CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Plaintiffs Al Balnius, Jerry L. Canter, Michael Birmingham and Bryan Moore ("Plaintiffs"), all of whom are participants in either the General Motors Savings-Stock Purchase Program for Salaried Employees ("S-PPP") or the General Motors Personal Savings Plan for Hourly Rate Employees ("PSP") (collectively, the "Plans"), on behalf of themselves and all others similarly situated, allege as follows:

I. INTRODUCTION

1. This is a class action brought pursuant to § 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, against the Plans’ fiduciaries, on behalf of participants in and beneficiaries of the Plans.

2. The S-PPP has two main components: (1) a component in which Plan participants make voluntary contributions to their Plan accounts out of their base pay (the "Participant Contribution Component"), and (2) a component in which the Company “matches” a percentage of the participants’ base pay and contributes this to the participants’ Plan accounts.
(the “Company Contribution Component”). Of these two components, the PSP has only the Participant Contribution Component.

3. Throughout the period from March 18, 1999 to the present (the “Class Period”), a General Motors Common Stock Fund, which invested almost exclusively in General Motors common stock (“General Motors Stock” or “Company Stock”), was offered as one of the investment alternatives in the Participant Contribution Component of the Plans. In addition, the Company Contribution Component of the S-SPP has been invested in General Motors Stock.¹

4. Throughout the Class Period, all General Motors Common Stock held in both Plans was maintained in a Master Trust, with Defendant State Street Bank & Trust Company (“State Street”) serving as Trustee, and, from May 28, 1999 on, as both Investment Manager and Trustee.

5. Throughout the Class Period, a major issue for General Motors Corporation (“General Motors,” “GM,” or the “Company”) has been massive, under-funded healthcare and defined-benefit pension obligations for tens of thousands of employees, retirees and their beneficiaries through defined-benefit pension plans and healthcare plans. Because many of the fiduciaries of the Plans are also fiduciaries of the defined-benefit pension and healthcare plans, these fiduciaries have been keenly aware of the burgeoning crisis facing the Company going forward. As the market began to become aware of the scope of GM’s problems earlier this year, the Company’s stock price dropped precipitously, analysts began making “sell” recommendations, and the Company’s unsecured debt was reduced to “junk” status – all based on information that has long been known to the fiduciaries.

¹ Currently, the Plans hold the General Motors Corporation $1-2/3 Par Value Common Stock Fund, and this Fund has always been in the Plans throughout the Class Period. In addition, up until December 2003, the Plans also held the General Motors Corporation Class H $0.10 Par Value Common Stock Fund. Except where otherwise noted, references to “General Motors Common Stock,” “General Motors Stock,” “GM Stock,” and “Company Stock” include both types of General Motors Common Stock.
6. Plaintiffs’ claims arise from the failure of Defendants, who are Plan fiduciaries, to act solely in the interest of the participants and beneficiaries of the Plans, and to exercise the required skill, care, prudence, and diligence in administering the Plans and the Plans’ assets during the Class Period, as is required by ERISA.

7. Specifically, Plaintiffs allege in Count I that Defendants breached their fiduciary duties in violation of ERISA by failing to prudently and loyally manage the Plans’ investment in General Motors Stock, continuing to offer General Motors Stock as an investment option, making the Company Contribution in General Motors Stock, and holding virtually all assets of the General Motors Common Stock Fund in General Motors Stock when the stock no longer was a prudent investment for participants’ retirement savings. In Count II, Plaintiffs allege that Defendants, who communicated with participants regarding the Plans’ assets or had a duty to do so, failed to provide participants with complete and accurate information regarding General Motors Stock sufficient to advise participants of the true risks of investing their retirement savings in General Motors Stock. In Count III, Plaintiffs allege that those Defendants responsible for the selection, removal, and, thus, monitoring of the Plans’ fiduciaries, failed to properly monitor the performance of their fiduciary appointees and remove and replace those whose performance was inadequate. In Count IV, Plaintiffs allege that certain fiduciaries breached their duty of loyalty by placing GM’s interest and their personal interests as GM executives, officers and employees above the interests of Plan participants as investors. In Count V, Plaintiffs allege that Defendants breached their duties and responsibilities as co-fiduciaries by enabling and failing to remedy each other’s fiduciary breaches. Finally, in Count VI, Plaintiffs allege that Defendant State Street breached the terms of the Investment Management Agreement by failing to ensure that the GM Common Stock Fund was diversified to avoid the risk of large losses.
8. This action is brought on behalf of the Plans and seeks losses to the Plans for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), Plaintiffs seek other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

9. As a result of Defendants’ fiduciary breaches, as hereinafter enumerated and described, the Plans have suffered substantial losses, resulting in the depletion of billions of dollars of the retirement savings and anticipated retirement income of the Plans’ participants. Under ERISA, the breaching fiduciaries are obligated to restore to the Plans the losses resulting from their fiduciary breaches. According to the Form 11-K for fiscal year 2003, the Plans held a total of approximately $4.145 billion in General Motors Stock.²

10. Because Plaintiffs’ claims apply to the participants and beneficiaries as a whole, and because ERISA authorizes participants such as Plaintiffs to sue for plan-wide relief for breach of fiduciary duty, Plaintiffs bring this case as a class action on behalf of all participants and beneficiaries of the Plans during the Class Period. Plaintiffs also bring this action as participants seeking plan-wide relief for breach of fiduciary duty on behalf of the Plans.

11. Because much of the information and documents on which Plaintiffs’ claims are based are solely in Defendants’ possession, certain of Plaintiffs’ allegations are by necessity upon information and belief. At such time as Plaintiffs have had the opportunity to conduct additional discovery, Plaintiffs will, to the extent necessary and appropriate, amend the Complaint, or, if required, seek leave to amend to add such other additional facts as are discovered that further support each of the following Counts below.

² In addition, at the beginning of 2003 the Plans held another $440 million worth of General Motors Corporation Class H $0.10 Par Value Common Stock.
II. JURISDICTION AND VENUE

12. **Subject Matter Jurisdiction.** This is a civil enforcement action for breach of fiduciary duty brought pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a). This Court has original, exclusive subject matter jurisdiction over this action pursuant to the specific jurisdictional statute for claims of this type, ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). In addition, this Court has subject matter jurisdiction pursuant to the general jurisdictional statute for “civil actions arising under the . . . laws . . . of the United States.” 28 U.S.C. § 1331.

13. **Personal Jurisdiction.** ERISA provides for nation-wide service of process, ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the Defendants are residents of the United States and this Court therefore has personal jurisdiction over them. This Court also has personal jurisdiction over them pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they all would be subject to the jurisdiction of a court of general jurisdiction in the State of Michigan.

14. **Venue.** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plans were administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and/or some Defendants reside or maintain their primary place of business in this district.

III. PARTIES

A. **Plaintiffs**

15. **Plaintiff Al Balnius** is a resident of Michigan. Mr. Balnius is a former General Motors employee and is a participant in the General Motors Personal Savings Plan. During the Class Period, as a result of his contributions, Mr. Balnius acquired and held shares of General Motors Stock in his Plan account.

16. **Plaintiff Jerry L. Canter** is a resident of Georgia. Plaintiff is a former General Motors employee and is a participant in the General Motors Savings-Stock Purchase Program for
Salaried Employees. During the Class Period, as a result of his and/or the Company’s contributions, Mr. Canter acquired and held shares of General Motors Stock in his Plan account.

17. **Plaintiff Michael Birmingham** is a resident of Michigan. Mr. Birmingham is a former General Motors employee and is a participant in the General Motors Personal Savings Plan. During the Class Period, as a result of his contributions, Mr. Birmingham acquired and held shares of General Motors Stock in his Plan account.

18. **Plaintiff Bryan Moore** is a resident of Idaho. Mr. Moore is a former General Motors employee and is a participant in the General Motors Savings-Stock Purchase Program for Salaried Employees. During the Class Period, as a result of his and the Company’s contributions, Mr. Moore acquired and held shares of General Motors Stock in his Plan account.

B. **Defendants**

19. **Defendant General Motors Corporation.** Defendant General Motors Corporation (“General Motors” “GM” or the “Company”) designs, manufactures, and/or markets vehicles, primarily in North America. GM’s Financing and Insurance Operations are carried out by the General Motors Acceptance Corporation (“GMAC”). GMAC provides a broad 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.

20. Throughout the Class Period, General Motors’ responsibilities included, through the Investment Funds Committee of its Board of Directors, along with other various officers, employees, and committees, broad oversight of and ultimate decision-making authority respecting the management and administration of the Plans and the Plans’ assets, as well as the appointment, removal, and, thus, monitoring of other fiduciaries of the Plans that it appointed, or to whom it assigned fiduciary responsibility. Throughout the Class Period, the Company exercised discretionary authority with respect to management and administration of the Plans.
and/or management and disposition of the Plans’ assets. According to the Plan documents, GM was the Plans’ Administrator, with responsibility for the day-to-day operation, management and administration of the Plans.

21. **Defendant The Investment Funds Committee of General Motors’ Board of Directors.** According to the Plan documents, the Investment Funds Committee is the Named Fiduciary of the Plans. Moreover, the financial statements for the Plans filed with the SEC provide that: “The Investment Funds Committee of the Corporation’s Board of Directors acts as the Plan fiduciary and, along with various officers, employees, and committees, with authority delegated from the Plan fiduciary, controls and manages the operation and administration of the Plan subject to the provisions of the Employee Retirement Income Security Act of 1974.” Thus, the Investment Funds Committee exercised discretionary authority with respect to the management and administration of the Plans and management and disposition of the Plans’ assets. The Investment Funds Committee also serves as the Named Fiduciary for General Motors’ under-funded pension and health-care plans.

22. **The Investment Funds Committee Defendants.** The Directors who served on the Investment Funds Committee and acted as fiduciaries with respect to the Plans during the Class Period are as follows:

a. **Defendant E. Stanley O’Neal** (“O’Neal”) served as the chairman of the Investment Funds Committee during the Class Period. Defendant O’Neal was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

b. **Defendant Armando Codina** (“Codina”) served as an Investment Funds Committee member during the Class Period. Defendant Codina was a fiduciary within the
meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

c. **Defendant Kent Kresa** ("Kresa") served as an Investment Funds Committee member during the Class Period. Defendant Kresa was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

d. **Defendant Eckhard Pfeiffer** ("Pfeiffer") served as an Investment Funds Committee member during the Class Period. Defendant Pfeiffer was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

e. **Defendant Phillip A. Laskawy** ("Laskawy") served as an Investment Funds Committee member during the Class Period. Defendant Laskawy was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

f. **Defendant Percy N. Barnevik** ("Barnevik") served as an Investment Funds Committee member during the Class Period. Defendant Barnevik was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with
respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

g. **Defendant Nobuyuki Idei** (“Idei”) served as an Investment Funds Committee member during the Class Period. Defendant Idei was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

h. **Defendant John F. Smith, Jr.** (“Smith”) served as an Investment Funds Committee member during the Class Period. Defendant Smith was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

i. **Defendant George M.C. Fisher** (“Fisher”) served as an Investment Funds Committee member during the Class Period. Defendant Fisher was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

j. **Defendant J. Willard Marriott, Jr.** (“Marriott”) served as an Investment Funds Committee member during the Class Period. Defendant Marriott was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans,
he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

k. **Defendant Ellen J. Kullman** ("Kullman") served as an Investment Funds Committee member during the Class Period. Defendant Kullman was a fiduciary within the meaning of ERISA because she exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, she possessed discretionary authority or discretionary responsibility in the administration of the Plans, and she exercised authority or control with respect to the management of the Plans’ assets.

23. **Defendant Richard Wagoner, Jr.** ("Wagoner") served as Chairman of General Motors’ Board of Directors, Chief Executive Officer and President during the Class Period. Defendant Wagoner was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the appointment of Plan fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

24. Moreover, the financial statements for the Plans filed with the SEC provide that: “The Investment Funds Committee of the Corporation’s Board of Directors acts as the Plan fiduciary and, along with various officers, employees, and committees, with authority delegated from the Plan fiduciary, controls and manages the operation and administration of the Plan subject to the provisions of the Employee Retirement Income Security Act of 1974.” Defendant Wagoner was one of the officers who controlled and managed the operation and administration of the Plans during the Class Period. Defendant Wagoner also signed the financial statements for the Plans filed with the SEC.

25. **Defendant General Motors Investment Management Corporation** ("GMIMCo") served as the Named Fiduciary of the Plans for the purposes of the investment of the Plans’
assets during the Class Period. GMIMCo is a wholly-owned subsidiary of GM. GMIMCo’s principal business is providing investment advice and investment managing services with respect to the assets of the employee benefit plans of GM, its subsidiaries, and unrelated employers, and with respect to the assets of certain direct and indirect subsidiaries of GM and associated entities. According to the Master Trust Agreement in effect throughout the Class Period, “Subject to the provisions of the Plans, GMIMCo may direct the Trustee to eliminate an Investment Fund and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in a successor Investment Fund if directed by GMIMCo.” Defendant GMIMCo was a fiduciary within the meaning of ERISA because it was the Named Fiduciary for the purposes of investment of the Plans’ assets under the Plans and exercised discretionary authority or discretionary control with respect to the management of the Plans, it possessed discretionary authority or discretionary responsibility in the administration of the Plans, and it exercised authority or control with respect to the management of the Plans’ assets. GMIMCo also serves as the Named Fiduciary for General Motors’ under-funded pension and health-care plans for the purposes of investment of those plans’ assets.

26. **Defendant State Street Bank and Trust Company** (“State Street”) has served as the Investment Manager of the Plans’ GM stock holdings in the Master Trust from May 28, 1999 through the present. State Street was also the Trustee for both Plans, charged with the discretionary authority “[t]o perform all acts that a prudent fiduciary under ERISA and this [Master Trust] Agreement would perform for the protection and safekeeping of the Trust Fund.” According to the Investment Management Agreement, State Street was “responsible in its sole judgment and discretion for the management and investment of the Investment Accounts” – including the GM Common Stock, $1-2/3 Par Value Investment Account and the GM Class Stock H $0.10 Par Value Common Stock Investment Account – and was required to discharge its duties “by diversifying the investments in the Investment Accounts so as to minimize the risk of
large losses, unless under the circumstances it is clearly not prudent to do so.” Further, State Street acknowledged in the Investment Management Agreement that “it is a fiduciary, within the meaning of ERISA,” with respect to the Plans. Thus, State Street has acted as a fiduciary within the meaning of ERISA because it possesses discretionary authority or discretionary responsibility in the administration of the Plans, and it exercises authority or control with respect to the management of the Plans’ assets.

27. **The Employee Benefits Committee Member Defendants** ("Committee Defendants"). According to S-SPP Plan documents, the Employee Benefits Plans Committee has “final discretionary authority to construe, interpret, apply and administer” the S-SPP. Thus, members of the Employee Benefits Plans Committee exercised discretionary authority with respect to the management and administration of the S-SPP and management and disposition of the S-SPP’s assets. According to information provided by GM, the following persons have been members of the Employee Benefits Committee during the Class Period:

   a. **Defendant Jean Rose** ("Rose") served as the chair of the Employee Benefits Committee during the Class Period. Defendant Rose was a fiduciary within the meaning of ERISA because she exercised discretionary authority or discretionary control with respect to the management of the S-SPP, she possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and she exercised authority or control with respect to the management of the S-SPP’s assets.

   b. **Defendant Cindy Gier** ("Gier") served as a member of the Employee Benefits Committee during the Class Period. Defendant Gier was a fiduciary within the meaning of ERISA because she exercised discretionary authority or discretionary control with respect to the management of the S-SPP, she possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and she exercised authority or control with respect to the management of the S-SPP’s assets.
c. **Defendant Paul Gonzales** (“Gonzales”) served as a member of the Employee Benefits Committee during the Class Period. Defendant Gonzales was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the management of the S-SPP, he possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and he exercised authority or control with respect to the management of the S-SPP’s assets.

d. **Defendant Terry Lee** (“Lee”) served as a member of the Employee Benefits Committee during the Class Period. Defendant Lee was a fiduciary within the meaning of ERISA because Lee exercised discretionary authority or discretionary control with respect to the management of the S-SPP, possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and exercised authority or control with respect to the management of the S-SPP’s assets.

e. **Defendant Jenny Machak** (“Machak”) served as a member of the Employee Benefits Committee during the Class Period. Defendant Machak was a fiduciary within the meaning of ERISA because she exercised discretionary authority or discretionary control with respect to the management of the S-SPP, she possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and she exercised authority or control with respect to the management of the S-SPP’s assets.

f. **Defendant Robert Moroni** (“Moroni”) served as a member of the Employee Benefits Committee during the Class Period. Defendant Moroni was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the management of the S-SPP, he possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and he exercised authority or control with respect to the management of the S-SPP’s assets.
Defendant Michael Morris ("Morris") served as a member of the Employee Benefits Committee during the Class Period. Defendant Morris was a fiduciary within the meaning of ERISA because he exercised discretionary authority or discretionary control with respect to the management of the S-SPP, he possessed discretionary authority or discretionary responsibility in the administration of the S-SPP, and he exercised authority or control with respect to the management of the S-SPP’s assets.

IV. CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated (the "Class"): All persons who were participants in or beneficiaries of the Plans at any time between March 18, 1999 and the present (the “Class Period”) and whose accounts included investments in the GM $1-2/3 Par Value Common Stock Fund, and/or the GM Class H Common Stock Fund.

29. Plaintiffs meet the prerequisites of Rule 23(a) to bring this action on behalf of the Class as numerosity, commonality, typicality and adequacy are all established.

30. Numerosity. The members of the Class are so numerous that joinder of all members is impracticable. Well over a hundred thousand members of the Class participated in, or were beneficiaries of, the Plans during the Class Period.

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

(a) whether Defendants acted as fiduciaries;

(b) whether Defendants breached their fiduciary duties to the Plans, Plaintiffs and members of the Class by failing to act prudently and solely in the interests of the Plans, and the Plans’ participants and beneficiaries;
(c) whether Defendants violated ERISA; and

(d) whether the Plans and, therefore, members of the Class have sustained damages and, if so, what is the proper measure of damages.

32. **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the Class because the Plans, as well as Plaintiffs and the other members of the Class, each sustained damages arising out of Defendants’ wrongful conduct in violation of federal law as complained of herein.

33. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action, complex, and ERISA litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

34. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

35. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (ii) Defendants have acted or refused to act on grounds generally applicable to the Plans and the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (iii) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.
V. DEFENDANTS’ CONDUCT

A. General Motors Stock Was an Imprudent Investment for the Plans

36. During the Class Period, Defendants ignored serious red flags that should have alerted them to the fact that General Motors Stock was not a prudent investment for the Plans. In light of the Company’s catastrophically high and under-funded healthcare and pension obligations, Defendants knew or should have known that General Motors’ business was not performing nearly as well as represented to the investing public and to Plan participants and beneficiaries.

37. The Investment Funds Committee Defendants, GM, and GMIMCo are also fiduciaries of the various defined benefit pension and healthcare plans, which, as detailed below, impose unfunded future obligations of more than $60 billion on GM. Because the Company has no plan for meeting these crippling obligations, many analysts and commentators believe that bankruptcy is inevitable.

1. GM’s Massive Pension Obligations Are “Funded” With Smoke And Mirrors

38. GM provides “defined benefit” pension plans for its employees. For example, hourly employees participate in the Hourly-Rate Employees Pension Plan. Under this plan, hourly retirees receive a lifetime monthly payment. GM is obligated to make these monthly payments in perpetuity. GM has a separate defined benefit pension plan for its overseas employees.

39. Retirees have a vested right to receive their pension plan benefits, and bankruptcy is generally the only manner in which a Company can avoid its defined benefit pension obligations.

40. Defined benefit plans contain plan assets that are managed by fiduciaries designated by the employer. Since the employer has an obligation to pay benefits in the future, it must set aside plan assets from which retirement benefits will be paid.
41. General Motors incurs an annual expense attributable to the cost of funding its defined benefit plans. Such expense, which, *e.g.* amounted to $1.49 billion in 2004 for General Motors, is actuarially determined by a complex formula that takes into consideration the employees’ years of service, an assumed discount rate, the expected investment return on plan assets, and amortization of “other prior service cost” as well as plan “loss or gain” components.

42. The cost to General Motors to fund its U.S. defined benefit pension plans, while only a portion of the costs incurred relating to the entire benefits package, is nonetheless astronomical. In fact, the actual benefits paid relating to the General Motors U.S. defined benefit pension plans amounted to approximately $38 billion from 1999 through 2004.

43. Perhaps even more significant, from 1999 to 2004 the projected benefit obligations for the U.S. defined benefit plans increased by approximately $16 billion to approximately $90 billion in total. Again, this liability represents only part of the total obligation General Motors has incurred with respect to future employee benefits:
44. ERISA requires companies that offer “defined benefit” pension plans to meet minimum contribution requirements and to invest such contributions in plan assets prior to the payment of future pension obligations. See ERISA § 302 (29 U.S.C. § 1082). A plan’s “funded” status can be described as the difference between the projected benefit obligation and the plan assets. When plan assets are in excess of the projected benefit obligation, the defined benefit pension is considered fully funded. If the value of the projected benefit obligation is in excess of the value of plan assets, the defined benefit pension is considered under-funded.

45. The “expected” return on plan assets is a key component to the value of plan assets and the all-important funding status of a defined benefit pension plan. All other things being equal, as the return on plan assets increases or decreases, plan assets will also increase or decrease in value. The rate of return that an employer “expects” is that employer’s estimate of the return that will be derived from investment of the plan assets. Clearly, the “expected” return may be quite different from the “actual” return.

46. Under Statement of Financial Accounting Standards Number 87, “Employers Accounting for Pensions,” the amount of return that an employer “expects” on an investment reduces annual pension expense, dollar for dollar. Thus, the higher the “expected” return, the more “funded” a defined benefit pension plan will appear. GM’s current “expected” return is an extremely aggressive 9% annually, and earlier in the Class Period it was pegged even higher, at 10%.

47. Historically, the actual return for General Motors’ defined-benefit pension plan assets has been extremely volatile. This volatility is due to GM’s high “expected” rates of return on plan assets and the consequent deployment of fund assets into risky investment vehicles. To meet its current aggressive expected annual return of 9% General Motors must “push the envelope” on the plan investment risk/reward spectrum.
48. The following chart demonstrates the extreme volatility GM has experienced in its *actual* return on defined benefit plan assets, ranging from sizable profits in 1999 and 2003 to $5 billion *losses* in 2001 and 2002:

**Volatility in General Motors' Return on Defined Benefit Plan Assets**

![Graph showing the actual return on GM plan assets from 1999 to 2004, with significant volatility from profits in 1999 and 2003 to losses in 2001 and 2002.]

49. In the August/September 2004 issue of *Chief Executive*, Alan Gersten examined the current investment strategy for General Motors’ plan assets and noted the alarming risk such a strategy engenders:

He’s [W. Allen Reed CEO of GMIMCo] mapped out an investment strategy that carries a remarkable degree of risk for a company as conservative as GM. Given the current state of the markets, Reed has reduced the company’s reliance on stocks and corporate bonds in favor of less conventional and riskier
alternatives such as junk bonds, emerging markets, real estate investment trusts and the slick science of arbitrage.  

50. What this investment strategy means is plan assets are at great risk of loss, yet GM cannot avoid its obligations to pay defined benefits to current and future retirees. Such volatility within the plan assets does not sit well with the capital markets, and has helped to convert General Motors, once a classic “blue chip” stock, into an extremely risky investment.

51. As of December 31, 2004, according to General Motors’ 10-K, General Motors’ non-U.S. defined benefit pension plans were under-funded by approximately $9 billion.

52. Up until 2003, the U.S. defined benefit plans were under-funded by approximately $19 billion, reflecting in part the danger of the extremely risky “expected” return rates utilized by the Company.

53. To make up for this gap and ostensibly attain “funded” status for its U.S. defined benefit pension plans, during 2003 General Motors essentially “robbed Peter to pay Paul” by issuing $13 billion in a debt offering, most of which went straight into funding the defined benefit plan assets. Additional cash to fund plan assets was generated from its spin-off of Hughes Electronic stock. Between the debt offering and the Hughes Electronic spin-off, GM contributed approximately $18.6 billion to fund plan assets. Although General Motors was able to technically remove the under-funded status for its domestic defined benefit plans, in substance, it simply traded one liability for another.

54. Bill Mann of The Motley Fool discussed the debt offering and its effects on General Motors’ shareholders in a June 25, 2003 article titled “GM’s Pension Peril.” Mann described just how peculiar and risky this move was to General Motors:

[GM] took on debt. This choice (and the company’s justification thereof) offers a creepy view into just how beholden to accounting appearances companies are. It’s going to cost their shareholders, big time.

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3 Chief Executive, August/September 2004, Volume 201.
When GM issues this $13 billion in debt, it is committing to repay this amount in the future, along with semi-annual coupon payments (interest) in the range of 6.5% - 7%. Companies, as I stated at the outset, generally take on debt for capital projects. GM, on the other hand, is sending most of this money down the rat hole that is its pension program. What GM is doing is taking a leveraged bet on the direction of the stock market, as well as on interest rates.

GM is effectively playing the market on margin. Don’t believe me? GM’s CFO Robert Devine called the new debt “somewhat accretive” to earnings. How can this be? Remember, earnings on pensions are reported based not on performance, but on estimates. GM just lowered its estimated gains on pension assets from 10% per annum down to 9%. So there’s a spread between the 9% gain on pension assets and the 7% cost of the money used to fund it. There’s one problem – that 9% isn’t real, it’s a guess. It’s also a wildly aggressive one, the equivalent of GM thinking it can generate 12-13% gains on its stock portfolio every year. That’s fantasy.

55. GM’s deceptive attainment of “funded” status for its U.S. pension plans was addressed in an article that appeared in the Financial Times on January 12, 2004. That article explained:

The pension fund industry still has a lot of adjustment to do if it is to face reality. In the US, too many companies are assuming ridiculously high returns on assets, flattering their annual profits.

This results in the absurd situation whereby General Motors, having issued a bond to fund its pension fund liabilities, could look forward to a sharp increase in profits. The strategy works because the assumed return on its pension assets is higher than the cost of the debt.

But, if that were true, companies could give up business altogether; all they would need to do is act as highly geared investment trusts, borrowing as much as possible and investing the proceeds in shares.

Investors would be horrified if most companies followed such a strategy; but when it comes to pension funds, they seem remarkably unconcerned.

56. The dismal state of General Motors’ pension funding and pension accounting was addressed by the Financial Times in a December 19, 2003 article entitled “American pension standards encourage delusion.” That article noted that:
[General Motors] is financially stretched thanks to the vast size of its pension and healthcare liabilities. It is, in effect, a social security system that finances itself by making and selling cars. To meet the bill to pay its US pensioners it has to earn a 9 per cent return on the $83bn (Pounds 48bn) fund - year in, year out. And it started this financial year with a whopping $19.3bn deficit on its pension fund. Pre-tax income last year was a mere $2.1bn.

The managers have sought to solve the problem by borrowing $14.4bn in the bond market. When combined with the proceeds of the planned sale of GM’s Hughes Electronics subsidiary, the resulting pot of cash will be used to inject $18.5bn into the pension fund, potentially reducing the deficit to $400m by the end of the year.

GM has now revealed that much of the new money will be invested in so-called alternative assets such as hedge funds, property, junk bonds and emerging market funds in an attempt to meet the demanding 9 per cent return target. These are usually regarded as high-risk assets. Yet GM argues that its strategy does not involve higher risk because of the benefit of increased diversification and reduced volatility. Even after deducting the after-tax cost of servicing the Dollars 14.4bn of new debt, the outcome will be a $550m boost to net income in 2004. GM does not expect to have to make further contributions to the scheme until 2010, provided the return on assets does not fall below 5 per cent.

Analysts greeted the news with enthusiasm, claiming that the biggest issue facing GM had now been resolved. The shares responded in kind. In one bound, GM was free.

But only if we look at the form, not the economic substance. For nothing in GM’s real net asset position has changed, since the reduction in the pension fund deficit is associated with a like-for-like increase in the company’s liabilities. The earnings position changes for no better reason than that US pension accounting allows companies to recognize expected investment returns. So GM continues to predict 9 percent - but on an enlarged fund. The really big economic change, meantime, is in the increased risk that comes from borrowing to punt in markets, which is ultimately borne by shareholders and other stakeholders in GM, including the taxpayers who stand behind the Pension Benefit Guaranty Corporation, which underpins US employers’ pension promises. [Emphasis added].

57. The claim that GM attained “funded” status for its U.S. pensions through accounting slight of hand (including the debt offering and the fantastically high “expected return
rate”) cannot be credited. As the Comptroller General of the General Accounting Office testified in recent hearings before the House Budget Committee:

I think one has to be careful about General Motors [‘claim that its pension plans are “funded”], because the fact of the matter is, you have to look at the nature of their plan. If their plans have these shutdown benefits, which it’s very possible that they could, then they could look fine from the standpoint of the 10-K, because they’re not considering the shutdowns.

But there could be real problems if in fact they actually terminate and there are huge benefits that pop up overnight.

So I think we can’t take a whole lot of comfort. And that’s why I am saying you have to look below the numbers. You have to look at the nature of the plan, the nature of the benefit obligations to truly get a true sense as to what the real exposure [of the Pension Benefit Guarantee Corporation] is [in the event of a GM bankruptcy].

58. Moreover, according to a recent news report, “Congressional sources said Security & Exchange Commission and Labor Department records show that . . . GM[’] s pension plans are underfunded.”

59. The Company’s unrealistic pension return estimate has artificially inflated GM’s earnings. In 2002, 80% of GM’s net operating income came not from selling cars but from the pension funds’ expected return on assets, which GM recognized as operating income at the 9% rate. The SEC launched a probe into GM’s pension accounting in 2004 and the results of the SEC’s ongoing investigation are expected later this year.

60. The combination of high-risk investments and the additional leverage of the 2003 debt offering provides the critical elements for “a perfect storm” – especially when one takes into account GM’s declining fortunes in the marketplace and its massive, under-funded healthcare obligations.

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4 “Pensions At Some U.S. Firms Go Underfunded; Employees And Pensioners At Risk In Company Bankruptcies,” Buffalo News (June 15, 2005).
2. GM’s Massively Under-Funded Healthcare Obligations

61. In addition to the “defined benefit pension plans” discussed above, GM provides substantial healthcare and other benefits to its employees and retirees. The estimated cost of such coverage over time is actuarially determined based on a complex formula that considers, e.g., employee turnover, expected retirement age, estimated medical costs in each year of retirement, the retiree’s share of costs, medical payments, expected age of death, and the number and the age of beneficiaries and dependents.

62. Healthcare costs comprise the bulk of GM’s “postretirement benefit costs.” Statement of Financial Accounting Standards Number (“SFAS”) 106, “Employers Accounting for Postretirement Benefits Other Than Pensions,” requires that the cost of such benefits be recognized in the financial statements during the period employees provide service to the corporation. For the calendar year 2004, General Motors incurred $4.6 billion in postretirement benefit expense.\(^5\)

63. Although postretirement benefit plans are often unfunded, with the employer disbursing coverage costs as they are incurred, SFAS 106 requires that the “expected postretirement benefit obligation” be calculated and disclosed. The expected postretirement benefit obligation represents an estimate, by the actuary, of the total postretirement benefits (at their discounted present value) which the plan participants are entitled to receive.

64. As of December 31, 2004, General Motors’ liability for its projected postretirement benefit obligation was a whopping $77.4 billion.

65. To put this in perspective, General Motors’ entire market capitalization (determined by multiplying the number of outstanding shares times the current stock price) was

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\(^5\) Technically, the postretirement benefit expense is calculated through application of a complex actuarial determination that involves computation of the: (1) portion of the postretirement benefit obligation attributed to the current period (the service cost); (2) increase in the postretirement benefit obligation due to the passage of time (the interest cost); (3) return on plan assets, if any, and the (4) amortization of unexpected changes in either the obligation or plan assets and “transition” obligations.
approximately $20 billion as of June 1, 2005. Put simply, the present value of General Motors’ postretirement benefit obligation is nearly four times its entire market capitalization.

66. As a recent *Forbes* article noted:

[GM] has only $20 billion set aside for [future health costs]. That leaves a funding shortfall of $57 billion. Roughly half of this shortfall finds its way onto the balance sheet as a liability. GM is allowed to amortize actuarial losses that make up the other half of the unfunded portion. If the whole $57 billion were booked as a liability, GM’s shareholder equity would vanish.

The $77 billion figure, moreover, is in all likelihood too low. The number is based on the rather benign assumption that in six years the growth of total retiree healthcare costs will taper off to a mere 5% a year. GM has been making that same assumption for a decade, and it has not panned out. In the company’s 1998 annual report, as Glenn Reynolds of the bond analyst firm CreditSights points out, it predicted that the growth of its healthcare costs would flatten at 5% by 2004. But its retiree cash outlay rose 12.5% last year.

GM has now boosted projections of short-term cost growth for retiree benefits to 10.5%, while sticking to 5% over the long term. Shouldn’t the cost plateau and then decline? Eventually, yes. But not soon. The average age of the beneficiaries is 54. Most are going to live another decade or two, and they spend more on Zocor and knee replacements as they age. Add a percentage point to both the short- and the long-term cost growth assumption and you increase that $77 billion money pit by $8.4 billion.6

67. There is no plan whatsoever for meeting the $65 billion or more in unfunded healthcare costs.

68. GM’s prospects for negotiating its way out of its obligations appear slim at best, as a recent *BusinessWeek* article7 noted:

Wagoner will be hard-pressed to get enough relief on medical costs, at least before the scheduled contract negotiations in 2007. The Center for Automotive Research (CAR) in Ann Arbor Michigan, estimates that GM could save at least $1.2 billion a year just by closing the gap in copayments and deductibles between

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different kinds of employees. A single, salaried worker pays at least $100 a month towards health costs, while hourly union workers pay no premiums and only a $5 co-pay on drugs. But so far, the United Auto Workers leadership has shown no sign that it’s willing to reopen a contract that still has two more years to run. When GM’s Group Vice President for Labor Relations, Gary L. Cowger suggested syncing up the union and nonunion plants, UAW Vice President Richard Shoemaker quipped: “If GM wants to give the salaried workers the same health-care plan we have, we’re happy to share.”

69. Moreover, the problems with respect to healthcare are increasing. Each percentage point rise in the assumed rate of healthcare inflation increases costs to the Company’s U.S. operations by $539 million annually, and the Company will have to push up its inflation assumption sharply this year. In addition, lower bond yields push down the rate at which future costs are discounted into today’s money. The 0.25 percentage point cut that GM plans in its discount rate this year will add another $170 million to annual costs. Defendants knew or should have known that these staggering unfunded healthcare costs made General Motors Stock an imprudent investment for the Plans.

3. Defendants Ignored Other Red Flags During The Class Period

70. Defendants also knew or should have known during the Class Period about the impact that GM’s failed merger with Fiat would have on the Company and its already horrendous financial performance. In February 15, 2005, GM announced a $2 billion payoff to Fiat to get GM out of a deal that cost the Company a total of $4.5 billion. In a press release entitled “Fiat, GM Reach Settlement Agreement,” the Company stated:

General Motors Corp (NYSE: GM) and Fiat S.p.A. (NYSE: FIA) today announced they have executed an agreement to terminate the Master Agreement between the companies and realign their industrial relationships. The boards of directors of both GM and Fiat have approved the settlement agreement.

GM will acquire certain strategic assets from Fiat to assure the future availability of a full range of diesel engines for vehicles produced by GM’s global operations.
“GM and Fiat have agreed that it is in the best interest of their companies and shareholders to terminate the Master Agreement,” said GM Chairman and Chief Executive Officer Rick Wagoner. “GM has derived significant benefits from its association with Fiat Auto, including the accelerated development of diesel engines, cost savings and the joint development of certain vehicle programs. With this settlement, our overall financial returns will have been favorable.”

“We believe that we have reached a fair and equitable agreement that enables both companies to maintain a high level of synergy savings, but in a more focused approach that gives each of us more freedom to act in today’s competitive environment,” Wagoner said.

Under terms of the agreement, GM will pay Fiat €1.55 billion to terminate the Master Agreement (including the put option) and to acquire an interest in key strategic diesel engine assets, and other important rights with respect to diesel engine technology and know-how. GM will return its 10 percent equity interest in Fiat Auto Holdings to Fiat S.p.A.

* * *

GM will take an after-tax charge to earnings of approximately US$840 million, or $1.49 per fully diluted share. [Emphasis added.]

71. Defendants also ignored several other red flags during the Class Period. Among other things, Defendants knew or should have known during the Class Period that GM’s declining market share has been artificially propped up for years by heavy incentives such as cash back to buyers, 0% interest rates, credit card promotions, sales to rent-a-car fleets, and special deals for workers, relatives of workers and employees of suppliers.

72. Defendants should have considered the fact that GM has led the automotive industry with vehicle recalls during the Class Period. For instance, in February 2005, GM recalled nearly 200,000 vehicles for safety defects. The largest recall consisted of approximately 155,000 pick-ups, vans and SUVs because of brake malfunctions.

73. Defendants also should have considered the fact that the Company was on the verge of a credit downgrade to junk bond status, and was eventually so downgraded. This will have a huge impact on GM’s borrowing costs. GM’s short-term borrowings total $56 billion,
while long-term borrowings come to $235 billion. According to one analyst, this credit downgrade will have a drastic impact on the Company. “If you factor in the increase in funding costs that comes with a ratings downgrade at such a high level of leverage, the figures one can arrive at offset all of GM’s net income over the last two years,” said Sean Egan, managing director of Egan-Jones Ratings. “That’s very significant, and we don’t see anything on the horizon that is going to change their prospects.”

4. GM’s Failing Business

74. In large part due to GM’s enormous and virtually insurmountable employee and retiree benefit obligations, the Company cannot hold its own in the fiercely-competitive U.S. and global automobile markets.

75. A May 9, 2005 article in BusinessWeek, “Why GM’s Plan Won’t Work… and the ugly road ahead,” summarized GM’s plight:

[Make no mistake, GM is in a horrible bind. The $1.1 billion loss in the first quarter [2005] doesn’t begin to tell the whole story. The carmaker is saddled with a $1,600 per vehicle handicap in so-called legacy costs, mostly retiree health and pension benefits. Any day now, GM is likely to get slapped with a junk-bond rating. GM has lost a breathtaking 74% of its market value -- some $43 billion -- since spring of 2000, giving it a valuation of $15 billion. What really scares investors is that GM keeps losing ground in its core business of selling cars. Underinvestment has left it struggling to catch up in technology and design. Sales fell 52% on GM’s home turf last quarter as Toyota Motor Corp., Nissan Motor Co., and other more nimble competitors ate GM’s lunch…

Worst of all, GM reached a watershed in its four decades decline in market share. After losing two percentage points of share over the past year to log in at 25.6%, GM has reached the point at which it actually consumes more cash than it brings in making cars, for the first time since the early ’90s. GM, once the world’s premier automaker, is now cash flow negative. That’s a game changer. Without growth, GM’s strategy of simply to try to keep its factories humming and squeaking by until its legacy costs start to

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8 Indeed this occurred later in May of 2005.
diminish is no longer tenable. If market share continues to slip, its losses will rapidly balloon.

Normally a company in such straits contracts until it reaches equilibrium. But for GM, shrinkage is not much of an option. Because of its union agreements, the automaker can’t close plants or lay off workers without paying a stiff penalty, no matter how far its sales or profits fall. It must run plants at 80% capacity, minimum, whether they make money or not. Even if it halts its assembly lines, GM must pay laid-off workers and foot their extraordinarily generous healthcare and pension costs. Unless GM scores major give-backs from the union, these costs are fixed, at least until the next round of contract talks in two years. The plan has been to run out the clock until actuarial tables tilt in GM’s favor (a nice way of saying that older retirees eventually will die off). But with decreasing sales and a smaller slice of the market, that plan backfires -- leaving GM open to an array of highly unattractive possibilities.

76. GM’s bloated employee benefits costs handicap any contemplated GM comeback.

According to the same BusinessWeek article:

Increasingly, though, the solutions will slip from GM’s control. At some point the laws of physics take over and, like steelmakers and airlines, GM is at the mercy of global forces. It simply cannot compete in the global economy with the enormous burden it now carries in legacy costs. It certainly cannot meet those costs for long off a shrinking sales base and negative cash flow. And distracted by those woes, it can’t begin to make the investments necessary to match the Koreans on price, the Japanese on quality, and the Europeans on performance.

77. Referring further to overwhelming competition from foreign carmakers, the recent BusinessWeek article continues:

Compare that with how the most successful car companies -- Toyota, Nissan, and Honda -- do things. They concentrate research dollars on fewer vehicles, back them with the latest features and technologies, manufacture them in low-cost nonunion US factories, and update them relentlessly. Look at the numbers: GM execs doled out $7 billion [substantially less than the amount of GM employee benefits paid] for capital spending and research and development last year, versus $15.3 billion for Toyota….
78. The following graphic, which appeared recently in the *Detroit News*, demonstrates the enormous advantage of Toyota in terms of reduced expenses and higher income regardless of its smaller marketshare:

*Nine months due to change in fiscal year; Toyota's fiscal year ends March 31.
Sources: Toyota, GM, Bloomberg

*The Detroit News*
Ultimately, the above-cited *BusinessWeek* article concludes that GM’s prospects are dim:

Private equity investors seem to believe that the company’s global cost handicap will eventually force it into bankruptcy court to shed union and dealer obligations. Wall Street bankers already are salivating over the opportunity to pick off GM’s profitable mortgage operations. But the auto business is a whole other animal. For now, the legacy costs are too onerous and the politics of chopping so many jobs just too dicey for it to be worth the trouble of a takeover. Says one senior banker: “The joke used to be that all of the airlines would have to go through a car wash... now the car companies are going to have to go through the car wash. That’s the challenge for anyone looking at these businesses and saying, Look, how do you deal with starting at a $2000 a car disadvantage versus the rest of the world?”

5. General Motors’ Revised Earnings Outlook

On March 6, 2005, GM stunned the market with a profit warning that cut the Company’s 2005 earnings by more than half. In a press release entitled “GM Revises Earnings Outlook,” the Company stated:

*General Motors Corp. (NYSE: GM) said today that it is revising its first-quarter and calendar-year earnings guidance to reflect lower North American sales and production volumes, a tougher pricing environment, and a more car-based sales mix. At the same time, GM’s other automotive regions and GMAC are all on track to meet or beat their 2005 net income targets.*

“Clearly we have significant challenges in North America. The rest of our automotive businesses, and GMAC, are running in line with, or ahead of, our expectations,” said GM Chairman and Chief Executive Officer Rick Wagoner. “But North America is our biggest business, and the key driver of automotive earnings and cash flow. So it’s important that we get this business right.”

*GM said it now expects to report a loss of approximately $1.50 per fully diluted share in the first quarter of 2005, excluding special items, compared to a previous target of breakeven or better. For the calendar year, GM expects to report earnings of approximately $1.00 to $2.00 per share, excluding special items, compared to a previous target of $4.00 to $5.00 per share.*

GM also expects negative operating cash flow in 2005 of approximately $2 billion, before the Fiat settlement and GM
Europe restructuring, versus the previous target of positive $2 billion. This is primarily attributable to lower volumes and decreased net income at GM North America (GMNA). GM’s 2005 corporate capital spending remains at approximately $8 billion, or $1 billion above 2004 levels.

GM’s previous first-quarter earnings guidance was based on North American vehicle-production volume of 1.25 million vehicles. Since then, production schedules have been reduced by approximately 70,000 vehicles. In addition, the pricing environment has been more competitive than expected in North America.

“The competitive environment that we face in North America means we must continue to find ways to reduce our costs and grow revenue,” said GM Vice Chairman and Chief Financial Officer John Devine. “While we have made good progress in reducing costs over the last several years, the projected loss in North America reinforces our need to do much more, particularly in the area of health care.” [Emphasis added.]

81. The market’s reaction to the revised earnings outlook was swift, as the price for General Motors common stock fell approximately 12% on heavy trading to a 52-week low.

6. Stock and Bond Analysts, and Fund Managers, Recognize the Imprudence of Investing in General Motors Stock

82. Mark Hillman, manager of the Hillman Aggressive Equity Fund, sold his 5% fund position in GM stock early in 2005, based in part on the Company’s under-funded pension and healthcare liabilities.


84. Then, on May 24, 2005, Fitch Ratings followed suit, downgrading General Motors’ debt to “junk” status.

85. Throughout the spring of 2005, Zack’s average brokerage recommendation – the average rating of some 16 analysts covering GM stock – was a “moderate sell” rating.
B. Defendants Knew Or Should Have Known that General Motors Stock was not a Prudent Investment for the Plans.

86. At all relevant times, Defendants knew or should have known that General Motors was engaged in the questionable pension and health-care funding practices, and the dubious financial reporting practices detailed above which made General Motors Stock an imprudent investment for the Plans.

87. Moreover, Defendants knew or should have known that these practices, and the Company’s failing business, put General Motors Stock at risk and made it an imprudent investment for the Plans.

88. In light of Defendants’ knowledge of and, at times, implication in, creating and maintaining public misconceptions concerning the true financial health of the Company, any generalized warnings of market and diversification risks that General Motors made to the Plans’ participants regarding the Plans’ investment in General Motors Stock did not effectively inform the Plans’ participants of the immediate and future dangers of investing in Company Stock.

89. In addition, Defendants failed to adequately review the performance of the other fiduciary Defendants to ensure that they were fulfilling their fiduciary duties under the Plans and ERISA.

90. Defendants failed to conduct an appropriate investigation into whether General Motors Stock was a prudent investment for the Plans and, in connection therewith, failed to provide the Plans’ participants with information regarding General Motors’ questionable activities so that participants could make informed decisions regarding General Motors Stock in the Plans.

91. An adequate investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plans in General Motors Stock, under these circumstances, was clearly imprudent. A prudent fiduciary acting under similar circumstances would have acted to protect participants against unnecessary loss, and would have made different investment
decisions. Because Defendants knew or should have known that General Motors Stock was not a prudent investment option for the Plans, they had an obligation to protect the Plans and their participants from unreasonable and entirely predictable losses incurred as a result of the Plans’ investment in General Motors Stock.

92. Defendants had available to them several different options for satisfying this duty, including: (1) making appropriate public disclosures as necessary; (2) divesting the Plans of General Motors Stock; (3) discontinuing further contributions to and/or investment in General Motors Stock under the Plans; (4) consulting independent fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the participants of the Plans; and/or, (5) resigning as fiduciaries of the Plans to the extent that as a result of their relationship with General Motors they could not loyally serve the Plans’ participants in connection with the Plans’ acquisition and holding of General Motors Stock.

93. In fact, the S-SPP specifically provides that “Each of the Investment Funds made available under the Program is subject to the fiduciary responsibilities of the Named Fiduciary or its delegate, and the Named Fiduciary or its delegate may add new Investment Funds to, or remove Investment Funds from, the list of permissible investments made available under the Program.” (Emphasis added.)

94. Despite the availability of these and other options, Defendants failed to take any action to protect participants from losses as a result of the Plans’ investment in General Motors Stock. In fact, Defendants continued to invest and allow investment of the Plans’ assets in Company Stock even as General Motors’ improper and risky practices came to light.

C. Defendants Regularly Communicated with the Plans’ Participants Concerning General Motors Stock, Yet Failed to Disclose the Imprudence of Investment in General Motors Stock

95. Defendants regularly communicated with employees, including the Plans’ participants, about General Motors’ performance, future financial and business prospects, and
Company Stock. One vehicle for such communications has been the publication captioned “*The GM Total Compensation Journal for Salaried Employees,*” in which Defendant Wagoner stated in December 1999, for example, “We are increasingly demonstrating the strength of operating as one global company—growing our business, *improving our cost competitiveness.*” (Emphasis added). During the Class Period, through similarly upbeat statements directed at Plan participants, Defendant Wagoner and others at the Company fostered a positive attitude toward General Motors’ Stock as an investment for the Plans, and/or allowed the Plans’ participants to follow their natural bias towards investment in the stock of their employer by not disclosing negative material information concerning investment in General Motors Stock (including the health and pension cost albatross). As such, the Plans’ participants could not appreciate the true risks presented by investments in General Motors Stock and therefore could not make informed decisions regarding investments in the Plans.

**VI. THE LAW UNDER ERISA**


97. ERISA § 409(a), 29 U.S.C. § 1109(a), “Liability for Breach of Fiduciary Duty,” provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

98. ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan *solely in the interest of the participants* and beneficiaries, for *the exclusive purpose of providing benefits to*
participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

99. These fiduciary duties under ERISA § 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the “highest known to the law.” They entail, among other things:

   a. The duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan, including in this instance the General Motors Stock Fund which invested in General Motors Stock, to ensure that each investment is a suitable option for the Plans;

   b. A duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the Plans’ sponsor; and

   c. A duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

100. ERISA § 405(a), 29 U.S.C. § 1105(a), “Liability for breach by co-fiduciary,” provides that “In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which
give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts
under the circumstances to remedy the breach.”

101. Plaintiffs therefore bring this action under the authority of ERISA § 502(a)(2) for
plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plans arising out of the
breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA
§ 405(a).

VII. DEFENDANTS’ FIDUCIARY STATUS

102. During the Class Period, all of the Defendants acted as fiduciaries of the Plans
pursuant to § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and the law interpreting that section.
Defendants all had discretionary authority with respect to the management of the Plans and/or
the management or disposition of the Plans’ assets, and had discretionary authority or
responsibility for the administration of the Plans.

103. ERISA requires every plan to provide for one or more named fiduciaries who will
have “authority to control and manage the operation and administration of the plan.”
§ 402(a)(1), 29 U.S.C. § 1102(a)(1). In this case, GM, the Investment Funds Committee, and
GMIMCo are all named fiduciaries.

104. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under
§ 402(a)(1), but also any other persons who act in fact as fiduciaries, i.e., perform fiduciary
functions. Section 3(21)(A)(i) of ERISA, 29 U.S.C. §1002(21)(A)(i), provides that a person is a
fiduciary “to the extent . . . he exercises any discretionary authority or discretionary control
respecting management of such plan or exercises any authority or control respecting
management of disposition of its assets . . . .” During the Class Period, each of the Defendants
performed fiduciary functions under this standard, and thereby also acted as fiduciaries under
ERISA.
105. The Plans and their assets are administered and managed by Defendants.

106. During the Class Period, Defendants’ direct and indirect communications with the Plans’ participants included statements regarding investments in Company Stock. Upon information and belief, these communications included, but were not limited to, SEC filings, annual reports, press releases, Company presentations made available to the Plans’ participants via the Company’s website and Plan-related documents which incorporated and/or reiterated these statements. Defendants also acted as fiduciaries to the extent of this activity.

VIII. THE PLANS

107. The General Motors Savings-Stock Purchase Program for Salaried Employees in the United States and the General Motors Personal Savings Plan for Hourly-Rate Employees in the United States are defined contribution plans, with a 401(k) feature, with separate accounts maintained for each participant. The Plans are subject to the provisions of ERISA.

A. General Motors Savings-Stock Purchase Program for Salaried Employees.

108. General Motors established the General Motors Savings-Stock Purchase Program for Salaried Employees in the United States (“S-SPP”), a defined contribution plan. Eligibility is restricted to regular employees of GM who have completed six months of employment and who are compensated fully or partly by salary and/or commission, but who are not represented by a labor organization (unless they are eligible through understandings reached between the Company and their collective bargaining representatives). Employees classified as part-time employees, regular employees, temporary assignment, flexible service employees, temporary employees, or cooperative student employees (hired prior to January 1, 1999) are eligible to participate in the S-SPP upon the completion of six months of employment.

109. According to Summary Plan Descriptions (“SPDs”), “The purpose of the Savings-Stock Purchase Program . . . is to help you accumulate savings, while at the same time providing
you with an opportunity to acquire an equity investment in GM.” Elsewhere, SPDs state that the S-SPP “can be used to accumulate savings for your future financial security.”

110. As of December 31, 2003, the S-SPP had 105,787 participants and $13,002,865,387 in assets.

111. The Investment Funds Committee of the General Motors’ Board of Directors is the Named Fiduciary of the S-SPP.

112. GMIMCo is the Named Fiduciary of the S-SPP for the purposes of investments of Plan assets.

113. GM is the Plan Administrator of the S-SPP, with discretionary authority to construe, interpret, apply and administer the S-SPP.

114. The Employee Benefit Plans Committee has final discretionary authority to construe, interpret, apply and administer the S-SPP.

115. An eligible participant employed by the Company (an “Employee”) may elect to contribute to the S-SPP as follows:

- on an after-tax basis (regular savings), up to 50% of an Employee’s eligible salary as defined in the Plan (the maximum percentage varied from 20% in 2000 to 50% in 2004).

- on a tax-deferred basis (deferred savings), an amount of eligible salary which is the lesser of (1) $13,000, $12,000 and $11,000 for 2004, 2003 and 2002, respectively or (2) up to 50% of the Employee’s eligible salary for a calendar year.

- in lieu of receiving a distribution from The General Motors Enhanced Variable Pay Plan for Salaried Employees in the United States (the “Variable Pay Plan”), an Employee may elect to have the Corporation contribute, as deferred savings to the extent permissible under tax law, up to 100%, in 10% increments, of any such amount, which vests immediately.

- in lieu of receiving a flexible compensation payment from the Corporation, an Employee may elect to have the Corporation contribute 100% of the flexible compensation
payment as deferred savings until the tax deferral legal limit is reached and then any remaining portion of such payment will be contributed as regular savings to the extent permissible under tax law.

116. As defined in the S-SPP Plan document, the Company’s total matching contribution will be based on the Employee’s “Basic Savings” contribution. “Basic Savings” is defined as Employee savings of up to 6% of an Employee’s eligible monthly base salary.

117. The amount of the Company’s matching contribution has varied from 70% of Basic Savings in 1999 to 80% in 2000 to 60% in 2001 to 20% in 2002 to 50% from January 1, 2003-March of 2005, when the contribution amount dropped to 20% of Basic Savings.

118. The Company’s matching contribution is invested entirely in the GM $1-2/3 Par Value Common Stock Fund and such contributions must remain invested in this fund during the period January through December 31, of the calendar year in which the contributions were made. This period is referred to as the “required retention period.”

119. In addition, throughout the required retention period, 50% of the Employee’s “Basic Savings” contributions must also be invested in the GM $1-2/3 Par Value Common Stock Fund (prior to December 2003, the GM Class H, $0.10 Par Value Common Stock Fund was also an option for some or all of the 50% of “Basic Savings.”)

120. An Employee hired on or after January 1, 1993 will automatically have a Company contribution amount equal to 1% of the Employee’s eligible monthly base salary credited each pay period to such Employee’s account upon attainment of eligibility. This contribution is provided because such Employee will receive different postretirement benefit treatment from the Company than Employees hired prior to January 1, 1993. These contributions are credited to the Employee’s account whether or not the Employee elects to participate in the S-SPP. The contribution is invested in the GM $1-2/3 Par Value Common Stock Fund, and the contribution must remain invested in this fund during the required retention period.
121. Assets derived from employee contributions and related Company contributions and earnings thereon vest immediately on allocation to the employee’s account except for Employees with less than three years of credited service for whom Company contributions and related earnings vest on January 1 following the calendar year in which such contributions or earnings are credited.

122. Participants may exchange funds between investment options on any business day, except for Employee and Company contributions that are required to be invested in Company common stock funds during the required retention period.

123. Participants may withdraw deferred savings in their account at any time after attaining age 59-1/2. Prior to age 59-1/2, after-tax savings may be withdrawn at any time; however, Employee deferred savings may only be withdrawn because of termination of employment, death, total and permanent disability, or financial hardship.

124. The Company’s contributions are invested in the GM $1-2/3 Par Value Common Stock Fund. One-half of an Employee’s Basic Savings up to 6% is required to be invested, in 10% increments, in the GM $1-2/3 Par Value Common Stock Fund (until December 2003, the GM Class H, $0.10 Par Value Common Stock Fund was also an option for some or all of the 50% of Basic Savings). The remainder of an Employee’s contributions will be invested at the Employee’s direction, in 10% increments, in any of the following investment options:

- General Motors $1-2/3 Par Value Common Stock Fund;
- General Motors Class H, $0.10 Par Value Common Stock Fund (up until December 23, 2003);
- Promark Funds;
- Mutual Funds.
125. As of December 23, 2003, GM Class H stock was replaced with the DIRECTV Group Common Stock and News Corporation Preferred ADSs at the ratio of 84% and 16%, respectively.

126. According to the S-SPP Plan document, “The term ‘GM $1-2/3 par value Common Stock Fund’ shall mean the investment option consisting principally of General Motors $1-2/3 par value $1-2/3 common stock issued by General Motors Corporation. A portion of the GM $1-2/3 par value Common Stock Fund may be invested in short-term fixed income investments and money market investments.”

127. Similarly, with respect to the “GM Class H Common Stock Fund” (which was a Plan option until December 23, 2003), the S-SPP Plan document provided that “[a] portion of the GM Class H Common Stock Fund may be invested in short-term fixed income investments and money market instruments.”

128. According to the S-SPP Plan document, the Company’s Common Stock Funds will be invested by an Investment Manager “under a management agreement which specifies the terms and conditions of such funds.”

129. The S-SPP Plan document further provides that “[t]he portion of the Program assets invested in the General Motors $1-2/3 par value Common Stock Fund and the General Motors Class H Common Stock Fund, including any dividends, earnings or gains thereon, is designed to invest primarily in qualifying employer securities as defined by Section 4975(e)(8) of the Code and is an employee stock ownership plan [“ESOP”] under Section 4975(e)(7) of the Code.”

130. Under the ESOP provisions of the S-SPP, the Named Fiduciary can direct the Trustee to obtain acquisition loans to finance the acquisition by the Master Trust of Company Stock; shares purchased with such loans are placed into a suspense account pending their release
when they are credited to Participant Accounts as the result of Employee contributions and Company matching contributions.

131. Promark funds are offered as investment options for participants in the S-SPP. These funds have a variety of investment strategies.

132. The Mutual Fund investment option is comprised of many different mutual funds, which are managed by Fidelity Investments, Neuberger Berman Management Inc., Domini Social Investments LLC and SSgA Funds Management, Inc. Each mutual fund has a different objective and investment strategy.

133. Other investments in the S-SPP include:

- **EDS Common Stock Fund** - Effective June 7, 1996, the net assets of Electronic Data Systems (“EDS”) were split-off from the net assets of the Corporation. As a result, the Class E Common Stock Fund was changed to the EDS Common Stock Fund. No new contributions, loan repayments, or exchanges may be made into the EDS Common Stock Fund. Dividends, if any, paid on EDS common stock held by the Plan are invested in an Income Fund investment option.

- **DIRECTV Group Common Stock Fund** - Effective December 23, 2003, GM Class H stock was replaced with DIRECTV Group Common Stock and News Corporation Preferred ADSs at the ratio of 84% and 16% respectively. The DIRECTV Group Common Stock Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the DIRECTV Group Common Stock Fund will be permitted during that time. Dividends if any paid on the stock held by the Trust are invested in the Promark Income Fund investment option.

- **News Corporation Preferred ADSs Fund** - Effective December 23, 2003, GM Class H stock was replaced with DIRECTV Group Common Stock and News Corporation Preferred ADSs at the ratio of 84% and 16% respectively. The News Corporation Preferred ADSs Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the News Corporation Preferred ADSs Fund are permitted during that time. Dividends if any paid on the stock held by the Trust
are invested in the Promark Income Fund investment option.

- **Delphi Common Stock Fund** - On May 28, 1999, GM completed the spin-off of Delphi Corporation (“Delphi”). In connection with that spin-off, Delphi common stock was distributed to holders of GM $1-2/3 par value common stock, and at the same time the Delphi Common Stock Fund was added as a Plan holding. The Delphi Common Stock Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the Delphi Common Stock Fund will be permitted during that time. Dividends if any paid on the stock held by the Trust are invested in the Promark Income Fund investment option.

- **Raytheon Common Stock Fund** - Effective December 17, 1997, GM spun-off the defense electronics business of Hughes Electronics Corporation, a GM subsidiary (Hughes Defense), to holders of GM $1-2/3 par value and Class H common stock, which was immediately followed by the merger of Hughes Defense with Raytheon Company. In connection with the above transaction, Raytheon Class A common stock was distributed to holders of GM $1-2/3 par value and Class H common stocks.

134. GMIMCo is the Named Fiduciary of the S-SPP for the purpose of investments of the S-SPP’s assets. GMIMCo may delegate authority to carry out such of its responsibilities as it deems proper to the extent permitted by ERISA. Pursuant to that authority, GMIMCo entered into an Investment Management Agreement with State Street on May 28, 1999 under which State Street became “responsible in its sole judgment and discretion for the management and investments of the Investment Accounts” – including the GM $1-2/3 par value Common Stock Fund Investment Account and (until December of 2003) the GM Class H Common Stock Fund Investment Account – held in trust on behalf of PSP and S-SPP participants.

### B. General Motors Personal Savings Plan for Hourly-Rate Employees

135. General Motors established The General Motors Personal Savings Plan for Hourly-Rate Employees in the United States (“PSP”), a defined contribution plan.
136. According to a Summary Plan Description ("SPD") for current employees, “The purpose of the Personal Savings Plan (PSP) is to allow you to save part of your earnings by investing for retirement through convenient and tax-effective payroll deductions.” Retirees were told in a separate SPD that “Your savings in the Personal Savings Plan (PSP) may represent a substantial portion of your retirement savings.”

137. Generally, eligible hourly-rate full-time and part-time employees may participate and accumulate savings under the PSP, the first day of the first pay period following the completion of 90 days of employment with the Company.

138. As of December 31, 2003, the PSP had 154,627 participants and total assets of $8,114,755,073.

139. The Investment Funds Committee of the Company’s Board of Directors is the Named Fiduciary of the PSP. The Investment Funds Committee may delegate authority to carry out such of its responsibilities as it deems proper to the extent permitted by ERISA.

140. GMIMCo is the Named Fiduciary of the PSP for the purpose of investments of the PSP’s assets. GMIMCo may delegate authority to carry out such of its responsibilities as it deems proper to the extent permitted by ERISA. Pursuant to that authority, GMIMCo entered into an Investment Management Agreement with State Street on May 28, 1999 under which State Street became “responsible in its sole judgment and discretion for the management and investments of the Investment Accounts” – including the GM $1-2/3 par value Common Stock Fund Investment Account, and (until December of 2003) the GM Class H Common Stock Fund Investment Account – held in Trust on behalf of PSP and S-SPP participants.

141. General Motors, or its delegate, has responsibility for the day-to-day operation, management and administration of the PSP, including full power and authority to construe, interpret, and administer the PSP and to pass upon and decide cases presenting unusual
circumstances in conformity with the objectives of the Plan and under such rules as General Motors, or its delegate, may establish.

142. An eligible participant employed by the Company (an “Eligible Employee”) may elect to make pre-tax contributions, in 1% increments, up to 60% in 2004 (40% for 2003 and 2002) of eligible weekly earnings up to the maximum Internal Revenue Service (the “IRS”) 401(k) limit. In addition, an Eligible Employee may elect to contribute, in 1% increments, up to 100% of his or her profit sharing distribution from the General Motors Profit Sharing Plan for Hourly-Rate Employees in the United States to his or her account in the Plan.

143. Profit sharing amounts contributed to the PSP on behalf of an Eligible Employee are invested in the same investment option(s) as selected by the participant for weekly contributions to the Plan.

144. An Eligible Employee may also contribute to the PSP on an after-tax basis, or a combination of a pre-tax and an after-tax basis – up to 60% for 2004, up from 40% in 2003 and 2002 – of weekly earnings as defined in the Plan.

145. Eligible Employees, who are age 50 or older or who will attain age 50 by the end of the calendar year, are eligible to make catch-up contributions to their accounts. A catch-up contribution is a separate contribution election, that is “pre-tax” only, and is made only after the participant’s contributions have been limited by the annual 401(k) contribution limit.

146. All employee contributions vest immediately.

147. Participants may withdraw tax-deferred savings in their accounts at any time after attaining age 59-1/2. Prior to age 59-1/2, employee after-tax savings may be withdrawn at any time; however, tax deferred savings may only be withdrawn because of termination of employment, retirement, death, total and permanent disability, or financial hardship.

148. The participants must direct, in 10% increments, how their contributions are to be invested.
149. As of 2004, the following investment options existed for new participant contributions or exchanges in the PSP:

- General Motors Common Stock Fund;
- Promark Funds;
- Mutual Funds, and
- Socially Oriented Funds.

150. Throughout the Class Period, General Motors Common Stock Fund, $1-2/3 Par Value has always been one of the options for PSP participants. Up until December 23, 2003, the GM Class H, $0.10 Par Value Fund was another option; as of that date, Class H stock was replaced with DIRECTV Group Common Stock and News Corporation Preferred ADSs at the ratio of 84% and 16%, respectively.

151. The PSP defines the “GM Common Stock Fund” as follows:

the investment option consisting principally of common stock, $1-2/3 par value, issued by General Motors Corporation. A portion of the GM Common Stock Fund may be invested in short-term fixed income investments and money market instruments.

152. The PSP similarly defines the “GM Class H Common Stock Fund” as follows:

the investment option consisting principally of General Motors Class H common stock, $0.10 par value, issued by General Motors Corporation. A portion of the GM Class H Common Stock Fund may be invested in short-term fixed income investments and money market instruments.

153. According to the PSP, “The Participants’ contributions which are to be invested in the Corporation’s Common Stock Funds . . . shall be invested by an investment manager, or managers, appointed by the Named Fiduciary, or its delegate, under a management agreement which specifies the terms and conditions of such Funds.”

154. There are also a variety of Promark Funds as investment options for participants in the PSP. These funds have a variety of investment strategies, and they are invested by an
investment manager or managers appointed by the Named Fiduciary (the Investment Funds Committee, or its delegate, GMIMCo).

155. Participants can also choose to invest in a variety of Mutual Funds. These funds, chosen by the Named Fiduciary (the Investment Funds Committee, or its delegate, GMIMCo) include mutual funds managed by Fidelity Investments, Neuberger Berman Management Inc., Domini Social Investments LLC and SSgA Funds Management, Inc. Each mutual fund has a different objective and investment strategy.

156. Finally, participants could choose to invest in “Socially Oriented Funds,” which are again mutual funds chosen by the Named Fiduciary, the Investment Funds Committee, or its delegate, GMIMCo.

157. Other options **not open for new participant investment** include:

- **EDS Common Stock Fund** - Effective June 7, 1996, the net assets of Electronic Data Systems (“EDS”) were split-off from the net assets of the Company. As a result, the Class E Common Stock Fund was changed to the EDS Common Stock Fund. No new contributions, loan repayments, or exchanges may be made into the EDS Common Stock Fund. Dividends, if any, paid on EDS common stock held by the Plan are invested in an Income Fund investment option.

- **DIRECTV Group Common Stock Fund** - Effective December 23, 2003, GM Class H stock was replaced with DIRECTV Group Common Stock and News Corporation Preferred ADSs at the ratio of 84% and 16% respectively. The DIRECTV Group Common Stock Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the DIRECTV Group Common Stock Fund will be permitted during that time. Dividends if any paid on the stock held by the Trust are invested in the Promark Income Fund. Investment Option Assets held in this fund are expressed in terms of units and not shares of stock.

- **News Corporation Preferred ADSs Fund** - Effective December 23, 2003, GM Class H stock was replaced with DIRECTV Group Common Stock Fund and News Corporation Preferred ADSs at the ratio of 84% and 16% respectively. The News Corporation Preferred ADSs Fund
will remain as an investment option; however, no further contributions or exchanges from any other investment option into the News Corporation Preferred ADSs Fund will be permitted during that time. Dividends if any paid on the stock held by the Trust are invested in the Promark Income Fund Investment Option.

- **Delphi Common Stock Fund** - On May 28, 1999, GM completed the spin-off of Delphi Corporation (Delphi). In connection with that spin-off, Delphi common stock was distributed to holders of GM $1-2/3 par value common stock. The Delphi Common Stock Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the Delphi Common Stock Fund will be permitted. Dividends if any paid on the stock held by the Trust are invested in the Promark Income Fund Investment Option.

- **Raytheon Common Stock Fund** - Effective December 17, 1997, GM spun-off the defense electronics business of Hughes Electronics Corporation, a GM subsidiary, to holders of GM $1-2/3 par value and Class H common stock, which was immediately followed by the merger of Hughes Defense with Raytheon Company. In connection with the above transaction, Raytheon common stock was distributed to holders of GM $1-2/3 par value and Class H common stocks. Raytheon Common Stock Fund will remain as an investment option; however, no further contributions or exchanges from any other investment option into the Raytheon Common Stock Fund will be permitted.

C. **The Master Trust Agreement And The Investment Management Agreement**

158. All participant investments in both the S-SPP and the PSP go into the Master Trust pursuant to the General Motors Master Savings Plans Master Trust Agreement between General Motors Corporation, Saturn Corporation and State Street. (The Master Trust Agreement, entered in 1994, also covers investments in the Saturn Individual Plan for Represented Members and the General Motors Income Security Plan, neither of which is at issue in this Complaint).

159. Throughout the Class Period, State Street has been the Trustee of the S-SPP and the PSP, and held the GM Stock of both Plans in the Master Trust.
160. Per the Master Trust Agreement, GMIMCo directs the Trustee to establish separate investment accounts within the Trust (“Investment Funds”). “Subject to the provisions of the Plans, GMIMCo may direct the Trustee to eliminate an Investment Fund and the Trustee shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof in a successor Investment Fund if directed by GMIMCo.”

161. Effective May 28, 1999, State Street entered into an Investment Management Agreement with GMIMCo “in its capacity as the Named Fiduciary” of, inter alia, the PSP, and the S-SPP.

162. Under the Investment Management Agreement, State Street became responsible for the management and investment of five “Investment Accounts” — including the General Motors Common Stock, $1-2/3 Par Value Investment Account, and the General Motors Class H Common Stock Investment Account. These two “Investment Accounts” contained all the shares of Company Stock held in the PSP and the S-SPP throughout the Class Period.

163. Each “Investment Account” is to “consist of the applicable class of common stock of the Corporation . . . and cash or short term U.S. Treasury Securities or investments in a short term investment fund.”

164. As “Investment Manager” of the Company Stock Investments Accounts within the meaning of Section 3(38) of ERISA, 29 U.S.C. § 1002(38), State Street had “the power to manage, acquire, or dispose of any asset” held in those Investment Accounts.

165. Under the Investment Management Agreement, State Street has “discretionary authority and responsibility” for managing and investing the Investment Accounts subject to the Trust Agreement and the Fund Policy for each Investment Account.

166. However, under the Investment Management Agreement State Street has the unqualified duty to act loyally, prudently, and “by diversifying investments in the Investment
Accounts so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.”

167. Despite the plain language of the Investment Management Agreement, State Street has maintained nearly all of the assets in the GM Stock Investment Accounts invested in General Motors Stock.

CAUSES OF ACTION

COUNT I

Failure to Prudently and Loyally Manage the Plans’ Assets
(Breaches of Fiduciary Duties in Violation of ERISA § 404 by All Defendants)

168. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

169. At all relevant times, as alleged above, all Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

170. As alleged above, Defendants were all responsible, in different ways and to differing extents, for the selection and monitoring of the Plans’ investment options, including the option of Company Stock Funds.

171. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan’s assets are responsible for ensuring that investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. Defendants were responsible for ensuring that investment in General Motors Stock was prudent and consistent with the purpose of the Plans. Defendants are liable for losses incurred as a result of such investments being imprudent.

172. A fiduciary’s duty of loyalty and prudence requires it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would
otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor may it allow others, including those whom they direct or who are directed by the plan, including plan trustees, to do so.

173. Defendants breached their duties to prudently and loyally manage the Plans’ assets. During the Class Period, these Defendants knew or should have known that General Motors Stock was not a suitable and appropriate investment for the Plans as described herein. Investment in General Motors Stock during the Class Period clearly did not serve the Plans’ purposes of helping participants save for retirement, and in fact caused significant losses/depreciation to participants’ savings. Despite all of this, these fiduciaries continued to offer General Motors Stock as an investment option for the Plans and to direct and approve the investment of General Motors Common Stock Fund in General Motors Stock, instead of cash or other investments. Similarly, at times during the Class Period, these fiduciaries permitted Company matching contributions to be made in General Motors Stock. In so doing, Defendants further breached their fiduciary duties.

174. Moreover, during the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take any meaningful steps to prevent the Plans, and indirectly the Plans’ participants and beneficiaries, from suffering losses as a result of the Plans’ investment in General Motors Stock and the Company’s matching contributions in General Motors Stock. Further, given that such a high concentration of the Plans’ assets were invested in the stock of a single company – General Motors – and because Company matching contributions were required to be invested primarily in General Motors Stock, Defendants were obliged to have in place some financial strategy to address the extreme volatility of single equity investments. All categories of Defendants failed to implement any such strategy.
175. The fiduciary duty of loyalty also entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with single-minded devotion to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

176. Defendants also breached their co-fiduciary obligations by, among their other failures: (i) knowingly participating in, or knowingly undertaking to conceal the failure to prudently and loyally manage the Plans’ assets with respect to offering Company Stock as an investment option in the Plans; (ii) providing the Company matching contributions in General Motors Stock; (iii) enabling the Defendants’ failure to prudently manage the Plans’ assets with respect to the Plans’ investments, including the Company match, as a result of their own fiduciary breaches; and, (iv) having knowledge of the failure to prudently manage the Plans’ assets, yet not making any effort to remedy the breach.

177. Specifically, at least some of the Defendants had actual knowledge of the Company’s corporate malfeasance and questionable reporting and business practices and/or constructive knowledge of these activities due to their high-ranking positions at the Company and on the Board of Directors. Moreover, the Investment Funds Committee Defendants and GMIMCo — by virtue of their dual positions as fiduciaries for GM’s perilously under-funded defined-benefit pension and healthcare plans and fiduciaries for the defined contribution plans at issue in this case — were keenly aware of GM’s crippling legacy costs and the accounting methods used to mask this issue. Despite this knowledge, they participated in each other’s failures to prudently manage the Plans’ assets and knowingly concealed such failures by not informing participants that the Plans’ holdings of General Motors Stock were not being prudently managed. They also failed to remedy their mutual breaches of the duty to prudently manage the Plans’ investment in General Motors Stock, despite their knowledge of such breaches.
178. Furthermore, through their own failure to prudently and loyally manage the Plans’ investment in General Motors Stock, or to undertake any genuine effort to investigate the merits of such investment, or to ensure that other fiduciaries were doing so, Defendants enabled their co-fiduciaries to breach their own independent duty to prudently and loyally manage the Plans’ investment in General Motors Stock.

179. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans’ other participants and beneficiaries, lost a significant portion of their investments meant to help participants save for retirement. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT II
Failure to Provide Complete and Accurate Information to Participants and Beneficiaries (Breaches of Fiduciary Duties in Violation of ERISA § 404 by General Motors, Defendant Wagoner, GMIMCo, and the Investment Funds Committee Defendants)

180. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

181. At all relevant times, as alleged above, Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

182. As alleged above, the scope of Defendants’ fiduciary duties and responsibilities included disseminating Plan documents and information to participants regarding the Plans and assets of the Plans. In addition, Defendants had a duty to provide participants with information they possessed that they knew or should have known would have material impact on the Plans.

183. The duty of loyalty under ERISA requires fiduciaries to speak truthfully to participants, not to mislead them regarding the Plans or the Plans’ assets, and to disclose information that participants need in order to exercise their rights and interests under the Plans.
This duty to inform participants includes an obligation to provide participants and beneficiaries of the Plans with complete and accurate information, and to refrain from providing false information or concealing material information regarding the Plans’ investment options such that participants can make informed decisions with regard to investment options available under the Plans. This duty applies to all of the Plans’ investment options, including investment in the General Motors Common Stock Fund.

184. Because a substantial percentage of the Plans’ assets was invested in General Motors Stock, such investment carried with it an inherently high degree of risk. This inherent risk made the Defendants’ duty to provide complete and accurate information particularly important with respect to General Motors Stock and the General Motors Common Stock Fund.

185. The Defendants named in this Count breached their duty to inform participants by failing to provide complete and accurate information regarding General Motors Stock, making material misrepresentations about the Company’s financial condition, and, generally, by conveying inaccurate information regarding the soundness of General Motors Stock and the prudence of investing retirement contributions in the stock.

186. With respect to the Company and certain other fiduciary Defendants, upon information and belief, such communications were disseminated directly to all participants, including prospectuses that incorporated by reference the Company’s materially misleading and inaccurate SEC filings and reports. In addition, upon information and belief, the Company communicated directly with all participants regarding the merits of investing in General Motors Stock in company-wide and uniform communications, and, yet, in the context of such communications, failed to provide complete and accurate information regarding General Motors Stock as required by ERISA.

187. GMIMCo and the Investment Funds Committee Defendants were fiduciaries of both the under-funded health and defined benefit pension plans and the Plans at issue here. Yet
notwithstanding their intimate knowledge of the insurmountable legacy obligations facing GM, they failed to disclose this material information to Plan participants invested in GM stock.

188. These failures were particularly devastating to the Plans and the participants, as a significant percentage of the Plans’ assets was invested in General Motors Stock during the Class Period and, thus, the stock’s precipitous decline had an enormous impact on the value of participants’ retirement assets.

189. In addition, General Motors, GMIMCo, the Investment Funds Committee and Defendant Wagoner knew or should have known that information they possessed regarding the true condition of General Motors would have an extreme impact on the Plan. Yet, in violation of their fiduciary duties, these Defendants failed to provide participants with this crucial information.

190. As a consequence of the failure of the Defendants named in this Count to satisfy their disclosure obligations under ERISA, participants lacked sufficient information to make informed choices regarding investment of their retirement savings in General Motors Stock, or to appreciate that under the circumstances known to the fiduciaries, but not known by participants, that General Motors Stock was an inherently unsuitable and inappropriate investment option for their Plan accounts.

191. As a consequence of Defendants’ breaches of fiduciary duty alleged in this Count, the Plans suffered tremendous losses. If the Defendants named in this Count had discharged their fiduciary duties to prudently invest the Plans’ assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary and co-fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the other Class members, lost millions of dollars of retirement savings.
192. Pursuant to ERISA §§ 409 and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

**COUNT III**

*Failure to Monitor Appointed Plan Fiduciaries and Provide Them with Accurate Information (Breaches of Fiduciary Duties in Violation of ERISA § 404 by General Motors, Defendant Wagoner, GMIMCo, and the Investment Funds Committee Defendants)*

193. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

194. At all relevant times, as alleged above, Defendants named in this Count were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). At all relevant times, as alleged above, the scope of the fiduciary responsibility Defendants named in this Count included the responsibility to appoint, evaluate, and monitor other fiduciaries. The duty to monitor entails both giving information to and reviewing the actions of the monitored fiduciaries. In this case, that means that the monitoring fiduciaries, General Motors and the other Defendants named in this Count, had the duty to:

- (1) ensure that the appointed Plan fiduciaries possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties. They must be knowledgeable about the operations of the Plans, the goals of the Plans, as noted above, and the behavior of the Plans’ participants;
- (2) ensure that the appointed Plan fiduciaries are provided with adequate financial resources to do their job;
- (3) ensure that the appointed Plan fiduciaries have adequate information to do their job of overseeing the Plans’ investments;
(4) ensure that the appointed Plan fiduciaries have ready access to outside, impartial advisors when needed;

(5) ensure that the appointed Plan fiduciaries maintain adequate records of the information on which they base their decisions and analysis with respect to the Plans’ investment options; and

(6) ensure that the appointed Plan fiduciaries report regularly to the Company. The Company must then review, understand, and approve the conduct of the hands-on fiduciaries.

195. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment of plan assets, and must take prompt and effective action to protect the plan and participants when they are not. In addition, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets.

196. GM and the other Defendants named in this Count breached their fiduciary monitoring duties by, among other things: failing to ensure that the monitored fiduciaries had access to knowledge about the Company’s business problems alleged above, which made Company Stock an imprudent retirement investment; and failing to ensure that the monitored fiduciaries completely appreciated the huge risk of significant investment by rank and file employees in an undiversified employer stock fund which was made up primarily of Company Stock, an investment that was imprudent and inherently subject to significant downward movements, especially here where the Company faces crippling healthcare and defined benefit pension costs that create a significant likelihood of bankruptcy. General Motors and the other Defendants named in this Count knew or should have known that the fiduciaries they were
responsible for monitoring were (i) imprudently allowing the Plans to continue offering the GM Common Stock Fund as an investment alternative for the Plans; (ii) continuing to invest the assets of the Plans in General Motors Stock; and (iii) imprudently failing to diversify the GM Common Stock Fund. Despite this knowledge, GM and the other Defendants named in this Count failed to take action to protect the Plans, and concomitantly the Plans’ participants, from the consequences of these fiduciaries’ failures.

197. In addition, GM and the other Defendants named in this Count, in connection with their monitoring and oversight duties, were required to disclose to appointed Plan fiduciaries accurate information about the financial condition of General Motors that they knew or should have known that these fiduciaries needed to make sufficiently informed decisions. By remaining silent and continuing to conceal such information from the other fiduciaries, these Defendants breached their monitoring duties under the Plans and ERISA.

198. General Motors and the other Defendants named in this Count are liable as co-fiduciaries because they knowingly participated in each other’s fiduciary breaches as well as those by the appointed Plan fiduciaries, they enabled the breaches by these Defendants, and they failed to make any effort to remedy these breaches, despite having knowledge of them.

199. As a direct and proximate result of the breaches of fiduciary duties alleged herein, Plans, and indirectly Plaintiffs and the Plans’ other participants and beneficiaries, lost a significant portion of their investments meant to help participants save for retirement.

200. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.
COUNT IV

Breach of Duty to Avoid Conflicts of Interest
(Breaches of Fiduciary Duties in Violation of
ERISA §§ 404 and 405 by GM, Wagoner, and the Investment Funds Committee
Defendants)

201. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

202. At all relevant times, as alleged above, all Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

203. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on a plan fiduciary a duty of loyalty, that is, a duty to discharge his/her duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

204. Given the allegations listed above, Defendants named in this Count clearly placed the interests of themselves and the Company, as evidenced by the longstanding artificial inflation of Company Stock, before the interests of the Plans and their participants. These conflicts of interest put these Defendants in the inherently problematic position of having to choose between their own interests as GM directors, officers, and executives, and the interests of the Plans’ participants and beneficiaries, in whose interests the Defendants were obligated to loyally serve with an “eye single.”

205. Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, inter alia: (i) failing to engage independent fiduciaries to make independent judgments concerning the Plans’ investment in the General Motors Stock; (ii) failing to notify appropriate federal agencies, including the SEC and the Department of Labor, of the facts and transactions which made General Motors Stock an unsuitable investment for the Plans; (iii)
failing to take such other steps as were necessary to ensure that participants’ interests were
loyally and prudently served; (iv) with respect to each of these above failures, doing so in order
to prevent drawing attention to the Company’s inappropriate practices; and, (v) by otherwise
placing the interests of the Company and themselves above the interests of the participants with
respect to the Plans’ investment in Company Stock.

206. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and ERISA § 409, 29
U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by
their breaches of fiduciary duties alleged in this Count.

COUNT V
Co-Fiduciary Liability
(Breaches of Fiduciary Duties in Violation of ERISA § 405 by General Motors, Defendant
Wagoner, the Investment Funds Committee Defendants, and GMIMCo)

207. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
Complaint as if fully set forth herein.

208. ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to
any liability which he may have under any other provision, for a breach of fiduciary
responsibility of another fiduciary with respect to the same plan if: (i) he participates knowingly
in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such
act or omission is a breach; (ii) he fails to comply with §1104(a)(1) in the administration of his
specific responsibilities which give rise to his status as a fiduciary, by enabling such other
fiduciary to commit a breach; or (iii) he has knowledge of a breach by such other fiduciary,
unless he makes reasonable efforts under the circumstances to remedy the breach.

209. As alleged herein, General Motors and the other Defendants named in this Count
withheld material information from the market and provided the market with misleading
disclosures, by the conduct set forth above, and profited from such practices, and, thus,
knowledge of such practices is imputed to these Defendants as a matter of law. In addition, as alleged herein on information and belief, Defendant Wagoner, GMIMCo and the Investment Funds Committee Defendants participated in and/or knew about the Company’s misrepresentations about and problems with the pension and healthcare accounting. Thus, these Defendants as well, had knowledge at all relevant times of the factual matters pertaining to the imprudence of General Motors Stock as an investment for the participants’ retirement assets.

210. Despite this knowledge, the Defendants named in this Count knowingly participated in their co-fiduciaries’ failures to prudently and loyally manage the Plans’ investment and holding of General Motors Stock during the Class Period. They did so by themselves making imprudent and disloyal decisions respecting the Plans’ investment in General Motors Stock in the manner alleged herein in violation of ERISA § 405(a)(1)(A). In addition, these same Defendants failed to undertake any effort to remedy their co-fiduciaries’ failures to prudently and loyally manage the Plans’ investment in General Motors Stock despite knowing such failures were breaches of fiduciary duty under ERISA. Instead, they allowed the harm to continue and contributed to it throughout the Class Period in violation of ERISA § 405(a)(1)(C).

211. In further violation of ERISA § 405(a)(1)(C), the Defendants named in this Count also knew that inaccurate and incomplete information had been provided to participants, yet they failed to undertake any effort to remedy this breach by ensuring that accurate disclosures were made to participants and the market as a whole. Instead, they compounded the problem by downplaying the significance of General Motors’ problems and further concealing such problems from participants and the market as a whole.

212. In addition, the Defendants named in this Count enabled the imprudent asset management decisions of any and all other Defendants who lacked knowledge of the circumstances rendering the Plans’ investment in Company stock imprudent, by failing to provide such persons with complete and accurate information regarding the stock, or to the
extent all such persons possessed the information, by failing to ensure that they appreciated the true risks to the Plans caused by the Company’s improper practices, so that these other Defendants could effectively discharge their obligation to prudently and loyally manage the Plans’ investment in General Motors Stock. In so doing, these Defendants breached ERISA § 405(a)(1)(B).

213. Further, through their failure to properly and effectively monitor their appointees, including those serving as appointed Plan fiduciaries, and to remove those whose performance was inadequate as alleged above, the Defendants named in this Count enabled these appointed Plan fiduciaries’ imprudent management of the General Motors Stock in the Plans.

214. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans’ other participants and beneficiaries, lost a significant portion of their retirement investment.

215. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT VI
Failure to Diversify General Motors Common Stock Investment Accounts in Violation of Investment Management Agreement
(Breaches of Fiduciary Duty in Violation of ERISA §§ 404 by State Street)

216. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

217. As outlined above, all the General Motors Common Stock, $1-2/3 Par Value held by the PSP and S-SPP were held in a single “Investment Account” in a Master Trust. Similarly, all the General Motors Class H Common Stock held by the two Plans was held in a separate, single Investment Account in the Master Trust.
218. From May 1999 through the present, State Street has been the Investment Manager for the Investment Accounts in the Master Trust, including the two Investment Accounts containing General Motors Common Stock.

219. As Investment Manager of the Company Stock Investment Accounts within the meaning of Section 3(38) of ERISA, 29 U.S.C. § 1002(38), State Street had “the power to manage, acquire, or dispose of any asset” of the Plans including those in the Company Stock Investment Accounts.

220. As a fiduciary, State Street was obliged to act “in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of” ERISA. 29 U.S.C. § 1104(a)(1)(D).

221. Pursuant to the Investment Management Agreement, State Street was obligated to “discharge its duties . . . by diversifying the investments in the Investment Accounts so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. . . .”

222. At all relevant times, it has not been prudent to maintain all or nearly all of the GM Common Stock Investment Accounts in GM Stock. Rather, the prudent course has always been to maintain a significant portion of each Account in short term investment funds as specifically provided for in the Trust Agreement and the Plans themselves.

223. However, on information and belief and contrary to the terms of the Investment Management Agreement, State Street has invested nearly all of the GM Common Stock Investment Accounts in GM Stock.

224. As a direct and proximate result of the breach of fiduciary duty alleged herein, the Plans, and indirectly Plaintiffs and the Plans’ other participants and beneficiaries, lost a significant portion of their retirement investment.
Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), State Street is liable to restore the losses to the Plans caused by its breach of fiduciary duty alleged in this Count.

IX. CAUSATION

The Plans suffered hundreds of millions of dollars in losses because substantial assets of the Plans were imprudently invested or allowed to be invested by Defendants in General Motors Stock during the Class Period, in breach of Defendants’ fiduciary duties. These losses to the Plans are reflected in the diminished account balances of the Plans’ participants.

Defendants are responsible for losses caused by the participants’ direction of investment in General Motors Stock because Defendants failed to take the necessary and required steps to ensure effective and informed independent participant control over the investment decision-making process, as required by ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated thereunder. Defendants concealed material, non-public facts from participants, and provided inaccurate, incomplete and materially misleading information to them regarding the true health and ongoing profitability of the Company, misrepresenting its soundness as an investment vehicle. As a consequence, participants did not exercise independent control over their investments in General Motors Stock, and Defendants remain liable under ERISA for losses caused by such investment.

Defendants are also responsible for all losses caused by the investment of the Plans’ Company contributions in the General Motors Stock Fund and/or General Motors Stock during the Class Period, as Defendants controlled the investment, and the investment was imprudent.

Defendants properly discharged their fiduciary and/or co-fiduciary duties, including the provision of full and accurate disclosure of material facts concerning investment in General Motors Stock, eliminating General Motors Stock as an investment alternative when it
became imprudent, and divesting the Plans from their holdings of General Motors Stock when maintaining such an investment became imprudent, the Plans would have avoided a substantial portion of the losses that they suffered.

**X. REMEDY FOR BREACHES OF FIDUCIARY DUTY**

230. Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the Plans’ assets should not have been invested in General Motors Stock during the Class Period. As a consequence of Defendants’ breaches, the Plans suffered significant losses.

231. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires “any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan . . . .” Section 409 also authorizes “such other equitable or remedial relief as the court may deem appropriate . . . .”

232. With respect to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the plan would not have made or maintained their investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plans’ assets to what they would have been if the Plans had been properly administered.

233. Plaintiffs and the Class are therefore entitled to relief from the Defendants in the form of: (1) a monetary payment to the Plans to make good to the Plans the losses to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as
provided by ERISA §§ 409(a) and 502(a)(2-3), 29 U.S.C. §§ 1109(a) and 1132(a)(2-3); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs; (5) interest on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

234. Under ERISA, each Defendant is jointly and severally liable for the losses suffered by the Plans in this case.

XI.  ERISA SECTION 404(C) DEFENSE INAPPLICABLE

235. ERISA § 404(c) is an affirmative defense that provides a limited exception to fiduciary liability for losses that result from participants’ exercise of control over investment decisions. In order for § 404(c) to apply, participants must in fact exercise “independent control” over investment decisions, and the fiduciaries must otherwise satisfy the procedural and substantive requirements of ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated under it.

236. Those provisions were not complied with here as, among other reasons, instead of taking the necessary steps to ensure effective participant control by complete and accurate disclosure of material information Defendants did exactly the opposite. As a consequence, participants in the Plans did not have informed control over the portion of the Plans’ assets that were invested in General Motors Stock as a result of their investment directions, and Defendants remained entirely responsible for losses that result from such investment.

237. Because ERISA § 404(c) does not apply here, Defendants’ liability to the Plans, Plaintiffs and the Class is established upon proof that investments in General Motors Stock were or became imprudent and resulted in losses in the value of the assets in the Plans during the Class Period.

238. Furthermore, under ERISA, fiduciaries – not participants – exercise control over the selection of investment options made available to participants. Thus, whether or not
participants are provided with the ability to select among different investment options, and whether or not participants exercised effective control over their investment decisions (which was not the case here), liability attaches to the fiduciaries if an imprudent investment is presented as an option to participants, and as a result of such action the Plans suffers a loss. Because this is precisely what occurred in this case, Defendants are liable for the losses incurred by the Plans.

239. In any event, Defendants remain liable for Plan losses that pertain to General Motors Stock acquired by the S-SPP and held during the required retention period as participants did not exercise any control over that Company Stock during this time.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A Declaration that Defendants, and each of them, have breached their ERISA fiduciary duties to the Plans and their participants;

B. A Declaration that Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

C. An Order compelling Defendants to make good to the Plans all losses to the Plans resulting from Defendants’ breaches of their fiduciary duties, and to restore to the Plans all profits Defendants made through use of the Plans’ assets, and to restore to the Plans all profits which the participants would have made Defendants had fulfilled their fiduciary obligations;

D. An Order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;

E. An Order requiring Defendants to appoint one or more independent fiduciaries to participate in the management of the Plans’ investment in General Motors Stock;

F. Actual damages in the amount of any losses the Plans suffered, to be allocated among the participants’ individual accounts in proportion to the accounts’ losses;

G. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);
H. An Order awarding attorneys’ fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

I. An Order for equitable restitution and other appropriate equitable monetary and injunctive relief against Defendants.

Dated: June 24, 2005

Respectfully submitted,

/s John P. Zuccarini

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

IN RE GENERAL MOTORS ERISA LITIGATION

Civil Action No. 05-71085
Honorable Nancy G. Edmunds

AFFIDAVIT OF SERVICE

STATE OF MICHIGAN )
COUNTY OF OAKLAND )

I hereby certify that on June 24, 2005, I electronically filed the Consolidated Class Action Complaint For Violations Of The Employee Retirement Income Security Act with the Clerk of the Court using the ECF system which will send notification of such filing to the following ECF participants: Morley Witus, Esq. I hereby certify that I have mailed by United States Postal Service the above referenced paper to the following non-ECF participants:

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