions and other retirement benefits might not be secure. As reported on August 23, 1999, by Automotive News, following the spin-off, Delphi was trying to “[e]ase the fears of hourly workers that Delphi’s spin-off from General Motors in May put their pensions in jeopardy.”

80. Eventually, fears that Delphi could not survive without cutting its workers’ pay and/or retirement benefits were realized. On October 8, 2005, Delphi filed for bankruptcy protection under Chapter 11. Delphi then began negotiating to obtain drastic wage and benefit concessions from its workers. Finally, after failing to reach such an agreement with its workers, Delphi requested that the bankruptcy judge void Delphi’s labor contracts.

81. In 1999, at the time of the spin-off, because of Delphi’s workers’ reasonable fears regarding their retirement benefits, during national contract talks between GM and the United Automobile Workers (“UAW”), the UAW insisted that GM take steps to guarantee Delphi’s provision of retirement benefits to UAW-represented Delphi employees who previously were employed by GM.

82. As a result, on or about September 9, 1999, GM entered into an agreement with the UAW, titled “Benefit Guarantee,” whereby GM provided guarantees relating to the pension, post-retirement healthcare and life insurance benefits of “Covered Employees,” who were defined as
“those UAW-represented Delphi employees who had unbroken seniority and were employed by GM under the terms of the 1996 GM-UAW National Agreement as of the spin-off of Delphi from GM on May 28, 1999.” (the “Delphi Legacy Guarantee,” or, the “Guarantee”)

83. As an example of the provisions in the Guarantee, regarding pensions, the Delphi Legacy Guarantee provides that:

In the event that Covered Employees on or before the eighth anniversary of the Effective Date of the 1999-2003 GM-UAW National Agreement receive pension benefits at a level below that called for in any applicable Delphi/UAW agreement or pension plan due to Financial Distress:

1. GM shall provide supplemental payments to such retired Covered Employees which, when combined with any pension benefits received (x) from a pension plan sponsored by Delphi, any of its subsidiaries or affiliates or any of their successor company(ies), (y) from the PBGC, and/or (z) from a pension plan sponsored by GM, result in the retired Covered Employees receiving pension benefits equal to those called for in the UAW-Delphi agreement applicable at such time.

The Guarantee also includes separate, slightly different, provisions under which GM guarantees, in turn, post-retirement medical and life insurance benefits.

84. Although the Delphi Legacy Guarantee was executed prior to the Class Period herein, the existence of the Delphi Legacy Guarantee was not mentioned by GM in any of the documents filed in connection with the Company’s debt offerings here at issue—including the Offering Circular, shelf registration statements, prospectuses, and the Form 10-Ks and Form 10-Qs incorporated in the shelf registration statements and/or prospectuses. Moreover, any explanation of the Delphi Legacy Guarantee made in any of GM’s other financial statements filed with the SEC during the Class Period, up until October 8, 2005, was so minimal that it failed to give investors adequate notice of GM’s contingent liability, and failed to satisfy the requirements of GAAP, as explained below.

85. On October 8, 2005—the same day on which Delphi filed for bankruptcy protection—GM finally filed the Delphi Legacy Guarantee with the SEC, as part of a Form 8-K.
86. In a press release included in the same Form 8-K that included the Delphi Legacy Guarantee, GM stated that “GM currently believes that it is not probable that it has incurred a liability due to Delphi’s Chapter 11 filing,” GM “further believes that it is not presently able to estimate the amount, if any, it may ultimately pay under the benefit guarantees,” and “[t]he range of GM’s contingent exposure extends from there being potentially no material financial impact to the company if the guarantees are not triggered, to approximately $10 billion to $11 billion at the high end, with amounts closer to the midpoint being considered more possible than amounts towards either of the extreme ends of this range.”

87. One month later, on November 9, 2005, in its Form 10-Q for the third quarter, in a reference to the Delphi Legacy Guarantee, GM stated that “GM currently believes that it is probable that it has incurred a liability due to Delphi’s Chapter 11 filing,” and added that its contingent exposure ranged from “no material impact” at the low end, to $12 billion at the high end, “with amounts closer to the midpoint being considered more possible than amounts toward either of the extreme ends.”

88. On January 26, 2006, GM issued a press release in which it announced a 2005 calendar-year loss of $8.6 billion—the second largest annual loss in GM’s history. The January 26, 2006, press release stated that, in addition to “poor performance in North America . . . . [o]ur results were also dramatically and adversely affected by charges for restructuring and matters associated with Delphi Corp.’s Chapter 11 filing.” (emphasis added). The press release then disclosed that in the fourth quarter of 2005, GM had “established a reserve of $3.6 billion ($2.3 billion after tax)” relating to GM’s “benefit guarantees for certain former GM U.S. hourly employees who transferred to Delphi,” which had been triggered by the Delphi bankruptcy.

89. On March 16, 2006, GM issued a press release stating that it was making an upward revision in “the charge for GM’s contingent exposure relating to Delphi’s Chapter 11 filing, including benefit guarantees between GM and certain unions, to $5.5 billion ($3.6 billion after tax)
from the previous estimate of $3.6 billion ($2.3 billion after tax)].”

2. **GAAP Rules Regarding Accounting for Contingent Liabilities**

90. Under Statement of Financial Accounting Standards No. 5, “Accounting for Contingencies,” (“FAS 5”), the accounting rule governing a contingent liability varies depending on the degree of likelihood that the liability has been incurred, with three different rules governing, in turn, three different degrees of likelihood that the liability has been incurred: probable, reasonably possible, or remote.

91. Under the first rule, set forth in FAS 5 ¶ 8,

*An estimated loss* from a loss contingency . . . shall be accrued* by a charge to income if both of the following conditions are met: (a) Information available prior to issuance of the financial statements indicates that it is *probable* that . . . a liability had been incurred at the date of the financial statements. . . . (b) The amount of the loss can be reasonably estimated. (emphasis added).

92. Under the second rule, set forth in FAS 5 ¶ 10, even if one or both of the conditions that would trigger accrual of the loss contingency under ¶ 8 have not been met, nevertheless,

*disclosure* of the contingency *shall be made* when there is at least a *reasonable possibility* that a loss or an additional loss may have been incurred. The *disclosure shall indicate* the *nature* of the contingency and *shall give an estimate of the possible loss or range of loss* or state that such an estimate cannot be made. (emphasis added).

Moreover, after it becomes a reasonable possibility that the loss has been incurred, the obligation of properly disclosing the obligation applies to every financial statement issued thereafter, unless and until a charge is accrued. Nothing in FAS 5 ¶ 10 would permit an issuer to omit properly disclosing a reasonably possible contingent liability in a given financial statement, even if such disclosure had been made in a prior financial statement.

93. Under the third rule, set forth in FAS 5 ¶ 12, “*even though the possibility of loss may be remote,*” if the loss contingency is “*a guarantee,*” the guarantee *must be disclosed.* (emphasis added). Moreover, “[t]he disclosure shall include the nature and amount of the guarantee.” Still further, the obligation of properly disclosing a guarantee applies to every financial
statement issued during the existence of the guarantee. Nothing in FAS 5 would permit an issuer to omit properly disclosing an existing guarantee in a given financial statement, even if such disclosure had been made in a prior financial statement.

94. In addition, under Statement of Position 94-6, “Disclosure of Certain Significant Risks and Uncertainties” (“SOP 94-6”), especially SOP 94-6 ¶¶ .07, .12-.14 & .18, for disclosures governed by FAS 5, if there is a reasonable possibility that, during the next year, the “estimate of the effect [of the contingent liability] on the financial statements” will materially change, such possibility must be disclosed, along with an estimate of the range of loss that would result from such changed circumstance.

3. **GM’s Improper Accounting**
   
   (a) **GM’s Omission to Properly Disclose the Delphi Legacy Guarantee, its Nature and Size, was a Violation of FAS 5 ¶ 12.**

95. The Delphi Legacy Guarantee existed prior to and throughout the Class Period. Therefore, under FAS 5 ¶ 12, in the financial statements contained in every 10-Q and 10-K that it filed during the Class Period, GM was required, at a minimum, to disclose the existence, nature and size of the Delphi Legacy Guarantee.

96. Under FAS 5 ¶ 12, proper disclosure of the nature of the Delphi Legacy Guarantee would have included, at a minimum, disclosure of (1) which Delphi employees were covered by the guarantee (as stated in the Guarantee, “those UAW-represented Delphi employees who had unbroken seniority and were employed by GM under the terms of the 1996 GM-UAW National Agreement as of the spin-off to Delphi from GM on May 28, 1999”), (2) what circumstances would trigger GM’s obligations under the guarantee (e.g., relating to pensions, as stated in the Guarantee, “[i]n the event that Covered Employees on or before the eighth anniversary of the Effective Date of the 1999-2003 GM-UAW National Agreement receive pension benefits at a level below that called for in any applicable Delphi/UAW agreement or pension plan due to Financial Distress”), and (3)
the scope of GM’s obligation (e.g., relating to pensions, to provide “supplemental payments to such retired Covered Employees which, when combined with any pension benefits received [from the PBGC will] result in the retired Covered Employees receiving pension benefits equal to those called for in the UAW-Delphi agreement applicable at such time”).

97. Under FAS 5 ¶ 12, proper disclosure also would have included an estimate of the amount guaranteed, which, at a minimum, would have included an estimate of the range of the amount guaranteed, or, if the range of the amount could not have been estimated, a statement that such an estimate could not be made. Because, at all times, Delphi’s 10-K’s disclosed the extent to which Delphi’s pension plan was underfunded, Delphi’s 10-Q’s as well as 10-K’s disclosed Delphi’s long-term liabilities for pension and other post-retirement benefits, and, from time to time, rating agencies and other analysts published numbers on the total underfunding of Delphi’s postretirement benefits, a reasonable range of the amount of GM’s contingent liability under the Delphi Legacy Guarantee always could be estimated. Thus, when GM finally disclosed an estimated range for its contingent liability, in its 8-K filed on October 8, 2005, the high end of that range—$11 billion—was simply the approximate equivalent of Delphi’s total liabilities for pension and other post-retirement benefits, which, according to the Detroit Free Press, in an article published on October 7, 2005, was $14.5 billion, reduced somewhat in accordance with the contractual limits on the size of GM’s obligation.

98. During the first three and a half years of the Class Period, up until the filing of GM’s 10-Q for the second quarter of 2003, the only time that the Delphi Legacy Guarantee was even arguably referenced in a GM financial statement was in the 10-Q for the first quarter of 2000, which mentioned nothing more specific than “guarantees covering benefits to be provided to certain

3 Proper disclosure of the nature of the Guarantee would have included a description of which Delphi employees were covered, the circumstances triggering GM’s obligations, and the scope of GM’s obligations, relating to post-retirement medical benefits and life insurance benefits, as well as pension benefits.
former U.S. hourly employees of GM who became employees of [certain] disposed businesses”

including Delphi. No indication was given of the number of employees covered—which, under this
statement, could have been a mere handful—, the kind of benefits guaranteed, the scope of GM’s
obligation regarding those benefits, or the conditions under which the guarantee would be triggered.

99. The Delphi Legacy Guarantee was never mentioned or referenced, in any way at all,
in any of the documents filed in connection with the bond offerings here at issue, including all of the
incorporated 10-Q’s and 10-K’s, starting with GM’s 10-Q for the second quarter of 2000, up to and
including its 10-Q for the first quarter of 2003.

100. In GM’s 10-Q for the second quarter of 2003, and in each of GM’s subsequent
10-Q’s and 10-K’s up to and including the 10-K for the year 2004, GM stated that it had “provided
guarantees with respect to benefits for former GM employees relating to pensions, postretirement
health care and life insurance . . . [i]n connection with certain divestitures prior to January 1, 2003.”
This statement did not reference Delphi. This statement also did not provide any estimate of GM’s
contingent liability—whether for the Delphi Legacy Guarantee specifically, or for the “certain
divestitures” collectively. This statement asserted that GM’s obligations were not “estimable,”
despite the fact that Standard and Poor’s press release regarding Delphi, issued on April 15, 2003,
stated that, as of December 31, 2002, Delphi had “total underfunded pension and retiree medical
liabilities of $11 billion,” and despite the fact that the balance sheets in Delphi’s 10-Q’s and 10-K’s
could be consulted to determine whether Delphi’s liabilities for pension and other postretirement
benefits were growing or shrinking.

101. Finally, in each of GM’s 10-Q’s for the first and second quarters of 2005 (the last
two quarterly reports filed with the SEC by GM, prior to GM’s filing of the Delphi Legacy
Guarantee, in the 8-K filed on October 8, 2005), GM stated that it had provided “limited guarantees
with respect to benefits for former GM employees relating to pensions, post-retirement healthcare,
and life insurance . . . [i]n connection with the Delphi spinoff,” and denied that it was probable that
GM had incurred any liability under the Guarantee. The statement provided no estimate of the size of GM's contingent liability, gave no explanation of the extent of the limitation on GM's guarantee, and omitted to disclose under what conditions GM's obligations under the Guarantee would be triggered. For this reason, it was impossible for an investor reading this statement to gain any idea regarding the financial significance of the Delphi Legacy Guarantee.

102. So inadequate were any statements regarding the Delphi Legacy Guarantee made in GM's SEC filings prior to October 8, 2005, that when, on October 8, 2005, GM finally filed the actual Delphi Legacy Guarantee, it was viewed by the Detroit Free Press as being a “secret deal.” Thus, in an article dated January 27, 2006, the Detroit Free Press would recall that “Delphi’s bankruptcy on Oct. 8 triggered a secret deal between GM and the UAW ensuring the payment of some benefits to some Delphi workers.”

103. The materiality of GM's omission to properly disclose the Guarantee is shown by, among other things, the fact that on the first weekday after GM finally, fully disclosed the Delphi Legacy Guarantee, by filing it with the SEC, the price of GM's stock fell by more than 9%, S&P lowered GM’s debt rating from BB to BB-, and Moody’s put GM’s status under “review for a possible downgrade.”

(b) GM’s Omission to Properly Disclose the Delphi Legacy Guarantee, its Nature and Size, was Also A Violation of FAS 5 ¶ 10.

104. As explained above, in paragraph 92, under FAS 5 ¶ 10, regardless of whether a contingent liability involves a guarantee, its existence and nature must be disclosed as soon as “there is at least a reasonable possibility that a loss . . . may have been incurred.” Moreover, an estimate of the size of the loss, or range of its size, must be disclosed, unless such an estimate cannot be made.

105. Based on the chronology described below, by April 15, 2003, it had become a reasonable possibility that GM “may have” incurred a liability under the Delphi Legacy Guarantee. However, as explained above, in paragraphs 96-102, none of GM’s filings made with the SEC after
April 15, 2003, but before October 8, 2005, and none of the documents filed by GM in connection
with GM’s debt offerings made during the Class Period after April 15, 2003, contained a proper
disclosure of the existence, nature and/or amount of GM’s liability under the Delphi Legacy
Guarantee.

106. If not by April 15, 2003, then, in the alternative, by March 11, 2005, it had become a
reasonable possibility that GM had incurred a liability under the Delphi Legacy Guarantee.

(i) Delphi’s Four Business Problems

107. From the time of the spin-off, Delphi faced at least four business problems whose
negative effects increased with time.

108. First, it’s high labor costs made it difficult for Delphi to pick up new business. From
Delphi’s point of view, the possible advantage of the spin-off was that Delphi would be able
to broaden its customer base by selling parts to OEM’s other than GM, with the ultimate goal of
increasing its business. Whether Delphi could do this, however, remained to be seen. As reported
on February 5, 1999, by Tom Wickham and Mike Turner of the Newhouse News Service, “the
[Delphi] spinoff has raised numerous questions. Among them: Can Delphi survive on its own by
drumming up business with companies other than GM?”

109. Moreover, Delphi’s need to pick up new business ran up against its high labor costs,
which were bound to raise the price that Delphi would need to charge for its products. Looking
back on this period, an article in Business Week, titled “Spin-Offs That Won’t Go Away,” published
on September 19, 2005, summed up the problem:

Back at the height of the 1990s bull market, the spin-off stories sounded swell for
both GM and Ford and for shareholders in the new parts outfits. The auto giants
said they would shed highly paid workers, inefficient plants, and some retirees -- and
be free to buy parts from other companies with lower costs. “There was no logic
to paying those kind of wages for parts [manufacturing],” says one former
Ford executive. “It was economic suicide. Once GM did it, we had to.”

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Right from the start, the U.S. plants of both Delphi and Visteon [previously Ford’s parts division] had a tough time winning new customers. Because of union contracts, the parts companies inherited their parents’ outsized labor rates -- now $22 an hour, compared with about $15 at parts companies Johnson Controls Inc. and Lear Corp. Adding in benefits, Delphi’s workers cost $65 an hour, says Delphi Chairman and CEO Robert S. "Steve" Miller. That's more than twice what rivals have to stump up. And if GM and Ford thought their parts operations were too expensive, so would potential customers such as Nissan Motor Co. or BMW. Since the spin-offs, additional sales to other companies haven't offset declining revenues from the parents. Says Joseph W. Cornell, president of Spin-Off Advisors LLC: “When GM and Ford did this, you could see that it was more to benefit the parents than to unleash good businesses that would blossom.” (emphasis added).

110. The same article in Business Week concluded that “[Delphi and Visteon] may have been destined to fail: GM and Ford lumbered them with huge labor costs while extracting promises from them to cut their prices,” and quoted an analyst who said “[t]hese companies were not spun out as viable businesses”

111. An article published in Ward’s Auto World, on November 1, 2005, titled “Analysts: Delphi Was Destined to Fail,” quoted John Henke, of Planning Perspectives Inc. in Birmingham, Michigan, an analyst who concurred that “Delphi Corp.’s plunge into bankruptcy could have been predicted, given the challenges it faced after being spun off from General Motors.” Henke distinguished Visteon from Delphi, because “[Visteon] gave all their turkeys (poor performing plants) back to Ford.”

112. Second, Delphi could not expect to maintain its previous amount of business with GM. Indeed, immediately after the spin-off, as reported by the Detroit Free Press in an article published on January 13, 2000, GM began looking to other suppliers for “auto parts at a lower price.” Moreover, throughout the class period, the percentage of Delphi’s business that was obtained from GM progressively shrank, as is shown by the following chart:
YEAR | AMOUNT OF BUSINESS FROM GM (in billions) | BUSINESS FROM GM AS % OF DELPHI'S TOTAL BUSINESS
--- | --- | ---
1999 | $22,302 | 76.4%
2000 | $20,665 | 70.9%
2001 | $17,624 | 67.6%
2002 | $18,094 | 65.5%
2003 | $17,029 | 60.7%
2004 | $15,417 | 53.9%

113. Initially, the tendency of GM to look to other parts suppliers was mitigated by the fact that, as part of the spin-off, GM had agreed that, for a limited period, Delphi would retain a “right of last refusal,” whereby if another supplier were to underbid Delphi for a contract to supply GM with a certain part, Delphi would have an opportunity to obtain the contract by matching its competitor’s bid. However, this right of last refusal expired on January 1, 2002.

114. Thus, the only way that Delphi could increase its business would be if it could pick up new business from other customers even faster than it was losing business from GM. As observed in a BT Alex. Brown analyst’s report, dated March 25, 1999, authored by Kenneth A. Blaschke and John D. Edwards, “of concern to investors is whether Delphi can build its non-GM revenue faster than it loses its GM revenue base, as a result of GM’s shift toward increased dual sourcing.”

115. Third, as Delphi warned in each of its Form 10-K’s filed during the years 2000-2004, Delphi, along with other automobile manufacturers and parts suppliers, was facing a steady increase in the cost of raw materials.

116. Fourth, as part of the spin-off, Delphi undertook primary responsibility for the tremendous obligations owed its workers for their post-retirement benefits, including, at the time of the spin-off, pension obligations of $5.4 billion. The large size of these obligations, and workers’ doubts regarding whether Delphi would be able to meet them, were the very reasons why GM had been asked by the UAW to guarantee the benefits.
117. In 1999, at the time of the spin-off, Delphi’s pension plan, like that of other corporations, could at least benefit from the high-returns on pension plan assets invested in the stock market. By 2002, however, conditions had changed. As noted in an article titled “Pension Underfunding: How Big is the Problem?,” published in Commercial Lending Review, in May 2003, which was based on “an exhaustive study completed in September 2002 by Credit Suisse First Boston (CSFB),” “[t]he severe bear market returns of the stock market beginning in 2000 have negatively affected the funding status of corporate pension plans to the point that many are now seriously underfunded.”

118. Delphi’s obligations for retirement benefits, not limited to pensions, was a major factor in Delphi’s finally filing for bankruptcy protection, as shown by Delphi’s statement to the bankruptcy court on the day that Delphi filed for Chapter 11 protection (reported the next day by the Associated Press), that “the current level of retirement benefits is unsustainable and will eventually sink the company.”

119. As shown below, by midway through the Class Period, the increasingly negative effect of the combined problems faced by Delphi could already be seen in the hugely increased underfunding of Delphi’s obligations for its workers’ retirement benefits, thus making it reasonably possible that GM “may have” incurred a liability under the Delphi Legacy Guarantee.

(ii) Delphi’s Condition Deteriorates and GM’s Liability Under the Delphi Legacy Guarantee Becomes a Reasonable Possibility

120. As reported by the Automotive News on August 23, 1999, “Delphi expects to have a fully funded hourly pension plan by the end of 2002.” By the end of 2002, however, Delphi’s expectations had been dashed.

121. At the end of 2000, Delphi’s pension plan was underfunded by only $300 million, as disclosed by Delphi’s 10-K405 for 2000, filed on February 8, 2001.

122. By the end of 2001, the underfunding of Delphi’s pension plan had grown seven
times larger than it had been the year before, with the plan now underfunded by $2.3 billion, as
disclosed by Delphi’s 10-K for 2001, filed on February 12, 2002. Delphi’s 10-K also disclosed that
as a result of, among other things, “uncertain industry conditions,” Delphi had embarked on a
restructuring plan that would cause it to reduce its worldwide employment by 11,500 positions.

123. Between May 17, 2002, and July 17, 2002, Delphi’s stock price underwent a long and
dramatic slide, losing more than 40% of its value, dropping from approximately $17 to
approximately $10—a price it would never again rise above. On July 18, 2002, a Wachovia
Securities International Ltd. analyst’s report on Delphi stated:

[I]t appears that the headwinds facing management in the present environment have
pushed the timeline for recovery beyond our initial expectations, including lower
content per GM vehicle, rising benefit costs and cash pension contributions.
(emphasis added).

124. On October 16, 2002, Delphi filed an 8-K stating that despite having contributed
$400 million to its pension fund during the second quarter of 2002, Delphi’s year-end unfunded
pension liability was expected to be more than a billion dollars larger than the previous year-end
underfunding, and would likely total $3.5 billion.

125. On October 17, 2002, Standard & Poor’s Ratings Services (“S&P”) reaffirmed its
BBB long-term credit rating of Delphi but revised its outlook on Delphi from stable to negative,
stating that “[t]he rating actions reflect Delphi’s reduced financial flexibility resulting form its
mounting pension liabilities,” and noting that “Delphi’s unfunded pension obligation could balloon
further.”

126. Delphi’s 10-K for 2002, filed on February 18, 2003, disclosed that the underfunding
of Delphi’s pension plan had almost doubled during the previous year, and was now more than
$4 billion.

127. On April 15, 2003, an S&P press release stated it had “placed its BBB corporate
credit rating on Delphi Corp. on CreditWatch with negative implications, reflecting concerns about
the company’s large underfunded employee benefit obligations,” and noted that, as of December 31, 2002, Delphi had “total underfunded pension and retiree medical liabilities of $11 billion.”

This amount of underfunding of Delphi’s post-retirement benefits was already in the range of underfunding that ultimately drove Delphi to seek bankruptcy protection (on the day before Delphi filed for Chapter 11 protection, according to the Detroit Free Press, Delphi’s retirement benefits were underfunded by $14.5 billion). Thus, by April 15, 2003, the publicly known state of Delphi’s financial condition was such that it was at least a reasonable possibility that GM “may have” incurred a liability under the Delphi Legacy Guarantee.

128. On May 22, 2003, S&P lowered its corporate credit rating on Delphi from BBB to BBB-, “because of the company’s large unfunded employee benefit obligations as well as concerns about the outlook for the automotive industry generally and Delphi’s largest customer, General Motors Corp.”

129. On September 30, 2004, the Detroit Free Press reported that Delphi was the subject of an SEC investigation regarding its accounting for technology-related contracts.

130. On December 10, 2004, Delphi announced it would cut another 8,500 jobs.

131. On December 21, 2004, S&P downgraded Delphi’s bonds to BB+ or “junk” status, because of, among other things, S&P’s expectation that Delphi’s post-retirement liabilities would exceed $13 billion by the end of the year. According to S&P, a BB rated company faces major ongoing uncertainties and exposure to adverse business, financial or economic conditions which could lead to the issuer’s inadequate capacity to meet its commitments.

132. On March 4, 2005, Delphi announced that it would restate it audited financial statements for the year 2001, and possibly for subsequent years, and that its CFO would resign. On

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Based on information in Delphi’s 10-K’s, in every year, from 2001 through the end of the Class Period, approximately two-thirds of the amount of underfunding of Delphi’s post-retirement benefit obligations involved the underfunding of post-retirement medical and life insurance benefits.
the same day, Fitch Inc. (“Fitch”) lowered its Senior Unsecured Debt rating on Delphi to BB+, or “junk” status.

133. On March 8, 2005, Moody’s lowered its Senior Unsecured Debt rating on Delphi to Ba2, or “junk” status. Delphi’s debt was now rated “junk” by each of the three leading rating agencies.

134. On March 11, 2005, the Grand Rapids Press published an article by Rick Haglund, titled “Delphi woes could snowball; Accounting scandal could open floodgates in auto industry, experts say,” which referred to “[r]evelations of a stunning accounting scandal at Delphi Corp.,” noted that “Delphi’s stock price has fallen below $5 a share, its lowest price ever,” and added that “UBS Investment Bank analyst Rob Hinchliffe said in a research note Wednesday [Delphi] should consider filing a Chapter 11 bankruptcy organization petition.”

135. If not previously, by March 11, 2005, the publicly known state of Delphi’s financial condition was such that it was at least a reasonable possibility that GM “may have” incurred a liability under the Delphi Legacy Guarantee.

(c) GM’s Delay in Accruing a Charge of at Least $5.5 Billion to Income, for its Contingent Liability Under the Delphi Legacy Guarantee, Was a Violation of FAS 5 ¶ 8

136. As explained above, in paragraph 91, under FAS 5 ¶ 8, “an estimated loss from a loss contingency . . . shall be accrued by a charge to income,” whenever it becomes “probable” that “a liability had been incurred at the date of the financial statements” and “[t]he amount of the loss can be reasonably estimated.”

137. Based on the chronology described above and below, by August 5, 2005, it was probable that GM had incurred a liability of at least $5 billion under the Delphi Legacy Guarantee. However, as explained above, GM did not announce until January 26, 2006, that it had incurred a charge for the Guarantee.
138. Moreover, by October 8, 2005, it was probable that GM had incurred a liability of at least $5.5 billion under the Delphi Legacy Guarantee. However, until January 26, 2006, GM did not announce that it had incurred a charge under the Guarantee, and, on January 26, 2006, it announced only that it had incurred a charge of $3.6 billion under the Guarantee. It was not until March 16, 2006, that GM issued a press release announcing that the charge incurred by it under the Delphi Legacy Guarantee was $5.5 billion.

139. Thus, as explained above, in Part VB3(b), by March 11, 2005, if not earlier, it was already at least a reasonable possibility that GM “may have” incurred a liability under the Delphi Legacy Guarantee. Thereafter, the public signs of Delphi’s distress became ever more clear.

140. On April 1, 2005, the Detroit Free Press reported that the FBI was investigating Delphi’s accounting practices, in a probe that had begun during the Summer of 2004.

141. On April 21, 2005, S&P lowered Delphi’s rating yet another notch, and in May 2005, Moody’s and Fitch did the same.

142. On June 30, 2005, in its 10-K for 2004, which Delphi filed late, Delphi disclosed that, as of December 31, 2004, its pension and other retirement benefits were underfunded by $13.951 billion.

143. In July, 2005, Robert S. Miller, a restructuring expert, became Delphi’s CEO.

144. On July 9, 2005, the New York Times published an article titled “For G.M., a Struggling Delphi Could Prove to Be a Burden.” The article stated that GM “faces the increasing likelihood that it will bear some financial responsibility for its former auto parts subsidiary, Delphi,” because, as stated by Gerald Meyers, a University of Michigan professor and former chief executive of American Motors, “General Motors cannot afford to let Delphi fail.” The article also reported that John Casesa, a Merrill Lynch analyst, had been told by Robert S. Miller, Delphi’s new CEO, that “G.M. would have to take responsibility for some of the supplier’s considerable labor costs,” and quoted Professor Meyers’s suggestion that GM simply “give Delphi a cash lifeline [of] no greater
than $5 billion.”

145. On August 5, 2005, each of the rating agencies again lowered their rating of Delphi’s debt: S&P lowered its Long-Term Issuer Credit rating on Delphi to CCC+. An issuer rated CCC by S&P is dependent on favorable business and economic conditions to meet its financial commitments. Moody’s lowered its Senior Unsecured Debt rating on Delphi to Ca—essentially the lowest rating by Moody’s for debt that has not yet defaulted. Fitch lowered its Senior Unsecured Debt rating on Delphi to CCC. Obligations rated CCC by Fitch are subject to high default risk.

146. Thus, as of August 5, 2005, with the known underfunding of Delphi’s post-retirement liabilities already within half a billion dollars of the amount by which they would be underfunded at the time of Delphi’s bankruptcy filing, it was probable that GM had incurred a liability of at least $5 billion under the Delphi Legacy Guarantee.

147. The materiality of GM’s omission, prior to January 26, 2006, to disclose that it had incurred a liability under the Guarantee is shown by, among other things, the fact that, when, on January 26, 2006, GM disclosed that it had incurred such a liability, GM described this as one of just two reasons why GM’s results for the year 2005 had been “dramatically and adversely affected.”

148. On October 8, 2005, Delphi filed for bankruptcy protection. If not previously, by October 8, 2005, the publicly known state of Delphi’s financial condition was such that it was probable the GM had incurred a liability under the Delphi Legacy Guarantee.

149. By October 8, 2005, not only was the publicly known state of Delphi’s financial condition a sufficient reason for GM to conclude that GM had probably incurred a liability under the Guarantee, but also, as GM disclosed in the Form 8-K that GM filed on October 8, 2005,

[t]oday, GM received a notice from Delphi, that in the opinion of its Chief Restructuring Officer, it was more likely than not that GM would become obligated to provide benefits pursuant to the benefit guarantees to the UAW employees or retirees.

150. Also on October 8, 2005, GM filed it’s 8-K that finally disclosed the Delphi Legacy
Guarantee in its entirety. The 8-K stated “GM currently believes that it is not probable that it has incurred a liability due to Delphi’s Chapter 11 filing.” However, only one month later, on November 9, 2005, in its 10-Q for the period ending September 30, 2005, in Note 15 to the financial statements, GM admitted that “GM currently believes that it is probable that it has incurred a liability due to Delphi’s Chapter 11 filing,” without attributing the change in its probability analysis to any changed condition that might have occurred, or any new information that GM might have received, during the period since October 8, 2005.

151. Also in GM’s 8-K filed on October 8, 2005, GM stated that it was “not presently able to estimate the amount, if any, it may ultimately pay under the benefit guarantees.” However, in the same 8-K, GM stated that “[t]he range of GM’s contingent exposure extends from there being potentially no material financial impact to . . . approximately $10 to $11 billion at the high end, with amounts closer to the midpoint being considered more possible than amounts towards either of the extreme ends of this range.” (emphasis added). Thus, on October 8, 2005, GM’s loss was estimable as being at least $5.5 billion, because, under paragraph 3 of FASB Interpretation No. 14—which is an official interpretation of FAS 5—when some amount within an estimated range of loss “appears at the time to be a better estimate than any other amount within the range, that amount shall be accrued.” (emphasis added). Moreover, GM ultimately admitted that $5.5 billion was the size of the liability that it had incurred under the Guarantee, by accruing a $5.5 billion charge to income, attributable to the Guarantee, in GM’s 10-K for 2005, which GM filed on March 28, 2006.

152. Therefore, no later than in its 8-K filed on October 8, 2005, GM should have announced that under the Guarantee it had incurred a charge of at least $5.5 billion, because, as of that date, it was probable that GM had incurred the charge, and as of that date, the charge was
The materiality of GM’s omission to disclose that the true size of its liability under the Guarantee was at least $5.5 billion is shown by, among other things, the fact that, when, on March 16, 2006, GM disclosed that it would take a charge of $5.5 billion attributable to the Guarantee, instead of, as previously announced, $3.6 billion, the price of GM’s stock fell 4.9% in just one day.

C. **GM OVERSTATED NET OPERATING CASH FLOWS**

In each of GM's financial statements covering any of the periods from the first quarter of 2002 through the third quarter of 2005, GAAP was violated and GM’s net cash provided by operating activities was overstated, as a result of GM’s misclassification of cash flows from (a) GM’s sales to its dealers made on credit, and/or (b) mortgage loans purchased by a GMAC subsidiary. The aggregate overstatement of net cash provided by operating activities totaled an astounding $32.83 billion.

1. **Cash Flow Accounting**

   (a) **Importance and Composition of Cash Flow Statements**

   A company’s statement of cash flows is a financial report showing the amounts and sources of any changes in the company’s cash balance during the reporting period.

   The statement of cash flows is critical for determining the solvency or short-term viability of a company, *i.e.*, the company’s ability to pay its bills and meet its other short-term obligations.

   The statement of cash flows is also useful to gauge the credibility or “quality” of a company’s reported earnings. By looking for unusually large discrepancies between reported

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Even assuming, *arguendo*, that GM was not required as of October 8, 2005 to disclose that it had incurred a $5.5 billion charge, under SOP 94-6 §§ .07, .12-.14 & .18, GM was still required to disclose that its “estimate of the effect” of the Guarantee might soon change such that a $5.5 billion liability would then be incurred.
earnings and operating cash flows, investors may be able to determine if reported earnings are a result of aggressive accounting techniques used to artificially boost earnings.

158. Information about the trends in a company’s cash flow are also used to assess the company’s ability, over the long term, to pay dividends and finance growth, and, thus, are an indicator of the company’s long-term value. It is a well-accepted postulate of financial analysis and valuation that a company’s stock price at any point in time reflects the market’s assessment of the future cash flows that may be generated by the business, discounted appropriately for time and relative risk. For example, on February 10, 2003, Deutsche Bank published an analyst’s report on GM that calculated a $32 target price for GM stock, “based on a discounted cash flow model that arrives at a theoretical enterprise value for GM.”

159. Consequently, misreporting of a company’s cash flows will affect the price at which the company’s shares are traded.

160. As stated in a publication posted by the SEC on its website:

The statement of cash flows is one of the primary statements required with a full set of financial statements. It is relied upon by analysts and investors as much, if not more in some instances, as the statement of net income. (emphasis added).


161. Under Financial Accounting Standard No. 95, “Statement of Cash Flows” (“FAS 95”), a company may streamline the presentation of its cash flows by using what is referred to as the “indirect” method of accounting for operating cash. Under this method, instead of itemizing and adding up all of the individual in-flows and out-flows of cash, the company first sets forth its net income during the relevant period, and then makes adjustments to that number by subtracting any amounts of income that did not produce a cash in-flow, such as sales made on credit, and by adding back any amounts of expense that did not produce a cash out-flow, such as depreciation.
162. Thus, on a company’s income statement, if the company’s accounts receivable resulting from the sale of inventory on credit increased during the relevant period, the amount of that increase will be included in net operating income. By contrast, on the company’s cash flow statement, the amount of the increase in receivables will be subtracted from net operating income, in order to compute net operating cash flow.

163. Most corporations, including GM, construct their cash-flow statements using the indirect method.

(b) Key Importance to Investors of Operating Cash Flow

164. FAS 95, which applied at all relevant times herein, “requires that a statement of cash flows classify cash receipts and payments according to whether they stem from operating, investing, or financing activities.” FAS 95.

165. As stated in the SEC Staff Statement,

The importance of appropriate classification and presentation of items in the consolidated statement of cash flows cannot be overstated. Accurate presentation of . . . cash receipts and cash payments based on activity (operating, investing and financing) . . . assists the reader in determining the registrant’s ability to meet its obligations, pay dividends, generate cash flows sufficient to grow its business, etc. (emphasis added).

Current Accounting and Disclosure Issues in the Division of Corporate Finance, at 33.

166. Cash flow from operating activities is a closely watched portion of a company’s financial filings, because it reveals how much cash is being generated on a recurring basis by the company’s core business. This is particularly true in the automobile industry. Indeed, as stated in a report on the automobile industry, dated March 31, 2006, published by Rating and Investment Information, Inc., Japan’s largest rating agency, “[w]hen looking at the automobile industry, the first focus is on how much operating cash flow is generated each fiscal year.” (emphasis added).

Throughout the Class Period, GM’s analysts and investors have focused on GM’s operating cash flow because GM has faced uniquely large obligations regarding pension and health benefits for its

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current and former employees, repeatedly coming due.

167.  For example, in January 2004, Bane One Capital Markets, Inc. published a research report on GM in which it affirmed its “buy rating” in part based on the strength of GM’s recently reported operating cash flow. The research report stated, in pertinent part:

Recommendation: We continue to recommend a BUY on General Motors (GM) based on attractive valuations, an improving liquidity situation, and a growing competitive position in the North American automotive market. We continue to believe that GM's bonds offer the best risk/reward relationship versus the other Big Three OEMs’ bonds. GM posted solid results for the fourth quarter and full year 2003. Fourth quarter EPS was $1.71 (including Hughes) compared with First Call estimates of $1.53. Operating cash flow was strong in the quarter, propelled by solid sales volumes, and offset somewhat by weak pricing (due to aggressive incentive spending) as well as rising pension and health care expenses. . . . Operating cash flow coupled with a $400 million dividend, helped fund $4.8 billion in pension contributions, $1.0 billion in VEBA contributions, and $1.1 billion in dividends. (Emphasis added.)

2.  MATERIALLY UNTRUE STATEMENTS CONCERNING DEALER-FINANCING CASH FLOW

(a)  OVERSTATEMENT OF NET CASH FLOW FROM OPERATING ACTIVITIES

168.  At all relevant times, GM offered its dealers financing of their purchases of GM vehicles, with GM’s wholly-owned finance subsidiary, GMAC, essentially purchasing such dealers’ notes, or other promises to pay, from GM. Between 2002 and 2004, approximately 83% of all GM sales of vehicles to dealerships were financed by GMAC. According to GMAC’s public filings, its provision of “wholesale” or “floor plan” financing for purchases by dealers of new and used vehicles manufactured or distributed by GM constitutes one of the most important aspects of GMAC’s financing operations.

169.  Under GAAP, cash flows relating to the sale of inventory are operating cash flows. As stated in the SEC Staff Statement,

Paragraph 22a of FASB Statement No. 95, Statement of Cash Flows, states that cash receipts from the sales of good or services are operating cash flows. Paragraph 22a clarifies that classification as an operating activity is required regardless of whether those cash flows stem from the collection of the receivable from the
customer or the sale of the customer receivable to others; regardless of whether those receivables are on account or stem from the issuance of a note; and regardless of whether they are collected in the short-term or the long-term. . . . As the SFAS 95 basis for conclusions indicates in paragraphs 93 to 96, the FASB considered and rejected classifying any portion of the cash receipts from the sale of inventory as investing activities. . . . [P]resenting cash receipts from receivables generated by the sale of inventory as investing activities in the registrant’s consolidated statements of cash flow is not in accordance with GAAP. (Emphasis added.)

Current Accounting and Disclosure Issues in the Division of Corporate Finance, at 33.

170. During the period from 2002 through the first two quarters of 2004, the dollar amount of GM’s uncollected receivables resulting from sales of vehicles to GM’s dealers on credit increased by huge amounts, creating the need to make huge negative adjustments to net income when deriving the number for cash flow from operations as presented on GM’s consolidated cash flow statements.

171. In GM’s annual and quarterly reports for the years 2002 through 2004, contrary to the unambiguous dictates of GAAP described above, and without providing any explanation of what it was doing, GM classified its cash flows from its financing of sales to dealers as investing cash flows rather than operating cash flows. As a result, the huge negative adjustments resulting from the increase in GM’s uncollected receivables were made to investing cash flows, rather than to operating cash flows. As a further result, for 2002, 2003, and the first two quarters of 2004, the numbers for operating cash flow—i.e., the numbers of greatest concern to investors—were inflated by billions of dollars.

172. Moreover, to the extent that an adjustment was recorded for the increase in the uncollected receivables, it was recorded as an adjustment to net investing cash flow, which gave the same appearance as would an investing cash out-flow.

173. Thus, GM’s cash flow statements were materially untrue in that they gave the erroneous impression that GM was receiving billions of dollars in cash through its operations and then investing it, rather than simply selling its inventory on credit without receiving any cash at all.
174. As GM ultimately admitted in its Form 10-K for the year 2004, filed after the market closed on March 16, 2005, and its Form 10-Q, for the quarter ended March 31, 2005, filed on May 10, 2005, at some point prior to December 31, 2005, the SEC informed GM that the SEC had become aware of the “inappropriate” way in which GM was presenting the cash flow effects of its sales to its dealers on credit.

175. In its 2004 10-K, GM publicly disclosed, for the first time, that it had reported misclassified cash flows for each of the years 2002 and 2003, and for the first three quarters of 2004. GM also presented what it labeled a “reclassification” of its cash flows for each of the years 2002 and 2003.

176. In order to reclassify cash flows for the years 2002 and 2003, GM moved the deduction for increased receivables from investing activities, where GM had previously erroneously placed it, to operating activities, where, in accordance with GAAP, it had always clearly belonged. This “reclassification” was presented in the following chart:

<table>
<thead>
<tr>
<th>Years Ended December 31</th>
<th>2003</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>(dollars in millions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities as previously reported</strong></td>
<td>$7,600</td>
<td>$15,482</td>
</tr>
<tr>
<td>Reclassification</td>
<td>$(4,644)</td>
<td>$(4,407)</td>
</tr>
<tr>
<td><strong>Revised net cash provided by operating activities</strong></td>
<td>$2,956</td>
<td>$11,075</td>
</tr>
<tr>
<td>Net Cash used in investing activities as previously reported</td>
<td>$(55,492)</td>
<td>$(40,524)</td>
</tr>
<tr>
<td>Reclassification</td>
<td>$4,644</td>
<td>$4,407</td>
</tr>
<tr>
<td><strong>Revised net cash used in investing activities</strong></td>
<td>$(50,848)</td>
<td>$(36,117)</td>
</tr>
</tbody>
</table>

177. As the chart shows, GM had previously overstated its consolidated net operating cash by more than \textbf{$4.6 \text{ billion}$} for the year 2003, and more than \textbf{$4.4 \text{ billion}$} for the year 2002, for a total overstatement regarding those two years of \textbf{$9 \text{ billion}$}.

178. As is also shown by the chart, these overstatements were material: the overstated
operating net cash flow in 2002 erroneously increased net operating cash by approximately 40%, and the overstated operating net cash flow in 2003 erroneously increased the net operating cash by 150%. Indeed, the overstatement in 2002 had increased the net operating cash by an amount more than twice the size of that year’s net operating income, which was approximately $2 billion; and the overstatement in 2003 had falsely increased the net operating cash by an amount more than one and a half times the size of that year’s net operating income, which was approximately $2.9 billion.

179. In its 2004 10-K, in addition to reclassifying 2002 and 2003 reported cash flows, GM admitted that its previous method for classifying cash flows was contrary to the dictates of FAS 95. Thus, in GM’s 2004 10-K, the company admitted:

> For 2004 GM reclassified certain amounts between operating and investing activities in its consolidated Statements of Cash Flows as a result of concerns raised by the staff of the SEC about the previous presentation. **This reclassification primarily relates to the financing of wholesale receivables from dealers** by GM’s Financing and Insurance Operations that results in no net cash receipts to GM on a consolidated basis when vehicles are sold. **Because these receivables relate to the sale of GM’s inventory, changes in their balances are now considered operating cash flows in accordance with Statement of Financial Accounting Standards No. 95, “Statement of Cash Flows”** (emphasis added).

180. In its 2004 10-K, GM also admitted that its prior treatment of cash flows was “inappropriate,” and that it had created an untrue impression that an operating cash flow existed on a consolidated basis, where, in fact, none existed. Thus, regarding its reclassification of cash flows for the years 2002 and 2003, GM stated:

> After considering the concerns raised by the staff of the SEC, management has concluded that certain prior year balances in the Consolidated Statements of Cash Flows should be reclassified to appropriately present net cash provided by operating activities and net cash used in investing activities.

**The Corporation’s previous policy** was to classify all the cash flow effects of providing wholesale loans to its independent dealers by GM’s Financing and Insurance Operations as an investing activity in its Consolidated Statements of Cash Flows. This policy, when applied to the financing of inventory sales, **had the effect of presenting an investing cash outflow and an operating cash inflow even though there was no cash inflow or outflow on a consolidated basis.** (emphasis added).
181. This admission was also an admission that GM had violated GAAP, because, as stated in the SEC Staff Statement:

Presenting cash flows between a registrant and its consolidated subsidiaries as an investing cash outflow and an operating cash inflow when there has not been a cash inflow to the registrant on a consolidated basis from the sale of inventory is not in accordance with GAAP. (emphasis added).

Current Accounting and Disclosure Issues in the Division of Corporate Finance, at 33-34.

182. Although GM’s reclassification of cash flows in its 10-K for the year 2004, including its reclassification of cash flows for the years 2002 and 2003, does not use the word “restatement,” it is, in every respect, a restatement. The 10-K’s discussion of the reclassification admits to a change in accounting policy, admits that the new policy is in accordance with FAS 95, and makes no attempt to justify the previous policy that was not in accordance with FAS 95. As stated by APB 20 ¶ 13, “[a] change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of an error for purposes of applying this Opinion.”

183. In GM’s 10-Q for the first quarter of 2005, GM finally also disclosed the amount of cash flow that it had reclassified for the first quarter of 2004. Net operating cash for the first quarter of 2004 had originally been reported as $1.098 billion. That original statement, which appeared in the 10-Q for the first quarter of 2004, had overstated net operating cash by $4.337 billion. After

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6 Moreover, under APB 20 ¶¶ 13, 31 & 36, there are only two possible situations in which a previously reported number can be changed in a financial statement: (1) If the original number was an “error” resulting from “mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared,” then the change “should be reported as a prior period adjustment.” (2) By contrast, if the original number was an accounting “estimate,” and if “new information or subsequent developments” result in “better insight or improved judgment” justifying a change in the estimate, then, the effect of the change “should be accounted for in (a) the period of change if the change affects that period only or (b) the period of change and future periods if the change affects both.” Under APB 20 ¶ 31, when the second kind of treatment (reporting a new estimate in the current and future periods) is appropriate (i.e., because it is based on new information that previously was unavailable), the first kind of treatment (changing a number for a prior period) is prohibited. Because GM’s “reclassification” of cash flows in its 10-K for the year 2004 reported changed numbers for years prior to 2004, it can only have been a “correction of an error,” or, essentially, a “restatement.”
reclassification, net operating cash for the first quarter of 2004 was negative $3.279 billion.

184. GM’s 10-Q for the second quarter of 2005 disclosed GM’s change to the figure it had originally reported for net operating cash flow for the first two quarters of 2004, combined. The amount originally reported was $7.599 billion. That figure had been overstated by $7.040 billion. The correct net operating cash flow for the first two quarters of 2004, as reported in GM’s 10-Q for the second quarter of 2005, was only $0.559 billion.

185. By the time of the filing of GM’s 10-Q for the second quarter of 2005, GM itself was referring to its correction of past misclassifications of cash flow as restatements. The 10-Q for the second quarter of 2005 explicitly presented the figure for net operating cash flow for the first two quarters of 2004 “as restated.” (emphasis added).

(b) Materially Untrue Statements Regarding Cash Flows Between GM’s Two Divisions

186. In GM’s 10-K for the year 2004, in its explanation of its reclassification of the cash flows for the years 2002 and 2003, in addition to admitting that the original statements of cash flows for those years had overstated net operating cash flows by huge amounts, GM also implicitly admitted the untruth of another highly material statement that GM had made in each of GM’s annual and quarterly reports from the 10-K for 2002 through the third quarter of 2004. That statement, made in each such report with only insignificant variations, was the following:

GM presents its primary financial statements on a fully consolidated basis. Transactions between businesses have been eliminated in the Corporation's consolidated financial statements. These transactions consist principally of borrowings and other financial services provided by Financing and Insurance Operations (FIO) to Automotive and Other Operations (Auto & Other). (emphasis added).

187. Contrary to the above statement, every time GM had presented misclassified cash flows, it was presenting the effects of intercompany transactions—i.e., transactions between GM and its wholly owned financing subsidiary, GMAC—without disclosing that it was so doing.

188. Thus, in its 10-K for the year 2004, in its explanation of its reclassification, GM
admitted:

The Corporation has changed its policy to eliminate this intersegment activity from its Consolidated Statements of Cash Flows and, as a result of this change, all cash flow effects related to wholesale loans are reflected in the operating activities section of the Consolidated Statement of Cash Flows for 2004. This reclassification better reflects the financing of the sale of inventory as a non-cash transaction to GM on a consolidated basis and eliminates the effects of intercompany transactions. (emphasis added).

189. Obviously, if the reclassification eliminated the effects of intercompany transactions, then it must be the case that the original misclassification did not eliminate those effects; and if the original presentation of cash flows did not eliminate the effects of intercompany transactions, then GM made an untrue statement by asserting, in every one of its quarterly and annual reports starting with the 10-K for 2002, through and including the 10-Q for the third quarter of 2004, that such transactions had been “eliminated.”

3. Materially Untrue Statements Regarding Cash Flows Relating To the Purchase or Sale of Mortgage Loans by a GMAC Subsidiary

(a) GM’s Disclosure that its Reported Cash Flows as Reclassified In the 2004 10-K were Still Misclassified

190. Although GM’s 10-K for 2004 admitted that GM’s previous 10-Ks for 2003 and 2002 had overstated net operating cash flow by a total of approximately $9 billion, one year after GM filed its 10-K for 2004, investors would learn that GM had not disclosed the full amount of the overstatement for the years 2002 and 2003. Investors would also learn that the 10-K for 2004 had overstated year-end net operating cash flow for the year 2004, and that each of GM’s next three quarterly reports filed after the 10-K for 2004 continued to misclassify cash flow, and continued to overstate net operating cash flow.

191. The undisclosed, additional, overstatement of operating cash flow in the statements for the periods reclassified in the 10-K for 2004 (i.e., the first quarter of 2002 through the fourth quarter of 2004), and the continuing overstatement of operating cash flow in each of the next three quarterly reports after 2004, resulted from GM’s misclassification—on its consolidated cash flow
statements—of cash flows relating to mortgage loans owned by ResCap, a subsidiary of GMAC. Specifically, net in-flows from investing in mortgage loans were misclassified as net in-flows from operations rather than from investing activities.


193. On March 16, 2006, after the market closed, GM issued a press release that began as follows:

General Motors Corp. today provided updated preliminary financial results for 2005 and said it will delay filing its annual report on Form 10-K with the Securities and Exchange Commission due to an accounting issue regarding the classification of cash flows at ResCap, the residential mortgage subsidiary of GMAC.

The ResCap accounting issue relates to the erroneous classification of cash flows from certain mortgage loan transactions as cash flows from operations instead of cash flows from investing activities. Although the company has not completed its review of this matter, the issue will not impact either net income or the balance sheet presentation but is expected to impact the presentation of cash flows from operating and investing activities. This issue may impact the statements of cash flows for 2005 and prior periods at ResCap, GMAC and GM, and the impact may be material in some or all of the affected periods.

With the exception of the ResCap accounting issue, GM is otherwise prepared to file its 2005 Form 10-K and intends to do so as soon as practicable and within the next two weeks. (emphasis added).

194. Thus, GM disclosed that, although the misclassification originated in a subsidiary of a GM subsidiary—i.e., ResCap is a subsidiary of GMAC, which is a subsidiary of GM—the misclassification was incorporated into the consolidated financial statements of GM, such that GM's financial statements were, themselves, materially “erroneous.”

(b) GM’s Admission that it had Violated GAAP Regarding Reported Cash Flows Relating to the Purchase or Sale of Mortgage Loans

of Certain Enterprises and Classification of Cash Flows from Certain Securities Acquired for
Resale” (“FAS 102”), purchasers of loans, such as GMAC, must account for cash flows related to
such loans (whether out-flows from the purchase of the loan, or in-flows from either repayment of
the loan by the borrower, or resale of the loan by the purchaser) in one of two ways—as either
operating cash flows or investing cash flows—based on the original purpose of the purchase. Thus,
FAS 102 (section titled “Summary”) “requires that . . . loans that are acquired specifically for
resale and carried at market value or the lower of cost or market value be classified as operating
cash flows in a statement of cash flows.” By contrast, under FAS 102 ¶ 9, “cash receipts resulting
from sales of loans that were not specifically acquired for resale shall be classified as
investing cash inflows.” (emphasis added). FAS 102 makes it emphatically clear that a change in
the use to which a loan is put does not justify any change in the way that it is accounted for. Thus,
FAS 102 ¶ 9 states that “if loans were acquired as investments, cash receipts from sales of those
loans shall be classified as investing cash inflows regardless of a change in the purpose for holding
those loans.” (emphasis added).

196. GMAC’s 10-K for 2005 admits that “restatement” of GMAC’s cash flows was
necessary because GMAC had failed to abide by the rule, under FAS 102, that cash flows regarding
loans must be classified according to the original reason for purchasing the loan:

As we were preparing our 2005 Form 10-K, it was discovered that cash outflows
related to certain mortgage loan originations and purchases were not appropriately
classified as either operating cash flows or investing cash flows consistent with
our original designation as loans held for sale or loans held for investment. In
addition, proceeds from sales and repayments related to certain mortgage
loans, which initially were classified as mortgage loans held for investment
and subsequently transferred to mortgage loans held for sale, were reported as
operating cash flows instead of investing cash flows in our Consolidated
Statement of Cash Flows, as required by Statement of Financial Accounting
Standards No. 102 Statement of Cash Flows—Exemption of Certain Enterprises
and Classification of Cash Flows from Certain Securities Acquired for Resale.
Finally, certain non-cash proceeds and transfers were not appropriately presented in
the Consolidated Statement of Cash flows or Supplemental disclosures to the
Consolidated Statements of Cash flows. (emphasis added).
197. An admission essentially identical to the one quoted above, from GMAC’s 10-K for 2005, was also made by GM, except that GM took two steps to make the admission. The first step is that GM’s 10-K/A (amended 10-K) for 2004 contains an admission essentially the same as the one quoted above, except that the GM admission does not mention FAS 102. The second step is that GM’s 10-K for 2005, which admits that GM has identified a material weakness in its internal control over financial reporting, makes essentially the same statement as the one appearing in GM’s 10-K/A for 2004 regarding misclassification of cash flows relating to mortgage loans, but also admits that the misclassifications were not in compliance with FAS 102.

198. GM’s 10-K/A for 2004 also explicitly admits that this reclassification of its cash flows is a “restatement.” Thus, the 10-K/A declares that GM has “restated its statements of cash flows to correct for the erroneous classification of cash flows from certain mortgage transactions within our financing and insurance operations.”

199. On March 17, 2006, an article in the Dow Jones Newswire, by Stephen Wisnieski and John D. Stoll, summarized the GM announcement and its impact:

GM suffered another big blow to its credibility with the announcement late Thursday of significant earnings restatements and accounting problems at its General Motors Acceptance Corp. lending unit. The world’s largest auto maker said higher charges related to its obligations to supplier Delphi Corp. and other restructuring-related charges inflated its 2005 loss to $10.6 billion, $2 billion more than previously announced. The company also pointed to cash-flow accounting errors at GMAC’s ResCap mortgage subsidiary, noting that it could change cash-flow calculations for previous years. (emphasis added).


201. GM’s 10-K/A for 2004 established that the ResCap cash flow restatement had, indeed, materially affected GM’s consolidated cash flows for the years 2002 through 2004, and quantified the effects. As a result, the figures for GM’s consolidated net operating cash flow,
for the years 2002, 2003 and 2004, were restated downward, in turn, by approximately $3.1 billion, $6.1 billion and $3.7 billion, while investing cash flows were restated upward by the same amounts.

202. The following chart summarizes GM’s restatement in its 2004 10-K/A regarding consolidated cash flows from operating activities for the years 2002 through 2004 (numbers represent billions):

<table>
<thead>
<tr>
<th>Year</th>
<th>Consolidated Cash Flows from Operating Activities as Stated in the Original 2004 10-K</th>
<th>Consolidated Cash Flows from Operating Activities as Restated in the 2004 10-K/A</th>
<th>Impact of Restatement</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$11.075</td>
<td>$7.970</td>
<td>$(3.105)</td>
</tr>
<tr>
<td>2003</td>
<td>$2.956</td>
<td>$(3.176)</td>
<td>$(6.132)</td>
</tr>
</tbody>
</table>

203. These downward corrections were separate from, and, in addition to, the $9 billion of downward corrections in net operating cash flow for the years 2003 and 2002 that had been made in the original 10-K for 2004, in order to correct the misclassification of cash flows relating to sales on credit to GM’s automobile dealers.

204. GM’s 10-Q/A’s for the first three quarters of 2005 established that operating cash flow in these quarters originally had been overstated by an approximate total of $10.93 billion.

205. The following chart summarizes GM’s restatement of consolidated cash flows from operating activities for the first three quarters of 2005 (numbers represent billions):

<table>
<thead>
<tr>
<th>Period</th>
<th>Consolidated Net Cash Flow from Operating Activities as Stated in GM’s Original 2005 10-Q’s</th>
<th>Consolidated Net Cash Flow from Operating Activities as Restated in GM’s 2005 10-Q/A’s</th>
<th>Impact of the Restatement</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the three months ending March 31, 2005</td>
<td>$(4.137)</td>
<td>$(6.148)</td>
<td>$(2.011)</td>
</tr>
<tr>
<td>For the six months ending June 30, 2005</td>
<td>$2.489</td>
<td>$(1.781)</td>
<td>$(4.270)</td>
</tr>
<tr>
<td>For the nine months ending September 30, 2005</td>
<td>$3.676</td>
<td>$(7.256)</td>
<td>$(10.932)</td>
</tr>
</tbody>
</table>
206. Therefore, based on disclosures in GM’s original 10-K for the year 2004, 10-K/A for the year 2004, and 10-Q/A’s for the first three quarters of 2005, the approximate original total overstatement of net operating cash flow during the period from the first quarter of 2002 through the third quarter of 2005, whether relating to GM’s sales on credit to GM automobile dealers or the ResCap mortgage loans, was an incredible $32.83 billion.

207. The materiality of GM’s overstatements of operating cash flow is clear from the huge size of the overstatements.

208. The materiality of GM’s untrue statements regarding cash flow is also shown by the fact that GM’s disclosure of the untruth of these statements contributed to placing GM in possible breach of its bank revolver and various of its leases, and that possible breach, in turn, caused Moody’s to lower its rating on GM and its senior unsecured debt, and caused Standard & Poor’s to place all of its ratings on GM “on CreditWatch with negative implications.”

209. Thus, GM’s restatement of its cash flows in its 10-K/A for 2004 and 10-Q/A’s for 2005 was accompanied by a disclosure made in GM’s 10-K for 2005—which was filed at the same time as the 10-K/A for 2004 and 10-Q/A’s for 2005—that there was now a substantial risk that GM had violated its promises, under its syndicated bank revolver and various of its leases, to deliver accurate financial statements.

210. On March 29, 2006, after the market closed, Moody’s lowered its rating on GM and its senior unsecured debt. As the sole reason for the downgrade, Moody’s cited the “disclosure that restatements of [GM’s] 2002, 2003 and 2004 financial statements could result in the acceleration of as much as $3 billion in various lease obligations and in the company potentially not being able to borrow under its $5.6 billion unused revolving credit facility.” Also on March 29, 2006, after the market closed, Standard & Poor’s placed all of its ratings on GM “on CreditWatch with negative implications.” As stated by S&P, “[t]his action stems from GM’s disclosure in its 2005 10-K that the recent restatement of its previous financial statements raises potential issues regarding
access to its 5.6 billion standby credit facility, as well as the possibility that certain lease obligations
of as much as $3 billion could be subject to possible claims of acceleration, termination, or other
remedies.”

D. GM IMPROPERLY ACCOUNTED FOR TWO TRANSACTIONS
WITH DELPHI APPORTIONING THE COST OF PAST RECALLS

211. In the third quarter of 2000, and in the fourth quarter of 2001, GM and Delphi made
agreements with each other apportioning the costs of past product recalls (i.e., the costs of
complying with warranties given consumers). GM’s accounting for each of these transactions
violated GAAP, and, in the first instance, Regulation S-K of the Exchange Act (“Reg. S-K”), and
made GM’s financial statements untrue in the periods in which the agreements were made, and in
subsequent periods in which GM’s financial statements repeated the original untruths.

1. Background

212. In a Form 8-K, dated September 29, 2004, Delphi disclosed that it was being
investigated by the SEC, regarding the way that Delphi had accounted for certain transactions.

213. In a Form 8-K, dated March 2, 2005, Delphi announced that certain of its prior
financial statements should no longer be relied upon, and that Delphi’s audit committee was
examining the manner in which Delphi had accounted for two transactions with GM—both, relating
to the same matters—that occurred in the years 2000 and 2001. These two transactions included

[a] $237 million in cash payments [Delphi] made to General Motors in 2000 as part
of an agreement in which the Company obtained a release with respect to certain
outstanding pre-separation warranty claims and certain true-up payments for future
post-retirement health care obligations[,] and $85 million in credits the Company
received from General Motors in 2001 for related matters.

journalism that disclosed how GM had accounted for these two transactions between GM and
Delphi. According to The Wall Street Journal, “four accounting experts who were asked to review
the transactions by [The Wall Street Journal] said they raise questions about the quality of GM’s
reported earnings and disclosure to investors.”

2. GM’s Erroneous Accounting for the $237 Million Payment Received from Delphi

   (a) The Payment, Which Was Included in GM’s Reported Income, Was a Non-Recurring Transaction

215. According to The Wall Street Journal’s article published on April 13, 2005, in the third quarter of 2000, Delphi made a $237 million payment to GM that GM included in its reported income for that quarter:

   the $237 million payment arose from a dispute between the companies over who was responsible for warranty or recall costs associated with Delphi-produced parts. [According to Delphi], the dispute involved pre-spinoff warranty issues. GM declined to say if the parts were made by Delphi before the May 1999 spinoff, but said the recalls happened after the spinoff.

216. Whereas some recall costs might be paid to GM by suppliers on a regular basis, in the quarter when they are incurred, this was not such a payment. According to The Wall Street Journal, Toni Simonetti, a GM spokeswoman, admitted the payment was for recall expenses that GM had previously booked as costs in prior quarters. Moreover, in the prior quarters when these costs had been incurred and booked, they had not been booked to Delphi. Thus, according The Wall Street Journal,

   Peter Bible, GM’s chief accounting officer, said that when GM announces a recall, it typically allocates a share of the cost to any supplier whose parts played a role in the vehicle problem. But with Delphi, he said, “we had not done that,” adding “we weren’t certain they were going to honor those.” (emphasis added).

217. In short, as reported by The Wall Street Journal, this was a “one-time recovery from a supplier,” which Delphi agreed to, not in the regular course of business, but, rather, only “[a]fter lengthy negotiations.”

218. As shown by the above described circumstances of the $237 million payment from Delphi, under Accounting Principles Board Opinions 30, “Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and
Infrequently Occurring Events and Transactions” (“APB 30”) ¶ 26, the $237 million payment was an “event or transaction” that “occurs infrequently.”

(b) The Payment was Material

219. As reported by The Wall Street Journal, the $237 million payment constituted 19% of GM’s pretax profits in the third quarter of 2000, and helped GM beat by one penny the earnings estimates of Wall Street, which already had been reduced from earlier estimates. Without it, the company would have fallen about 28 cents shy of the $1.54-a-share estimates of Wall Street analysts for that quarter. (emphasis added).

220. Under GAAP, and also from the perspective of investors, the $237 million payment clearly was material. Paul R. Brown, chairman of the accounting department at New York University’s Stern School of Business, told The Wall Street Journal that a one-time recovery from a supplier of 19% of pretax profits—like GM’s $237 million recovery from Delphi—would be “way above the threshold of what’s material.”

221. Moreover, under Staff Accounting Bulletin 99, “Materiality,” (“SAB 99”), among the considerations that may well render material a quantitatively small misstatement of a financial statement item are:

whether the misstatement masks a change in earning or other trends;

whether the misstatement hides a failure to meet analysts’ consensus expectations for the enterprise.

222. Thus, under SAB 99, even if the $237 million payment had been much smaller, it still would have been material, because it “hid[ ] GM’s failure to meet analysts’ consensus expectations for the enterprise,” and masked the change in earnings that, but for the non-recurring Delphi payment, would have caused GM to miss analysts’ expectations.

(c) GM Violated GAAP by Failing to Report the $237 Million Payment as a Separate Component of Income

223. Under APB 30 ¶ 26, if a material event or transaction is one that occurs infrequently,
[it] should be reported as a separate component of income from continuing operations. The nature and financial effects of each event or transaction should be disclosed on the face of the income statement or, alternatively, in notes to the financial statements. (emphasis added). 7

224. Contrary to APB 30 ¶ 26, GM did not report the $237 million payment as a separate component of income in its 10-Q for the third quarter of 2000, or in any financial report thereafter, thus leaving investors with the false impression that, based only on GM’s recurring operations, GM was meeting the earnings estimates of Wall Street.

225. Therefore, in its 10-Q for the third quarter of 2000, and in its 10-K for 2000, GM’s failure to separately report the $237 million payment was a clear violation of APB 30 ¶ 26 and SAB 99, and it made GM’s statements of income for those periods materially untrue.

(d) GM Violated Reg. S-K by Failing to Explain the Relation of the $237 Million Payment to Future Trends

226. Item 303 of Reg. S-K, which sets forth the disclosure requirements for “Management’s Discussion and Analysis of Financial Condition and Results of Operations” (‘‘MD&A’’) in reports required to be filed under the Exchange Act, requires registrants to:

Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrants’ liquidity increasing or decreasing in any material way. 303(a)(1)

Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. 303(a)(3)(ii) (emphasis added).

227. Under Item 303 of Reg. S-K, GM was required to inform investors of the likelihood that there would be no future repetition of the $237 million Delphi payment to GM, and that the likely future trend in GM’s liquidity, revenue and income would be the trend apparent only after excluding from the results of the third quarter of 2000 the $237 million payment from Delphi.

7 Under APB 30 ¶ 26, the same requirements apply to material events or transactions that are “unusual in nature.” If the event or transaction is both unusual and occurs infrequently, additional disclosure requirements must be satisfied.
228. In its MD&A in its 10-Q for the third quarter of 2000, GM failed to explain the effects of the $237 million payment from Delphi. Therefore, GM violated the requirements of Reg. S-K.

229. Because, in violation of GAAP and Reg. S-K, GM's 10-Q for the third quarter of 2000 and 10-K for 2000 failed to separately report the $237 million payment from Delphi and explain the payment’s effects on GM’s liquidity, revenues and income, the statements in GM’s 10-Q for the third quarter of 2000 regarding liquidity, revenues and income were materially untrue.

(e) GM's Failure to Treat the $237 Million Payment as a “Special Item” When Calculating Pro Forma Income and Earnings Rendered the 2000, 2001 and 2002 10-K's Materially Untrue

230. In its 10-K for 2000, in the MD&A, GM presented a table showing pro forma or “adjusted” income, which was derived by removing “special items”—essentially income and losses from non-recurring events—from net income for the year ended December 31, 2000. The table also presented pro forma “earnings per share” based on such “adjusted income.”

231. Because, for the reasons described above, the $237 million payment from Delphi was a non recurring transaction, it should have been treated as a “special item” and removed from net income in order to derive pro forma, or “adjusted,” income. Nevertheless, the $237 million payment was not treated as a “special item,” and GM’s omission to treat it as a “special item” was not disclosed.

232. Because the number for “adjusted income” in the table showing pro forma or “adjusted income” purported to present income only from recurring operations, and because the number for earnings per share purported to present earnings per share based on income only from recurring operations, and because, without any disclosure, GM had failed to treat the $237 million payment from Delphi as a “special item,” and because the number for earnings per share was based on earnings that included the $237 million payment from Delphi, this presentation was materially untrue.
233. Prior to GM’s release of its financial results for the year 2000, Wall Street’s mean earnings estimate for GM was $8.58 per share. GM’s actual earnings per share for 2000, based on net income as reported in GM’s income statement, was only $6.68. However, GM’s pro forma earnings per share based on pro forma, or “adjusted,” income, as presented in the table in the MD&A, was exactly $8.58 per share.

234. Thus, based on its untrue presentation, GM was able to say, that, if special items were excluded, GM had met analysts expectations—to the penny.

235. By contrast, if GM had removed the $237 million payment from Delphi when calculating pro forma, or “adjusted,” income—as it should have—, GM’s pro forma earnings per share would have missed meeting analysts expectations by $0.27. Therefore the failure to remove the $237 million payment from the pro forma income and pro forma earnings per share made those items in the 2000 10-K materially untrue.

236. The presentation described above regarding “adjusted income” for the year ended December 31, 2000, also appeared in GM’s 10-K for 2001, and GM’s 10-K for 2002. In each of these later 10-Ks, the presentation appeared in the MD&A, along side of similar presentations for preceding and/or subsequent years. In each of these other 10-Ks the presentation for 2000 remained materially untrue, and, thus, each of these 10-Ks was materially untrue in the same way, and for the same reasons, that the 10-K for 2000 was materially untrue.

3. **GM’s Untruthful Accounting for The $85 Million Credit Given to Delphi**

   (a) **Background**

   237. As reported by The Wall Street Journal, “accounting experts” also questioned GM’s accounting for a second transaction with Delphi, this one occurring at the end of 2001, in which GM agreed to give Delphi an $85 million credit (pre-tax) to offset certain amounts that Delphi owed to GM.
According to Delphi, as reported in a later article in The Wall Street Journal, dated April 28, 2005, this credit given to Delphi was related to Delphi’s earlier payment to GM, and, indeed, was a partial reimbursement of Delphi’s earlier payment to GM. According to Delphi, as part of the settlement that resulted in the $237 million payment made by Delphi to GM, “the parties agreed to have an outside mediator examine whether Delphi was overpaying. Largely as a result of this mediation, in late 2001[,] GM agreed to give Delphi the $85 million credit as a kind of rebate on the $237 million.” As The Wall Street Journal had reported in its earlier article, GM denied that the $85 million credit was related to the $237 million payment made by Delphi to GM, and insisted that the credit was related to the spinoff, but admitted that the credit resulted from “negotiations that went back and forth related to the separation.” (emphasis added).

(b) GM Failed to Report the Effect On Income of Giving the Credit

The credit given to Delphi was reported by GM in its 10-K for 2001 only as a $56 million after-tax adjustment to “retained earnings.” Thus, in GM’s 2001 10-K, the “Consolidated Statements of Stockholders Equity for the Years ended December 31, 2001, 2000, and 1999” presented the “balance [of retained earnings] at December 31, 2000,” and then subtracted the $56 million from that balance, in order to derive “the balance [of retained earnings] at December 31, 2001.” The line item description for the $56 million entry was titled “Delphi spinoff adjustment,” and a footnote to the line item stated “Resolution of worker’s compensation, pension, and other postemployment liabilities owed to GM by Delphi Automotive Systems, which GM spun-off in 1999.” (emphasis added). As The Wall Street Journal article noted, GM “booked the $85 million credit [as] an aftertax reduction of $56 million in GM’s shareholder equity,” but made “no charge to earnings.” (emphasis added).
GM Has Admitted That Its Accounting Violated GAAP

240. In GM’s 10-K/A for 2004, GM restated its accounting for the credit given to Delphi. In a note to its consolidated financial statements, titled “Restatement of Financial Statements,” next to a line item titled “Transactions with former subsidiary,” and sub-titled “Settlement Agreement,” GM placed a footnote stating the following:

In 2001, GM erroneously recorded, as a reduction in stockholders’ equity, a $55 million settlement with Delphi Corporation (Delphi), a former subsidiary, in the form of a credit to be used against amounts owed by Delphi to GM in relation to pension, OPEB, and other employment related benefits of former GM employees who had transferred to Delphi. This item has now been recorded as a warranty expense in that period. (emphasis added).

241. Under APB 20, it was well understood, and under Financial Accounting Standards 154, “Accounting Changes and Error Corrections” (“FAS 154”) ¶ 2(j), it has now been explicitly stated, that a “restatement” is “the process of revising previously issued financial statements to reflect the correction of an error in those financial statements.” By restating its income for 2001 regarding the credit given to Delphi, and admitting that its original method of accounting for the credit had been “erroneous,” GM admitted that its original accounting for the credit given to Delphi was contrary to GAAP, and that it made GM’s consolidated income statement materially untrue.

242. Under APB 20 ¶¶ 13 & 31, “a change in accounting estimate” resulting from “new information or subsequent developments” is accounted for “in the period of change” (and in future periods if they are also affected) and not by making changes to prior periods. GM’s original accounting for the credit, in its 10-K for 2001, treated the credit as if it were a change to a prior period, labeled the credit as related to the Delphi spin-off, which had happened in 1999, and failed to show how GM’s giving the credit in 2001 had affected operating income during 2001. By contrast, GM’s restatement in its 2004 10-K/A admitted that the credit was an “expense” incurred during 2001, which means that, under APB 20 ¶¶ 13 & 31, if the giving of the credit had any relationship at all to the past, nevertheless, it was the result of “new information or subsequent
developments.” For this reason, GM’s restatement admitted that the credit given to Delphi should have been subtracted from GM’s operating income for 2001. Therefore, GM’s original accounting for the transaction, which failed to show the effect of the transaction on operating income during 2001, violated GAAP, including APB 20 ¶¶ 13 & 31.

(d) Even if GM’s Giving the Credit to Delphi had Been a Correction of its Prior Accounting for the Spinoff, Rather than Being an Event Subsequent to the Spinoff, GM’s Accounting for the Credit Still Would Have Violated GAAP

243. As explained above, GM originally described the credit given to Delphi as a “spinoff adjustment,” but, eventually, essentially admitted, in its 10-K/A for 2004, that its giving the credit to Delphi was an event that took place subsequent to the spinoff, in 2001. However, under GAAP, even if GM’s giving the credit to Delphi had not been an event subsequent to the spinoff, but, rather, had been an adjustment to, or correction of, GM’s original accounting for the spinoff, GM still would have been required to report, in the appropriate period (i.e., in the period of the spinoff), the effect of the $56 million adjustment on GM’s operating income, and not just on its retained earnings.

244. Thus, under APB 20 ¶¶ 13 & 36, and APB 9 (“Reporting the Results of Operations”) ¶ 18, if the $56 million had represented an “adjustment”—or, what is the same thing, a correction—to previously reported income, then, GM would have been required, in its 10-K for 2001, to restate the reported net income in the first year affected by such adjustment, as well as the retained earnings in each year thereafter, prior to the year 2001. Moreover, because the first year affected by such adjustment could not have been prior to 1999 (because Delphi was not an independent company prior to 1999), and because the 2001 10-K was required to present income for 1999 and 2000, as well as for 2001, GM still would have been required to restate its net income for one of the years included in its 2001 10-K.

245. In its original 10-K for 2001, GM did not make any such restatement of income.
246. In short, under APB 20 ¶¶ 13, 30, & 36, and APB 9 ¶ 18, regardless of whether GM's giving of the credit to Delphi was a “subsequent event” to the spinoff, or an adjustment/correction of GM’s past accounting for the spinoff, either way, GM was required to report a charge to income, not merely retained earnings, and this GM failed to do.

(e) The Credit Given to Delphi Was Material

247. As The Wall Street Journal article noted, if, in the 10-K for 2001, the credit given to Delphi had been charged to operating income, earnings for the fourth quarter of 2001 would have been 22% lower. Clearly, investors would have viewed such a large difference in earnings as material. Therefore, because the 10-K for 2001 failed to report the giving of the credit as a charge to operating income, the statements in the 10-K for 2001, regarding income and earnings, were materially untrue.

E. GM FAILED TO TIMELY WRITE DOWN ITS INVESTMENT IN FUJI

248. In its 2005 second quarter financial statements, GM violated GAAP and made materially untrue statements regarding its income and assets, by failing to write-down its investment in Fuji Heavy Industries, Ltd. (“Fuji” or “FHI”).

1. Background

249. On April 12, 2000, as disclosed in GM’s 10-Q for the second quarter of 2000, GM purchased a 20% share of the Japanese car manufacturer, Fuji, for approximately $1.3 billion. With that purchase, GM became Fuji’s largest single shareholder. According to a joint press release issued by GM and Fuji prior to the purchase, dated December 10, 1999, “[t]he alliance agreement [between Fuji and GM] covers all aspects of the partners’ business in all regions of the world.” As reported by Japan Economic Newswire Plus, on May 29, 2000, Fuji hoped to increase its global sales “by utilizing the global sales network of General Motors Corp.”
2. **GAAP Requirements of the Equity Method of Accounting for Investments**

250. Under Financial Accounting Standards 115, “Accounting for Certain Investments in Debt and Equity Securities” (“FAS 115”) and Accounting Principles Board Opinions 18, “The Equity Method of Accounting for Investments in Common Stock” (“APB 18”), an investor who does not control its investee (e.g., because the investor owns 50% or less of the investee’s voting stock), and who, therefore, does not consolidate its results with those of the investee, is required to make certain disclosures regarding changes in the market value of the common stock held by the investor.

251. Under APB 18 ¶ 17, when such investors have “the ability to exercise significant influence over operating and financial policies of [the] investee” (because, for example, they hold a substantial percentage of the investee’s voting stock), such investors are able to use the “equity method” of accounting for their investment. The equity method somewhat reduces the investor’s disclosure obligations regarding changes in the market price of the investee’s stock. For example, under FAS 115 ¶¶ 4 & 13, investors who do not have the ability to exercise significant influence over their investee must report on their balance sheets any unrealized gains and losses from the securities they hold, in a separate component of shareholder’s equity. By contrast, under APB 18, there is no requirement that investors who do have the ability to exercise “significant influence” over their investee must report unrealized gains and losses on their balance sheets, if those gains or losses are only temporary.

252. Nevertheless, under APB 18 ¶19(h), even when using the “equity method,” “[a] loss in value of an investment which is other than a temporary decline should be recognized.” (emphasis added). Under the rules of double-entry bookkeeping, recognizing such a loss requires adjusting the income statement as well as the balance sheet, in the period of the loss.

253. Moreover, under APB 18 ¶19(h), “[e]vidence of a loss in value might include . . . inability of the investee to sustain an earnings capacity which would justify the carrying amount of
the investment.”

3. **GM’s Use of the “Equity Method” Regarding its Investment in Fuji**

254. As stated in GM’s 10-Q for the second quarter of 2000, GM’s investment in Fuji was accounted for by the “equity method” of accounting.

255. Under APB 18 ¶ 17,

> A[n] investment (direct or indirect) of 20% or more of the voting stock of an investee should lead to a presumption that in the absence of evidence to the contrary an investor has the ability to exercise significant influence over an investee.

(emphasis added).

256. At all relevant times, GM held at least 20% of Fuji’s stock, and, more importantly, GM was Fuji’s largest shareholder.

4. **Fuji’s Revision of its Business Plan**

257. As stated by GM in an 8-K, filed on October 5, 2005, “[a]t the time of GM’s initial investment in FHI and during most of the holding period since then, the book value of the FHI shares GM acquired has been in excess of the fair value of the underlying shares of common stock of FHI, as determined by trades on the Tokyo Stock Exchange.”

258. On May 12, 2005, Fuji announced a 52% year-on-year drop in net profit, and released a revised “Mid-Term Business Plan” (the “Revised Plan”). Historical figures in the Revised Plan showed that operating income had dropped substantially from the year 2002 to 2003, and again from 2003 to 2004, even while sales rose, each year, from 2002 to 2004. Moreover, the Revised Plan revised projected sales downward for each of the next two years, and revised projected net income downward by a total of 55% over the next two years.

5. **GM’s Materially Untrue Statements**

259. On July 20, 2005, GM filed two 8-Ks, which, together, presented GM’s financial results for the second quarter of 2005.

Neither the 8-Ks nor the 10-Q recorded any change on GM’s balance sheet—or anywhere else—regarding the value of GM’s investment in Fuji, nor any effect of such a change on GM’s income. Therefore, the balance sheet and income information in these 8-Ks and 10-Q were materially untrue, for the reasons explained below.

6. GM Has Admitted That It’s Statements Violated GAAP, and Were Materially Untrue

On October 5, 2005, before trading began, GM filed an 8-K stating:

GM’s interim consolidated financial statements for the period ended June 30, 2005, included in its Quarterly Report on Form 10-Q for that period, and the related financial information for that period filed on two Form 8-Ks dated July 20, 2005, should no longer be relied upon because GM is making an adjustment to the carrying value of its investment in the common stock of FHI owned by GM that was reflected in those reports. . . .

In May 2005, management of FHI formulated a business plan that indicated the company’s expectation of a decline in revenues and substantial reduction in future profits and cash flows in the near term from those levels comprehended in its previous business plan. In addition, GM’s expectations regarding synergies through its joint vehicle programs with FHI were being realized below the level that had been expected. GM has now determined that, as of the end of the second quarter, the value of its investment in the common stock of FHI was impaired on an other than temporary basis. The write-down due to this impairment is currently estimated to be between approximately $700 million and $800 million. GM intends to file an amended Form 10-Q for the quarter ended June 30, 2005, as soon as practicable, in order to reflect the adjustments that will be associated with this impairment. (emphasis added).

This statement is an admission that GM’s 8-Ks and 10-Q violated APB 18 ¶ 9(h), and were materially untrue, because they failed to recognize the impairment of GM’s investment in Fuji. This statement also is an admission that, as of May 2005, knowledge of Fuji’s Revised Plan, and knowledge of GM’s unrealized expectations regarding “synergies through GM’s joint vehicle programs with Fuji” compelled the conclusion that GM’s investment in Fuji had lost value on other than a temporary basis, and, thus, was impaired.

On March 28, 2006, GM filed a 10-Q/A (amended 10-Q) for the second quarter of 2005. In a note to the financial statements, titled “Restatement of Financial Statements,” the
10-Q/A stated that, as of June 30, 2005, GM had a 20.1% investment in Fuji, “which then had a book value of $1.5 billion.” The note went on to state:

At the time of GM’s initial investment in FHI and through the first quarter of 2005, the book value of the FHI shares had been in excess of the value of the underlying shares of common stock of FHI, as determined by trades on the Tokyo Stock Exchange. However, the carrying value amount had been considered recoverable based on GM’s periodic estimates of fair value that comprehended FHI’s future business plans and financial prospects. In May 2005, management of FHI formulated a new business plan, which indicated FHI’s expectation of a decline in revenues, profits and cash flows in the near term from those levels comprehended in previous plans.

GM has determined that, as of the second quarter, the value of the common stock of FHI was other than temporarily impaired and that the carrying value of the common stock [of] FHI should have been reduced to fair value of approximately $650 million, based on the closing price of FHI stock on the Tokyo Stock Exchange on June 30, 2005. . . . This correction had no effect on GM’s originally reported amounts of cash flows . . . (emphasis added).

264. In another note to the financial statements in the 10-Q/A, titled “Investment in Nonconsolidated Affiliates,” the 10-Q/A stated that “[t]he write-down [of GM’s investment in Fuji] due to this impairment was $788 million, after tax, included in cost of sales and other expenses.”

265. In the note titled “Restatement of Financial Statements,” the 10-Q/A also presented a restatement of GM’s net income for the second quarter of 2005. This restatement showed that GM had originally reported a loss of $286 million for the second quarter, and, now, after subtracting $788 million for the Fuji write-down, GM was reporting a loss of $987 million for the second quarter. Thus, as a result of the restatement, GM’s loss during the second quarter was now almost three and one half times larger than originally reported. Clearly, the original erroneous statement was of a size and kind that is material under GAAP, and material to investors.

266. Under APB 20 ¶¶ 31 & 36, only “the correction of an error in the financial statements of a prior period” is “reported as a prior period adjustment”; by contrast, “[a] change in an [accounting] estimate should not be accounted for by restating amounts reported in financial statements of prior periods.” Therefore, by restating GM’s financial results for the second quarter
of 2005, by stating that “as of the second quarter, the value of the common stock of FHI . . . should have been reduced to fair value of approximately $650 million,” and by referring to the restatement as a “correction,” GM admitted that the portions of the financial statements relating to net income and assets in GM’s original 10-Q, and in the 8-Ks filed on July 20, 2005, were violations of GAAP, and were materially untrue.

VI. DEFENDANTS’ MATERIALLY UNTRUE STATEMENTS AND OMISSIONS

A. FISCAL YEAR 2000

267. The Class period begins on April 13, 2000, when GM issued a release, signed by Defendant Bible, announcing GM’s financial results for the first quarter ended March 31, 2000, reporting net income of $1.8 billion, or $2.80 per share.


269. The first quarter 2000 10-Q contained a statement that the “accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information.”

270. On July 18, 2000, GM issued a press release, signed by Defendant Bible, announcing the Company’s second quarter earnings for the quarter ended June 30, 2000, in which it reported net income totaling $1.8 billion, and ICO totaling $1.751 billion for Q2.

271. On August 14, 2000, GM filed its 10-Q for the second quarter of 2000 covering the period ending June 30, 2000, signed by Defendant Bible. GM reported ICO of $1.751 billion,

272. The second quarter 2000 10-Q contained a statement similar to that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with generally accepted accounting principles for interim financial information.”

273. On October 12, 2000, GM issued a press release, signed by Defendant Bible, announcing the Company’s third quarter earnings for the quarter ended September 30, 2000, in which it reported net income totaling $829 million, and ICO totaling $829 million for Q3. “We're pleased that GMAC had record profits and GM's North American automotive operations generated continued strong results and posted improved net income during the third quarter compared with the same period last year,” said GM Chairman John F. Smith, Jr.

274. On November 14, 2000, GM filed its 10-Q for the third quarter of 2000 covering the period ending September 30, 2000, signed by Defendant Bible. GM reported ICO of $829 million, Net Income of $829 million, and Retained Earnings of $10.335 billion. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. GM omitted to separately report the $237 million payment from Delphi (for the cost of past recalls) as a component of income, and, in its MD&A, GM omitted to explain the effects of the $237 million payment from Delphi on trends in revenue, income, and liquidity.

275. The third quarter 2000 10-Q contained a statement similar to that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with generally accepted accounting principles for interim financial information.”

276. On January 17, 2001, GM issued a press release, signed by Defendant Bible, announcing the Company’s fourth quarter earnings for the quarter ended December 31, 2000, and
the Company’s annual earnings for the year ended December 31, 2000, in which it reported Year
2000 net income totaling $4.452 billion, including special items, and ICO totaling $3.639 billion.

277. On March 7, 2001, GM filed its 10-K for the year 2000 covering the period ending
December 31, 2000, signed by Defendants Bible, Devine, Wagoner, and Pfeiffer, among others. GM
reported ICO of $4.452 billion, Net Income of $4.452 billion, Retained Earnings of $10.119 billion,
pro forma (“Adjusted”) Income of $4.972 billion, and pro forma Earnings Per Share (“EPS”) of
$8.58. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent
Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy
Guarantee. GM omitted to separately report the $237 million payment from Delphi (for the cost of
past recalls) as a component of income, and, in the MD&A, GM omitted to explain the effects of
the $237 million payment from Delphi on trends in revenue, income, and liquidity.

278. The 2000 10-K also provided a section, titled “Responsibilities for Consolidated
Financial Statements”, signed by defendants Wagoner and Devine, which stated as follows:

The following consolidated financial statements of General Motors Corporation and
subsidiaries were prepared by management, which is responsible for their integrity
and objectivity. The statements have been prepared in conformity with accounting
principles generally accepted in the United States of America and, as such, include
amounts based on judgments of management.

***

It is management's conclusion that internal control at December 31, 2000 provides
reasonable assurance that the books and records reflect the transactions of the
companies and that established policies and procedures are complied with.

279. The 2000 10-K stated, in the MD&A, that the financial results contained therein
were prepared in accordance with GAAP and fairly presented the Company’s consolidated financial
condition and results from operations.

280. The 2000 10-K contained a letter, signed by Deloitte, titled the Independent
Auditor’s Report, which assured investors of the accuracy and completeness of the Company’s
financial statements (the “Independent Auditors’ Report”). The Deloitte Independent Auditor’s
Report stated, in part, the following:

Independent Auditors' Report

General Motors Corporation, its Directors, and Stockholders:

We have audited the Consolidated Balance Sheets of General Motors Corporation and subsidiaries as of December 31, 2000 and 1999, and the related Consolidated Statements of Income, Cash Flows, and Stockholders' Equity for each of the three years in the period ended December 31, 2000. Our audits also included the financial statement schedule listed at Item 14. These financial statements and the financial statement schedule are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of General Motors Corporation and subsidiaries at December 31, 2000 and 1999, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2000 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/DELOITTE & TOUCHE LLP
DELOITTE & TOUCHE LLP

Detroit, Michigan
January 17, 2001

The 2000 10-K also contained a “Consent of Independent Auditors” by Deloitte to the incorporation by reference of its Independent Auditors’ Report into certain of GM’s registration statements for securities.

281. GM’s year 2000 financial results were materially untrue for the following reasons:

● In each of the three 10-Qs and in the 10-K for the year 2000, the numbers for ICO
and Net Income were inflated due to improper recognition of supplier rebates.

- In each of the three 10-Qs and in the 10K for the year 2000, there was an omission to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.
- In each of the three 10-Qs and in the 10-K for the year 2000, the numbers for Retained Earnings were inflated because they were based on earnings from previous and current periods that had been inflated due to premature recognition of supplier rebates.
- In the third quarter 10-Q and in the 10-K for the year 2000, GM omitted to report separately the $237 million payment from Delphi as a component of income, and, in its MD&A, GM omitted to explain the effects of the $237 million payment on trends in revenue and liquidity.
- In the 10-K for the year 2000, pro forma ("Adjusted") Income and the pro forma EPS were overstated because GM did not remove the $237 million payment made by Delphi (for the cost of past recalls) from either of those items.
- Each untrue statement made in an earnings release that was similar to an untrue statement made in the 10-Q or 10-K following the earnings release was untrue for the same reason the statement in the 10-Q or 10-K was untrue.
- Each financial statement did not present fairly, in all material respects, GM’s financial position, results of operations, and cash flows at the end of the period covered, in conformity with GAAP, and the audits were not conducted in accordance with Generally Accepted Auditing Standards ("GAAS").

B. **FISCAL YEAR 2001**

282. On April 18, 2001, GM issued a press release, signed by Defendant Bible,
announcing the Company’s first quarter earnings for the quarter ended March 31, 2001, reporting net income totaling $237 million.


284. The first quarter 2001 10-Q contained a statement similar to that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with generally accepted accounting principles for interim financial information.”


287. The second quarter 2001 10-Q contained a statement similar to that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with generally accepted accounting principles for interim financial information.”

288. On October 18, 2001, GM issued a press release, signed by Defendant Bible, announcing the Company’s third quarter earnings for the quarter ended September 30, 2001, reporting net income as a loss of $368 million.

289. On November 13, 2001, GM filed its **10-Q for the third quarter of 2001** covering the period ending September 30, 2001, signed by Defendant Bible. GM reported Net Income as a
$368 million loss and Retained Earnings of $9.565 billion. In the Notes to the Consolidated
Financial Statements, under “Contingent Matters,” GM omitted to properly disclose the existence,
nature, and amount of the Delphi Legacy Guarantee.

290. The third quarter 2001 10-Q contained a statement similar to that in the first quarter
2000 10-Q that the consolidated financial statements “have been prepared in accordance with
generally accepted accounting principles for interim financial information.”

291. On January 16, 2002, GM issued a press release, signed by Defendant Bible,
announcing the Company’s fourth quarter earnings for the quarter ended December 31, 2001, as
well as earnings for the year ended December 31, 2001. GM reported net income for the quarter of
$255 million, and net income for the year, including special items, of $601 million. GM also reported
ICO for the fiscal year 2001 totaling $1.222 billion.

292. On February 25, 2002, defendants issued a release, signed by Defendant Bible,
announcing the Company’s goal of adding $10 billion to its balance sheet by improving cash flows.

293. Following publication of defendants’ release, GM shares rallied – trading to a high of
$55.80 – up over five percent in the single trading day. This sudden rise in the price of GM shares
amounted to a single day increase of over $1.5 billion in GM’s market capitalization.

294. On March 6, 2002, defendants raised $3.750 billion, by issuing preferred securities
and notes, including $1.150 billion aggregate principle amount 4.5% Series A debentures convertible
until March 6, 2032, and $2.6 billion aggregate principal amount 5.25% Series B debentures
convertible until March 6, 2032. The price of these preferred securities decreased and their yield
increased following defendants’ forced disclosure of the true state of GM’s business affairs.

295. On March 12, 2002, GM filed its 10-K for the year 2001 covering the period ending
December 31, 2001, signed by Defendants Bible, Devine, Wagoner, Lafley, and Pfeiffer, among
others. GM reported ICO of $601 million, Net Income of $601 million, Retained Earnings of $9.463
billion, year 2000 pro forma (“Adjusted”) Income of $4.972 billion, and year 2000 pro forma EPS of
$6.80. In the Notes to the Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. A statement, signed by Defendants Wagoner and Devine, said, “It is management’s conclusion that internal control at December 31, 2001, provides reasonable assurance that the books and records reflect the transactions of the companies and that established policies and procedures are complied with.”

296. The 2001 10-K included a statement, “Responsibilities for Consolidated Financial Statements,” signed by defendants Wagoner and Devine, which was essentially the same as the “Responsibilities for Consolidated Financial Statements,” in the 2000 10-K. Furthermore, under the heading “Significant Accounting Principles,” the 2001 Form 10-K reiterated that “[t]he consolidated financial statements of GM are prepared in conformity with accounting principles generally accepted in the United States.”

297. The 2001 10-K contained the Independent Auditors’ Report, signed by Deloitte, which certified the purported veracity and completeness of the Company’s financial and operational results, certified that the financials complied with GAAP and that the audit complied with GAAS, and was essentially the same as the Independent Auditor’s Report described at ¶ 280, above. The 2001 10-K also contained a “Consent of Independent Auditors” by Deloitte to the incorporation by reference of its Independent Auditors’ Report into certain of GM’s registration statements for securities.

298. GM’s year 2001 financial results were materially untrue for the following reasons:

- In each of the three 10-Qs and in the 10-K for the year 2001 the numbers for ICO and Net Income were inflated due to improper recognition of supplier rebates, and in the 2001 10-K, the Net Income from the year 2001 was overstated because GM did not subtract the $85 million credit given to Delphi.
In each of the three 10-Qs and in the 10-K for the year 2001 the numbers for Retained Earnings were inflated because they were based on earnings from previous and current periods that had been inflated due to premature recognition of supplier rebates in prior periods.

In each of the three 10-Qs and in the 10-K for the year 2001 there was an omission to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.

In the 2001 10-K, pro forma (“Adjusted”) Income for the year 2000, and pro forma EPS for the year 2000 were both overstated, because GM did not remove the $237 million payment made by Delphi (for the cost of past recalls) from either of those items.

In the Net Income numbers for the year 2000 that were reported in the 10-K for the year 2001, GM omitted to separately report the $237 million dollar payment from Delphi (for the cost of past recalls) as a component of Net Income.

In the 10-K for the year 2001, the statement that there were “no significant deficiencies or material weaknesses” in GM’s “disclosure controls” was untrue because there was a material weakness in the controls for accounting for supplier credits.

Each untrue statement made in an earnings release that was similar to an untrue statement made in the 10-Q or 10-K following the earnings release was untrue for the same reason the statement in the 10-Q or 10-K was untrue.

Each financial statement did not present fairly, in all material respects, GM’s financial position, results of operations, and cash flows at the end of the period covered in conformity with GAAP, and the audits were not conducted in accordance
C. **FISCAL YEAR 2002**

299. On April 16, 2002, GM issued a release, signed by Defendant Bible, announcing its financial results for the first quarter ended March 31, 2002. The release reported net income of $228 million, or $0.57 per share, and retained earnings of $9.387 billion.

300. That same day, April 16, 2002, during a conference call for analysts and investors, defendant Devine stated:

   A big piece of the story in the first quarter was operating cash flow, very strong, and our improvement in that liquidity. That was the plan, and frankly, we're achieving that plan.

   ** ***

   I think as we've been talking over the last couple of months, there's three key drivers we've been working very hard on to improve the value equation at General Motors. Improving our product performance, improving our financial performance, in particular our earnings and cash flow, and lastly, improving our balance sheet strength. We set a target this year of generating about $10 billion of capital improvement to strengthen our balance sheet.

301. Shares of GM rallied on this announcement and Devine’s comments, trading from a close of $61.10 per share on April 15, 2002 to a close of $64.05 the following day. This share increase in the price of GM stock added over $1.5 billion to the Company’s market capitalization in a single trading day.


303. The 1st quarter 2002 10-Q also stated:
The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information. In the opinion of management, all adjustments (consisting of only normal recurring items), which are necessary for a fair presentation have been included.

304. On July 16, 2002, GM published its second quarter 2002 press release, signed by Defendant Bible, touting the Company’s financial results for the second quarter ended June 30, 2002, reporting that “earnings nearly doubled” as compared with the same period in the prior year and that earnings, excluding special items, were $1.5 billion, or $2.63 per share. GM also reported net income totaling $1.3 billion, or $2.43 per share, and said:

Earlier this year, GM set a goal of raising $10 billion in cash in 2002. As of June 30, 2002, GM has nearly achieved this annual objective by generating $4.8 billion in cash from automotive operations and by executing $4.6 billion in retail and convertible debt offerings.

305. On the same day, in a conference call with analysts and investors, Devine stated:

Turning to Page 3, you can see the numbers for both the second quarter of last year and the second quarter of this year. We have started with reported net income, you can see that $1.448 billion, $1.292 billion including use, 253 and 243 respectively. We had one special item, this end of life vehicle charge that I mentioned earlier. $55 million. GM, ex-use, is $1,503, 263,000, total GM $[inaudible] that compares without use last year of $1.37 and $1.26. So, a nice improvement from the second quarter of last year.


307. The second quarter 2002 10-Q also contained a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”
308. The 10-Q also stated:

On August 14, 2002, the Chief Executive Officer and Chief Financial Officer of GM delivered to the U.S. Securities and Exchange Commission (the “Commission”) their unqualified attestations, signed under oath concerning all covered reports filed by the Corporation under the Securities Exchange Act of 1934, as amended, as called for by the order of the Commission dated June 27, 2002. In addition, on August 14, 2002, the Chief Executive Officer and Chief Financial Officer of GM complied with the certification requirement of 18 U.S.C. section (ss.) 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, by submitting such certifications by correspondence to the Commission. These certifications and attestations are available to the public in separate Forms 8-K filed with the Commission on August 14, 2002.

309. Also, On August 14, 2002, GM also filed two Form 8-K’s with the SEC, one containing an attestation from Wagoner, and the other from Devine, each titled “Statement Under Oath of Principal Executive Officer and Principal Financial Officer Regarding Facts and Circumstances Relating to Exchange Act Filings,” each regarding the attester’s compliance with the Sarbanes-Oxley Act of 2002 (“SOX”):

(1) To the best of my knowledge, based upon a review of the covered reports of General Motors Corporation (GM), and, except as corrected or supplemented in a subsequent covered report:

   – no covered report contained an untrue statement of a material fact as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed); and

   – no covered report omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report (or in the case of a report on Form 8-K or definitive proxy materials, as of the date on which it was filed).

(2) I have reviewed the contents of this statement with GM's audit committee.

(3) In this statement under oath, each of the following, if filed on or before the date of this statement, is a “covered report”:

Annual Report on Form 10-K for the year ended December 31, 2001 of GM;

   – all reports on Form 10-Q, all reports on Form 8-K and all definitive proxy materials of GM filed with the Commission subsequent to the filing of the Form 10-K identified above; and
any amendments to any of the foregoing.

(emphasis added).

310. On August 14, 2002, GM also filed with the SEC a document titled “Certification Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes Oxley Act of 2002”, in which Wagoner certified:

In connection with the Quarterly Report of General Motors Corporation (the “Corporation”) on Form 10-Q for the period ending June 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, G. Richard Wagoner, Jr., President and Chief Executive Officer of the Corporation, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

(“SOX Section 906 Certification”) (emphasis added). GM also filed a similar certification, virtually identical in sum and substance, to the one above, certified by Devine.

311. On October 15, 2002, GM issued a release, signed by Defendant Bible, announcing the Company’s financial results for the third quarter ended September 30, 2002, including earnings before special items of $696 million, or $1.24 per share.

312. Following publication of the Company’s third quarter results, the same day, October 15, 2002, Moody’s affirmed GM’s and GMAC’s investment grade credit ratings.

313. On October 31, 2002, debt analysts at Fitch published a report on GM that also affirmed the Company’s investment grade credit rating.

Financial Statements, under “Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.

315. The second quarter 2002 10-Q also contained a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

316. The second quarter 2002 10-Q also made the following statement about controls and procedures:

Within 90 days prior to the date of this report, the Corporation's Chief Executive Officer and Chief Financial Officer evaluated, with the participation of GM's management, the effectiveness of the Corporation's disclosure controls and procedures. Based on the evaluation, which disclosed no significant deficiencies or material weaknesses, the Corporation's Chief Executive Officer and Chief Financial Officer concluded that the Corporation's disclosure controls and procedures are effective. There were no significant changes in the Corporation's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation.

317. SOX Section 906 Certifications by Wagoner and Devine were filed as exhibits to the third quarter 10-Q. In addition, in accordance with Section 302 of SOX, the 10-Q contained certifications by Wagoner and Devine, each of which certified, in relevant part:

1. I have reviewed this quarterly report on Form 10-Q of General Motors Corporation;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

* * * *
b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

(“SOX Section 302 Certification”) (emphasis added).

318. On January 16, 2003, defendants issued a release, signed by Defendant Bible, announcing 2002 earnings of $1.7 billion, or $3.35 per diluted share, on “record” revenues of $186.8 billion.

GM presents its primary financial statements on a fully consolidated basis. Transactions between businesses have been eliminated in the Corporation's consolidated financial statements. These transactions consist principally of borrowings and other financial services provided by Financing and Insurance Operations (FIO) to Automotive, Communications Services, and Other Operations (ACO).

320. The 2002 10-K also included a statement on “Controls and Procedures” essentially the same as the one in the third quarter 2002 10-Q.

321. The 2002 Form 10-K also contained a section titled “Critical Accounting Estimates” which stated, in pertinent part:

Accounting policies are integral to understanding this MD&A. The consolidated financial statements of GM are prepared in conformity with accounting principles generally accepted in the United States, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the periods presented.

322. The 2002 10-K contained the Independent Auditors’ Report, signed by Deloitte, which certified the purported veracity and completeness of the Company’s financial and operational results, certified that the financials complied with GAAP and that the audit complied with GAAS, and was essentially the report described at ¶ 280, above. The 2002 10-K also contained a “Consent of Independent Auditors” by Deloitte to the incorporation by reference of its Independent Auditors’ Report into certain of GM’s registration statements for securities.

323. SOX Section 302 Certifications by Wagoner and Devine were included in the 10-K; SOX Section 906 Certifications by Wagoner and Devine were attached as exhibits.

324. GM’s year 2002 financial results were materially untrue for the following reasons:

- In each of the three 10-Qs and in the 10-K for the year 2002 the numbers for ICO and Net Income were inflated due to improper recognition of supplier rebates.
- In each of the three 10-Qs and in the 10-K for the year 2002 the numbers for Retained Earnings were inflated because they were based on earnings from previous and current periods that had been inflated due to premature recognition of supplier...
rebates in prior periods.

- In each of the three 10-Qs and in the 10K for the year 2002 there was an omission to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.

- In the 10-K for the year 2002, GM overstated pro forma (“Adjusted”) Income for 2000 and pro forma EPS for 2000 because the $237 million dollar payment from Delphi (for the cost of past recalls) was not removed from either of those items.

- In the 10-K for the year 2002, GM overstated the ICO and Net Income from the year 2001 because GM failed to subtract the $85 million credit given to Delphi.

- In the 10-K for the year 2002, consolidated Net Cash Provided by Operating Activities was overstated because GM mischaracterized cash flow relating to car sales made on credit to dealers as investing cash flow, and mischaracterized cash flow from sales and repayments related to certain mortgage loans as operating cash flow; in each of the 10-Qs, Net Cash Provided by Operating Activities of the Financial and Insurance Business was overstated for the same reasons.

- In the 10-K for the year 2002, contrary to the statement that “GM presents its primary financial statements on a fully consolidated basis,” GM’s misclassification of cash flows had the effect of preserving, rather than eliminating, the effects of inter-division transactions.

- In the third quarter 10-Q and in the 10-K for the year 2002, the statement that there were “no significant deficiencies or material weaknesses” in GM’s “disclosure controls” was untrue because there was a material weakness or significant deficiency in the controls for accounting for supplier credits, as well as a material weakness regarding classification of cash flows relating to mortgage loans.
Each untrue statement made in an earnings release that was similar to an untrue statement made in the 10-Q or 10-K following the earnings release was untrue for the same reason the statement in the 10-Q or 10-K was untrue.

Each financial statement did not present fairly, in all material respects, GM's financial position, results of operations, and cash flows at the end of the period covered, in conformity with GAAP, and the audits were not conducted in accordance with GAAS.

D. **FISCAL YEAR 2003**

325. On April 15, 2003, GM issued a release, signed by Defendant Bible, announcing the Company's financial results for the first quarter ended March 31, 2003. Specifically, defendants reported net income of $1.5 billion, or $2.71 per share. With respect to cash flows, the April 15, 2003 release stated, in pertinent part:

> “The first quarter financial results reflect solid contributions from both our automotive operations and our finance unit,”

> “GM turned in a strong performance overall during the first quarter,” GM President and Chief Executive Officer Rick Wagoner said.

326. On April 19, 2003, S&P issued a report in which it supported the Company’s investment grade debt rating based, in part, on what it stated was “overall strong earnings and cash flow in 2002.” S&P noted that the Company’s ability to generate $7.8 billion in free cash flow (net cash flow from operating activities less capital spending) was “impressive.”

included a statement, substantially like the one in the 2002 10-K, stating that the financial statements were being presented on a “fully consolidated basis,” and included a statement on “Controls and Procedures” essentially the same as the one in the third quarter 2002 10-Q.

328. The first quarter 2003 10-Q also contained a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

329. The first quarter 2003 10-Q also included SOX Section 302 Certifications by Wagoner and Devine; SOX Section 906 Certifications by Wagoner and Devine were attached as exhibits.

330. Following publication of the Company’s Form 10-Q, on May 8, 2003, Moody’s published a report that confirmed GM and GMAC’s investment grade rating.

331. As described immediately below, between May 16, 2003 and July 3, 2003, defendants raised more than $14.3 billion, by issuing preferred securities and notes.8 The price of these securities decreased and their yield increased following defendants’ subsequent disclosure of the true state of GM’s business affairs.


8 For this calculation, European debt offering amounts have been converted to U.S. dollars using the exchange on the date of issue, which was 1.15. In some of these offerings, amounts actually issued were somewhat larger than the amount stated in the prospectus.
The February 2003 Registration Statement incorporated by reference GM’s 2001 10-K, the 2002 10-Qs and 10-K, and the 10-Q for the first quarter of 2003, each of which was materially untrue for the reasons stated herein. The February 2003 Registration Statement also contained the Independent Auditors’ Consent of Deloitte, dated February 28, 2003, which consented to the incorporation by reference of the Consolidated Balance Sheets for GM and its subsidiaries as of December 31, 2001, and 2000; the Consolidated Statements of Income, Cash Flows, and Stockholders’ Equity appearing in the GM’s 2001 10-K; and consented to Deloitte’s being referred to under the heading “Experts” in the prospectuses. The February 2003 Registration Statement is also deemed to have incorporated everything contained in, or incorporated by reference into, the May 16, 2003, Prospectus.

The May 16, 2003, Prospectus incorporated by reference GM’s 2002 10-K, and the 10-Q for the first quarter of 2003, each of which was materially untrue for the reasons stated herein.


The February 2003, Registration Statement incorporated by reference GM’s 2001 10-K, the 2002 10-Qs and 10-K, and the 10-Q for the first quarter of 2003, each
of which was materially untrue for the reasons stated herein. The February 2003, Registration Statement also contained the Independent Auditors’ Consent of Deloitte, dated February 28, 2003, which consented to the incorporation by reference of the Consolidated Balance Sheets for GM and its subsidiaries as of December 31, 2001 and 2000; the Consolidated Statements of Income, Cash Flows, and Stockholders’ Equity appearing in the GM’s 2001 10-K; and to Deloitte’s being referred to under the heading “Experts” in the prospectuses. The February 2003, Registration Statement is also deemed to have incorporated everything contained in, or incorporated by reference into, the May 21, 2003, Prospectus.

- The May 21, 2003, Prospectus incorporated by reference GM’s 2002 10-K, and the 2003 first quarter 10-Q, each of which was materially untrue for the reasons stated herein. The May 21, 2003, Prospectus also included Net Income figures for 2001, 2002, and for the first three quarters of 2003, that were untrue for the same reasons that Net Income in the 10-Qs and 10-Ks for each of those periods was untrue.

334. On June 27, 2003, GM filed a Form 424b5 “Supplemental Prospectus,” (the “June 27, 2003, Prospectus”) for an offering of $4 billion of 6.25% GM Series C convertible debentures due June 27, 2033 (the “June 27, 2003, Series C Offering”). The June 27, 2003, prospectus supplemented and was part of a prospectus dated June 9, 2003, and, along with the June 9, 2003, Prospectus, was part of a Form S-3 Shelf Registration Statement filed by GM on June 9, 2003, (the “June 2003 Registration Statement”). The June 2003 Registration Statement was signed by Defendants Bible, Borst, Devine, Wagoner, Lafley, Laskawy, and Pfeiffer.

- The June 2003 Registration Statement incorporated by reference GM’s 2002 10-
K and the 10-Q for the first quarter of 2003, each of which was materially untrue for the reasons stated herein. The June 2003 Registration Statement also contained the Independent Auditors’ Consent of Deloitte, which was similar in sum and substance to the consent in the February 28, 2003, Registration Statement, detailed in ¶ 332 herein. The June 2003 Registration Statement is also deemed to have incorporated everything contained in, or incorporated by reference into, the June 27, 2003, Prospectus.

The June 27, 2003, Prospectus incorporated by reference GM’s 2002 10-K, and the 2003 first quarter 10-Q, each of which was materially untrue for the reasons stated herein. The June 27, 2003, Prospectus also included Net Income figures for the years 2001 and 2002 that were untrue for the same reasons that Net Income in the 10-Qs and 10-Ks for each of those periods was untrue.

On June 30, 2003, GM filed a Form 424b5 “Supplemental Prospectus,” (the “June 30, 2003, Prospectus”) for an offering of: (1) $1 billion of 7.125% GM Senior Notes due 2013, (2) $1.25 billion of 8.25% Senior Debentures due 2023, and (3) $3 billion of 8.375% Senior Debentures due 2033 (the “June 30, 2003, Offering of Senior Notes and Senior Debentures”). The June 30, 2003, Prospectus supplemented and was part of a prospectus dated June 9, 2003, and, along with the June 9, 2003, prospectus, was part of a Form S-3 Shelf Registration Statement filed by GM on June 9, 2003, (the “June 2003 Registration Statement”). The June 2003 Registration Statement was signed by Defendants Bible, Borst, Devine, Wagoner, Lafley, Laskawy, and Pfeiffer.

The June 2003, Registration Statement incorporated by reference GM’s 2002 10-K and the 10-Q for the first quarter of 2003, each of which was materially untrue for the reasons stated herein. The June 2003 Registration Statement also contained the independent auditor’s consent of Deloitte, which was similar in
sum and substance to the consent in the February 28, 2003, Registration Statement, detailed in ¶ 332 herein. The June 2003 Registration Statement is also deemed to have incorporated everything contained in, or incorporated by reference into, the June 30, 2003, Prospectus.

○ The June 30, 2003, Prospectus incorporated by reference GM’s 2002 10-K, and the 2003 first quarter 10-Q, each of which was materially untrue for the reasons stated herein. The June 30, 2003, Prospectus also included Net Income figures for the years 2001 and 2002 that were untrue for the same reasons that Net Income in the 10-Qs and 10-Ks for each of those periods was untrue.

336. On July 1, 2003, GM issued a prospectus (the “July 1, 2003, Prospectus”) for a purportedly foreign offering of €1 billion of 7.25% Senior Notes due July 3, 2013, and €1.5 billion of 8.375% Senior Notes due July 5, 2033 (the “July 1, 2003, Notes Offering”).

○ The July 1, 2003, Prospectus incorporated by reference GM’s 2002 10-K, and the 2003 first quarter 10-Q, which were untrue for the same reasons the 10-K and 10-Qs for each of those periods was untrue.

○ The July 1, 2003, Prospectus also contained the independent auditor’s consent of Deloitte, which was similar in sum and substance to the consent included in the February 28, 2003, Registration Statement. The July 1, 2003, Prospectus contained mostly identical material information to the June 27, 2003, Prospectus and the June 30, 2003, Prospectus.

337. On July 17, 2003, GM issued a release, signed by Defendant Bible, announcing the Company’s financial results for the second quarter ended June 30, 2003, reporting net income of $901 million, or $1.58 per share. This release also stated, “[t]hese results clearly demonstrate the benefits of our global portfolio of businesses, ranging from our core automotive operations in all
four regions of the world, to vehicle financing and mortgage operations.

338. On August 6, 2003, Lehman Brothers increased its rating on GM from “underweight” to “equal rate” citing better-than-expected cash flow and earnings.

339. On August 8, 2003, GM filed its 10-Q for the second quarter of 2003, covering the period ending June 30, 2003, signed by Defendant Bible. GM reported Net Income of $901 million for the three months ended June 30, 2003, Retained Earnings of $11.855 billion, and consolidated Net Cash Provided by Operating Activities of $13.079 billion for the six months ended June 30, 2003. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. It included a statement, substantially like the one in the 2002 10-K, stating that the financial statements were being presented on a “fully consolidated basis.” The 10-Q also contained a statement similar to the statement in the third quarter 2002 10-Q that there were “no significant deficiencies or material weaknesses” in GM’s “disclosure controls.”

340. The second quarter 2003 10-Q also contained a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

341. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the second quarter 2003 10-Q.

342. On October 15, 2003, GM issued a release, signed by Defendant Bible, announcing the Company’s financial results for the third quarter ended September 30, 2003. This release reported net income of $425 million, or $.79 per share and boasted that the Company would exceed its original full-year 2003 earnings target of $5.00 per share.

343. On November 13, 2003, GM filed its 10-Q for the third quarter of 2003, covering the period ending September 30, 2003, signed by Defendant Bible. GM reported Net Income of
$425 million for the three months ended September 30, 2003, Retained Earnings of $12.0 billion, and consolidated Net Cash Provided by Operating Activities of $10.299 billion for the nine months ending September 30, 2003. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. The 10-Q included a statement, substantially like the one in the 2002 10-K, stating that the financial statements were being presented on a “fully consolidated basis.” The 10-Q also contained a statement similar to the statement in the 2002 10-K that there were “no significant deficiencies or material weaknesses” in GM’s “disclosure controls.”

344. The third quarter 2003 10-Q also contained a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

345. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the third quarter 2003 10-Q.

346. On January 20, 2004, GM issued a release, signed by Defendant Bible, announcing the Company’s financial results for the fourth quarter and full-year ended December 31, 2003, reporting “GM Earns $3.8 Billion, or $7.14 Per Share in 2003.” This release stated:

GM’s strong cash performance enabled the company to contribute a total of $18.5 billion to its U.S. pension plans and $3.3 billion to the Voluntary Employees’ Beneficiary Associated (“VEBA”) Trust for retiree health-care benefits in 200....

347. Following publication of GM’s release, shares of the Company continued to trade at artificially inflated levels. On January 21, 2004, shares of the Company traded to a close of over $54.00 per share.

Retained Earnings of $12.752 billion, consolidated Net Cash Provided by Operating Activities of $7.6 billion, and 2001 Net Income of $601 million. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. The 10-K included a statement, substantially like the one in the 2002 10-K, stating that the financial statements were being presented on a “fully consolidated basis.”

349. The 2003 Form 10-K also included a discussion of “Critical Accounting Estimates” essentially the same as the one in the 2002 10-K.

350. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the 2003 10-K.

351. The 2003 10-K also contained a section titled “Controls and Procedures”, which included the following statement:

The Corporation maintains disclosure controls and procedures designed to ensure that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the specified time periods. As of the end of the period covered by this report, the Corporation's Chief Executive Officer and Chief Financial Officer evaluated, with the participation of GM's management, the effectiveness of the Corporation's disclosure controls and procedures. Based on the evaluation, which disclosed no significant deficiencies or material weaknesses, the Corporation's Chief Executive Officer and Chief Financial Officer concluded that the Corporation's disclosure controls and procedures are effective. There were no changes in the Corporation's internal control over financial reporting that occurred during the Corporation's most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Corporation's internal control over financial reporting.

352. The 2003 10-K contained an Independent Auditors’ Report, signed by Deloitte, which certified the purported veracity and completeness of the Company’s financial and operational results, certified that the financials complied with GAAP and that the audit complied with GAAS, and was essentially the same as the report described at ¶ 280, above. The 2003 10-K also contained a
“Consent of Independent Auditors” by Deloitte to the incorporation by reference of its
Independent Auditors’ Report into certain of GM’s registration statements for securities.

353. GM’s year 2003 financial results were materially untrue for the following reasons:

- In each of the three 10-Qs and in the 10-K for the year 2003 the numbers for
  Retained Earnings were inflated because they were based on earnings from previous
  and current periods that had been inflated due to premature recognition of supplier
  rebates in prior periods.

- In each of the three 10-Qs and in the 10K for the year 2003 there was an omission
  to properly disclose the existence, nature, and amount of the Delphi Legacy
  Guarantee.

- In the 10-K for the year 2003, GM overstated the Net Income from the year 2001
  because GM failed to subtract the $85 million credit given to Delphi.

- In each of the three 10-Qs and in the 10-K for the year 2003, consolidated Net Cash
  Provided by Operating Activities was overstated because GM mischaracterized cash
  flow relating to car sales made on credit to dealers as investing cash flow, and
  mischaracterized cash flow from sales and repayments related to certain mortgage
  loans as operating cash flow.

- In each of the three 10-Qs and in the 10-K for the year 2003, contrary to the
  statement that “GM presents its primary financial statements on a fully consolidated
  basis,” GM’s misclassification of cash flows had the effect of preserving, rather than
  eliminating, the effects of inter-division transactions.

- In each of the 10-Qs and in the 10-K for the year 2003, the statement that there were
  “no significant deficiencies or material weaknesses” in GM’s “disclosure controls,”
  and in the 2003 10-K, the statement that “disclosure controls and procedures are
effective,” all were untrue because there was a material weakness or significant
deficiency in the controls for accounting for supplier credits, as well as a material
weakness regarding classification of cash flows relating to mortgage loans.

- Each untrue statement made in an earnings release that was similar to an untrue
  statement made in the 10-Q or 10-K following the earnings release was untrue for
  the same reason the statement in the 10-Q or 10-K was untrue.

- Each financial statement did not present fairly, in all material respects, GM's
  financial position, results of operations, and cash flows at the end of the period
  covered, in conformity with GAAP, and the audits were not conducted in
  accordance with GAAS.

E. **FISCAL YEAR 2004**

354. On April 20, 2004, GM issued a release, signed by Defendant Bible, announcing
GM's financial results for the first quarter ended March 31, 2004, reporting earnings of $1.3 billion,
or $2.25 per share, and net income totaling $1.28 billion.

355. On April 26, 2004, Lehman Brothers raised its rating on GM from “Equal Weight”
to “Overweight,” stating that it expected GM’s earnings and cash flow to remain strong, and raised
its price target to $57 from $54.

356. On May 6, 2004, GM filed its **10-Q for the first quarter of 2004**, covering the
period ending March 31, 2004, signed by Defendant Bible. GM reported ICO of $1.280 billion and
Net Income as $1.280 billion, Retained Earnings of $13.750 billion, and consolidated Net Cash
Provided by Operating Activities of $1.098 billion. In the Notes to the Financial Statements, under
“Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature,
and amount of the Delphi Legacy Guarantee. The 10-Q included a statement, substantially like the
one in the 2002 10-K, stating that the financial statements were being presented on a “fully
consolidated basis.” The 10-Q also contained a statement similar to the statement in the 2002 10-K
that there were “no significant deficiencies or material weaknesses” in GM’s “disclosure controls.”

357. The first quarter 2004 10-Q also contained statements regarding GM’s Critical Accounting Estimates, essentially the same those filed in the 2002 10-K. The 10-Q also contained a statement essentially the same as the one in the 2003 10-K that “disclosure controls and procedures are effective,” and there are “no significant deficiencies or material weaknesses.”

358. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the first quarter 2004 10-Q.

359. The first quarter 2004 10-Q contained a statement similar to that in the first quarter 2000 10-Q that GM’s consolidated financial statements “are prepared in conformity with GAAP.”

360. On June 24, 2004, defendants raised $720 million, by issuing 7.50% preferred securities maturing on July 1, 2044, bringing the total amount of debt issued by GM during the Class Period to more than $22.7 billion.

361. On June 24, 2004, GM filed a Form 424b5 “Supplemental Prospectus,” (the “June 24, 2004, Prospectus”) for a $650 million offering of 7.50% GM Senior Notes due July 1, 2044 (the “June 24, 2004, Notes Offering”). The June 24, 2004, Prospectus supplemented and was part of a prospectus dated September 5, 2003, and, along with the September 5, 2003, prospectus, was part of a Form S-3 Shelf Registration Statement filed by GM on September 5, 2003, as amended on March 18, 2004, (the “September 2003 Registration Statement”). The September 2003 Registration Statement was signed by Defendants Borst and Wagoner.

- The September 2003 Registration Statement incorporated by reference GM’s 2002 10-K, the 10-Qs for the first and second quarter of 2003, the 2003 10-K, and the 10-Q for the first quarter of 2004, each of which was materially untrue for the reasons stated herein. The September 2003 Registration Statement also included an Independent Auditors’ Consent signed by Deloitte, consenting to the
incorporation by reference of Deloitte’s Independent Auditors’ Report
previously included in GM’s 2002 10-K, and consenting to Deloitte’s being
referred to under the heading “Experts” in the Prospectuses under the
Registration Statement. The September 2003 Registration Statement is also
deemed to have incorporated everything contained in, or incorporated by
reference into, the June 24, 2004, Prospectus.

- The June 24, 2004, Prospectus incorporated by reference GM’s 2003 10-K, and
the 2004, first quarter 10-Q, each of which was materially untrue for the reasons
stated herein.

362. On July 21, 2004, GM issued a release, signed by Defendant Bible, announcing
financial results for the second quarter ended June 30, 2004, reporting earnings of $1.3 billion, or
$2.36 per share, and stating that for the third quarter of 2004, GM expects to earn approximately
$0.75 to $1.00 per share, excluding special items and at current dilution level, and that GM’s
2004-calendar-year earnings estimate remains unchanged at approximately $7.00 per share, excluding
special items and at current dilution levels.

363. On August 5, 2004, GM filed its 10-Q for the second quarter of 2004, covering the
period ending June 30, 2004, signed by Defendant Bible. GM reported ICO of $1.341 billion and
Net Income of $1.341 billion, Retained Earnings of $14.809 billion, and consolidated Net Cash
Provided by Operating Activities of $7.599 billion for the six months ending June 30, 2004. In the
Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,”
GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.
The 10-Q included a statement, substantially like the one in the 2002 10-K, stating that the financial
statements were being presented on a “fully consolidated basis.”

364. The second quarter 2004 10-Q also contained statements regarding GM’s Critical
Accounting Estimates, essentially the same as in the 2002 10-K, and regarding Disclosure Controls,
The Corporation maintains disclosure controls and procedures designed to ensure that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the specified time periods. GM's CEO and CFO, after evaluating the effectiveness of GM's disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this report, have concluded that based on the evaluation of these controls and procedures required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15, that GM's disclosure controls and procedures were effective. There were no changes in the Corporation's internal control over financial reporting that occurred during the last fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Corporation's internal control over financial reporting.

365. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the second quarter 2004 10-Q.

366. On October 14, 2004, GM issued a release, signed by Defendant Bible, announcing financial results for the third quarter ended September 30, 2004, reporting net income of $440 million, and earnings of $.78 per share.

367. At about the same time, Moody's announced that it was reviewing its Baa1 long-term rating of GM for possible downgrade. Balancing GM's weaknesses against its strengths, Moody's noted that "[t]he company's liquidity is sound," and that "GM has demonstrated exceptional cash generating capacity during the past three years," including "a sustainable dividend received from GMAC."

were being presented on a “fully consolidated basis.” The 10-Q also contained a statement essentially the same as the statement in the 2003 10-K that “the corporation’s disclosure controls and procedures are effective.”

369. The third quarter 2004 10-Q contained statements regarding the Company’s Critical Accounting Estimates essentially the same as those in the 2002 and 2003 10-Ks, including a statement that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

370. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the third quarter 2004 10-Q.

371. On January 13, 2005, GM issued a release that outlined the Company’s objectives and provided guidance for 2005, stating, in pertinent part, the following:

   GM Outlines 2005 Business Objectives
   2005 earnings per share target is $4.00 - $5.00
   Solid GMAC earnings expected to be sustained
   Rising health-care costs remain a challenge

372. On January 19, 2005, GM issued a release, signed by Defendant Bible, announcing financial results for the Company’s fourth quarter and full year 2004, ended December 31, 2004. This release reported “record” revenues of $193 billion and the “10th Year of Net Income Growth,” in addition to stating, in pertinent part, the following:

   General Motors Corp. (NYSE: GM) today reported adjusted 2004 earnings from continuing operations of $3.6 billion, or $6.40 per diluted share, led by record earnings from financial services and a 12-percent improvement in automotive earnings. These results, which were in line with GM’s original guidance, compare to earnings of $3.2 billion, or $5.62 per share, in 2003. Adjusted revenue rose 4.5 percent to a record $193 billion.

   Consolidated net income for 2004, including special items, totaled $3.7 billion, or $6.51 per share, compared with $3.8 billion, or $7.14 per share, in 2003.
Fourth Quarter

GM’s adjusted earnings from continuing operations totaled $569 million or $1.01 per share in the fourth quarter of 2004, down from $838 million or $1.47 per share in the fourth quarter of 2003. Including special items and discontinued operations, GM reported net income of $630 million, or $1.11 per share in the fourth quarter of 2004, down from $1.0 billion or $2.13 per share in the year-ago period. Adjusted revenue rose 4.7 percent to $51.2 billion.

373. On March 16, 2005, GM filed its 10-K for the year 2004, covering the period ending December 31, 2004, signed by Defendants Bible, Borst, Devine, Wagoner, Lafley, Laskawy, and Pfeiffer, among others. GM reported ICO of $2.805 billion and Net Income of $2.805 billion, Retained Earnings of $14.428 billion, and consolidated Net Cash Provided by Operating Activities of $13.061 billion. In the Notes to the Consolidated Financial Statements, under “Commitments and Contingent Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee. The 10-K also contained a statement essentially the same as in the second quarter 2004 10-Q that “GM’s disclosure controls and procedures were effective.”

374. The 2004 Form 10-K also included a discussion of “Critical Accounting Estimates” essentially the same as the one in the 2002 10-K.

375. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the 2004 10-K.

376. The 2004 10-K contained the Independent Auditors’ Report, signed by Deloitte, which certified the purported veracity and completeness of the Company’s financial and operational results, certified that the financials complied with GAAP and that the audit complied with GAAS, and was essentially the report described at ¶ 280, above. The 2004 10-K also contained a “Consent of Independent Auditors” by Deloitte to the incorporation by reference of its Independent Auditors’ Report into certain of GM’s registration statements for securities. Furthermore, the 10-K contained a statement by Deloitte that “the Corporation maintained, in all material respects,
effective internal control over financial reporting as of December 31, 2004.”

377. In addition, the 2004 Form 10-K disclosed that GM was reclassifying the cash flows that GM had originally reported for the years 2002 and 2003, with the result that consolidated net cash flows from operating activities was being corrected downward by a total of $9 billion.

378. With the filing of GM's 2004 10-K, major ratings agencies each lowered, or placed under review for a foreseeable downgrade, the ratings on the Company and its subsidiaries’ debt, as follows:

On March 16, 2005, Standard & Poor’s Ratings Services (S&P) affirmed the ratings of General Motors Corporation (GM) and General Motors Acceptance Corporation (GMAC), but changed the outlook of both companies to negative from stable.

On March 16, 2005, Fitch Ratings (Fitch) downgraded the ratings of GM and GMAC. The rating outlook remains negative.

On March 16, 2005, Moody's Investors Services, Inc. (Moody’s) placed under review for possible downgrade the long-term and short-term ratings of GM and the long-term rating of GMAC. Moody's also affirmed the short-term rating of GMAC.

On March 16, 2005, Dominion Bond Rating Service (DBRS) confirmed the ratings of GMAC and related subsidiaries, but changed the trends to negative from stable.

379. GM's common stock, which on March 15, 2005 had closed at $33.72, fell $4.71 per share, or 14%, to close at $29.01 on March 16, 2005 on extraordinary trading volume of 63.7 million shares. It was the Company’s largest single-day decline since the market crash of 1987, and a 10-year trading low for the Company. Prices of GM and GMAC’s publicly traded debt also declined. Analysts’ disappointment was widely reported by the financial press.

380. On May 4, 2005, Kirk Kerkorian’s Tracinda Corp. announced its offer to purchase as many as 28 million shares of GM equities for $31 each. On that date, GM shares rose $5.03, or 18%, to $32.80 and traded at an average price of approximately $32.44 until near the end of the Class Period.

381. On the Company’s conference call, defendant Wagoner stated that GM had “well thought-out plans to address GM North America’s poor performance.”
GM’s year 2004 financial results were materially untrue for the following reasons:

- In each of the three 10-Qs and in the 10-K for the year 2004 the numbers for ICO and Net Income were inflated due to improper recognition of supplier rebates.

- In each of the three 10-Qs and in the 10-K for the year 2004 the numbers for Retained Earnings were inflated because they were based on earnings from previous and current periods that had been inflated due to premature recognition of supplier rebates in prior periods.

- In each of the three 10-Qs and in the 10K for the year 2004 there was an omission to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.

- In each of the 10-Qs and in the 10-K for the year 2004, consolidated Net Cash Provided by Operating Activities was overstated because GM mischaracterized cash flow from sales and repayments related to certain mortgage loans as operating cash flow.

- The 10-Qs from the first and second quarters and the 10-K for the year 2004 also overstated Net Operating Cash Flow because GM mischaracterized cash flow relating to car sales made on credit to dealers as investing cash flow.

- In each of the three 10-Qs for the year 2004, contrary to the statement that “GM presents its primary financial statements on a fully consolidated basis,” GM’s misclassification of cash flows had the effect of preserving, rather than eliminating, the effects of inter-division transactions.

- In each of the 10-Qs and in the 10-K for the year 2004, the statement that GM’s “disclosure controls” were/are effective was untrue because there was a material weakness or significant deficiency in the controls for accounting for supplier credits,
as well as a material weakness regarding classification of cash flows relating to
mortgage loans.

● Each untrue statement made in an earnings release that was similar to an untrue
statement made in the 10-Q or 10-K following the earnings release was untrue for
the same reason the statement in the 10-Q or 10-K was untrue.

● Each financial statement did not present fairly, in all material respects, GM’s
financial position, results of operations, and cash flows at the end of the period
covered, in conformity with GAAP, and the audits were not conducted in
accordance with GAAS.

F. FISCAL YEAR 2005

383. On April 19, 2005, GM issued a release, signed by Defendant Bible, announcing
GM’s financial results for the first quarter ended March 31, 2005, reporting cash used in operating
activities as a $4.137 billion loss for the three months ended March 31, 2005.

384. On May 10, 2005, GM filed its 10-Q for the first quarter of 2005, covering the
period ending March 31, 2005, signed by Defendant Bible. GM reported consolidated Net Cash
Used in Operating Activities as a $4.137 billion loss for the three months ended March 31, 2005. In
the Notes to the Consolidated Financial Statements, under “Commitments and Contingent
Matters,” GM omitted to properly disclose the existence, nature, and amount of the Delphi Legacy
Guarantee.

385. The first quarter 2005 10-Q also contained a statement, essentially the same as the
one in the first quarter 2004 10-Q, that “GM’s disclosure controls and procedures were effective.”

386. The first quarter 2005 10-Q also stated:

The accompanying unaudited consolidated financial statements have been prepared
in accordance with accounting principles generally accepted in the U.S. for interim
financial information. In the opinion of management, all adjustments (consisting of
only normal recurring items), which are necessary for a fair presentation have been
included.
387. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the first quarter 2005 10-Q.

388. On July 20, 2005, GM filed a Form 8-K, signed by Defendant Bible, containing an earnings release and publishing results for the second quarter ended June 30, 2005. In addition to reporting a net income loss of $286 million, or $0.51 per share, the GM Defendants used this release to condition investors to believe that defendants continued to achieve important milestones and turnaround, stating in part, the following:

   Our second quarter results reflect a mix of some important pluses and minuses . . . . financial results were positive in four of our operating units, with GMAC and GM Latin America/Africa/Mid-East continuing their recent favorable performance [; however,] our health-care cost situation remains an extreme burden on our ability to compete.

389. Also on July 20, 2005, GM filed an additional Form 8-K, signed by Defendant Bible, which included a bullet-point presentation of results for the second quarter, which also showed a Net Income loss of $286 million for the quarter.


391. The second quarter 2005 10-Q contained a statement essentially the same as that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”
392. The second quarter 2005 10-Q also contained a statement, essentially the same as the one in the first quarter 2004 10-Q, that “GM’s disclosure controls and procedures were effective,” and contained a statement that the financial results were reported in conformance with GAAP.

393. SOX Section 302 Certifications (one certified by Wagoner and one certified by Devine) and SOX Section 906 Certifications (one certified by Wagoner and one certified by Devine) were attached as exhibits to the second quarter 2005 10-Q.

394. On October 5, 2005, GM filed an 8-K, signed by Defendant Bible, disclosing that its second quarter 2005 earnings were overstated by approximately $700-$800 million due to GM’s failure to properly value GM’s holdings in Fuji Heavy Equipment, an impaired investment which the Company claimed was worth $1.5 billion, but which had a true value of $650 million.

395. On October 8, 2005, GM filed an 8-K, signed by Defendant Bible, which contained a press release. The release contained a statement that “GM currently believes that it is not probable that it has incurred a liability due to Delphi’s Chapter 11 filing. It further believes that it is not presently able to estimate the amount, if any, it may ultimately pay under the benefit guarantees due to the foregoing uncertainties.”


397. The third quarter 2005 10-Q contained a statement similar to that in the first quarter 2000 10-Q that the consolidated financial statements “have been prepared in accordance with generally accepted accounting principles for interim financial information,” and, under “Item 4, Controls and Procedures,” omitted to mention any control problem regarding reporting of cash flows.
398. The third quarter 2005 10-Q contained a statement regarding the Company’s Critical Accounting Estimates stating essentially the same as in the 2002 10-K that “[t]he accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information.”

399. On November 9, 2005, after the close of NYSE trading, GM announced the restatement of its 2001 results. On the news, GM shares, which closed at $24.63 on November 9, 2005, fell by 7.6%, to a low of $22.74 the following day - their lowest level in 13 years. The 2001 restatement was attributed to mis-accounting for approximately $300 to $400 million in “credits” from un-named suppliers - possibly including Delphi. The size of these credits amounted to approximately two-thirds of GM's profits originally reported.

400. By mid-November, investor confidence in GM was so low that the stock had fallen almost $45.00 per share, or almost 66%, from the $68.00 per share reached in mid-May 2002.

401. Adding significant downward pressure on the price of GM shares, also on November 9, after the close of trading, GM filed with the SEC a notice of Non-Reliance on Previously Issued Financial Statements, signed by Defendant Bible, which stated, in part, the following:

ITEM 4.02. NON-RELIANCE ON PREVIOUSLY ISSUED FINANCIAL STATEMENTS

GM has been conducting an internal review of credits received from suppliers and the appropriateness of its accounting treatment for them during the years 2000-2005. This issue is one of the matters that is also being investigated by the SEC as previously reported by GM.

The review of supplier credits is ongoing and GM has not reached final conclusions about this matter. However, the review to date indicates that GM erroneously recognized some supplier credits as income in the year in which they were received rather than in the future periods to which they were attributable. Based on the information to date, GM currently estimates that its net income from continuing operations for 2001 was overstated by approximately $300 million to $400 million (or about 25% to 35%) due to this error. Accordingly, although the final restatement amounts have not yet been determined, GM has determined to restate its financial statements for 2001, and the restatement is expected to be material to the financial
statements previously reported for that year. GM will also restate financial statements for periods subsequent to 2001 that may be affected by the erroneous accounting. However, the effect of any such restatement in subsequent periods is expected to be immaterial to those financial statements.

GM anticipates that it will complete the review referred to above and take any appropriate action to correct previously reported financial statements prior to the filing of its annual report on Form 10-K for 2005. On November 8, 2005, the Audit Committee of the Board of Directors concluded that, due to the likelihood of a material restatement of GM's financial statements with respect to 2001, investors should no longer rely on GM's previously filed financial statements for that year, nor the related auditors' reports thereon.

402. Also, adding to the downward pressure on the price of GM stock, as reported by The Wall Street Journal on November 10, 2005, the admission that the Company had failed to properly account for rebates from suppliers was in stark contrast to defendant Devine’s statements during a March 2005 conference call, when he stated, “Our policy is no rebates from suppliers.” In March 2005, according to Devine, GM had specifically reviewed its practices after questions were raised about Delphi transactions. According to a transcript of that conference call, defendant Devine stated, “We have been very clear through the purchasing organization, very clear with our suppliers that we don’t do business that way.”


404. GM’s year 2005 financial results, up to and including the January 26, 2006 earnings release, were materially untrue for the following reasons:

- In the first and second quarter 10-Qs, there was an omission to properly disclose the existence, nature, and amount of the Delphi Legacy Guarantee.
- In the second and third quarter 10-Qs, Net Income was inflated because GM omitted to take a charge for its liability under the Delphi Legacy Guarantee.
- In the second and third quarter 10-Qs, GM understated Total Liabilities because it
omitted to take a charge for its liability under the Delphi Legacy Guarantee.

- In the three 10-Qs for the year 2005, consolidated Net Cash Provided by Operating Activities was overstated because GM mischaracterized cash flow from sales and repayments related to certain mortgage loans as operating cash flow.

- In the second quarter 10-Q for the year 2005, GM overstated Net Income, Retained Earnings, and total assets because of a failure to write down the value of GM’s investment in Fuji.

- The statements in GM's 8-K, dated October 8, 2005, were materially untrue because, as of the date of the filing of the 8-K, it had become probable that GM had incurred a liability under the Guarantee, and that liability was estimable as being $5.5 billion (pre-tax).

- In each of the 10-Qs for the year 2005, the statement that “GM’s disclosure controls and procedures were effective” and/or the omission to state that there was a material weakness was untrue because there was a material weakness regarding classification of cash flows relating to mortgage loans.

- In the January 26, 2005 Earnings release, Net Income was inflated and Total Liabilities were understated because GM took an insufficient charge for its liability under the Delphi Legacy Guarantee.

- Each untrue statement made in an earnings release that was similar to an untrue statement made in the 10-Q or 10-K following the earnings release was untrue for the same reason the statement in the 10-Q or 10-K was untrue.

- Each financial statement did not present fairly, in all material respects, GM’s financial position, results of operations, and cash flows at the end of the period covered, in conformity with GAAP, and the audits were not conducted in
accordance with GAAS.

VII. THE ROLE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (“GAAP”)

A. GM AND THE OFFICERS HAD A RESPONSIBILITY TO PREPARE GM’S FINANCIAL STATEMENTS IN ACCORDANCE WITH GAAP

405. Public companies are required by the SEC to prepare their financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”). Under SEC Rule 4-01(a) of SEC Regulation S-X, “[f]inancial statements filed with the [SEC] which are not prepared in accordance with [GAAP] will be presumed to be misleading or inaccurate.” 17 C.F.R. § 210.4-01(a)(1) (emphasis added).9

406. An issuer’s management is responsible for preparing financial statements that conform with GAAP. As noted by AICPA auditing standards (“AU”), § 110.02:

Financial statements are management's responsibility . . . [M]anagement is responsible for adopting sound accounting policies and for establishing and maintaining internal controls that will, among other things, record, process, summarize; and report transactions (as well as events and conditions) consistent with management’s assertions embodied in the financial statements. The entity’s transactions and the related assets, liabilities and equity are within the direct knowledge and control of management. Thus, the fair presentation of financial statements in conformity with Generally Accepted Accounting Principles is an implicit and integral part of management's responsibility.

407. Moreover, each and every Form 10-K and Form 10-Q filed by GM during the Class Period contains a statement that the enclosed consolidated financial statements have been prepared in accordance with GAAP.

408. Under SEC rules, management is also required to provide a narrative explanation indicating, among other things, “the likelihood that past performance is indicative of future

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9 GAAP principles and rules are initially approved and adopted by private professional organizations, including the American Institute of Certified Public Accountants (“AICPA”), Accounting Principles Board (“APB”) and Financial Accounting Standards Board (“FASB”), with the permission of the SEC. See Accounting Series Release 150. A citation to a GAAP rule usually includes a reference to the organization that issued it.

The MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant’s prospects for the future.

409. In addition, SEC Rule 12b-20 (17 C.F.R. § 240.12b-20) states:

In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

410. Finally, under SEC regulations, management of a public company also has a duty “to make full and prompt announcements of material facts regarding the company's financial condition.” SEC Release No. 34-8995, 17 C.F.R. § 241.8995 (Oct. 15, 1970).

B. GM'S FINANCIAL STATEMENTS PREPARED DURING THE CLASS PERIOD WERE NOT IN ACCORDANCE WITH GAAP

411. As explained supra, in Part V, “Substantive Allegations,” GM's financial statements prepared during the class period were substantially not in accordance with GAAP.


C. DELoitTe VIOLATED GAAS BY FALSELY CERTIFYING THAT GM'S FINANCIAL STATEMENTS WERE PRESENTED IN CONFORMITY WITH GAAP

413. Under the SEC’s regulations, as expressed in the instructions to Form 10-K, every Form 10-K must contain the report of an independent public or certified public accountant who has
audited the financial statements therein. Under 17 C.F.R. § 210.2-02(b), the audit must have been conducted in conformity with “Generally Accepted Auditing Standards” (“GAAS”)—rules and principles of auditing that have been approved and adopted by the AICPA. Under Auditing Standards (“AU”) § 150.02, the auditor’s report “shall state whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP).”

414. Each of GM’s 10-K’s for the years 2000 through 2005 contained an “Independent Auditor’s Report” or similarly titled report, signed by Deloitte (the “Report”), including a statement that, in Deloitte’s opinion, the consolidated financial statements contained in the 10-K “present fairly, in all material respects, the financial position of General Motors Corporation and subsidiaries” at the end of the covered period or periods, “in conformity with accounting principles generally accepted in the United States of America.”

415. Because, as explained above, in Part V, “Substantive Allegations,” GM’s financial statements that were contained in each of its Class Period 10-K’s were not in conformity with GAAP, and because they contained multiple material untrue statements and omissions, the above referenced statements in Deloitte’s Reports were also materially untrue.

416. Deloitte’s Report that appeared in GM’s 10-K/A for 2004, which states that GM’s consolidated financial statements for the period ending December 31, 2004, as restated, are in conformity with GAAP, necessarily is an admission that Deloitte’s original Report that appeared in the 2004 10-K was materially untrue.

417. Moreover, Deloitte’s original Report in GM’s 2004 10-K contained a statement that “the Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2004.” In the 10-K/A, Deloitte admitted that its prior statement about controls was erroneous, now stating that it had “an adverse opinion on the effectiveness of
the Corporation’s internal control over financial reporting . . . as of December 31, 2004.”

COUNT I
(Against GM and the Individual Defendants for Violations of § 11 of the Securities Act)

418. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth fully herein, except to the extent that any such allegation sounds in fraud. This claim is not based on and does not sound in fraud. As against GM, this claim is based on strict liability. As against the Individual Defendants, this claim is based on negligence.

419. This Count is brought pursuant to Section 11 of the Securities Act on behalf of all Plaintiffs and Class members who purchased or acquired GM securities pursuant to, or traceable to, the February 2003, June 2003 and September 2003 Registration Statements, described in ¶¶ 332-35 and ¶ 361, above (the “Registration Statements”). In other words, this Count is brought pursuant to Section 11 of the Securities Act on behalf of all members of the Subclass.

420. The February 2003, June 2003, and September 2003, Registration Statements each contained materially untrue statements and omitted material facts necessary to make the statements made therein not misleading, including, without limitation, in the SEC filings incorporated into such Registration Statement, as set forth in ¶¶ 267-361 and ¶ 382, above.

421. The offerings made pursuant to each of the Registration Statements, and the SEC filings containing materially untrue statements and omitting material facts necessary to make the statements made therein not misleading that were incorporated into each Registration Statement, are identified in the chart below:

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10 Under AU § 508 (“Reports on Audited Financial Statements”) ¶ 10, “[a]n adverse opinion states that the financial statements do not present fairly the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.” (emphasis added). Under AU § 508 ¶ 10, an opinion like that in Deloitte’s original Report in the 2004 10-K, which says that “the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles” is called an “unqualified opinion.”
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<tr>
<td>February 2003 Registration Statement</td>
<td>$425 million 7.375% GM Senior Notes due May 23, 2048</td>
<td>02/28/03 Shelf Registration Statement, Amended 03/21/03; 02/28/03 Prospectus; 05/21/03 Supplemental Prospectus</td>
<td>2001 10-K First Quarter 2002 10-Q Second Quarter 2002 10-Q Third Quarter 2002 10-Q 2002 10-K First Quarter 2003 10-Q</td>
</tr>
<tr>
<td>June 2003 Registration Statement</td>
<td>$4 billion 6.25% GM Series C Convertible Debentures due 2033</td>
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<td>2002 10-K First Quarter 2003 10-Q</td>
</tr>
<tr>
<td>June 2003 Registration Statement</td>
<td>$1 billion 7.125% GM Senior Notes due 2013</td>
<td>06/09/2003 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
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</tr>
<tr>
<td>June 2003 Registration Statement</td>
<td>$1.25 billion 8.25% Senior Debentures due 2023</td>
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<td>2002 10-K 10-Q First Quarter 2003</td>
</tr>
</tbody>
</table>
422. None of the misrepresentations or omissions alleged here were forward looking statements, but, rather, concerned existing facts. Moreover, Defendants did not properly identify any of these statements as forward-looking statements and did not disclose information, known to them, that undermined the validity of those statements.

423. GM is the registrant and issuer for the securities and filed each of the Registration Statements.

424. The Individual Defendants were directors and/or senior officers of GM during the time that some or all of the securities were issued, and during the time that the February 2003, June 2003, and/or September 2003 registration statements were filed. The February 2003 and June 2003 Registration Statements were signed by Defendants Bible, Borst, Devine, Laskawy, Lafley, Pfeiffer and Wagoner. The September 2003 Registration Statement was signed by defendants Borst and Wagoner.

425. At the time when each Registration Statement became effective, each of the Individual Defendants who signed such Registration Statement had not made a reasonable investigation and/or did not possess reasonable grounds for believing that the statements made in the Registration Statement were true and did not omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

426. Certain Plaintiffs, as described in greater detail in ¶¶ 19-28, and certain other
members of the Class, and all members of the Subclass purchased GM debt securities issued
pursuant to, or traceable to each of the February 2003, June 2003, and September 2003 Registration
Statements.

427. Each such Plaintiff and member of the Class, and every member of the Subclass, has
sustained damages as a result of the misstatements and omissions in one or more of the Registration
Statements, for which they are entitled to compensation.

428. Plaintiffs brought this action within one year after the discovery of the untrue
statements and omissions, and within three years after the securities in question were bona fide
offered to the public.

429. By reason of the foregoing, the defendants named in this Count have violated
Section 11 of the Securities Act.

COUNT II
(Against Deloitte for Violations
of § 11 of the Securities Act)

430. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth
fully herein, except to the extent that any such allegation sounds in fraud. This claim us not based
on and does not sound in fraud. This claim is based on negligence.

431. This Count is brought pursuant to Section 11 of the Securities Act on behalf of all
Plaintiffs and other Class members who purchased or acquired GM securities pursuant to, or
traceable to, the February 2003, June 2003 and September 2003 Registration Statements, described
in ¶¶ 332-35 and ¶ 361, above. In other words, this Count is brought pursuant to Section 11 of the
Securities Act on behalf of all members of the Subclass.

432. The February 2003, June 2003, and September 2003, Registration Statements each
contained materially untrue statements and omitted material facts necessary to make the statements
made therein not misleading, including, without limitation, in the SEC filings incorporated into such
Registration Statement, as set forth in ¶¶ 267-361 and ¶ 382, above.
433. The offerings made pursuant to each of the Registration Statements, and the SEC filings containing materially untrue statements and omitting material facts necessary to make the statements made therein not misleading that were incorporated into each Registration Statement, are identified in the chart in ¶ 421, above.

434. None of the misrepresentations or omissions alleged here were forward looking statements, but, rather, concerned existing facts. Moreover, Defendants did not properly identify any of these statements as forward-looking statements and did not disclose information, known to them, that undermined the validity of those statements.

435. Deloitte was an outside auditor retained by GM to audit its financial statements.

436. Deloitte consented to being named in the Registration Statements as an expert who audited and certified the financial statements of GM.


438. Contrary to Deloitte’s representations, those financial statements had not been presented in conformity with GAAP, and Deloitte’s audit had not been conducted in conformity with GAAS. Instead such GM financial statements and Deloitte’s audit reports contained untrue statements of material fact and failed to state facts necessary to make the statements therein not misleading.

439. Deloitte failed to exercise reasonable care in conducting its audits incorporated by reference into the Registration Statements, and in failing to detect, disclose and/or correct the material omissions and materially false statements in the financial statements that were contained in the Registration Statements.

440. At the time when each Registration Statement became effective, Deloitte had not
made a reasonable investigation and/or did not possess reasonable grounds for believing that the statements contained in such Registration Statement were true and did not omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

441. Deloitte is liable under Section 11 of the Securities Act for the material misrepresentations or omissions contained in its audit opinions and in GM’s financial statements for the years 2001, 2002, and 2003, as reported and incorporated in the Registration Statements discussed above.

442. Certain Plaintiffs, as described in greater detail in ¶¶ 19-28, and certain other members of the Class, and all members of the Subclass purchased GM debt securities issued pursuant to, or traceable to each of the February 2003, June 2003, and September 2003 Registration Statements.

443. Each such Plaintiff and other member of the Class, and every member of the Subclass, has sustained damages as a result of the misstatements and omissions in one or more of the Registration Statements, for which they are entitled to compensation.

444. Plaintiffs brought this action within one year after the discovery of the untrue statements and omissions, and within three years after the securities in question were bona fide offered to the public.

445. By reason of the foregoing, the defendants named in this Count have violated Section 11 of the Securities Act.

COUNT III
(Against GM for Violations of § 12(a)(2) of the Securities Act)

446. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth fully herein, except to the extent that any such allegation sounds in fraud. This claim is not based on and does not sound in fraud. This claim is based on negligence.

447. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of
all Plaintiffs and other Class members who purchased or acquired the GM debt securities issued pursuant to the May 16, 2003 prospectus, May 21, 2003 prospectus, June 26, 2003 prospectus, July 1, 2003 European prospectus, and/or June 24, 2004 prospectus (the “Prospectuses”). In other words, this Count is brought on behalf of all members of the Subclass.

448. Each of the Prospectuses contained materially untrue statements and omitted material facts necessary to make the statements made therein not misleading, including, without limitation, in the SEC filings incorporated into such prospectus, as set forth in ¶¶ 267-361 and ¶ 382, above.

449. The offerings made pursuant to each Prospectus, and the SEC filings containing materially untrue statements and omitting material facts necessary to make the statements made therein not misleading that were incorporated into each prospectus, are identified in the chart below:

<table>
<thead>
<tr>
<th>Date Offering was Issued</th>
<th>Type of Security and Amount Offered in Prospectus</th>
<th>Filing Dates of Registration Statement and Prospectus</th>
<th>Materially Untrue SEC Filings Incorporated into The Prospectus</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 16, 2003, Prospectus</td>
<td>5/14/2003 $1 billion 7.375% GM Senior Notes due May 15, 2048</td>
<td>02/28/03 Shelf Registration Statement, Amended 03/21/03; Prospectus 02/28/03; Supplemental Prospectus 05/16/03</td>
<td>2001 10-K First Quarter 2002 10-Q Second Quarter 2002 10-Q Third Quarter 2002 10-Q 2002 10-K First Quarter 2003 10-Q</td>
</tr>
<tr>
<td>May 21, 2003, Prospectus</td>
<td>5/20/2003 $425 million 7.375% GM Senior Notes due May 23, 2048</td>
<td>02/28/03 Shelf Registration Statement, Amended 03/21/03; 02/28/03 Prospectus; 05/21/03 Supplemental Prospectus</td>
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</tr>
<tr>
<td>June 27, 2003, Prospectus</td>
<td>6/26/2003 $4 billion 6.25% GM Series C Convertible Debentures due 2033</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/27/03 Supplemental Prospectus</td>
<td>2002 10-K First Quarter 2003 10-Q</td>
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<tr>
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<tr>
<td>June 30, 2003, Prospectus</td>
<td>$1 billion 7.125% GM Senior Notes due 2013</td>
<td>06/09/2003 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K First Quarter 2003 10-Q</td>
</tr>
<tr>
<td>June 30, 2003, Prospectus</td>
<td>$1.25 billion 8.25% Senior Debentures due 2023</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q First Quarter 2003</td>
</tr>
<tr>
<td>June 30, 2003, Prospectus</td>
<td>$3 billion 8.375% Senior Debentures due 2033</td>
<td>06/09/03 Shelf Registration Statement; 06/09/03 Prospectus; 06/30/03 Supplemental Prospectus</td>
<td>2002 10-K 10-Q First Quarter 2003</td>
</tr>
<tr>
<td>June 24, 2004, Prospectus</td>
<td>$650 million 7.50% GM Senior Notes due July 1, 2044</td>
<td>09/05/03 Shelf Registration Statement, Amended 03/18/04; 09/05/03 Prospectus; 06/24/04 Supplemental Prospectus</td>
<td>2002 10-K First Quarter 2003 10-Q Second Quarter 2003 10-Q 2003 10-K First Quarter 2004 10-Q</td>
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<th>Materially Untrue SEC Filings Incorporated into The Prospectus</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2003, European Prospectus</td>
<td>€1 billion 7.25% Senior Notes due July 3, 2013</td>
<td>07/01/03 Offering Circular</td>
<td>2002 10-K First Quarter 2003 10-Q</td>
</tr>
<tr>
<td>July 1, 2003, European Prospectus</td>
<td>€1.5 billion 8.375% Senior Notes due July 5, 2033</td>
<td>07/01/03 Offering Circular</td>
<td>2002 10-K First Quarter 2003 10-Q</td>
</tr>
</tbody>
</table>

450. None of the misrepresentations or omissions alleged here were forward looking
statements, but, rather, concerned existing facts. Moreover, Defendants did not properly identify any of these statements as forward-looking statements and did not disclose information, known to them, that undermined the validity of those statements.

451. GM offered or sold securities to plaintiffs by means of the May 16, 2003 prospectus, May 21, 2003 prospectus, June 26, 2003 prospectus, July 1, 2003 European prospectus, and/or the June 24, 2004 prospectus, and, therefore, by means of a prospectus including untrue statements of material fact and/or omitting to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

452. GM made such sales by using means and instruments of transportation and communication in interstate commerce and of the mails.

453. Each of the offerings pursuant to the May 16, 2003 prospectus, May 21, 2003 prospectus, June 26, 2003 prospectus, July 1, 2003 European prospectus, and June 24, 2004 prospectus was a public offering, including, without limitation, because it was widely distributed to many individuals and/or entities.

454. GM is a seller within the meaning of the Securities Act because it (a) transferred title to Plaintiffs and other purchasers of the GM debt securities; or (b) transferred title to the GM debt securities to underwriters and/or broker dealers that sold the GM debt securities to Plaintiffs and other purchasers, as agents for GM; and (c) solicited the purchase of the GM debt securities by Plaintiffs and other members of the Class, motivated primarily to serve its own financial interest.

455. GM’s senior officers and/or directors signed each of the Registration Statements under which the prospectuses were issued: Borst and Wagoner signed the September 2003 Registration Statement, and each of the other Registration Statements was signed by each of the Individual Defendants.

456. GM hired the underwriters involved in each of the offerings.

457. The July 1, 2003, European prospectus states “[t]he information set forth in this
Offering Circular is provided by the Issuer and not by the Managers,” that “the Issuer accepts full responsibility” for its truthfulness, and that “[n]o person has been authorized to give any information or to make any representation save as contained in this Offering Circular in connection with the offering of the Notes.”

458. The July 1, 2003, European prospectus also states that “GM currently expects that substantially all of the proceeds of these offerings will be used over time to partially fund GM’s U.S. pension funds and other retiree benefit obligations; to the extent the proceeds are not used for such purposes, they will be used for general corporate purposes.”

459. Certain Plaintiffs, as described in greater detail in ¶¶ 19-28, and certain other members of the Class, and all members of the Subclass, purchased GM debt securities based on the May 16 2003 prospectus, May 21, 2003 prospectus, June 26, 2003 prospectuses, July 1, 2003 European prospectuses, and/or the June 24, 2004 prospectus.

460. Each such Plaintiff, Class member and Subclass member who purchased any of these debt securities did so in an initial public offering, with the purchase involving one of the offering’s underwriters.

461. Plaintiffs, Class members and Subclass members who made such purchases did not know of the omissions and misstatements described above when they purchased their debt securities.

462. Plaintiffs brought this action within one year after the discovery of the untrue statements and omissions, and within three years after the offerings described above.

463. By virtue of the foregoing, GM has violated Section 12(a)(2) of the Securities Act.

464. The Plaintiffs and other members of the Class and Subclass who acquired debt securities pursuant to the May 16 2003 prospectus, May 21, 2003 prospectus, the June 26, 2003 prospectuses, the July 1, 2003 European prospectuses, and/or the June 24, 2004 prospectus, and who still hold such debt securities have the right to rescind and recover the consideration exchanged
for their debt securities, and hereby tender their debt securities to the Company. Plaintiffs, Class
members and Subclass members who have sold debt securities that they acquired pursuant to those
prospectuses seek damages to the extent permitted by law.

COUNT IV
(Against Bible, Borst, Devine and Wagoner,
Pursuant to § 15 of the Securities Act)

465. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth
fully herein, except to the extent that any such allegation sounds in fraud. This claim us not based
on and does not sound in fraud.

466. Bible, Borst, Devine and Wagoner each was a control person of GM by virtue of his
position as a director and/or senior officer of GM.

467. Bible, Borst, Devine and Wagoner each had a series of direct and/or indirect
business and/or personal relationships with other directors and/or major shareholders of GM,
approved GM’s press releases and SEC filings, and received and reviewed internal Company reports.

468. Bible, Borst, Devine and Wagoner each were culpable participants in the violations
of Section 11 and 12(a)(2) of the Securities Act alleged in Counts I and III above, as to each Officer,
based on his having signed the February 2003, June 2003 and/or September 2003 Registration
Statements, and on his having otherwise participated in the process that facilitated successful
completion of the offerings made pursuant to each such Registration Statement.

469. Therefore, Bible, Borst, Devine and Wagoner are each liable jointly and severally
with and to the same extent that GM is liable to Plaintiffs and the other members of the Class and
Subclass who purchased securities in the offerings pursuant to one or more of the Registration
Statements and/or Prospectuses.
COUNT V
(Violation of Section 10(b) of the Exchange Act and
Rule 10b-5 Promulgated Thereunder, Against
GM, GMAC, Bible, Borst, Devine, Wagoner and Deloitte)

470. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth fully herein, except any allegation denying that fraud is alleged.

A. SCIENTER

1. Introduction

471. GM has admitted that its financial statements filed during the Class Period were permeated with errors—including the overstatement of net income by more than a billion dollars total, and the overstatement of its cash flows from operating activities by tens of billion of dollars—and that GM is liable under the previously undisclosed Delphi Legacy Guarantee for another $5.5 billion.

472. These disclosures were made by GM, only after GM had been served with government subpoenas, or otherwise notified by the government that GM should change its accounting policies. Thus, near the end of 2004, the SEC informed GM to stop misclassifying cash flows in such a way that cash flow from operating activities would be inflated. Thus too, on April 13, 2005, GM disclosed that it had been served with an SEC subpoena relating to its accounting for the two transactions apportioning recall costs with Delphi. And on October 27, 2005, GM disclosed that it had been served with SEC subpoenas relating to, among other things, “credits [GM] received from suppliers” and “any obligation GM may have to fund pension and other employee retirement benefits in connection with Delphi’s Chapter 11 bankruptcy filing.” GM has also received subpoenas from a federal grand jury, regarding supplier credits.

473. The nature, size and pattern of GM’s accounting irregularities, as well as the timing of their disclosure by GM, show that GM, GMAC and the Officer Defendants committed fraud. Thus, on June 4, 2006, in an article titled: “A Look at the Books: How GM Juggled Millions; GM’s
Road May Get Rougher,” the Detroit Free Press quoted two experienced accounting professors as follows:

“There was a string of errors, all going in one direction, giving a more positive light to GM’s results,” said Charles Mulford, an accounting professor at the Georgia Institute of Technology who has studied accounting at GM and other large companies. “Simple, honest errors go both ways. Investors were misled, in my view.”

... Peter Henning, a Wayne State University law professor who specializes in white collar crime sees reason for concern. When errors fall uniformly in the company’s favor, he said, “that starts to look like a plan; that’s not a series of accidents.” (emphasis added).

474. Throughout the Class Period, GM’s underlying business prospects and financial condition were deteriorating, with GM losing market share, and GM’s uniquely large obligations for its workers’ postretirement benefits increasing.

475. Because such deterioration threatened, among other things, to destroy GM’s uniquely important credit rating and thus raise GM’s cost of borrowing by billions of dollars, and because such deterioration also threatened to deny the Officer Defendants, personally, millions of dollars of incentive pay awards, Wagoner and the other Officer Defendants falsified GM’s financial statements, to disguise the full extent of the Company’s decline.

476. As a result, GM’s business prospects and financial condition were given a temporary, artificial appearance of health, and the price of GM’s stock was artificially inflated, rising as high as $68 per share, as late as in May of 2002, before falling to $21.06 per share, on the final day of the Class Period.

2. The Premature Recognition of Supplier Credits

(a) Defendants Violated a Bright Line GAAP Rule Of the Kind that is not Violated Inadvertently

477. By recognizing supplier credits prematurely, GM and each of the officers who signed any of GM’s financial statements during the period from the first quarter of 2000 through the third quarter of 2004—i.e., Wagoner, Devine and Bible—violated a bright line rule under GAAP: the
requirement that, as stated by the SEC, “revenue should not be recognized until it is realized or realizable and earned.” SEC Staff Accounting Bulletin: No. 101—Revenue Recognition in Financial Statements. Such a violation of GAAP is not made inadvertently, but only consciously or recklessly. Moreover, the resulting misrepresentation of GM’s net income was huge—with approximately two-thirds of net income as originally reported for the year 2001 consisting of supplier credits that had been recognized prematurely—and the erroneous practice continued over a period lasting five years.

(b) The Officer Defendants Knew About, or Recklessly Disregarded, GM’s Policy Regarding Supplier Rebates

478. Wagoner, Devine and Bible, as, in turn, GM’s CEO, CFO and Chief Accounting Officer, either knew that the rebates were being included in “income from continuing operations” and “net income,” or were reckless in not so knowing, because transacting with suppliers is one of the core aspects of an automobile manufacturer’s business, and knowledge of the effects of such transacting is at the heart of senior management’s responsibilities. As noted by Banc of America Securities’ analyst Ron Tadross, who was quoted in a Wall Street Journal article published on November 10, 2005, regarding the disclosure of GM’s premature recognition of supplier rebates, “[w]e often marveled at the continuous price discussions between the Big 3 and their suppliers.” Moreover, as noted by Deutsche Bank analyst Alexis Boyer, who was quoted in the same Wall Street Journal article, GM “is relying on significant supplier savings in their turnaround plan.” Boyer concluded “the odds GM management could be held accountable for accounting errors has gone up.”

(i) GM’s Supplier Rebate Policy Was a Core GM Policy

479. Mutually reinforcing testimony provided by more than a half dozen confidential witnesses, including a former GM program purchasing manager, a former senior Delphi financial officer, and others in financial positions at one or another of GM’s Tier One suppliers shows that
GM’s policy of obtaining rebates was long-standing, pervasive, and aggressively pursued by GM.

480. The policy predated and continued straight through the Class Period. CS No. 4, a Project Manager for Collins & Aikman, one of GM’s Tier One Suppliers has described in detail rebate transactions that GM was obtaining from suppliers as far back as the early 1990s. CS No. 5, who worked at Delphi from 1999 through May 2005, has stated that throughout his employment, GM demanded refunds and credits from Delphi on all of its transactions.

481. The policy was based on a theory that suppliers’ costs would drop if they continued to supply GM with the same item over a long duration. CS No. 6, a former program purchasing manager for GM, has explained that if GM gave a long contract (such as 5-7 years) to a supplier, it was GM’s contention that the supplier would gain productivity and efficiency for that program, as time went on GM would demand from the supplier a 3% rebate. CS No. 7, a former GM consultant, stated that GM sought and obtained “productivity benefits” from its suppliers. According to CS No. 7, GM reasoned that after a year of a supplier producing a part, the supplier’s “productivity savings” would be approximately 6% of the sales price. GM demanded half of the “productivity saving,” i.e., 3%.

482. The policy was so pervasive and regularized that GM had developed different categories of such agreements. According to CS No. 4, GMs supply contracts took three forms: (i) the 55443 Lifetime Plan; (ii) Long Term Contract; and (iii) “VAVE”—Value Added, Value Engineering rebates.

483. According to CS No. 4, under the terms of the 55443 Lifetime Plan, GM “could not go to market for the duration of the contract to seek out other sources for that product.” GM received a 5% supplier credit in the first year, 5% supplier credit in the second year, 4% supplier credit in the third year, 4% supplier credit in the fourth year and a 3% supplier credit in the fifth year. CS No. 4 stated there were other long-term plans similar to this one, but 55443 was a standard model “that’s been around since the mid-to-late 90s.”
According to CS No. 4, the Long-Term Contract was not favored by suppliers because it allowed GM to seek other sources for the parts. A Long Term Contract, according to CS No. 4, was typically a five-year contract with clearly defined credits for each year of the contract. Under the terms of a Long Term Contract, GM could receive a 0% supplier credit in the first year, 0% supplier credit in the second year, 1 or 3% supplier credit in the third year, 1 or 3% credit in the fourth year and a 1 or 3% supplier credit in the fifth year.

According to CS No. 4, the VAVE rebate supplemented GM’s rebates from the 55443 Lifetime Plan or the Long Term Contracts. Under the VAVE rebates, GM would inform a supplier that it wanted additional rebates going forward based on certain efficiencies added by the long term relationship. For example, GM informed Collins & Aikman that it also wanted an 5% rebate from Collins & Aikman’s sales revenues. CS No. 4 stated the figure 5% was merely an example, and that the rebate could be as high as 24% of Collins & Aikman’s sales revenues from its GM contracts. According to CS No. 4, GM also referred to the VAVE rebates as “current production rebates” or “production give backs.” CS No. 4 described one particular VAVE rebate request from GM. According to CS No. 4, On December 31, 2004, GM told CS No. 4 and his colleagues that Collins & Aikman had to deliver a $14 million VAVE give back on top of any pre-existing contracts. Similarly in 2003, according to CS No. 4, GM demanded that Collins & Aikman rebate an additional 24% on its Lifeline Plans or Long Term Contracts agreements. Under this VAVE demand, GM obligated Collins & Aikman to show GM exactly which periods Collins & Aikman were charging the 24% rebate to, e.g., 4% from the first year, 9% from the second year, 11% from the third.

The impetus for such agreements came from GM, rather than from the suppliers, and from senior management at GM. CS No. 8, a former Controller for a Lear manufacturing facility, stated that GM’s Long Term Agreements were “very well known as difficult” and “put a tremendous amount of pressure on” Lear. As CS No. 1 stated: “We were all aware of the wrath of
[GM’s] worldwide purchasing methods. Nobody was left unscathed.” CS No. 9 stated that at the end of 2004, GM demanded about a 6% discount off of the total amount billed to them in a year—approximately $60 million. According to CS No. 9, Bo Anderson, GM’s Director of Purchasing, who reported directly to defendant Wagoner, personally made the demand. Furthermore, CS No. 9 stated that the credit was to come from future purchase orders.

487. When GM needed money quickly, it simply shortened the length of time covered by the agreement. CS No. 10 asserted that the demands for one-time rebates from future performance were a part of GM’s “recovery program.” According to CS No. 10, “GM’s senior people would tell their purchasing community they needed X amount of dollars.” GM would state to its suppliers that it “needed X amount if you want to remain our supplier.” CS No. 10 has also described something called a “2 & 20” contract that required suppliers to give a credit of 20% in the second year.

488. Moreover, the demands imposed by GM were intricate, required constant coordination between GM and the suppliers and led to constant conflicts between GM and the suppliers. CS No. 11 explained that GM required Lear to work with particular second level suppliers, which created a number of different contracts and preferred pricing arrangements. CS No. 11 indicated that a lot of time was spent between GM and Lear, reconciling the books due to the different pricing arrangements. Although CS No. 11 kept track of the price changes in the work orders, CS No. 11 said it was a “battle” to keep up with the pricing, because Lear would have one price in its system and GM would have another: “We were always reconciling variances.” According to CS No. 11, the variances would arise because GM would either be pricing wrong or calculating the wrong amount of volume received. GM would often have a rate that was not in the agreed upon contract, which caused discrepancies with reconciling the books. According to CS No. 11, the difference between what GM felt it was owed by Lear and what Lear calculated it owed GM was often approximately $200,000 or more a month—just for the two plants.

489. A policy regarding one of GM’s core business activities—i.e., purchasing
manufactured automobile parts—so aggressively, intricately and persistently pursued by GM cannot have been unknown to GM’s senior officers unless they were severely reckless in their ignorance.

(ii) Wagoner’s Hands-On Management Style

490. Having been, in turn, the President of GM’s North American Operations, and GM’s Chief Operating Officer, Wagoner was intimately familiar with such core GM operations as its contracting with parts suppliers. Moreover, as reported by The Wall Street Journal, in an article published on February 3, 2000, “Mr. Wagoner is known for picking up the phone to call deep into the chain of command to get a firsthand update on the business.” (emphasis added).

(iii) Wagoner and Devine’s Sarbanes-Oxley Certifications Strongly Imply their Scienter

491. Starting with GM’s 10-Q for the third quarter of 2002, and in every quarter thereafter, Wagoner and Devine each certified the following statement, which was contained in the SOX Section 302 Certifications filed by GM:

4. The registrant’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

The fact that GM was continually booking rebates from its suppliers as income in the periods when the rebates were received certainly was material information in those periods, because it affected the amount of income to such an extent that GM later was required to restate the income; therefore, Wagoner’s and Devine’s sworn statements in their SOX Section 302 Certifications, quoted above, are strong evidence that such facts were routinely made known to Wagoner and Devine.
Devine’s False Denial of the Underlying Facts Creates a Strong Inference of his Scienter Regarding GM’s Improper Accounting Practices

492. Before GM ever disclosed that it had been recognizing supplier rebates prematurely, a similar disclosure was made, in December 2004, by Delphi, who also disclosed that it had received subpoenas from the SEC regarding this improper practice.

493. On March 16, 2005, still months before GM itself disclosed that it was improperly recognizing supplier rebates, during a conference call with analysts, Devine was asked the following question by Prudential analyst, Michael Bernstein:

We know GM did get rebates from suppliers in past years. Has that been accounted for or can you explain how that has been accounted for.

Devine answered as follows:

**Our policy is no rebates from suppliers.** We went back and looked very specifically at ’04 when [the] Delphi issue[ was] raised. We have been very clear through the purchasing organization, very clear with our suppliers that we don’t do business that way. (emphasis added).

494. GM’s restatement of its income to correct for its premature recognition of supplier credits is, of course, an admission that Devine’s statement was false. Moreover, the confidential testimony described here above shows that Devine’s statement was either knowingly false, or else made with reckless disregard for the facts. Notably, the question asked by analyst Michael Bernstein was a question regarding GM’s accounting policies. In his answer, Devine could have either (1) explained GM’s accounting policy, (2) pleaded ignorance of those policies, or (3) pleaded ignorance of the underlying facts. Devine did not do any of those things.

Rather, Devine responded with an emphatically expressed falsehood about the underlying facts.

495. Devine’s willingness to misrepresent the underlying facts, in order to avoid answering the analyst’s question regarding how GM accounted for the rebates, raises a strong inference that he knew GM’s accounting policies were improper, misleading, and in violation of
GAAP.

(d) The Timing of GM’s Disclosure Shows Fraud

496. As noted by Bear Stearns analyst, Peter Nesvold, who was quoted in the November 10, 2005, Wall Street Journal article, “GM’s accounting issues sound similar to some of those disclosed 14 months ago by its former sub, Delphi. Although it’s unclear whether they’re related, it would seem reasonable to expect GM to have started an internal review more than a year ago.” However, GM did not restate its income until after receiving a subpoena from the SEC regarding its accounting for the supplier rebates and other transactions.

497. Moreover, although GM disclosed its receipt of the SEC subpoena on October 27, 2005, GM did not disclose that it would restate its income to correct for the premature recognition of supplier rebates until November 9, 2005, the same day that GM filed its third quarter 10-Q. Such timing suggests an attempt to bury the disclosure beneath GM’s quarterly results. As stated by Bear Stearns’ analyst, Peter Nesvold, who, again, was quoted in the November 10, 2005, Wall Street Journal Article, “[w]e are respectfully surprised with how the restatement was disclosed. . . . We believe GM missed an opportunity to emphasize transparency by not more fully disclosing the restatement two weeks ago, rather than awaiting the 10-Q.”

3. The Failure to Adequately Disclose and Timely Take a Charge for the Delphi Legacy Guarantee

(a) The Requirement of Disclosing a Guarantee is a Bright Line Rule, and Defendants Knew—or Were Reckless in Not Knowing—about the Guarantee’s Existence

498. As explained above, at ¶ 93, FAS 5 ¶ 12 requires the disclosure of the “nature” and “amount” of every loss contingency that is a guarantee, even if the possibility of loss is remote. Also as explained above, at ¶¶ 95-103, any references to the Delphi Legacy Guarantee in GM’s financial statements filed during the Class Period up until October 8, 2005, were clearly inadequate to satisfy FAS 5 ¶ 12, and there was no reference of any kind to the Guarantee in any of the documents.
filed in connection with, or incorporated into, any of the bond offerings here at issue. Defendants thus violated a bright line GAAP rule, of the kind that is not violated inadvertently.

499. The Officer Defendants who signed GM’s financial statements, and therefore, also, GM, either knew about the existence of the Delphi Legacy Guarantee or were extremely reckless in their failure to know about it, because the Guarantee was related to the spin-off of a substantial portion of GM’s operations—so substantial that, as an independent company, Delphi is the world’s largest auto parts supplier—and because GM’s obligations for the postretirement benefits of its current and former workers—whether still employed by GM or otherwise—was a major cause of concern for GM throughout the Class Period.

500. The Guarantee was also, in particular, a labor agreement, and Wagoner made a point of his involvement in labor issues relating to the spin-off. As reported by BusinessWeek, in an article published on February 1, 1999, at the time of the Delphi spin-off, “Wagoner is also counting on closer union ties to smooth the way for GM’s spin-off of Delphi. . . . Wagoner now participates far more frequently in meetings and phone calls with union leaders.”

501. Moreover, starting with GM’s 10-Q for the third quarter of 2002, and in every quarter thereafter, Wagoner and Devine certified, in their SOX Section 302 Certifications, that they had:

a) **designed such disclosure controls and procedures**, or caused such disclosure controls and procedures to be designed under our supervision, **to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared**;

Given the facts that all guarantees must be disclosed, that Delphi’s pension obligations at the time of the spin-off were already $5.4 billion, and that the Guarantee applies to postretirement medical benefits as well as pension benefits, the Delphi Legacy Guarantee clearly was material to GM’s financial statements at all times during the Class Period.

502. Still further, at the beginning of the Class Period, GM’s 10-Q for the first quarter of
2000, in the Notes to the Financial Statements, under “Commitments and Contingent Matters,” vaguely referred to “guarantees covering benefits to be provided to certain former U.S. hourly employees of GM who became employees of [certain] disposed businesses, [including Delphi].”

Though this vague reference was totally inadequate as a disclosure under FAS 5 ¶ 12, nevertheless, it put Bible, who signed the 10-Q, and Wagoner and Devine, who presumably read the 10-Q, on notice to inform themselves about any and all such guarantees. Any failure on their part to so inform themselves would have been reckless.

(b) Long Before the Officer Defendants Adequately Disclosed the Guarantee, they had Information Compelling them to Conclude That GM’s Liability Was a Reasonable Possibility

(i) Information About Delphi’s Distress
Triggering the Requirements of FAS 5 ¶ 10
Was Publicly Available to the GM Officers

503. As explained above, at ¶¶ 104-35, by April 15, 2003, the publicly known state of Delphi’s financial condition was sufficiently distressed so that the Officer Defendants must have known that it was at least a reasonable possibility that GM “may have” incurred a liability under the Delphi Legacy Guarantee; and, if, in the alternative, by April 15, 2003, the publicly known state of Delphi’s financial condition was not sufficiently distressed so that the Officer Defendants must have known that GM “may have” incurred a liability under the Guarantee, then, by March 11, 2005, the publicly known state of Delphi’s financial condition was sufficiently distressed so that the Officer Defendants must have known that it was at least a reasonable possibility that GM “may have” incurred a liability under the Guarantee. Moreover, for the reasons explained above, at ¶ 97, a reasonable range of GM's contingent liability under the Delphi Legacy Guarantee could be estimated, at all times during the Class Period. Therefore, the failure of the Officer Defendants to adequately disclose the nature and amount of the Guarantee by April 15, 2003, or, in the alternative, by March 11, 2005, was a knowing, or at least a reckless, violation of FAS 5 ¶ 10, which requires the disclosure of all contingent liabilities—whether or not they are guarantees—once they “may have”
become reasonably possible.

(ii) **The GM Officers Also Had Non-Public Information Regarding Delphi’s Developing Distress**

504. Confidential testimony by a former senior Delphi financial officer and former GM employees who worked in GM’s parts operations shows that GM had continuous access to non-public information showing Delphi’s developing financial distress.

505. As part of his job duties, CS No. 1 provided detailed financial information for David Oleen and other senior executives that outlined Delphi’s current financial status as well as future projections. CS No. 1 also prepared financial documentation for meetings between the senior management of Delphi and GM. CS No. 1 stated that these high-level meetings started shortly after the separation agreement was finalized, and that Delphi’s developing financial difficulties were apparent from CS No. 1’s documents.

506. According to CS No. 1, it became apparent in 2003 that Delphi had reached a breaking point, when the UAW, GM and Delphi “had to come back to the table and negotiate a new contract” regarding the issues originally settled at the time of the spin-off.

507. Also according to CS No. 1, the requirement that he produce detailed financial information for meetings with GM increased dramatically in the first quarter of 2005. At that point, according to CS No. 1, “someone from Delphi was communicating with someone at GM every single day.” Indeed, at that point, CS No. 1 himself was interacting with GM “every single day,” in an effort to let GM know that Delphi was “the fight for its life financially.” CS No. 1 recalls that, in early 2005, Delphi’s CEO called defendant Wagoner and said, “Hey, you need to pay attention to our numbers, we are in trouble.”

508. In addition to getting reports about Delphi’s financial condition directly from Delphi, GM was also using its own sources—e.g., Lexis-Nexis, SEC filings, the Internet, and “sources in the field”—to monitor Delphi’s business.
CS No. 2, a twenty year veteran of GM, spent 2003 through 2005 as the Associate Administrator for Business Analysis in the Service & Parts Operations department. One of her job duties was to investigate whether Delphi was breaching its agreements with GM by selling GM parts to third-party dealers at lower prices than it was charging GM. Under its agreements with GM, Delphi was the main supplier for certain after-market replacement parts, but consumers could purchase “genuine GM parts” either from a GM dealership and get a genuine GM part (made by Delphi) or could purchase the part from a third-party vendor such as AutoZone or Napa. CS No. 2 investigated whether Delphi was selling their parts to AutoZone and Napa for less money than it was selling the same parts to GM.

CS No. 2 conducted the investigation through Lexis-Nexis, SEC filings, the Internet, and “sources in the field” that would call her if they learned that Delphi was selling their parts “cheaper than what they charged GM.”

When CS No. 2’s research determined that Delphi had sold their parts to the third-party vendor for less than it had charged GM, CS No. 2 reported her findings to the department heads. The reports were made by e-mail and power point presentations to the whole department.

CS No. 2 stated as she discovered the price undercutting, CS No. 2’s supervisors called Delphi and told them to “fix it fast.” However, GM never took further action because GM was aware of Delphi’s increasing financial precariousness. According to CS No. 2 stated that “GM knew that Delphi was ripping them off on aftermarket parts a lot of the time,” but GM allowed the practice to continue because “GM could not afford to take their business away from them and be responsible for Delphi sinking.”

GM’s awareness of and concern about Delphi’s precarious financial condition is shown by the fact that it was the job of CS No. 3 to track all of Delphi’s invoices. CS No. 3 was required to create a spreadsheet reflecting Delphi’s transactions, but although she handled many other suppliers, CS. No. 3 was not required to do this for any of the other suppliers.
(c) The GM Officers Knowingly or Recklessly Failed
To Timely Take an Adequate Charge for the Guarantee

(i) Information Showing GM that FAS 5 ¶ 8
Had Been Triggered was Publicly
Available by August 5, 2005

514. As explained above, at ¶¶ 119-147, information about Delphi’s financial condition
was publicly available by August 5, 2005, that was sufficient to show the Officer Defendants—who
had knowledge of the Guarantee—that the requirement for GM to take a charge to its income
because of the Guarantee had been triggered. Therefore, the failure of the GM Officer defendants
to have GM take such a charge in GM’s 2005 second quarter 10-Q was made knowingly or with
reckless disregard for such publicly available information.

(ii) GM’s Own Public Filings Show the Officers’ Scienter
For Their Failure to Have GM Take a Charge of at Least
$5.5 Billion, No Later than In the Third Quarter of 2005

515. As explained above, under FAS 5 ¶ 8, a loss contingency must be accrued when it
becomes probable that a liability has been incurred and the amount of the loss can be reasonably
estimated. As also explained above, GM did not accrue any loss for the guarantee prior to the filing
of its 2005 10-K, and did not disclose what the full amount of that loss would be until March 16,
2005, when it disclosed that it would accrue a pre-tax loss of $5.5 billion. However, GM’s own
public filings show that the Officer Defendants knew that the prerequisites for the FAS 5 ¶ 8 accrual
requirement had been met no later than by the filing of GM’s 10-Q for the third quarter of 2005,
and, indeed, that they knew by the time of GM’s October 8, 2005, 8-K that accrual would be
required in GM’s third quarter 10-Q.

516. As explained above, in ¶ 150, GM’s 10-Q for the third quarter of 2005, signed by
Bible and certified as true by Wagoner and Devine in their Sarbanes-Oxley certifications, explicitly
admitted that “GM currently believes that it is probable that it has incurred a liability due to Delphi’s
Chapter 11 filing.” As also explained above, in ¶ 151, GM’s 8-K filed on October 8, 2005, had
previously provided an accurate estimate of the range of GM’s liability under the Guarantee, as “from there being no material financial impact to . . . approximately $10 to $11 billion at the high end, with amounts closer to the midpoint [i.e., $5.5 billion] being considered more possible than amounts towards either of the extreme ends of this range.” Therefore Defendants knew when they filed the third quarter 10-Q that the requirements of FAS 5 ¶ 8 had been fulfilled. Thus, their failure to have GM accrue a $5.5 billion charge in that 10-Q was done either knowingly or, at a minimum, recklessly.

517. Moreover, as explained above, in ¶¶ 148-50, GM’s 8-K filed on October 8, 2005, contained information sufficient to compel the Officers’ conclusion that GM’s liability under the Guarantee was already probable (including the fact of Delphi’s bankruptcy, and the fact that Delphi had informed GM that GM’s liability was now probable), and GM’s third quarter 10-Q—which admitted that liability was now probable—did not base its conclusion of probable liability on any event subsequent to Delphi’s filing for bankruptcy.

518. Still further, in between the filing of GM’s October 8, 2005, 8-K, which denied that GM’s liability was probable, and the filing on November 9, 2005, of GM’s third quarter 10-Q, which admitted that GM’s liability was probable, on October 27, 2005, GM disclosed to The Wall Street Journal its receipt of an SEC subpoena covering “any obligation GM may have to fund pension and other employee retirement benefits in connection with Delphi’s Chapter 11 bankruptcy filing earlier this month.” This shows that GM changed its position regarding the probability of its liability under the Delphi Guarantee to avoid a finding by the SEC that GM’s position, as stated in its October 8, 2005 8-K, was misleading investors.

519. Therefore, the evidence raises a strong inference that GM officers knew or were reckless in not knowing, no later than when GM filed its October 8, 2005, 8-K, that GM was required to accrue a pre-tax loss of at least $5.5 billion in its 2005 third quarter 10-Q.
4. The Misclassification of Cash Flows Relating to Mortgage Loans

(a) The SEC Put Defendants on Notice To Avoid Misclassification of Cash Flows

520. As explained above, in GM's 2004 10-K: GM reclassified its cash flows relating to its car sales to dealers on credit, for the period from the first quarter of 2002 through the third quarter of 2004; GM reclassified cash flows relating to sales to dealers made on credit “as a result of concerns raised by the staff of the SEC about the previous presentation”; and GM admitted that its previous policy for classifying such cash flows was not “in accordance” with GAAP.

521. GM's 10-Q for the first quarter of 2005, filed on March 31, 2005, disclosed that the SEC’s “concerns” about GM's misclassification of cash flows relating to sales to dealers made on credit were “raised by the staff of the SEC as of December 31, 2004.”

522. As explained above, in ¶¶ 166-85, the misleading effect of GM's misclassification was to inflate GM's cash flows from operating activities—an item of particular importance to investors, and especially to investors in the automobile industry. GM's misclassification of cash flows relating to dealer financing inflated GM's cash flows from operating activities by a total of $9 billion. The need to prevent publication of inflated numbers for cash flows from operating activities was the reason why the SEC asked GM to reclassify its cash flows relating to dealer financing.

523. Therefore, from the date of the filing of GM's 2004 10-K, if not from December 31, 2004, Defendants, including each of the Officer Defendants, were on notice to avoid misclassifications of cash flows that had the effect of inflating GM's reported numbers for cash flow from operating activities.

524. Also as explained above, at ¶¶ 190-206, GM's misclassification of cash flows relating to mortgage loans owned by ResCap had the very same misleading effect that Defendants were on notice to avoid—namely, inflating GM's cash flows from operating activities. In fact, GM's
misclassification of cash flows relating to mortgage loans owned by ResCap resulted in GM’s cash flows from operating activities being inflated $23.83 billion, two and a half times the amount of inflation resulting from GM’s misclassification of dealer financing cash flows.

525. As also explained above, at ¶¶ 190-206, not only did GM fail to disclose past misclassification of ResCap cash flows until more than a year after GM had been put on notice by the SEC to avoid misclassification of cash flows, but also, during that same time period, GM misclassified new ResCap cash flows, all with the resulting effect of inflating GM’s consolidated cash flows from operating activities.

(b) The Scienter of GM and its Officers

526. Because of the importance to investors of operating cash flow, as explained above in ¶¶ 166-67, the reporting of GM’s consolidated cash flows from operating activities was a core concern for senior officers of GM. Therefore it can be presumed that either the Officer Defendants were aware of how GM was classifying cash flows totaling tens of billions of dollars, or that the Officers were reckless in not so knowing. This is especially, but not only, true for Bible, who, at all relevant times, was GM’s Chief Accounting Officer.

527. As an exhibit to every 10-K and 10-Q here relevant, from the 10-K for 2004 through the 10-Q for the third quarter of 2005, Wagoner and Devine provided SOX Section 302 Certifications containing the following statement:

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared. (emphasis added).

528. As shown by GM’s ultimate restatement of its cash flows to correct for the
misclassification of cash flows related to loans owned by ResCap, as well as by the huge amounts of those misclassifications, information regarding GM's classification of cash flows relating to loans owned by ResCap clearly was material to GM's financial statements. Therefore, Wagoner’s and Devine’s SOX certifications are strong evidence that each of these officers knew the underlying facts regarding how these cash flows were being classified, or else were reckless in not so knowing.

529. The same conclusion is further supported by the facts that (1) Wagoner, Devine and Borst each also signed GMAC’s 2004 10-K, (2) in GM’s chain of command, the head of GMAC reported directly to Wagoner, and (3) Wagoner was, himself, GM’s former CFO.11

(c) GMAC’s Role

(i) GMAC, as well as GM, made the Misleading Statements in GM’s Financial Statements

530. As GM stated in its press release on March 16, 2006, the false cash flow information that GM’s 10-K/A for 2004 admitted had appeared in GM’s 10-K’s for 2002, 2003 and 2004, and 10-Q’s for the first three quarters of 2005, was “due to an accounting issue . . . at ResCap, the residential mortgage subsidiary of GMAC,” which means that GM had obtained the false information from GM’s subsidiary, GMAC. Moreover, on March 28, 2006, in GMAC’s 10-K for 2005, and 10-Q/A’s for each of the first three quarters of 2005, GMAC restated its cash flows for the years 2003 and 2004, and for each of the first three quarters of 2005, and thus admitted that such GMAC cash flow information had been false and/or misleading. Indeed, also on March 28, 2006, GMAC filed a form 8-K announcing that because of the false cash flow information contained in

11 A JP Morgan analyst report regarding GM, dated March 29, 2006, authored by Himanshu Patel, Shaz Kidwai, and Ranjit A. Unnithan, explained that ResCap’s misclassification of investing cash flows as operating cash flows had allowed ResCap to inappropriately use a change in market conditions to inflate its cash flows from operations: “We believe the error primarily relates to transitioning certain mortgage securities from ‘Held for Investment’ to ‘Held for Sale’ on the balance sheet after changing market conditions improved their sale prospects. Sales of these reclassified [as] ‘held for sale’ assets [therefore] were reported in Cash Flow for Operations, but ResCap’s auditors are now suggesting that this may be incorrect because the cash flow classification should be based on where these securities were originally placed on the balance sheet (i.e. Held for Investment).” (emphasis added).
GMAC’s original 10-K’s and 10-Q’s for 2003 and 2004, and its 10-Q’s for 2005, those reports
should no longer be relied upon.

531. Because, at all relevant times, GM’s financial statements were consolidated
statements incorporating the results of GMAC, during each of the quarters and years from the first
quarter of 2002 through the end of 2004, and in the first three quarters of 2005, GMAC’s senior
officers, and, thus, GMAC itself, knew that the information about cash flow that it was supplying to
GM would be incorporated into GM’s consolidated financial statements, and therefore knew that it
would be communicated by GM to investors.

532. Moreover, at all relevant times, although investors did not know that the cash flow
information being supplied by GMAC was false and/or misleading, they knew that such information
was being supplied by GMAC. Investors knew this because GM’s 10-K’s and 10-Q’s contained
presentations of cash flow that segregated the results for each of GM’s two main divisions, which
are labeled by GM, in turn, as “Automotive and Other Operations,” and “Financing and Insurance
Operations (FIO).” As stated by GM in its 10-K’s and 10-Q’s, “FIO . . . consists primarily of
GMAC.”

533. Thus, as can be seen in the following table, which is copied from GM’s 10-K/A for
2004—with insignificant formatting changes, and with emphasis added—GM’s restatement of cash
flows relating to the ResCap loans segregated out and restated the figures for “Financing and
Insurance” cash flow, as well as restating the figures for GM’s “Consolidated” cash flow:
<table>
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<td><strong>Consolidated Financing &amp; Insurance</strong></td>
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<td><strong>Consolidated Financing &amp; Insurance</strong></td>
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<td><strong>Net Cash From Operating Activities</strong></td>
<td></td>
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<tr>
<td>As Originally Reported</td>
<td>$13,061</td>
<td>$11,843</td>
<td>$2,956</td>
<td>$8,282</td>
<td>$11,075</td>
<td>$3,064</td>
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<tr>
<td>Adjustments for Mortgage related activities</td>
<td>(3,705)</td>
<td>(3,705)</td>
<td>(6,132)</td>
<td>(6,132)</td>
<td>(3,105)</td>
<td>(3,105)</td>
</tr>
<tr>
<td>As Restated</td>
<td>$9,356</td>
<td>$8,138</td>
<td>$(3,176)</td>
<td>$2,150</td>
<td>$7,970</td>
<td>$(41)</td>
</tr>
<tr>
<td><strong>Net Cash From Investing</strong></td>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>As Originally Reported</td>
<td>$(31,768)</td>
<td>$(27,718)</td>
<td>$(50,573)</td>
<td>$(42,626)</td>
<td>$(36,117)</td>
<td>$(29,173)</td>
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<tr>
<td>Adjustments for Mortgage related activities</td>
<td>3,705</td>
<td>3,705</td>
<td>6,132</td>
<td>6,132</td>
<td>3,105</td>
<td>3,105</td>
</tr>
<tr>
<td>As Restated</td>
<td>$(28,063)</td>
<td>$(24,013)</td>
<td>$(44,441)</td>
<td>$(36,494)</td>
<td>$(33,012)</td>
<td>$(26,068)</td>
</tr>
</tbody>
</table>

534. For the reasons stated above, the false and/or misleading statements of cash flows in GM’s 10-K’s and 10-Q’s, from the first quarter of 2002, through the third quarter of 2005, resulting from the misclassification of cash flows at ResCap, were made by GMAC, among others.

(ii) **GMAC’s Officers Had Notice, Obligation and Knowledge**

535. GMAC’s 2004 10-K and each of GMAC’s 2005 10-Q’s were signed by GMAC’s Executive Vice President and CFO, Sanjiv Khattri, and GMAC’s Vice President and Corporate Controller, Linda K Zukauckas. The 2004 10-K was also signed by GMAC Chairman and CEO, Eric A. Feldstein.

536. Based on the public filing of GM’s 2004 10-K, if not otherwise, Khattri, Zukauckas
and Feldstein each had notice of the SEC’s concern about GM misclassifying its consolidated cash flows, and therefore had notice to make sure that ResCap’s cash flows, which are consolidated into GMAC’s and GM’s cash flows, are appropriately classified, to prevent the inflation of GM’s cash from operating activities.

537. Because cash flows relating to mortgage loans owned by ResCap relate to core operations of GMAC—which are borrowing and lending operations—it can be presumed that Khattri, Zukauckas and Feldstein either knew about, or recklessly disregarded, the manner in which GMAC was misclassifying cash flows relating to mortgage loans owned by ResCap.

538. Moreover, Sanjiv Khattri and Eric Feldstein each provided SOX Section 302 Certifications, with language identical to that described above in ¶ 527, that were attached as exhibits to GMAC’s 2004 10-K and each of GMAC’s 2005 10-Q’s.

539. The classification of past and current cash flows relating to mortgage loans owned by ResCap was clearly material to GMAC during the period from the filing of GM’s and GMAC’s 2004 10-K’s through the filing of GM’s and GMAC’s 10-Q’s for the third quarter of 2005, as shown by GMAC’s and GM’s ultimate restatements to correct the misclassification of these cash flows and by the huge amounts restated. Therefore, Khattri’s and Feldstein’s SOX certifications provide strong evidence that each of them, and, therefore, GMAC itself, knew about or recklessly disregarded GMAC’s, and thus GM’s, misclassification of cash flows from mortgage loans owned by ResCap.

5. The Improper Accounting For the Two Transactions
   With Delphi Apportioning the Cost of Past Product Recalls

(a) The $237 Million Payment from Delphi

540. As explained above at ¶¶ 215-36, GM’s failure to report the $237 million payment from Delphi for product recall/warranty costs as a separate component of income, to remove it from pro forma income and earnings per share, and to discuss it in the MD&A as a factor that had distorted the appearance of current trends, were violations of bright line rules under GAAP and
Reg. S-K. Such rules are not violated inadvertently. Indeed, According to a Wall Street Journal article dated April 14, 2005, when asked about its accounting for the transaction, GM did not claim that its conduct was inadvertent, but, rather, described it as a matter of policy, saying that “under GM’s current policies, the company probably would provide investors more information about such a transaction.” (emphasis added).

541. As explained above, because, contrary to GAAP and Reg. S-K, the $237 million payment from Delphi was not properly disclosed, investors were misled into thinking that GM’s earnings from recurring transactions during the third quarter of 2000, were $237 million larger than they really were. As a further result of this deception, in the words of The Wall Street Journal article published on April 13, 2005, the $237 million payment helped GM beat by one penny the earnings estimates of Wall Street, which already had been reduced from earlier estimates. Without it, the company would have fallen about 28 cents shy of the $1.54-a-share estimates of Wall Street analysts for that quarter.

The precision with which GM’s erroneous accounting helped GM to meet analyst’s projections, strongly implies that the misleading accounting was intentional.

542. Moreover, Wagoner went out of his way to publicize the fact that GM had met analyst’s projections, without revealing the fact that this accomplishment was based on the one-time payment from Delphi of $237 million. As reported by The Wall Street Journal, in an article published on September 25, 2000:

Mr. Wagoner said last week he expects third-quarter earnings to come in on track, despite a cooling U.S. market, the weak euro and oil jitters, and notwithstanding hints and even outright warnings of profit shortfalls at several other major companies in the auto sector.

543. As shown by Bible’s statement to The Wall Street Journal, reported in its April 13, 2005, article, that the $237 million recall expense was, from the beginning, treated differently than other recall costs, Bible was aware of the issue at all relevant times, and cannot have been unaware, except as an act of recklessness, that the $237 million payment ultimately was included in GM’s
income for the third quarter of 2003.

544. It can be presumed that Wagoner knew about the $237 million payment, because, as GM’s Chief Operating Officer, Wagoner had made it a personal point to reduce GM’s warranty costs, and he had set the end of the year 2000, as a deadline. As reported by BusinessWeek, in an article published on February 1, 1999:

Wagoner has more recently turned to another perennial GM problem—spiraling warranty costs. . . . Wagoner summoned senior North American managers to the company’s design dome. Reduce warranty costs to 2% by 2001, to save $1 billion, or look for another job, he ordered. (emphasis added).

(b) The $85 Million Credit Given to Delphi

545. GM’s failure to take a charge to income—in any year—for the $85 million credit that GM gave to Delphi, violated the brightest conceivable line under GAAP: as stated by CON 5 ¶ 30, statements of earnings, or net income, must reflect “the extent to which and the ways in which the equity of an entity increased or decreased from all sources other than transactions with owners during a period.” (emphasis added).

546. As explained above, at ¶¶ 238-42, in GM’s 2001 10-K, GM labeled its giving of the credit as if it were a correction to GM’s original accounting for the Delphi spin-off (in which case, income should have been debited in the year of the spin-off), but, ultimately, in its 10-K/A for 2004, admitted that its giving of the credit was an event that took place subsequent to the spin-off (in which case, income should have been debited in the current year of 2001).

547. However, as further explained above, at ¶¶ 243-46, even if GM’s original description of the transaction had been correct, its original accounting for the transaction still would have been inappropriate, because GM failed to charge income in any year for its giving of the credit.

548. For this reason, even if he did not know any information additional to the information provided in the 2001 10-K itself, each and every GM Officer who signed the 2001 10-K
knew that its accounting for the $85 million credit violated GAAP, or else was reckless in his failure to so know.

549. Additional, independent bases for the scienter of each of the GM Officer Defendants, and, thus, of GM, are provided by the facts that (1) the Officers knew or were reckless in not knowing, at the time when the 10-K for 2001 was signed, that the credit was an event subsequent to the spinoff, and not, as they had originally implied, an adjustment to, or correction of, their original accounting for the spinoff, because, as Delphi informed The Wall Street Journal, the credit resulted from negotiations that continued even after Delphi had agreed to make its $237 million payment to GM—which agreement GM recorded as having happened in the third quarter of 2000, long after the spinoff, (2) the Officers knew or were reckless in not knowing at the time that the 10-K for 2001 was signed that their original accounting for the credit was misleading, because, rather than labeling the line item as a loss to GM (i.e., “warranty expense”), they labeled the line item as if it were a gain to GM (“resolution of . . . liabilities owed to GM by Delphi”), and (3) the Officers knew or were reckless in not knowing at the time that the 10-K for 2001 was signed that their accounting for the credit violated GAAP, because, like the $237 million payment from Delphi, the credit was related to warranty expenses, but, whereas GM recorded the $237 million payment from Delphi as income, GM failed in its 10-K for 2001 to report the credit given to Delphi as an expense.

6. The Failure to Timely Write Down GM’s Investment in Fuji

(a) As of May 2005, GM Knew, or Was Reckless In Not Knowing, the Content of Fuji’s Revised Plan

550. As explained above, at ¶¶ 262-66, GM has admitted that knowledge of Fuji’s Revised Plan, and knowledge of GM’s unrealized expectations—as of May 2005—regarding “synergies through GM’s joint vehicle programs with Fuji,” compels the conclusion that, as of May 2005, GM’s investment in Fuji had lost value on other than a temporary basis, and, thus, was impaired.
551. GM knew the content of Fuji’s Revised Plan, as soon as that plan was issued, in May, 2005, and, in any event, no later than by June 3, 2005, or else was reckless in failing to know it, because GM was intimately and pervasively involved in facilitating, supervising and even implementing Fuji’s business, as shown by the following facts:

552. By accounting for its investment in Fuji under the “equity method” of accounting, GM has admitted that GM had “the ability to exercise significant influence over [Fuji].”

553. During the relevant period, GM was Fuji’s largest shareholder.

554. At substantially all times from when GM first invested in Fuji, until October 5, 2005, one of the directors on Fuji’s board of directors was also the President of GM Asia Pacific. Up until May 31, 2004, such person was Frederick A. Henderson. Thereafter, such person was Troy A. Clarke.

555. As alleged above, Fuji was using GM’s global sales network. Therefore, it was necessary for GM to know, in advance, whether any changes were expected in Fuji’s sales activity.

556. No later than on June 3, 2005, the President of Fuji had a face to face discussion with Rick Wagoner, GM’s CEO and Chairman, regarding Fuji’s deteriorated financial condition and its Revised Plan. According to an article in the Nikkei Weekly, dated June 20, 2005, after Fuji announced, on May 12, 2005, that it had suffered a 52% year-on-year drop in net profit, and made “substantial changes to its medium-term plan,” Fuji’s President, Kyoji Takenaka, “felt compelled to give GM a good explanation quickly.” According to the Nikkei Weekly article, on May 13, 2005, GM told Takenaka that Wagoner could see him the following day, giving the Japanese executive a chance to explain the financial results to Wagoner and outline the adjustments to the medium-term plan. (emphasis added).

Also according to the Nikkei Weekly article, Takenaka “met in Detroit” with Wagoner, on June 3, 2005.
(b) As of May 2005, Defendants Also Knew That Their Expectations of Synergies with Fuji Were Being Realized Below The Level That Had Been Expected

557. According to the 8-K filed on October 5, 2005, one of the reasons for writing down GM’s investment in Fuji, as of the end of the second quarter of 2005, was that, as of May 2005, “GM’s expectations regarding synergies through [GM’s] joint vehicle programs with Fuji . . . were being realized below the level that had been expected.” Because GM must be aware of its own “expectations being realized,” it must also be aware whether they are being ‘fully realized.’ Therefore, and because of Wagoner’s and Devine’s sworn statements quoted above in ¶ 491, the GM Officer Defendants and GM must have known, as of May 2005, that, as of May 2005, GM’s “expectations . . . were being realized below the level that had been expected.”

(c) As of the Second Quarter of 2005, GM was Already Trying to Get Rid of its Investment in Fuji

558. In the same 8-K, filed on October 5, 2005, that disclosed the falsity of GM’s statements or omissions regarding the value of GM’s investment in Fuji, GM also announced that, during the second quarter of 2005, GM had begun negotiating with Toyota for the sale of GM’s shares of Fuji to Toyota. This shows that, prior to the end of the second quarter, and, therefore, prior to the filing of the 8-Ks on July 20, 2005, and the 10-Q for the second quarter, GM was already aware that its investment in Fuji was impaired, and was trying to terminate the investment.

(d) The Timing of GM’s Disclosure Shows That the Disclosure Was Intentionally Delayed, In Order to Dilute its Effect on the Market

559. The 8-K filed on October 5, 2005, also disclosed that an agreement now had been reached to sell GM’s shares of Fuji to Toyota; that on October 2, 2005, i.e., only three days before the filing of this 8-K, GM’s board had approved the sale to Toyota; and that “the transactions with Toyota and FHI may result in GM recording a gain on sale in the fourth quarter.”

560. According to GM’s 10-K for 2005, filed on March 28, 2006, GM made a profit of
$71 million on the sale to Toyota. In other words, although GM had written the value of the shares down by $788 million, Toyota was willing to buy the shares for $71 million more than the price to which GM had written them down, thus leaving GM with what appeared—at least on paper—to be a $71 million profit from the sale, in the fourth quarter of 2005. GM was able to obtain such a profit by simply writing the value of the shares down $71 million more than was necessary.

561. Thus, GM timed the disclosure that its investment in Fuji had been impaired, so that the disclosure could appear in the very same 8-K that announced GM’s sale of its Fuji shares for what—at least on paper—appeared to be a profit. In this way, GM hoped to dilute the impact of the disclosure that the investment had been impaired. Such a timing of the disclosure, in order to dilute its impact, shows that the disclosure was not made at the time when GM first became aware of the impairment, and adds further support to the other evidence showing that GM was, in fact, aware of the impairment, or was reckless in not so knowing, as soon as that impairment occurred, which, according to GM’s 8-K, filed on October 5, 2005, was no later than “[i]n May 2005.”

(e) Wagoner and Devine’s Scienter

562. In addition to the foregoing evidence of Wagoner’s personal knowledge of Fuji’s Revised Plan, it can be presumed that Wagoner and Devine each had such scienter regarding the failure to timely write down the investment in Fuji as is alleged here above on the part of GM, because the SOX Section 302 Certifications signed by Wagoner and Devine for the 2005 second quarter (and every other reporting period from the third quarter of 2002 through the end of the Class Period) provide strong evidence that, at the time of the filing of the July 20, 2005 8-K’s and the 2005 second quarter 10-Q, Wagoner and Devine each knew all material information relating to GM that was known to anyone else within GM, or else each of them was reckless in his failure to know it.

563. Moreover, for the reasons stated above in ¶¶ 265-66, the impairment of GM’s investment in Fuji, as of the end of the 2005 second quarter, was material under GAAP, and was
material to investors.

7. **GM Had a Motive to Falsify its Financial Statements, In Order to Avoid Paying Billions of Dollars of Interest**

   (a) **The Unique Importance to GM of its Interest Costs**

   564. As compared with other mature industrial companies, a unique characteristic of GM and the other big American auto manufacturers is that they are heavily dependent on continuous borrowing in order to finance their sales. Thus, an article published on August 13, 2001, by The Wall Street Journal, titled “Soon, the Big Three Won’t Be, As Foreigners Make Inroads,” noted that the “trio of manufacturers” are “heavily dependent on short-term borrowing to finance their sales.”

   565. Moreover, during the Class Period, as the popularity of the American auto makers’ models declined, GM and the other two members of the Big Three tried to compensate by increasing their consumer financing. Thus, in an article published on June 19, 2003, titled ‘U.S. Auto Makers’ Trouble Deepen,” The Wall Street Journal noted that the “Big Three” were especially dependent on “borrowings they need to sustain their 0% financing deals.”

   566. Most of the borrowing done to finance GM’s consumer sales is done by its wholly owned subsidiary, GMAC. Because of its function as GM’s financing arm, GMAC is one of the world’s largest issuers of corporate debt. Based on the disclosures in GMAC’s 10-K’s and 10-Q’s, **during the Class Period, GMAC issued more than $360 billion of debt** with a maturity greater than one year.

   567. Because of GM’s nearly unique dependency on consumer financed sales, the interest that GM is required to pay on its debt is a uniquely important cost of GM’s ordinary operations.

   568. During the Class Period, GM also had an unusual need to borrow money to fund its pension fund. As explained by an article titled “Pension Underfunding: How Big is the Problem,” published in the May 2003 issue of the Commercial Lending Review, “[a]s a result of the unrelenting bear market of recent years . . . pension assets have declined in value while pension obligations
continue to increase.” GM was especially vulnerable to this dynamic because, as explained by a Wall Street Journal Article, published on April 17, 2002, GM “has the largest number of retirees among the big auto makers.”

569. The purpose of the bond offerings made by GM—the parent corporation—during the Class Period was to obtain funds with which to cure the underfunding of GM’s retiree benefit plans. Thus, an article in the January 12, 2004, issue of Business Insurance, written by Joanne Wojcik, noted that “General Motors successfully tackled its $19.3 billion pension deficit—the largest of any U.S. company—with [among other things] the sale of $13 billion in bonds.” (emphasis added).

570. During the Class Period, GM—the parent corporation—issued approximately $23 billion in debt, in addition to the $360 billion issued by GMAC.12

571. Thus, during the Class Period, GM’s interest costs were an even larger than usual component of the costs of its ordinary business.

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12 Following is a list of all of GM’s debt offerings made during the Class Period:

<table>
<thead>
<tr>
<th>Security</th>
<th>Date of Final Prospectus</th>
<th>Date Issued</th>
<th>Amount Announced</th>
<th>Amount Issued</th>
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<tr>
<td>7.5% Senior Notes Due 7/1/44</td>
<td>6/24/04</td>
<td>6/23/04</td>
<td>$650 M</td>
<td></td>
</tr>
<tr>
<td>7.25% Senior Notes Due 7/3/13</td>
<td>7/1/03</td>
<td>6/26/03</td>
<td>€ 1B</td>
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<td>($1.283 B)</td>
</tr>
<tr>
<td>8.375% Sr Notes Due 7/5/33</td>
<td>7/1/03</td>
<td>6/26/03</td>
<td>€ 1.5B</td>
<td>€ 1.5B</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($1.923 B)</td>
<td>($1.923 B)</td>
</tr>
<tr>
<td>7.125% Sr Notes Due 7/15/13</td>
<td>6/30/03</td>
<td>6/26/03</td>
<td>$1 B</td>
<td>$1 B</td>
</tr>
<tr>
<td>8.25% Senior Deb’s Due 7/15/23</td>
<td>6/30/03</td>
<td>6/26/03</td>
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<td>$1.25 B</td>
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<tr>
<td>8.375% Sr Deb’s Due 7/15/33</td>
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<td>6/26/03</td>
<td>$3 B</td>
<td>$3 B</td>
</tr>
<tr>
<td>6.25% Convertibles Due 7/15/33</td>
<td>6/27/03</td>
<td>6/26/03</td>
<td>$4 B</td>
<td>$4.3 B</td>
</tr>
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<td>7.375 Senior Notes Due 5/23/48</td>
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<td>7.375% Sr Notes Due 5/15/48</td>
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<td>5/14/03</td>
<td>$1B</td>
<td>$1.115 B</td>
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<td>5.25% Convertibles Due 3/6/32</td>
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<td>2/28/02</td>
<td>$1 B</td>
<td>$1.15 B</td>
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<tr>
<td>5.25% Convertibles Due 3/6/32</td>
<td>3/4/02</td>
<td>2/28/02</td>
<td>$2.3 B</td>
<td>$2.6 B</td>
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<td>7.25% Senior Notes Due 2/15/52</td>
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<td>$875 M</td>
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<td>7.375% Sr Notes Due 10/1/51</td>
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<td>7.25% Qrtl Int Bonds Due 4/15/41</td>
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<td>7.2% Notes Due 1/15/11</td>
<td>1/31/01</td>
<td>1/29/01</td>
<td>$500 M</td>
<td>$1.5 B</td>
</tr>
</tbody>
</table>
The Size of GM's Interest Costs are Determined by Its Credit Rating, and Especially, by Whether It has an “Investment Grade” Credit Rating

572. For any given amount of debt that GM must incur, the amount of interest that GM must pay is determined by the size of the interest payment—or coupon—that GM must promise to pay, in order to find buyers for the debt offering.

573. As a practical matter, the size of such interest rate is in large part determined by GM's credit rating, as assigned to GM by each of the several leading rating agencies, especially S&P and Moody's. Thus, The Wall Street Journal's August 13, 2001, article about the troubles of the Big Three noted that “credit-rating agencies already have threatened the trio of manufacturers with cuts in their debt ratings. That would immediately hurt companies heavily dependent on short-term borrowing to finance their sales.” Similarly, the article published by The Wall Street Journal on June 19, 2003, referred to “[c]redit-rating agencies, whose views affect what the Big Three pay for the borrowings they need to sustain their 0% financing deals.”

574. Also as a practical matter, the size of the interest payments that GM must promise in order to sell its debt is especially sensitive to whether GM’s debt is rated as “investment grade” or “junk.” As noted by The Wall Street Journal, in an article published on January 20, 2005, titled “Bond Market Is Fixated on GM,” many “pension funds, mutual funds and other institutional investors [are] required to hold investment-grade securities.” Therefore, when a company’s credit rating is downgraded to junk, those institutions are forced to sell their holdings of the company’s debt, and the company must promise higher coupons to find new buyers. As The Wall Street Journal noted in another article, published on May 8, 2005, titled ‘How GM and Ford Bonds Became ‘Junk,’” “Companies that see their debt cut to speculative status have to pay higher interest rates, or yields, to tempt investors to buy their bonds.”

575. As noted above, most of GM’s borrowing is done by its financing subsidiary, GMAC. Traditionally, and up until nearly the end of the Class Period, GMAC’s credit rating moved
in lock step with GM’s, because of the interdependency of their businesses. As stated in Moody’s credit report, dated October 12, 2004, “General Motors Acceptance Corp. (GMAC) remains an integral part of GM, and thus the ratings of GMAC are linked to those of GM.”

576. Even after the ratings of GM and GMAC began to diverge—after they were both downgraded to junk, and then, GM, but not GMAC, suffered further downgrades, the size of the coupon that GMAC was required to offer continued to be affected by GM’s credit ratings. Thus, an article published by The Wall Street Journal on November 9, 2005, written by Lee Hawkins Jr. and Michael Schroeder, noted that “GM’s junk debt ratings have weighed down GMAC. . . . Freeing GMAC from GM’s credit rating is one reason why Mr. Wagoner has said GM will seek to sell a controlling interest in the GMAC financing arm. . . . the spinoff is needed to secure GMAC a better credit rating.”

577. GMAC’s 10-K for the year 2005 disclosed that

[as a result of] **credit actions that downgraded the credit rating on GM’s debt**

. . . our unsecured borrowing spreads have widened significantly over the past several years, **substantially reducing our access to the unsecured debt markets and impacting our overall cost of borrowing.** (emphasis added).

(c) **Throughout the Class Period, GM had Reason to Fear a Downgrade from “Investment Grade” to “Junk”**

578. During the Class period, because of GM’s shrinking market share and increasing obligations for post-retirement benefits, GM’s credit rating was steadily downgraded, step by step, from a high investment grade credit rating at the beginning of the Class Period to a low junk rating at the end of the Class Period, with the crucial dividing line being crossed on May 5, 2005, when S&P cut GM’s rating from BBB- (S&P’s lowest investment grade rating) to BB (S&P’s highest level of ‘junk’).

579. From the very start of the Class Period, in order to prevent an escalation in GM’s interest costs, Defendants were extremely anxious to avoid continuing credit downgrades, and, in particular, to avoid being downgraded to junk.
580. As early as **June 1, 2001**, an article written by Joseph McCafferty and published by CFO Asia Magazine quoted a statement by Devine that he was “working hard” to avoid the higher interest rates that would result from a credit downgrade:

> Although GM commercial paper currently enjoys top credit ratings, Standard & Poor's placed GM on credit watch in February, lowering the outlook for GM’s debt from ‘stable’ to ‘negative.’ **A downgrade would have a dramatic impact on GMAC’s profitability, making it difficult to refinance maturing short-term debt.** ‘(GMAC has) a very large balance sheet, and we are always looking at ways to strengthen it,” says Devine. **“We are working hard to avoid a downgrade.”** (emphasis added).

581. On October 16, 2002, when Bloomberg News reported that, “because of rising pension liabilities,” S&P had cut its long-term credit rating on GM from A to BBB+, even though S&P’s rating was still two notches **above** junk, investors were already worried that a downgrade to junk was coming, and that their GM debt securities would therefore lose substantial value. Thus, Bloomberg News quoted one investment fund manager:

> “The dramatic increase in the pension liability is certainly disconcerting, especially when it precipitates a rating downgrade to **just two notches above junk,**” said Mark Freeman, who helps manage about $800 million of fixed-income assets including notes of General Motors at Westwood Management Corp. in Dallas. (emphasis added).

582. On October 30, 2002, an article in USA Today titled “Auto Sales Could be Economic Time Bomb,” described S&P’s downgrade as a downgrade to **near-junk-bond status,** making it more expensive . . . to raise money.” (emphasis added).

(d) **The Falsification of GM's Financial Statements Maintained GM's Credit Rating One Step Higher than it Otherwise Would Have Been, And Thereby Reduced GM's Borrowing Costs by Billions of Dollars**

583. But for GM's falsification of its financial statements as alleged herein, the downgrading of GM's credit rating would have happened more quickly. Indeed, due to the falsification of GM's financial statements alleged herein, throughout the Class Period, GM's credit rating remained roughly one step higher than it otherwise would have been. This is shown by the fact that, on March 29, 2006, the day after GM filed its 10-K for 2005, 10-K/A for 2004, and
10-Q/A’s for the first three quarters of 2005, thus completing its disclosures regarding its Class Period falsifications, Moody’s downgraded GM’s credit rating one step, from B2 to B3.

584. Thus, during the period when GM’s credit was rated just one notch above junk, if not for the falsification of GM’s financial statements, GM’s credit would have been rated junk.

585. Thus too, during the period when GM’s credit was rated just one notch above junk, if not for the falsification of GM’s financial statements alleged herein, GM would have had to pay the higher level of interests rates that it eventually had to pay when its credit was subsequently downgraded to junk.

586. From October 15, 2004, to May 5, 2005, GM’s credit was rated one step above junk by S&P (BBB-). From May 6, 2005, to October 10, 2005, GM’s credit was rated the highest level of junk, by S&P (BB). During the period when GM was rated one step above junk, the coupons on the debt offered by GMAC were, on average, approximately 2% lower than the coupons on the debt offered by GMAC during the subsequent period, after GM had been downgraded one step, when GM was rated the highest level of junk, by S&P.13 Moreover, no general market movements of interest rates during this period can account for this difference between pre-downgrade and post-downgrade GMAC coupons.

587. Based on GMAC’s SEC filings, GMAC issued approximately $26 billion of debt during the period from October 15, 2004, to May 5, 2005, when GM’s credit rating by S&P was one step above junk, and while GMAC’s coupons were 2% lower than they would be subsequently, after S&P downgraded GM to junk. Therefore, the falsification of GM’s financial statements, which

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13 This calculation has been made using information about GMAC’s debt securities publicly available from Bloomberg LP. Pre-downgrade coupons were compared to post-downgrade coupons on debt with the same number of years to maturity. In order to simplify the calculation, foreign debt issues and debt issues with variable interest rates were excluded from the analysis (based on the information in GMAC’s SEC filings, the large majority of GMAC’s debt is issued domestically; moreover, it is a reasonable assumption that variable interest rate debt will be affected by a credit downgrade in the same way that fixed interest rate debt will be affected).
permitted GM to retain an S&P credit rating one step above junk during the period from October 15, 2004, to May 5, 2005, saved GM interest payments totaling approximately 2% of $26 billion—which is $520 million—during every year of the life of the debt issued during the period from October 15, 2004, to May 5, 2005.

588. The number of years to maturity of the fixed interest debt issued during the period when GM was rated one step above junk by S&P ranged from 1.5 to 20 years. Therefore, the falsification of GM’s financial statements prior to and during that period saved GM billions of dollars of interest going forward.

589. Moreover, GM’s falsification of its financial statements probably also avoided higher interest payments during earlier portions of the Class Period, including when GM was borrowing money to fund its pension fund.

590. Thus, GM reaped concrete benefits from the falsification of GM’s financial statements, namely, it avoided billions of dollars of interest costs associated with the debt that GM and GMAC were constantly incurring, including approximately $520 million of interest costs avoided during the last year of the Class Period, and possibly equivalent amounts during earlier years in the Class Period.

591. Obviously, as senior officers, the Officer Defendants had the opportunity to manipulate GM’s financial statements, as well as a concrete motive for doing so.

8. **Huge Incentive Compensation Awards Gave Wagoner And Devine Each a Personal Motive to Commit Fraud**

592. Throughout the class period, GM’s executive compensation program was designed to motivate senior officers to improve the company’s financial performance. Especially when financial performance cannot be improved by legitimate means, such a program may also have the effect of motivating senior officers to falsify the company’s financial results.

593. According to GM’s Proxy Statement for the year ended December 31, 2000 (filed
with the SEC on April 19, 2001) (“2000 Proxy Statement”) the Company’s “Compensation Philosophy” is “based on the belief that the interests of executives should be closely aligned with those of GM’s stockholders.” To that end, “[a] significant portion of each executive’s total compensation is linked to accomplishing specific, measurable results that are intended to create value for stockholders in both the short- and long-term.” The Proxy Statements for the years 2001-2005 contain virtually identical statements about executive compensation.

594. A GM executive’s annual compensation includes his or her base salary, bonuses, and perquisites. The executive’s long-term compensation includes the grant of stock options, restricted stock units (“RSUs”), and long-term incentives.

595. The incentive award part of GM’s executive compensation program is comprised essentially of three parts: an Annual Incentive Plan, a Stock Incentive Plan, and a Performance Achievement Plan—renamed the Long-Term Incentive Plan, in 2002.

596. **Annual bonuses**, which are usually paid in cash, are determined according to whether the Company meets certain business objectives and financial performance targets set by the Executive Compensation Committee, as well as according to the executive’s individual performance.

597. **Stock options** are granted “to emphasize the importance of improving stock price performance and increasing shareholder value over the long-term and to encourage executives to own GM stock.”

598. **RSUs** are also granted pursuant to the Company’s stock incentive plan, but not on a regular basis. An RSU is a grant valued in terms of company stock, but company stock is not issued at the time of the grant. RSUs vest over time according to a defined vesting schedule, but are available for distribution only after the director retires from the Board at age 70, or after the director leaves the Board.

599. **Long-term incentives** are payouts of GM stock to GM’s senior executives based upon the Total Shareholder Return (“TSR”) performance of GM’s common stock compared to that
of other stocks in the S&P 500 Index over a three year period.

600. In addition to awarding stock based on TSR results, from time to time the Board creates special grant programs with particularized criteria that the Company must meet in order for the executives to receive any payout. Two examples of such long-term incentive programs are the 2000 Net Margin grant and the 2002 Leadership Challenge grant.

601. As The Wall Street Journal reported in an article published on September 20, 2000, on that day, Wagoner told a meeting of GM company executives that “GM must not only work to expand its business but also has to move faster to boost profitability.” (emphasis added). To that end, the Compensation Committee made a special “Net Margin” grant to the entire executive team worldwide. According to the Company’s 2000 Proxy Statement, payment of this grant depended on increasing the Company’s “four-quarter rolling average Corporate Net Margin [i.e. net income as a percent of net sales] to at least 5% prior to the end of 2003.”

602. GM’s determination that its senior officers benefit from its incentive program regardless of whether the company’s shareholders were actually benefiting is shown by the fact that, during 2002, when it became apparent that the Company was not going to achieve the 5% level, thus precluding the payment of bonuses, the Net Margin grant was cancelled and replaced with the “Leadership Challenge” grant. According to the Company’s 2002 Proxy Statement, payment of the grant was “contingent upon attainment of specific structural cost improvement and cash flow targets well above projected business plan levels over the two year period, 2002-2003.” Unlike the Net Margin grant, receiving an award under the Leadership Challenge grant was not an all or nothing proposition, and was tied to the Company’s cash flow.

603. Due to the replacement of the Net Margin Grant with the 2002 Leadership Challenge grant, Wagoner was awarded $3,313,000 worth of GM stock as long-term incentive compensation in 2003. Devine was awarded $2,821,000 worth of GM stock as long-term incentive compensation in 2003.
604. Both Wagoner and Devine served as GM’s top executive officers during the Class Period. Wagoner has served as GM’s Chief Executive Officer since June 2000. Devine has served as GM’s Chief Financial Officer since January 2001.

605. Based on the information in GM’s Proxy Statements, as illustrated by the table below, during the Class Period, defendants Wagoner and Devine both received substantial bonuses and other incentive based compensation that was tied to GM’s apparent financial results.

<table>
<thead>
<tr>
<th>NAME</th>
<th>YEAR</th>
<th>ANNUAL COMPENSATION</th>
<th>LONG-TERM COMPENSATION</th>
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<tr>
<td></td>
<td></td>
<td>Salary $</td>
<td>Bonus $</td>
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<tr>
<td>Wagoner</td>
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<tr>
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<tr>
<td>TOTAL</td>
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<tr>
<td>Devine</td>
<td>2000</td>
<td>-</td>
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<tr>
<td></td>
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<tr>
<td>TOTAL</td>
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<td>4,512,000</td>
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606. As shown by the chart above, during the Class Period, aided by the falsification of GM’s financial statements, Wagoner received approximately $16 million in incentive compensation, in addition to his salary during the same period, which totaled approximately $12 million. During the same period Devine received approximately $14.7 million in incentive compensation, in addition to his salary during the same period, which totaled approximately only $7.6 million.

607. Moreover, Defendant Wagoner engaged in a highly suspicious stock sale on April 23,
2002. According to GM’s Proxy Statement filed on April 18, 2002, five days before Defendant Wagoner’s large insider transaction, Defendant Wagoner owned 94,013 shares of common stock, and 1,050,470 common stock options. On April 23, 2002, just days after the Company’s stock price rose from $62.95 to $64.05 per share, on the April 16, 2002, press release reporting GM’s 2002 first quarter results, which included net income and retained earnings numbers inflated by GM’s premature recognition of supplier rebates, Wagoner exercised 178,254 options for $6,650,211, and sold 176,052 shares for proceeds of $11,585,982.

608. Thus, Wagoner and Devine each reaped huge, personal, concrete benefits from the falsification of GM’s financial statements during the Class Period, which gave each of them a substantial motive to commit fraud.14

9. Deloitte’s Scienter

(a) Deloitte Repeatedly Approved Violations of Bright Line GAAP Rules Applied to Obvious Underlying Transactions

609. As explained above, in Part V, “Substantive Allegations,” every category of materially untrue statement made by GM in its financial statements involved violation of a bright line GAAP standard and/or SEC regulation.

610. Moreover, as explained below, in every such instance, the violation applied to one or more underlying transactions whose existence would have been obvious to even the most cursory investigation.

611. Still further, under AU § 150 (re “Generally Accepted Auditing Standards”) ¶.02(3), “[s]ufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements

14 By misleading investors about the true financial condition of the Company and engaging in the fraudulent schemes described above to conceal GM’s poor financial condition, defendants Wagoner and Devine also violated the Company’s own compensation policy, the purpose of which was to provide value to the shareholders, and thus, should be required to disgorge their bonuses and other compensation, and the profits from Wagoner’s 2002 stock sale, for that reason as well.
under audit.” Indeed, every one of Deloitte’s Reports in GM’s Class Period 10-K’s contains a statement that “[a]n audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.”

612. Despite the clear violation by GM of bright line GAAP standards as applied to obvious underlying transactions, and despite Deloitte’s professional responsibility to investigate the underlying transactions, as to each and every such violation, in six successive 10-K’s, Deloitte stated falsely that GM’s consolidated financial statements were prepared “in conformity with [GAAP]” and that they presented “fairly, in all material respects, the financial position of [GM] and subsidiaries” at the end of the covered period or periods. Such an accumulation of false audit reports made in the context of such blatant GAAP violations and transparent underlying transactions indicates that, at the time when Deloitte signed its audit Report, either Deloitte knew that it spoke falsely, or Deloitte had essentially failed to conduct any audit at all. In short, at the time when Deloitte issued each GM Class Period audit Report, it knew, or recklessly disregarded, that the central statements in that Report were false.

613. GM’s premature recognition of supplier credits violated the bright line GAAP principle that “revenues are not recognized until earned.” CON 5 ¶ 83. Moreover, the underlying transactions would have been obvious to any substantial audit because: (1) the violation did not involve removing the effects of certain transactions, but, rather, including the effects of those transactions in reported numbers, (2) the effects were included in income from continuing operations and consolidated net income, arguably the issuer’s most important line items, (3) the amount of the prematurely recognized credits was huge—including $405 million in the year 2001, which was two-thirds of the consolidated net income reported by GM in that year, and (4) as admitted in GM’s 10-K/A for 2004, Delphi was one of the suppliers giving the credits, and Deloitte
is also the auditor for Delphi.  

614. GM’s failure to adequately disclose the Delphi Legacy Guarantee in any financial statement filed prior to October 8, 2005, or even to mention the Guarantee in any financial statement incorporated into the registration statements and prospectuses here at issue, violated the bright line GAAP rule that the existence, nature and—if estimable—amount of a contingent liability involving a guarantee given by the issuer that exists at the time when a financial statement is issued must be disclosed in the financial statement. FAS 5 ¶ 12. Moreover, while the reference in GM’s 10-Q for the first quarter of 2000 to “guarantees covering benefits to be provided to certain former U.S. hourly employees of GM who became employees of [certain] disposed businesses, [including Delphi],” was much too vague to satisfy FAS 5 ¶ 12, Deloitte cannot have made any investigation at all of GM’s contingent liabilities, if Deloitte did not, as result of that reference in the 2000 first quarter 10-Q, obtain a copy of the Delphi Legacy Guarantee. This is all the more true because, again, Deloitte is the auditor for Delphi, and thus would have additional reason to know about the existence of the Guarantee.

615. GM’s failure to report the $237 million payment from Delphi for past recalls as a separate item of income violated, among other rules, the bright line GAAP rule APB 30 ¶ 26, which requires that material transactions that occur infrequently “should be reported as a separate component of income.” Moreover, the existence of the underlying transaction would have been

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15 Moreover, if Deloitte was not aware of the underlying transactions, that could only be because it recklessly turned a blind eye to the red flag provided by its own previous experience with problems raised by accounting for supplier rebates. Thus, on May 13, 2003, The Wall Street Journal published an article about “the potential for abuse” in accounting for vendor rebates to retailers, titled “Problems with Vendor Rebates May Be Broader than Thought.” The article noted that: “The issue isn’t new. In 1999, shareholders accused Just For Feet Inc. (“JFF”), a Birmingham, Ala., shoe retailer, of using rebates to inflate revenue before filing for bankruptcy-court protection. The suit, filed in federal court in the Northern District of Alabama, also named Deloitte as a defendant, alleging the auditor failed to sufficiently corroborate purported vendor payments. . . . Deloitte settled the matter last year, agreeing to pay shareholders $7.4 million.” (emphasis added).
obvious to any substantial audit, because: (1) the violation did not involve removing the effects of the transaction, but, rather, including the effects of the transaction in reported numbers, (2) the $237 million resulted from an unusual one-time transaction that accounted for 19% of the income reported in the quarter when it occurred, and (3) the payor of the $237 million, Delphi, was also an audit client of Deloitte, so that Deloitte would have twice as much reason as would otherwise be the case to know about the transaction.

616. GM’s failure to charge its net income for the $85 million credit that it gave to Delphi violated the bright line GAAP rule that statements of earnings, or net income, must reflect “the extent to which and the ways in which the equity of an entity increased or decreased from all sources other than transactions with owners during a period.” CON 5 ¶ 30. As explained above, in ¶¶ 238-46, 545-49, there is no possible justification under GAAP for this violation. Moreover, the existence of the transaction had to be known to Deloitte because it was mentioned in GM’s 2001 10-K, though in a manner that disguised its effect on income. Of course, the transaction also was known to Deloitte because it was yet another transaction involving Deloitte’s other audit client—Delphi. In short, Deloitte’s certification of this erroneous piece of accounting simply cannot be explained in any other way than by Deloitte’s intentional or reckless participation in an act of fraud.

(b) Deloitte Turned a Blind Eye to the Red Flag Provided by the SEC’s Effort to Stop GM from Overstating Cash Flows from Operating Activities

617. GM’s misclassification of cash flows relating to mortgage loans owned by ResCap violated the bright line rule that “if loans were acquired as investments, cash receipts from sales of those loans shall be classified as investing cash inflows regardless of a change in the purpose for holding loans.” FAS 102 ¶ 9.

618. Moreover, in the three year period up to and including 2004, the misclassification of ResCap cash flows had resulted in the overstatement of GM’s cash flow from operating activities by $12.9 billion, which was approximately 48% of the operating cash flow reported. No substantial
audit could possibly have missed that this cash flow was being misclassified in violation of a bright line GAAP rule.

619. Still further, Deloitte knew by reviewing GM’s 2004 10-K prior to its filing, if not well before that, that the SEC had told GM to stop overstating its cash flows from operating activities by misclassifying certain other cash flows. The SEC’s expressed concerns constituted a red flag requiring Deloitte to pay special attention to GM’s classification of its cash flows. Deloitte either knowingly or recklessly turned a blind eye to that red flag.

620. Nor can Deloitte’s failure be explained away because ResCap was a subsidiary of GMAC. Each of Deloitte’s Reports in GM’s 10-K’s explicitly states that the included financial statements “present fairly, in all material respects, the financial position of General Motors Corporation and subsidiaries . . . in conformity with [GAAP].” (emphasis added). Moreover, Deloitte was also GMAC’s auditor, and Deloitte provided the same unqualified audit reports in each of GMAC’s 10-K’s during the period 2002 through 2004.

(c) Deloitte Also Turned a Blind Eye to GM’s Internal Control Failures Regarding Accounting For Supplier Rebates

621. GAAS Standard of Field Work No. 2, requires an outside auditor to make a proper study of existing internal controls, including accounting, financial and managerial controls, to determine whether reliance thereon is justified, and if such controls are not reliable, to expand the nature and scope of the auditing procedures to be applied. The standard provides that a sufficient understanding of an entity’s internal control structure must be obtained to adequately plan the audit and determine the nature, timing and extent of tests to be performed. AU § 150.02. In all audits, the auditor should perform procedures to obtain a sufficient understanding of three elements of an entity’s internal control structure: the control environment, the accounting system, and control procedures. AU § 319.02.

622. In GM’s 10-K/A for 2004, GM admitted that there had been at least a “significant
deficiency” in its “internal controls in the accounting for supplier credits,” lasting over a period of almost **five straight years**: from 2001 through the third quarter of 2005.

623. Moreover, GM’s 10-K/A for 2004 admitted that, during 2001, the internal control failure regarding supplier credits had been severe enough to be a “material weakness,” and that, in 2002, it had been “remediated” to a “significant deficiency,” only because **changes were made within the purchasing process.**” (emphasis added).

624. Still further, in GM’s 10-K/A for 2004, Deloitte stated that “[i]n our opinion, management’s revised assessment that the Corporation did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated.

625. Nevertheless, in each of GM’s 10-K’s for the years 2001 through 2004, Deloitte’s Independent Auditor’s Report certified as truthful the statements by GM that there were no material weaknesses or significant deficiencies in GM’s internal controls and/or that GM’s internal controls were effective.

626. Either Deloitte’s certification of GM’s statements regarding its controls were intentionally false, or else Deloitte recklessly turned a blind eye to control deficiencies that lasted for five straight years, and to a change in GM’s purchasing process during 2002 that significantly affected the manner in which GM’s supplier rebates were accounted for, but left that accounting process still subject to a significantly deficient.

**B. CAUSATION**

1. **Disclosure of GM’s Improper Accounting for The Two Transactions Apportioning Recall Costs**

627. On April 13, 2005, as first reported by Bloomberg News and others after the market closed, **GM disclosed that it had been issued a subpoena by the SEC, for what Bloomberg described as “documents related to transactions with Delphi Corp,”** in connection with the SEC’s investigation of Delphi’s accounting. (emphasis added). Bloomberg’s story added that
Delphi had already acknowledged that Delphi had improperly accounted for its $237 million payment to GM. **This disclosure came only hours after publication of The Wall Street Journal's article of April 13, 2005, in which accounting experts had criticized GM's accounting for its two transactions with Delphi apportioning the costs of past recalls.** Taken together with The Wall Street Journal article, news of the subpoena gave investors substantial reason to lose faith in GM’s accounting for the two transactions with Delphi.

628. On April 14, 2005, the first day of trading after disclosure of the SEC’s subpoena to GM regarding its transactions with Delphi, the price of GM stock dropped $1.67 per share, or 5.89%, to $26.66. Taken together with The Wall Street Journal article, the disclosure that GM had received a subpoena, and, thus, the implicit disclosure that GM's accounting for its two transactions with Delphi probably could not be relied upon, was a substantial cause of this price drop.

2. **Disclosure of GM’s Failure to Timely Write Down its Investment in Fuji**

629. On October 5, 2005, before trading began, GM filed its 8-K disclosing that the financial statements in its 2005 second quarter 10-Q, and in its two Form 8-Ks filed on July 20, 2005, “should no longer be relied upon” because they had failed to record a $700-$800 million impairment to the carrying value of GM’s investment in Fuji.

630. On October 5, 2005, the first day of trading after GM’s disclosure, GM’s stock dropped by $1.45 per share, or 4.82%, to $28.63. GM’s disclosure in its October 5, 2005, 8-K, that its 8-Ks filed on July 20, 2005, and its 10-Q filed on August 8, 2005, could no longer be relied upon, and, essentially, that the income statements and balance sheets in those prior filings were materially untrue, was a substantial cause of this drop in the price of GM’s stock.


631. On October 8, 2005, which was a Saturday, for the first time, GM adequately disclosed the existence and nature of the Delphi Legacy Guarantee, by filing it with the SEC as part
of a Form 8-K, and disclosed that GM could possibly be liable under the Guarantee for as much as “$10 billion to $11 billion at the high end.”

632. On October 10, 2005, the first day of trading after GM disclosed the Delphi Legacy Guarantee and the range of GM’s possible liability under the Guarantee, the price of GM stock fell $2.81 per share, or 9.9%, to $25.48.

633. Also during the weekend prior to the trading on October 10, 2005, Delphi filed for Chapter 11 protection. However, as noted in an article by Mohammed Hadi, published by The Wall Street Journal on October 11, 2005, Delphi’s bankruptcy filing “was expected.” What was not expected was GM’s disclosure of the Delphi Legacy Guarantee and the range of GM’s potential liability. Thus, the Detroit Free Press would later recall, in an article published on January 27, 2006, that “Delphi’s bankruptcy on Oct. 8 triggered a secret deal between GM and the UAW ensuring the payment of some benefits to some Delphi workers.” (emphasis added).

634. GM’s disclosure on October 8, 2005, of the Delphi Legacy Guarantee and the range of GM’s possible liability under the Guarantee was a substantial cause of the drop in the price of GM stock that occurred on October 10, 2005.

635. On January 26, 2006, before the market opened, GM issued a press release in which it announced a 2005 calendar-year loss of $8.6 billion—the second largest annual loss in GM’s history.

636. The January 26, 2006, press release stated that, in addition to “poor performance in North America . . . . [o]ur results were also dramatically and adversely affected by charges for restructuring and matters associated with Delphi Corp.’s Chapter 11 filing,” (emphasis added). The press release then disclosed that, in the fourth quarter of 2005, GM had “established a reserve of $3.6 billion ($2.3 billion after tax), relating to GM’s “benefit guarantees for certain former GM U.S. hourly employees who transferred to Delphi,” which had been triggered by the Delphi bankruptcy.
637. This revelation shocked investors, because, as recently as in its 8-K filed on October 8, 2005, GM had stated that “GM currently believes that it is not probable that [GM] has incurred a liability due to Delphi’s Chapter 11 filing.”

638. On the day of this announcement, January 26, 2006, the price of GM’s stock fell 80 cents per share, or 3.35%, to $23.05. Moreover, GM’s stock took this dramatic fall on a day when the Dow Jones Industrial Average rose by almost 100 points.

639. The next day, the Detroit Free Press summarized the events of January 26, 2006, by reporting that GM’s announcement of a “larger-than expected loss . . . sent its already battered stock down 3.35%.” As the article explained,

GM’s losses included charges totaling $5.2 billion last year, chief among them $2.3 billion after taxes that GM set aside to pay for guaranteed benefits for some former GM hourly workers who transferred to Delphi Corp. For the first time, GM said it would have to pay at least $3.6 billion, or $2.3 billion after taxes, for those guaranteed benefits. Delphi’s bankruptcy on Oct. 8 triggered a secret deal between GM and the UAW ensuring the payment of some benefits to some Delphi workers. GM had said last year that the cost of those guarantees could be anywhere from zero to $12 billion. Now GM estimates that range is from $3.6 billion to $12 billion, and would likely be in the low end of that range. GM’s large losses spooked Wall Street investors. GM’s stock price dropped 80 cents to $23.05 on the New York Stock Exchange. (emphasis added).

640. Thus, GM’s disclosure that it would have to reserve at least $3.6 billion, or $2.3 billion after taxes, because of its originally undisclosed obligation for the postretirement benefits of certain Delphi workers, was a substantial cause of the drop in the price of GM’s stock on January 26, 2006.

4. Disclosure of GM’s Premature Recognition of Supplier Credits

641. On November 9, 2005, after the close of trading, GM filed its non-reliance Form 8-K with the SEC, in which GM disclosed, for the first time, that it had been recognizing supplier credits prematurely; that, consequently, it would be forced to restate downward its net income from continuing operations for 2001 by at least $300 - $400 million for improperly recorded supplier credits; that “due to the likelihood of a material restatement of GM’s financial statements with
respect to 2001, investors should no longer rely on GM’s previously filed financial statements for that year, nor the related auditors’ reports thereon”; and that GM “will also restate financial statements for periods subsequent to 2001 that may be affected by the erroneous accounting.”

642. On November 10, 2005, the first day of trading after GM’s disclosure, the price of GM’s stock fell $1.12 per share, or 4.6%, to $23.51.

643. On the following day, Friday, November 11, The Wall Street Journal published an article titled “At General Motors, Troubles Mount for Man Behind the Wheel,” and subtitled “Restatement Hits the Stock,” which reported that “GM jolted investors late Wednesday by disclosing it had improperly booked rebates from suppliers, inflating earnings for 2001 by $300 million to $400 million, or roughly half the amount reported at the time,” and that “[y]esterday, investors hammered down GM shares to their lowest level since October 1992.”

644. GM’s disclosure in its 8-K filed on November 9, 2005, that it had prematurely recognized supplier rebates and inflated income for the year 2001 by $300 to $400 million, and that its financial statements in years subsequent to 2001 might also have been affected by premature recognition of supplier rebates was a substantial cause of the drop in the price of GM stock that occurred on November 10, 2005.


645. On March 16, 2006, investors were waiting for GM to file its 10-K for the year 2005. On that day, after the market closed, GM issued a press release stating that it would “delay filing its annual report on Form 10-K with the [SEC] due to an accounting issue regarding the classification of cash flows at ResCap, the residential mortgage subsidiary of GMAC,” and that it would “increase GM’s reported loss in 2005 to a total of $10.6 billion,” instead of the $8.6 billion loss announced only two months earlier. As for the accounting issue, the press release made clear that it “may impact the statements of cash flows for 2005 and prior periods at ResCap, GMAC and GM, and the
impact may be material in some or all of the affected periods.” (EMPHASIS ADDED). As for the upward revision in the year 2005 earnings loss, the press release made clear that the largest single reason was an upward revision in “the charge for GM’s contingent exposure relating to Delphi’s Chapter 11 filing, including benefit guarantees between GM and certain unions, to $3.6 billion ($5.5 billion before tax) from the previous estimate of $2.3 billion ($3.6 billion before tax).”

646. On March 17, 2006, an article in the Dow Jones Newswire, by Stephen Wisnfski and John D. Stoll, summarized the GM announcement and its impact:

GM suffered another big blow to its credibility with the announcement late Thursday of significant earnings restatements and accounting problems at its General Motors Acceptance Corp. lending unit. The world’s largest auto maker said higher charges related to its obligations to supplier Delphi Corp. and other restructuring-related charges inflated its 2005 loss to $10.6 billion, $2 billion more than previously announced. The company also pointed to cash-flow accounting errors at GMAC’s ResCap mortgage subsidiary, noting that it could change cash-flow calculations for previous years.

647. On March 17, 2006, the first day of trading after GM’s announcement, GM’s stock dropped $1.09 per share, or 4.91%, to $21.13.

648. The relationship between the disclosures relating to the restatement of cash flows and the increase in the charge relating to the Delphi bankruptcy, on the one hand, and the drop in GM’s stock price, on the other hand, was elaborated in an article by Sarah Karush published by the Associated Press on March 18, 2006:

General Motors Corp.’s disclosures that it lost $2 billion more last year than previously reported and needs more time to sort out accounting errors in the finance business it wants to sell gave investors fresh reasons to worry about the world’s biggest automaker. They sent GM’s shares price down nearly 5 percent Friday, shaving more than a half-billion dollars off its market value. . . . The delay in filing the annual report and the disclosure of accounting errors ‘undermines management’s credibility with investors,’ Morgan Stanley analyst Jonathan Steinmetz wrote in a research note. . . . The biggest reason for the increase in GM’s 2005 loss was an increase in the charge for its exposure relating to Delphi’s Chapter 11 bankruptcy case by $1.3 billion to $3.6 billion.

649. As the price of GM shares dropped, GM’s board of directors had what The Wall Street Journal described as “a hastily scheduled conference call” to discuss the “newly uncovered
accounting errors.” In its article, dated March 18-19, 2006, The Wall Street Journal’s headline made the connection between the cash flow disclosure and GM’s most recent stock drop explicit: “GM Board Seeks Probe of Mistakes In Bookkeeping—Last Minute Error at GMAC Caught Directors by Surprise; Share Price Drops Nearly 5%.”

650. Thus, the disclosure that GM’s obligation arising from Delphi’s bankruptcy was larger than previously disclosed, and the disclosure that GM would have to restate its cash flows, were each substantial causes of the drop in the price of GM shares on March 17, 2006.


652. GM’s 10-K/A for 2004 quantified, for the first time, the effect of the ResCap cash flow restatement on GM’s consolidated cash flows. As a result, the figures for the key cash flow entry—GM’s consolidated net operating cash flow—for the years 2004, 2003 and 2002, were restated downward, in turn, by approximately $3.7 billion, $6.1 billion and $3.1 billion, while investing cash flows were restated upward by the same amounts.

653. The substantial materiality of this cash flow restatement is shown by the fact that GM’s 10-K for 2005, filed at the same time as the 10-K/A for 2004, disclosed, for the first time, that there was a substantial risk that GM had now violated its promises, under its syndicated bank revolver and various of its leases, to deliver accurate financial statements:

In view of GM’s recent restatement of its prior financial statements, GM believes that there is substantial uncertainty as to whether the bank syndicate would be

16 The 10-K/A for 2004 also quantified precisely, for the first time, the full effects of GM’s premature recognition of supplier credits on GM’s income, admitted for the first time that, as of December 31, 2004, there was a “significant deficiency in internal controls related to the accounting for supplier credits” and that in 2001 it had been a “material weakness,” and admitted, for the first time, that GM’s accounting for the $85 million credit given to Delphi was improper, and that it had resulted in GM’s 2001 after tax income being inflated by $55 million.
required to honor a borrowing request under its $5.6 billion long-term credit facility, and therefore there is a high risk that GM would not be able to borrow under this facility. GM believes that issues also may arise from its restatement under various financing agreements, which consist principally of obligations under sale/leaseback transactions and other lease obligations.

654. This potential breach had not been disclosed previously, despite the fact that certain other restatements made in the 10-K/A—besides those relating to cash flows—had been partially disclosed long before, such as in its 8-K filed on November 9, 2005, when GM had announced that “investors should no longer rely on GM’s previously filed financial statements for [2001],” because GM would be restating net income from continuing operations for that year and certain subsequent years, due to GM's inappropriate treatment of supplier credits. Thus, when added to the prior disclosure of GM’s other accounting improprieties, the restatement of GM’s cash flows in its 10-K/A was sufficiently material to trigger, for the first time, the possibility that GM had breached covenants in its revolving credit facility and certain lease agreements.

655. Moreover, the possibility that GM had violated its promises under its revolving line of credit and certain lease agreements to provide accurate financial statements was, in turn, so substantially material that on March 29, 2006, after the market closed, Moody’s lowered its rating on GM and its senior unsecured debt, citing the “disclosure that restatements of its 2002, 2003 and 2004 financial statements could result in the acceleration of as much as $3 billion in various lease obligations and in the company potentially not being able to borrow under its $5.6 billion unused revolving credit facility” as the sole reason for the downgrade.

656. Also in its 10-K for 2005, GM disclosed, for the first time, that its internal controls regarding its accounting for cash flows are not adequate. Thus, the 10-K disclosed that:

[a] material weakness was identified related to our design and maintenance of adequate controls over the preparation review, presentation and disclosure of amounts included in our consolidated statements or cash flows, which resulted in misstatements therein. Cash outflows related to certain mortgage loan originations and purchases were not appropriately classified as either operating cash flows or investing cash flows . . .
657. On March 29, 2006, in the first day of trading after GM restated its cash flows and disclosed the inadequacy of its controls regarding accounting for cash flows (and before Moody’s had had time to publish its report downgrading GM’s debt securities), the price of GM’s stock dropped 60 cents per share, or 2.64%, to $22.15. Moreover, GM’s stock price experienced this drop, while the market, in general, was rising.

658. The causal connection between GM’s restatement of cash flows and the drop in GM’s stock price, and the resulting movement of GM’s stock in a direction opposite to the rest of the market, was summed up by the on-line edition of The Wall Street Journal, which, in an article published just before the close of trading on March 29, 2006, stated that “[a] 3% slide by General Motors, which said late Tuesday that it would restate financial results for financing arm GM Acceptance Corp., weighs on the average.”

659. On March 30, 2006, an article by Michael Ellis, in the Detroit Free Press, reported that:

[shares of General Motors Corp. fell about 2.6% [on March 29, 2006,] due to growing worries about a possible strike at Delphi Corp., a possible hitch in its sale of its financial services company and more problems with its accounting practices.]

660. The relationship between GM’s restatement of its cash flows and the “possible hitch in its sale of its financial services company” referred to by the Detroit Free Press, was, in turn, explained by Efraim Levy, an analyst for Standard & Poor’s Equity Research. On March 30, 2006, Business Week Online quoted Levy’s statement that, although GM might have bigger worries, its restatement of cash flows “is another dent in management’s credibility and damaging to GMAC’s value. If GM financial statements can’t be relied upon as could be inferred by recent restatements including that of GM’s 2005 earnings, then potential GMAC stake buyers could ask for a discount.”

661. Thus, GM’s restatement of its cash flows in its 10-K/A for 2004, and its disclosure of “a material weakness” in its controls regarding accounting for cash flows, were each substantial causes of the drop in GM’s stock price on March 29, 2006.
On March 30, 2006, after Moody’s had downgraded GM’s debt, the price of GM’s stock dropped yet again, this time by $1.09 per share, or 4.92%, to $21.06.

The drop in GM’s stock price on March 30, 2006, was a continuation of the market’s reaction to the disclosures alleged above, in GM’s 10-K/A for 2004 and 10-K for 2005, with Moody’s downgrading of GM’s debt merely having made the market more aware of the full significance of those disclosures. Thus, GM’s restatement of its cash flows in its 10-K/A for 2004, and its disclosure of “a material weakness” in its controls regarding accounting for cash flows, were each substantial causes of the drop in GM’s stock price on March 30, 2006.

Disclosure that Deloitte’s Unqualified Reports were Materially Untrue

Logically, every disclosure described above regarding an untrue statement made in one or another of GM’s 10-K’s was also a disclosure that Deloitte’s Report that appeared in such 10-K was materially untrue.

In each instance, the disclosure that Deloitte’s Report was materially untrue was a substantial cause of the drop in GM’s stock price that immediately followed the disclosure of this untruth.

C. APPLICABILITY OF THE PRESUMPTION OF RELIANCE: THE FRAUD-ON-THE-MARKET DOCTRINE

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

(a) GM common stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient market;

(b) GM debt securities met the requirements for listing and were listed on the NYSE and Luxembourg Exchange and traded in the open market;

(c) As a regulated issuer, GM files periodic public reports with the SEC;

(d) The trading volume of GM common stock averaged over 5 million shares per day;
GM regularly communicated with public investors and analysts via established market communications mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures;

GM was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales forces and certain customers of their respective brokerage firms. These reports were publicly available and entered the public marketplace. Among the securities firms that followed the Company during the Class Period are those identified in this Complaint; and

GM's credit rating was regularly evaluated by rating agencies widely followed by investors in GM debt securities.

As a result, the market for GM securities promptly digested current information regarding GM from all publicly available sources, including the materially false and misleading information issued by or for defendants and promptly reflected such information in the market price of GM securities. Under these circumstances, all purchasers of GM securities during the Class Period suffered similar injury through the purchases of securities at artificially inflated prices and the presumption of reliance applies.

D. **ALL THE ELEMENTS OF SECTION 10(b) AND RULE 10b-5 ARE SATISFIED**

During the Class Period, GM, the Officer Defendants, and Deloitte, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did:

(a) deceive the investing public, including Plaintiffs and other Class members, as alleged in this Complaint;

(b) artificially inflate and maintain the market price of GM’s securities; and

(c) cause Plaintiffs and other members of the Class to purchase GM’s securities at
artificially inflated prices.

668. In furtherance of this unlawful scheme, plan and course of conduct, the defendants named in this Count, and each of them, took the actions set forth in this Count.

669. The defendants named in this Count (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s securities in an effort to maintain artificially high market prices for GM’s securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

670. None of the misrepresentations or omissions alleged here were forward looking statements, but, rather, concerned existing facts. Moreover, Defendants did not properly identify any of these statements as forward-looking statements and did not disclose information, known to them, that undermined the validity of those statements.

671. Each of the defendants named in this Count is sued as a primary participant in the wrongful and illegal conduct charged in this Complaint, in addition to each of the Officer Defendants being sued as a controlling person, as alleged below.

672. In addition to the duties of full disclosure imposed on each of the defendants named in this Count as a result of their making of affirmative statements and reports, or participating in the making of affirmative statements and reports to the investing public, each of such defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. Sections 210.01 et seq.) and Regulation S-K (17 C.F.R. Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company’s operations, financial condition and earnings so that the market price of the Company’s securities would be based on truthful, complete and accurate information.
673. Each of the defendants named in this Count, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of GM as specified in this Complaint.

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

675. The primary liability and controlling person liability of each of the Officer Defendants arises from the following facts: (i) such Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof, (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which he knew or recklessly
disregarded was materially false and misleading.

676. The defendants named in this Count had actual knowledge of the falsity of the material misrepresentations and omissions of material facts set forth in ¶¶ 267-404 above, or acted with reckless disregard for the truth in that they failed to ascertain and disclose such facts, even though such facts were readily available to them. Such defendants’ material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing GM’s operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants’ overstatements and misstatements of the Company’s business, operations, cash flows, income, earnings, retained earnings and assets, and understatements of liabilities, throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false and/or misleading.

677. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of GM’s securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of GM’s publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, Plaintiffs and the other members of the Class acquired GM securities during the Class Period at artificially high prices. Plaintiffs and other members of the Class suffered an economic loss as a direct result of defendants’ fraudulent conduct.

678. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity and believed them to be true. Had Plaintiffs and the other
members of the Class, and the marketplace, known of the true financial condition and business
prospects of GM, which were not disclosed by defendants, plaintiffs and other members of the
Class would not have purchased or otherwise acquired their GM securities, or, if they had acquired
such securities during the Class Period, they would not have done so at the artificially inflated prices
that they paid.

679. By virtue of the foregoing, the defendants named in this Count have violated Section
10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

680. As a direct and proximate result of defendants’ wrongful conduct, Plaintiffs and the
other members of the Class suffered damages in connection with their respective purchases and
acquisitions of the Company’s securities during the Class Period.

COUNT VI
(Violation of Section 20(a) of the Exchange Act,
against Bible, Borst, Devine and Wagoner)

681. Plaintiffs reallege each allegation set forth in the paragraphs above, as if set forth
fully herein.

682. Each of the Officer Defendants acted as a controlling person of GM within the
meaning of Section 20(a) of the Exchange Act as alleged in this Complaint. By virtue of their
high-level positions, and their ownership and contractual rights, participation in and/or awareness of
the Company’s operations and/or intimate knowledge of the false financial statements filed by the
Company with the SEC and disseminated to the investing public, the Officer Defendants each had
the power to influence and control and did influence and control, directly or indirectly, the
decision-making of the Company, including the content and dissemination of the various statements
which plaintiffs contend are false and misleading. Each Officer Defendant was provided with or
had unlimited access to copies of the Company’s reports, press releases, public filings and other
statements alleged by plaintiffs to be misleading prior to and/or shortly after these statements were
issued and had the ability to prevent the issuance of the statements or cause the statements to be
In particular, each Officer Defendant had direct and supervisory involvement in the
day-to-day operations of the Company and, therefore, is presumed to have had the power to control
or influence the particular transactions giving rise to the securities violations as alleged in Count VI
of this Complaint, and exercised the same.

As set forth above, GM and the Officer Defendants each violated Section 10(b) and
Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as
controlling persons, the Officer Defendants are liable pursuant to Section 20(a) of the Exchange
Act, jointly and severally with GM.

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

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for
relief and judgment, including:

A. Determining that this action is a proper class action under Rule 23 of the Federal
   Rules of Civil Procedure and appointing Lead Plaintiff as Lead Plaintiff for the Class
   and Subclass, and the Co Lead Counsels as Co-Lead Counsels for the Class and
   Subclass, and certifying Lead Plaintiff as Class Representative and Subclass
   Representative under Rule 23;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members
   against all defendants, jointly and severally, for all damages sustained as a result of
defendants’ wrongdoing, in an amount to be proven at trial, including interest
   thereon;
C. Requiring defendants Wagoner and Devine to disgorge their bonuses and other incentive compensation, and Wagoner to disgorge the profits of his stock sales in 2002;

D. Awarding Plaintiffs, Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: August 15, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2006, I electronically filed the foregoing “Third Amended Complaint for Violation of the Federal Securities Laws” with the Clerk of the Court using the ECF system, which will send notification of such filing to the following ECF participants: Thomas M. Schehr, Thomas J. Tallerico, Dennis J. Levasseur, Dennis M. Barnes, Eugene Driker, Timothy A. Duffy, E. Powell Miller, Matthew R. Millikin, Marc L. Newman, Jill M. Wheaton, Scott A. Wolfson and David H. Fink. I also hereby certify that on August 15, 2006, I caused the foregoing “Third Amended Complaint for Violation of the Federal Securities Laws” to be mailed by United States first class mail to each of the following:

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