

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BRIDGESTONE AMERICAS, INC.,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Docket No. _____

JURY DEMANDED

COMPLAINT

Plaintiff Bridgestone Americas, Inc. alleges the following as its Complaint against Defendant International Business Machines Corporation:

PARTIES

1. Bridgestone Americas, Inc. (“BSAM”)¹ is a Nevada corporation with its principal place of business in Davidson County, Tennessee.

2. International Business Machines Corporation (“IBM”) is a New York corporation with its principal place of business in Armonk, New York and may be served with process by service on C.T. Corporation System at 800 South Gay St., Suite 2021, Knoxville, TN 37929-9710.

¹ Bridgestone Americas, Inc., is the present name of the corporation formerly named Bridgestone Americas Holding, Inc. The corporate name only was changed as part of a December 2008 rebranding. Some of the background facts pleaded predate December 2008, however, all claims post-date the change. Accordingly, to avoid unnecessary confusion “BSAM” will be used throughout.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because it (1) involves a matter in controversy in excess of \$75,000, exclusive of interest and costs; and, (2) is between citizens of different states.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claims occurred in Davidson County, Tennessee; and, the Parties agreed by contract to submit all disputes related to this matter to, and consented to the exclusive jurisdiction of a state or federal court located in Nashville, Tennessee, for the resolution of all disputes.

SUMMARY OF CASE

5. BSAM is an international corporation with headquarters in Nashville, Tennessee. Its primary business is the manufacture, sale, and distribution of more than 8,000 different types and sizes of tires for almost everything on wheels. BSAM's North American customers submit approximately one product order per second, eight hours per day, five days a week, requesting delivery to over 62,000 different locations. Delivering and accounting for each of these orders requires precise execution of dozens of coordinated activities traditionally performed in multiple, separate "back office" business processes. These separate back office business processes (i.e., invoicing, order management, logistics execution, accounting, etc.) are collectively referred to as the Order-to-Cash ("OTC") business cycle.

6. To remain competitive and provide the best customer service, over the years BSAM's IT organization has implemented computer programs specifically designed to handle distinct back office business processes within the larger OTC business cycle, such as sales order processing, warehouse management, and transportation management. Before January 2012, these

special purpose software applications, typically referred to as business process modules, were largely integrated through an aging computer mainframe system – referred to as the COPS (Customer Order Processing System) – which is written in COBOL computer language.

7. Like all competitive manufacturers, BSAM continuously seeks to implement proven computer technology offerings to improve its business performance, to better serve its customers, to better integrate and standardize systems across multiple locations, and to replace aging systems as necessary to position itself for growth. In 2005, BSAM began an investigation of the feasibility of implementing a fully integrated SAP OTC computer system to replace its aging COPS system by utilizing a modern Enterprise Resource Planning (“ERP”) software platform provided by German software developer SAP AG. The separate business process modules would be integrated with the SAP software using either SAP or third-party proprietary “middleware” software.

8. The design and implementation of such a fully integrated computerized “OTC design solution” can only be accomplished by companies possessing expertise in myriad areas including: computer engineering, computer science, competing business process application modules, and all related areas. Bridgestone has never had all of these capabilities within its company, and it has always obtained the necessary expertise for projects such as this from specialized companies such as IBM.

9. Between 2005 and the end of 2007, BSAM worked with several such companies, including IBM, to determine the feasibility of a fully integrated OTC solution for BSAM.

10. As a result of the work by these specialists, by late 2007 BSAM had an OTC blueprint for its Commercial Tire division. Based on this blueprint, BSAM issued a Request for Quotation (“RFQ”) for the finalization and implementation of the OTC solution design for the

Commercial Tire business and received five responses. IBM's response included representations that it possessed, and was committing, all of its best people, methodologies, tools, and design and management practices to BSAM if selected for the project. Based on IBM's representations in its response, BSAM hired IBM. IBM assigned project leadership to BSAM which was, in significant part, made up of individuals who were already working on-site at BSAM on other projects.

11. In Fall 2008, IBM completed its proposed Commercial Tire OTC design solution utilizing the SAP ERP software platform to orchestrate the separate business application modules. IBM also recommended that BSAM use the IBM WebSphere middleware software to integrate all non-SAP business process modules with the SAP software platform.

12. In early 2009, BSAM issued a second RFQ seeking a company qualified to evaluate the feasibility of applying IBM's Commercial Tire SAP OTC solution design to BSAM's entire North American Tire operation.

13. Based on IBM's repeated representations in its Response to the RFQ that its company and IBM experts on the project were uniquely qualified in every aspect of the project and fully committed to BSAM project success, BSAM contracted with IBM to perform the feasibility study.

14. IBM conducted its feasibility study and represented that its design solution could be scaled to provide a fully integrated OTC computer system as needed. BSAM contracted with IBM to complete the integrated design solution for BSAM's All Division SAP OTC implementation. By December 2009, BSAM had paid IBM over \$4,400,000 to create the SAP OTC design solution for BSAM's North American tire operations. IBM represented its design solution would, when finalized and implemented, provide BSAM with a fully integrated, next

generation SAP OTC system which would efficiently and accurately orchestrate and execute all of the back office business functions involved in the BSAM North American Tire Operations (“BATO”) and Bridgestone Retail Operations (“BSRO”) from end-to-end of the OTC business cycle.

15. In reasonable reliance on IBM’s representations, BSAM executed an IBM Statement of Work² (“SOW”) for an SAP OTC All Division Rollout dated December 18, 2009 (covering final design and implementation). Under the SOW, IBM was paid on a cost-plus basis for a project to finalize and implement IBM’s design solution. At that time, IBM estimated that it could complete the project and give BSAM a fully functioning OTC system in 19 months, ending July 30, 2011.

16. IBM’s SAP OTC design solution ultimately went live after 24 months and payment of over \$74,000,000 for IBM time and related expenses. The SAP OTC system that IBM delivered was not as represented and quickly began damaging the customer relations it was intended to improve. IBM’s defective system lost or deleted scheduled customer orders, would not process orders, duplicated, or partially processed orders and, for those limited orders that were processed, did not complete critical corresponding business applications. Due to the magnitude of the failures in the IBM solution and IBM’s inability to provide services it contracted to provide, BSAM was compelled to hire SAP directly for the first six months of 2012 after go-live to identify and resolve, or partially resolve, defects in IBM’s SAP implementation to allow BSAM to receive and deliver some orders through its new IBM SAP OTC system. During the same six months, IBM attempted but failed to resolve major defects in its own proprietary middleware, WPS. In many cases, IBM’s response to defects in its work was to make

² As explained more fully below, the SOW described the specific work that IBM contracted to perform and was entered into pursuant to the terms of a the parties’ particular Master Services Agreement, which governed the general terms of the parties’ contractual relationship

changes without any communication to BSAM, which caused other failures in the system which were ultimately tracked to IBM changes. Throughout this six-month period and thereafter, IBM intentionally concealed defects it knew were built into its design and development work while it attempted to deliver a system which would get by without discovery of these defects.

17. The overwhelming number of major and minor defects in IBM's design solution as implemented by IBM threw BSAM's North American tire operations and its retail operations into chaos. BSAM had to turn off or disconnect automated systems. BSAM's entire organization had to go into manual disaster recovery, with everyone, including management, working day and night to find creative ways to deliver products critical to their customers' businesses. BSAM delivered tires to manufacturers without any purchase orders to keep customers' production lines running and to mitigate damages. As time progressed, it became apparent that IBM could not stabilize the implementation of its own solution design and the stabilization efforts continued through the first six months of 2012. As a result, BSAM suffered tens of millions of dollars in direct costs, including, but not limited to, costs for (1) additional logistics execution and supply chain management ("LSCM"); (2) additional expense of hiring SAP, Fujitsu, and IBM for continuing efforts to obtain a generally stable, reliable, partially integrated system; (3) damages paid to customers for failure to deliver product; and, (4) diversion of BSAM personnel from their assigned responsibilities to respond to the violent disruption of BSAM's tire business. As a direct and proximate result of IBM's breaches, BSAM has suffered damages in excess of \$200,000,000, and continues to suffer damages from injury to its reputation and customer relations.

18. Subsequent investigations have revealed some of the material facts IBM misrepresented and/or wrongfully and intentionally concealed from BSAM, including but not

limited to the following: the SAP OTC “solution design” provided by IBM was not for the “next generation” but outdated; IBM had provided a “non-standard” and unsuitable SAP OTC solution for BSAM’s applications; IBM assigned and billed IBM personnel to the BSAM project who lacked the represented expertise, experience, and qualifications in key positions and skills solely within IBM’s responsibility. Further, IBM knew, or should have known, that (1) its solution design was not appropriate for BSAM; (2) critical IBM project management and expert personnel assigned to the project were not qualified for BSAM’s project; (3) promised IBM tools, methodologies, and project safeguards were not used by IBM on BSAM’s project; and (4) mission-critical IBM work product delivered by IBM was defective, or carried unreasonable risk of failure. IBM intentionally and knowingly concealed these facts from BSAM while it collected tens of millions of dollars for these services.

19. During the course of its solicitation and performance of BSAM’s work on the SAP OTC project, IBM (1) fraudulently represented material facts to BSAM and concealed material facts it had a duty to disclose to BSAM; (2) knowingly breached explicit contractual undertakings; (3) engaged in a course of deceptive conduct for its own economic advantage; (4) dealt in bad faith; and, (5) committed gross negligence in the performance of its services – all proximately damaging BSAM and making IBM liable to BSAM for all damages proximately caused, interest, costs, attorneys’ fees, treble damages under the Tennessee Consumer Protection Act, and punitive damages.

ALLEGATIONS OF SPECIFIC FACTS

SAP Order to Cash (OTC) All Division Rollout Project Background

20. BSAM is the parent entity of one of North America’s largest tire manufacturers and to its largest automotive service provider. Tire operations are primarily conducted through a

single member LLC – Bridgestone Americas Tire Operations, LLC (“BATO”); and, retail automotive sales and service operations are conducted through another single member LLC, Bridgestone Retail Operations, LLC (“BSRO”). BSAM is the sole member of both BATO and BSRO. BATO’s day-to-day tire business is conducted in structured divisions including the following: Consumer Tire - OEM (Original Equipment Manufacturer), Consumer Tire - Replacement, Commercial Tire, Off-Road, Agricultural, Tube, and Retread. BSRO operates the world’s largest chain of company-owned auto care centers through its Firestone Complete Auto Care™, Tires Plus™, Expert Tire, and Wheel Works retail locations across the United States. These are very competitive businesses which must constantly adjust to changes in the marketplace and available technologies.

21. BATO and BSRO were the intended beneficiaries of all contracts entered into between BSAM and IBM relating to the SAP OTC Project. Recognizing BATO and BSRO as third party beneficiaries is appropriate to effectuate the parties’ intent in the SAP OTC contracts and the SOWs and PCRs relating to the SAP OTC project. The terms of those contracts and the circumstances indicate that performance of those contracts by IBM satisfied contractual obligations it owed to BATO and BSRO. BATO and BSRO have assigned to BSAM all claims and rights they have arising from the wrongful actions of IBM in its performance of its obligations pertaining to the SAP OTC project. Unless otherwise expressly stated, facts asserted on behalf of BSAM include all relevant aspects of the rights and claims of BATO and BSRO.

22. BATO manufactures most of its tires for North American sale in eight new tire manufacturing facilities and conducts its Bandag retread business through several additional facilities. Additionally, BATO exports and imports tires to and from South America, Europe, and Asia. New tires manufactured and imported for BATO’s North American operations are

primarily shipped from the ports and manufacturing facilities directly to original equipment manufacturers, to one of seven Distribution Centers strategically located in the United States, or to North American Bandag distribution centers for maximum transportation and delivery efficiency. BATO's original equipment manufacturing, wholesale, and retail customers submit an average of approximately one product order per second, eight hours per day, five days a week for delivery to over 62,000 locations.

23. Filling each customer order requires the execution of a multitude of individual tasks grouped into separate back office business processes, including but not limited to electronic ordering, sales order processing, warehouse management, inventory control, transportation management, accounting, finance and control, and sales and income reporting. Collectively, these business processes executed between the initiation of a customer order and the accounting and reporting of goods sold, delivered, and paid for comprise the Order-to-Cash business cycle ("OTC" or "OTC business cycle").

24. BSAM provides back-office process support, including information technology ("IT") systems and services for BATO. It also provides some IT system support for BSRO. To support BSAM's growth in sales, improve efficiencies in its manufacture, sale, and distribution of goods and services, reduce errors in execution, and sustain the company's competitive position, BSAM has worked over the last several decades with highly specialized computer science, engineering, and software companies to implement new IT technologies being developed for large manufacturing companies such as BSAM. In the 1990s and into the 2000s, these implementations involved customized, or evolving standardized "best of breed" software applications, such as warehouse management and transportation management applications,

which automated distinct aspects of BSAM's business, including separate business processes executed within the OTC business cycle.

25. From 2000 through 2007, BSAM, utilizing IBM expertise, knowledge, and personnel, began (1) implementing Enterprise Resource Planning ("ERP") software on IBM mainframe computer platforms for certain manufacturing and finance applications, and (2) upgrading, implementing, and/or supporting new internet-based computerized product ordering systems. During this process, IBM became increasingly involved in BSAM's business and its IT activities. During this time, BSAM selected SAP ERP software as its product for standardization proceeding forward, and IBM provided the specialized expertise necessary for several SAP applications.

26. Automation of individual business processes within the OTC business cycle made BSAM increasingly more efficient and supported continued growth of BSAM's tire and service businesses from the 1980s into 2000s. However, the fact that the automated back office business applications were not fully integrated through a modern ERP software platform limited BSAM's ability to make improvements to the efficiency of its operations, to obtain better information to support business decisions, and to improve customer service.

27. By 2005, as a result of significant changes in computer systems technology, BSAM's COPS system and several of the OTC business cycle computer applications imposed fundamental limitations on BSAM's ability to continuously improve efficiency and customer service. These systems were also becoming increasingly difficult to maintain for lack of technical support. In response, BSAM hired specialized companies to undertake an investigation of the feasibility of implementing a *customized computer architectural solution* which would utilize a current SAP ERP software platform to orchestrate the execution of the diverse business

processes within the OTC business cycle, including third-party business process software application modules best suited to BSAM's business. Some of these third party systems already in use are referred to as current production systems ("CPS" systems) or "legacy" systems.

28. The expertise to conduct such a feasibility study, and to design and implement a fully integrated OTC solution has never been available within BSAM's IT organization, which is primarily responsible for maintaining and managing BSAM's IT systems in use. The design, development, and implementation of a fully integrated OTC system for a company such as BSAM requires a host of specialized computer engineers, computer scientists, product specific experts, and a team of project managers with years of relevant education, training, and experience on comparable complex projects within the industry.

29. Between 2005 and 2007, several IT consulting companies, including Booz Allen Hamilton, Quality Services & Software ("QS&S"), Fujitsu, and ultimately IBM worked with BSAM on the OTC feasibility study, provided the concept, and ultimately developed a design solution blueprint for only the Commercial Tire Division of BATO. At that time, the idea was to implement an OTC solution for Commercial Tire, which was to be used as the template for the rest of the North American Operations. During this process, the decision was made to utilize an SAP³ ERP software platform, but the integration middleware was not selected. BSAM anticipated a completed solution blueprint for this project in February 2008.

IBM Substantially Increases its Involvement in BSAM IT Activities

30. In early 2008, the already high level of IBM's involvement in Bridgestone's business and IT application on a day-to-day basis took a substantial leap. In February 2008, as a result of long-term sales efforts of the IBM Bridgestone account manager, Anthony Consiglio,

³ SAP AG and its U.S. company are the world's largest ERP software platform providers, and IBM is its largest "implementation partner."

IBM entered into a new Master Services Agreement (“2008 IBM MSA”) with BSAM, under which IBM began the process of taking over a part of BSAM’s in-house Application Management Systems Services (“AMS” or “AMS Services”), which had historically been performed by BSAM IT employees.

31. The MSA provides terms and conditions applicable to all potential work which may be performed by IBM, but does not, standing alone, provide for any specific work. The actual work performed by IBM under the MSA is described in separate Statements of Work (“SOW”) and/or Project Change Requests (“PCR”) relating to specific projects. Accordingly, the MSAs anticipate work which may be performed for the benefit of BSAM and/or any of its affiliated companies (i.e., “BSAM Group Members”). IBM’s assumption of responsibility for providing day-to-day AMS Services for specified BSAM CPS systems was detailed in an SOW under this MSA. Over the next several years, the scope of in-house BSAM IT services taken over by IBM employees under the IBM AMS SOWs continued to increase.

32. In the 2008 IBM MSA, IBM represented and warranted the following with respect to the AMS services which were being contracted to IBM under the SOW of the same date, or which might be contracted to IBM in the future:

- a. that IBM would only assign personnel with the proper level of knowledge, skill, education, training, experience, technical expertise, and qualifications to perform the services for which they were provided under the 2008 IBM MSA.
- b. that IBM had the skills, resources, and expertise to provide the services it was providing under the 2008 IBM MSA.

- c. that IBM services provided under the 2008 IBM MSA would be performed in a professional and timely manner and would meet or exceed the services levels required by the parties' agreement for which they were provided.

33. IBM also expressly agreed to provide management capable of coordinating and delivering all aspects of the performance of IBM personnel.

34. Also in early 2008, in anticipation of the completion of the Commercial Tire SAP OTC solution blueprint, IBM was selected from among six companies which responded to BSAM's December 2007 "Request for Quote for SAP Order to Cash Implementation Realization, Final Preparation, Go-Live and Support Phases."

35. BSAM's December 2007 Request for Quotation provided a detailed description of BSAM's CPS applications requiring integration and expressly stated that in making its decision as to the solution provider, BSAM was relying on the potential solution provider's responses to many technical and business questions – including factors which differentiated each company from its competitors. BSAM expressly stated it would rely upon the following criteria in selecting a vendor:

- a. "Functional and technical capabilities (solution hard skills)";
- b. "Delivery, change and project management capabilities (solution soft skills)";
- c. "Project ownership qualities"; and
- d. "Core team and bench strength."

36. IBM responded to BSAM's Request for Quote on or about January 23, 2008. IBM's Response characterized IBM's relationship with BSAM as a long existing and successful relationship based on trust earned by IBM. IBM provided an extensive explanation of its specific capabilities responding to each area listed above. IBM asserted that, at the time of its Response,

it possessed all the human resources, proven technology, project management and development tools, product expertise, third party applications expertise and relationships, and prior OTC and auto industry project experience necessary to provide BSAM a successful SAP OTC solution design and implementation. In summary, IBM assured BSAM that BSAM's planned project fell well within IBM's existing expertise and prior experience on directly comparable projects, and that IBM had committed these resources which assured the success of BSAM's project.

37. To induce BSAM to select IBM as design solution provider and implementation expert for BSAM's SAP OTC project, IBM provided a Response of over 150 pages containing representations of material fact regarding its present and existing expertise, capabilities, and experience in every area required for a successful project. IBM's material representations included statements regarding existing and available expertise and resources committed to BSAM:

- a. IBM already possessed knowledge of BSAM's business in which the OTC solution would be implemented, including BSAM's current information systems and practices.
- b. IBM was in a position to leverage prior consulting work performed for BSAM.
- c. [REDACTED]
- d. With regard to its existing and available SAP knowledge and expertise IBM's material representations included the following:
 - i. [REDACTED]

ii. Global resources have [REDACTED]

[REDACTED]

iii. [REDACTED]

[REDACTED]

iv. [REDACTED]

[REDACTED]

v. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vii. [REDACTED]

[REDACTED]

[REDACTED]

viii. [REDACTED]

ix. [REDACTED]

[REDACTED]

[REDACTED]

x. [REDACTED]

[REDACTED]

xi. [Redacted]

xii. [Redacted]

xiii. [Redacted]

xiv. [Redacted]

e. [Redacted]

f. [Redacted]

g. With regard to IBM's existing and available middleware software capabilities, IBM material representations included the following:

i. [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

ii. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

h. With regard to the proven IBM design and project management methodologies and tools, IBM made material representations included the following:

i. [REDACTED]

[REDACTED]

ii. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. [REDACTED]

[REDACTED]

[REDACTED]

iv. [REDACTED]

[REDACTED]

⁴ RICEF is an acronym for: Reports, Interfaces, Conversions, Enhancements, and Forms, which are tools used in the development of an SAP system.

- v. [REDACTED]
[REDACTED]
 - 1. [REDACTED]
[REDACTED]
 - 2. [REDACTED]
[REDACTED]
 - 3. [REDACTED]
 - 4. [REDACTED]
 - 5. [REDACTED]
[REDACTED]
 - 6. [REDACTED]
 - 7. [REDACTED]
[REDACTED]
- vi. [REDACTED]
[REDACTED]
 - 1. [REDACTED]
 - 2. [REDACTED]
 - 3. [REDACTED]
 - 4. [REDACTED]
 - 5. [REDACTED]

38. The consistent message of IBM's Response was that its commitment to BSAM, and its existing SAP and middleware expertise and experience, assured program success. In this regard, IBM represented in writing that it had already evaluated its ability to integrate BATO's

Commercial Tire legacy systems with the SAP software and had concluded all heterogeneous [third-party] systems could be integrated with SAP using IBM's own WebSphere/WPS product.

39. In justifiable reliance on these and other material representations contained in IBM's Response, IBM was selected as the SAP OTC solution integration design and implementation company for the Commercial Tire SAP OTC implementation project. However, the separate Commercial Tire implementation project never proceeded. The Commercial Tire design solution was not completed as anticipated in February 2008, and the project did not proceed as proposed. Nevertheless, IBM and BSAM executed an SOW under which IBM, together with QS&S, continued work on the Commercial Tire SAP OTC solution design through 2008.

40. The IBM Commercial Tire SAP OTC solution design blueprint evaluation, finalization, and sign-off were ultimately scheduled to be completed in August 2008. However, IBM and QS&S continued to work on Commercial Tire solution architecture and design issues into Fall 2008 – while IBM and BSAM attempted to negotiate an implementation SOW.

41. Under the terms of IBM's 2008 contracts with BSAM, IBM agreed to provide its recommendation of suitable and reliable middleware software products for BSAM's SAP OTC integration solution. In October 2008, Phillip Hartman of IBM recommended IBM's WebSphere middleware product suite for the integration of substantially all SAP to non-SAP systems within IBM's SAP OTC solution design.

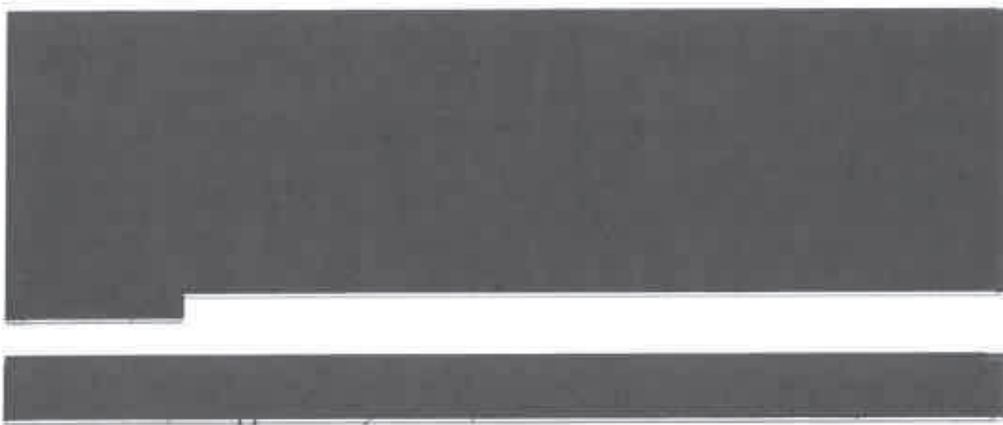
42. Based on Mr. Hartman's recommendations, IBM's WebSphere middleware suite became the key integration software designed into IBM's SAP OTC solution design for the Commercial Tire project. In Fall 2008, IBM represented that it had completed the solution design for this project which was ready to move to the implementation phase. However, at that time the

Commercial Tire project was put on hold until it could be determined how it fit into other BSAM company planning which was underway.

SAP Order to Cash (OTC) All Division Rollout Evaluation

43. In December 2008, BSAM management restructured BATO to include Bandag, a large, recently acquired commercial retread company, and adopted a market strategy emphasizing going to market with “One Face to the Customer.” Against this backdrop, BSAM made the decision to wind down the Commercial Tire SAP OTC project as a separate project and to pursue an enterprise-wide SAP OTC design solution for all of BATO’s North American tire operations.

44. In anticipation of IBM’s receipt of the contracts for the overall All Division SAP OTC design solution and implementation, IBM sought and obtained a new MSA under which specific project SOWs for new implementations [independent of the AMS services] would be executed in the future. This new Agreement (the “2009 IBM MSA”) was finalized and dated January 9, 2009 and applied to the core SOWs under which IBM provided the SAP OTC solution design, development, and implementation related work undertaken in 2009 and thereafter. Among other terms, the 2009 IBM MSA contained the following commitments to BSAM:





(Emphasis added).

45. Paragraph 6.3 of the 2009 IBM MSA recognized the importance of maintaining IBM expert personnel continuity on sophisticated technology projects and provided that IBM would not replace or reassign the IBM Project Executive or Key Contract Staff Members prior to the completion of their initial assignment under any SOW. As in the case of the 2008 IBM MSA, the 2009 IBM MSA did not contract for any specific work, but provided that services would be

obtained on specific projects in the future under separate SOWs and/or PCRs to the 2009 IBM MSA.

46. When IBM learned that BSAM was going to pursue a new project seeking an integration design solution and implementation for all of BATO, Anthony Consiglio of IBM began marketing IBM as the only logical choice for the SAP OTC All Division Rollout Project. Nevertheless, BSAM chose to prepare a request for quotations on this project and invite responses. To initiate the SAP OTC All Division evaluation and solution design project, BSAM released its “SAP Order to Cash Enterprise Design and Roadmap Request for Quote” in January 2009 (“Enterprise Design RFQ”). The Enterprise Design RFQ explained that BATO and BSAM had lean staffing levels and needed a full service technology company as a long-term expert to take ownership of the project and commit to a successful solution to the same extent as BSAM. In the area of qualifications, BSAM again asked the responding company to detail its functional and technical solution skills and the attributes which separated it from other SAP OTC solution providers.

47. In the Enterprise Design RFQ, BSAM clearly stated it would rely upon the following criteria in selecting a vendor:

- a. “Functional and technical capabilities (solution hard skills)”;
- b. “Delivery, change and project management capabilities (solution soft skills)”;
- c. “Project ownership qualities”; and
- d. “Core team and bench strength.”

48. IBM’s February 10, 2009, Response to the Enterprise Design RFQ as delivered by Anthony Consiglio included material representations of fact made for the purpose of inducing BSAM to select IBM as the vendor for this phase of the project. The Response provided written

assurances that IBM already was, and would continue to be, more than a technology services provider, and that it was BSAM's "go to" expert with the requisite specialized expertise and past experience to justify BSAM's trust:

[REDACTED]

[REDACTED]

[REDACTED]

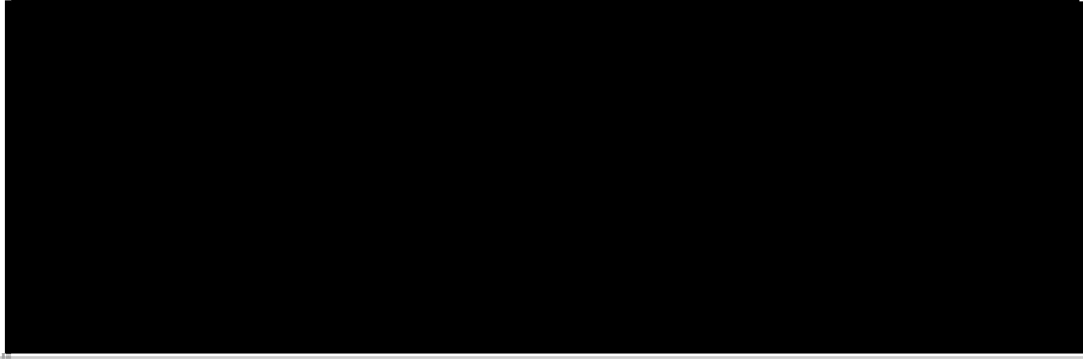
[REDACTED]

[REDACTED]

[REDACTED]

(Emphasis added).

49. IBM further assured BSAM that if selected, it would be more than a vendor; it would be the only expert BSAM needed:



(Emphasis added).

50. IBM’s assertion that it knew BSAM’s people, business, processes, and IT systems was no surprise to BSAM IT. As detailed by IBM in its Responses to BSAM’ RFQs on the SAP OTC project, IBM had been continuously engaged on BSAM IT projects, including other SAP implementations, and IBM’s partner responsible for BSAM, Anthony Consiglio, and its project leadership on those projects, as well as IBM AMS personnel resided in BSAM’s offices.

51. IBM dedicated several pages of its Response to demonstrate its full appreciation of BSAM’s project objectives, and affirmatively represented that IBM had the ability to meet those objectives in planning and preparing the SAP OTC solution design for BATO:



- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

(Emphasis added).

52. Affirming its earlier 2008 representations, IBM enhanced and augmented its earlier material representations made to BSAM to continue with IBM as the source of all specialized expertise necessary to undertake the much larger project which was now being evaluated and planned:

a. IBM represented that it had [REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]

53. From its prior work for BSAM, IBM knew that this was easily BSAM’s largest technology project to date. IBM’s written Response was designed to convince BSAM that IBM possessed, and had already committed, all specialized resources and a team with directly applicable SAP OTC experience to the project to assure its success – all of which IBM was also contractually obligated to bring to BSAM’s project. IBM represented that its BSAM team had applicable experience from equivalent [REDACTED] This claimed experience and IBM’s relationship with SAP – which it asserted spanned [REDACTED] [REDACTED] – was intended to represent, and was a core material fact which BSAM had a right to rely upon, and did rely on: that IBM had used its knowledge of BSAM, and of the SAP OTC project design solution as advanced by IBM, to choose, identify, and commit a proven project team with directly applicable SAP OTC integration solution design and implementation experience to BSAM’s project, before submitting its Response. The project team IBM had selected was largely made up of IBM experts who were already on Bridgestone’s site and were represented by IBM to be fully qualified to perform this work.

54. At the time IBM delivered its Response to the Enterprise Design RFQ, IBM had been on site at BSAM managing, maintaining, and upgrading the BSAM CPS/Legacy systems with full access to and knowledge of BSAM's business and existing CPS/legacy systems, which required integration in the SAP OTC solution being designed by IBM. IBM had also specified its own WebSphere Process Server ("WPS") as the best integration middleware and verbally reinforced its continued representations that its best personnel, practices, and resources were committed to BSAM by IBM.

55. In reasonable reliance on IBM's material written and spoken representations, BSAM selected IBM as the expert for the All Division Solution Design and Roadmap project, and the parties entered into a SOW for this work dated February 27, 2009. Among other things, IBM's SOW obligated IBM to deliver a Case for Action, Enterprise Design, Solution Architecture, and Deployment Alternatives and SAP OTC Roadmap.

56. IBM's report on the SAP OTC Enterprise Design and Roadmap, dated June 1, 2009, discussed the project, the deliverables, and defined the steps to be taken for design completion and validation: Common Design Phase 0.1 for the month of June, and Common Design Phase 0.2 for July – December, 2009. IBM's plan anticipated the finalization of the solution architecture and enterprise design, and the beginning of project deployment rollout in the 4th quarter of 2009.

57. In continuing reasonable reliance on IBM's representations, BSAM accepted IBM's proposal, and contracted with IBM to perform the Common Design work to complete the solution architecture and enterprise design work for the SAP OTC All Division Rollout.

58. In late 2009, IBM represented that it had substantially completed all solution design work and the design solution phase should be finally completed in mid-2010. During

2009, BSAM paid IBM approximately \$4.4 million dollars for IBM's solution architecture and design work.

59. Throughout IBM's work on the solution architecture and enterprise design SAP OTC All Division Rollout, BSAM fully performed all of its obligations under the contracts, including but not limited to, all obligations to assist IBM by providing all information necessary for IBM's performance of its work.

60. In continued reliance on the truth of IBM's material written and spoken representations and on IBM's honest performance of its contractual undertakings, BSAM negotiated and signed the IBM Statement of Work for SAP Order to Cash (OTC) All Division Rollout Project (the "SAP OTC Implementation SOW") dated December 18, 2009.⁵ Under the SAP OTC Implementation SOW, IBM continued its work on the SAP OTC project solution design and also contracted to perform all the services necessary to serve as BSAM's implementation expert to put IBM's design solution in place. This SOW provided for IBM services applicable to all BATO and BSRO operations. As implementation expert, IBM represented that it had already provided and was providing the specialized management, development, testing, and implementation services and resources required to implement IBM's OTC solution design within SAP, WebSphere, and other areas exclusively under IBM's sole project control. "Section 1.1 Project Scope" read as follows:



⁵ This SOW covers the completion of the design and implementation of the system. By its terms it incorporates general terms and conditions contained in the 2009 IBM MSA.

[REDACTED]

(Emphasis added). IBM agreed that among other responsibilities, its project management team would, during each phase of the SAP OTC project, keep BSAM fully informed and to alert the BSAM Project Manager of *all risks or perils* to a successful, on-schedule, within budget project.

61. The form of payment for IBM services under the SAP OTC Implementation SOW was hourly fees as set out in IBM's fee schedule for the level of service as defined by IBM in the SOW, plus expenses.

62. The project schedule included in the SAP OTC Implementation SOW anticipated go-live as late as June 2011, with two months stabilization thereafter, and total estimated IBM service fees of approximately \$41,000,000. In December 2009, work continued on IBM's solution design finalization and began on the SAP OTC Implementation. The solution design work was scheduled for completion in May 2010 with implementation continuing until go-live in June 2011.

63. Under the SAP OTC Implementation SOW, IBM was responsible for all aspects of the design and development work performed by its project personnel. This work included, but was not limited to, the configuration, coding, and interface development for IBM's WebSphere middleware software, the configuration and coding of the SAP ERP software platform and interfaces, the project management for all of these tasks, and the writing and oversight of all testing. Throughout the project, IBM managed and performed all of these activities with limited participation of BSAM. IBM provided limited information to BSAM regarding IBM's development work in which BSAM was not involved.

64. Under the SAP OTC Implementation SOW, BSAM was originally assigned the primary responsibility for a number of tasks relating to its CPS/legacy systems. However, in January 2010 BSAM began the process of entering into a number of separate agreements with IBM which fell under the 2008 IBM MSA, whereby BSAM responsibility for CPS systems work on the SAP OTC project was outsourced to IBM.

65. For reasons not anticipated by BSAM or IBM, the first phase of the implementation project fell behind schedule and the final IBM SAP OTC All Division solution design was not completed until Fall 2010. Upon completion, IBM re-evaluated the project schedule, and the project to implement the IBM design solution was taken to BSAM management which approved a new go-live date of October 1, 2011, and anticipated additional IBM services costs. At that time, IBM represented to BSAM that its SAP OTC All Division design solution was final and would provide the promised implementation of a single instance of SAP OTC functionality for the BSAM – which would support the next generation OTC processes described in the SAP OTC Implementation SOW. All that remained was for the IBM solution design to be developed, built, tested, and implemented.

66. While BSAM was working with IBM in late 2010 and gearing up design solution implementation for the October 1, 2011, go-live, key IBM subject matter expert leaders important to project completion, began leaving without explanation. This continued into 2011, and many key IBM personnel in leadership positions were either never replaced with comparable personnel, or were replaced multiple times without meaningful project knowledge transfer.

67. The loss of IBM project leadership, its failure to retain project knowledge and provide replacements with sufficient qualifications, and failure to make anticipated progress on IBM's sole responsibilities under the contract concerned BSAM. In February 2011, Joe O'Neill

of BSAM attempted to escalate this issue within IBM's management structure as anticipated in the contract. However, IBM continued to allow key personnel to leave the project without effective work product and knowledge transfer to a qualified person within a reasonable time. These failures by IBM were putting the new October 1, 2011, go-live date at risk. In response to Joe O'Neill's escalation efforts, in what became a pattern of IBM during the rest of the project, IBM performed an assessment, acknowledged minimal responsibility for work delays, and represented that its analysis established that BSAM was primarily responsible for project delays. At the time, IBM knew or should have known that these representations were false, and it was intentionally concealing material facts regarding the competence of IBM project management and defects in IBM work to deflect responsibility from IBM.

68. In April 2011, the parties began negotiating the language of Project Change Request No. 8 ("PCR No. 8") to document the project changes agreed upon by IBM and BSAM in late 2010. IBM sought additional fees resulting from the changes. The parties also began negotiating an amendment to the separate IBM Application Management Services Master Services Agreement SOW ("AMS Agreement") which would further extend IBM support of BSAM current production systems and provide additional IBM support for the integration of those systems into the IBM SAP OTC solution design implementation.

69. In May 2011, BSAM expressed its concerns to IBM about delays in delivery of the project and specifically with IBM's progress on its WPS product development for integration of SAP with other applications. BSAM requested a holistic assessment of the IBM WPS integration solution design and the development approach by IBM, which did not appear to be delivering acceptable results. IBM commenced the requested assessment in mid-May 2011, while negotiations were ongoing for PCR No. 8 and the amendment of the AMS agreement.

70. During IBM's assessment of its solution design, development work on the project and negotiations of PCR No. 8 and the amendment of the AMS SOW were ongoing. Throughout these negotiations and in the assessment ultimately delivered to BSAM, IBM consistently took the position that BSAM was primarily responsible for the project delays and for the failures of IBM deliverables. IBM used this position throughout these negotiations to insist that the terms of its concessions were fair because of its allocation of "shared responsibility."

71. On or about May 31, 2011, IBM and BSAM completed negotiations of the material terms of PCR No. 8. BSAM was anxious to put this PCR into place because it provided that IBM would bring on board significant additional IBM subject matter experts IBM claimed were necessary for timely completion of IBM's work. Despite the completion of these negotiations, IBM informed BSAM it would not execute and implement this PCR (with the exception of compensation adjustments) until BSAM agreed to terms acceptable to IBM for amendment of the AMS Agreement to provide for IBM's expansion of its role under that agreement to cover the AMS services for the SAP OTC system after its go-live and stabilization. Using BSAM's need of the additional IBM resources on the SAP OTC Project as leverage, IBM insisted on a seven year term with stiff early termination penalties as a condition to the execution of the amendment to the AMS Agreement.

72. In late May 2011, IBM middleware integration interfaces for both legacy systems and SAP were beginning System Integration Testing ("SIT"). During the first week of June, the IBM OTC integration interfaces in testing failed at a very high rate.

73. On or about June 15, 2011, Anthony Ippolito of IBM delivered IBM's "Bridgestone Project OTC – Assessment Report" dated June 7, 2011 to BSAM's Jeff Wilkes and Joe O'Neill. The Assessment Report delivered to BSAM did not disclose the major flaws and

defects IBM found in its solution design and interface development work. Indeed, as described more fully below, IBM intentionally withheld that critical information from BSAM. The Assessment Report acknowledged only the need for review of the WPS deployment topology but failed to identify or even suggest the existence of serious defects with IBM's WPS and SAP design or development work. Specifically, the IBM Assessment Report represented the following:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]

74. While IBM's June 7, 2011 Assessment Report claimed limited IBM responsibility for the project delays and integration interface test failures, its assessment represented that the IBM interface test failures and development delays were primarily BSAM's fault. By way of example only, IBM asserted:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

d. [REDACTED]
[REDACTED]

75. IBM represented to BSAM that all that was necessary on IBM's side was to provide additional WPS development project assistance: (1) to accelerate interface correction work to meet these problems and the related performance testing and tuning; (2) to address BSAM's error handling and recovery problem; and, (3) to explore potential alternate WPS Topology deployments.

76. Negotiations of the AMS Agreement were finalized on June 22, 2011. Throughout the negotiations in Summer 2011, IBM intentionally concealed material facts which it had a duty to disclose.

77. IBM concealed material facts with the intent to deceive and to induce BSAM to enter into agreements it would not have otherwise executed, at that point or thereafter, including but not limited to, PCR No. 8, the amendment to the AMS SOW under the 2008 IBM MSA, and all subsequent PCRs relating to the SAP OTC implementation. After June 22, 2011, IBM's integration effort was augmented by new IBM middleware experts brought to Nashville, with continued, but somewhat reduced, assistance from IBM's original off-shore development team. Even with IBM's best WPS resources finally assigned to the project, progress was slow. IBM continued to attribute the majority of delays and failures in IBM's integration interface development to alleged deficiencies in functional specifications – including those developed by IBM AMS resources – which IBM asserted were BSAM's sole responsibility.

78. As IBM interface development and testing proceeded, IBM acknowledged in mid-August 2011 that it could not correct the issues in IBM's interfaces in time for the October 1, 2011, go-live. While acknowledging some IBM responsibility to correct these problems, IBM's

project team leadership represented that the only impact the IBM interface rework would have on the project was a brief delay to correct remaining interface problems.

79. At this time, IBM advised BSAM that it might be ready for a November 1, 2011, go-live but proposed that the new date be set for December 1, 2011. BSAM advised IBM leadership that there were critical business reasons that required the SAP system go live no later than January 1, 2012. IBM understood BSAM's requirement that the go-live occur by January 1, 2012 and expressed no doubt that it could easily meet that date.

80. While IBM's work was slowly progressing on development and testing of its integration interfaces, a stream of IBM experts were studying the WPS topology to assure that it accommodated the number of WPS software deployments and volume of data and information the IBM solution design had flowing between WPS and SAP. At IBM's request, BSAM expended substantial time and resources to build out alternative server applications for IBM to deploy and test alternative WPS topologies. Ultimately, the last alternative IBM topology failed in testing in early December 2011. IBM represented that modification of the original topology would be sufficient if BSAM purchased additional hardware capacity from IBM, which BSAM promptly agreed to in order to meet the January 2012 go-live date.

81. Following the failure of the alternative WPS topology in early December 2011, and given the continued slow process IBM was making on some of its interface work, BSAM and IBM explored the potential risks of the planned cutover to the IBM solution design beginning December 24, 2011, and going-live with most of the system on January 3, 2012. During the Fall and early Winter after the extension of the go-live date, BSAM accelerated its continuous efforts throughout the project to mitigate all known and reasonably anticipated risks of unacceptable business impacts. The focus in December was on the specific risks IBM

disclosed to BSAM IT shortly after the failure of the last alternative IBM WPS topology. IBM and BSAM project leadership collaborated on the tasks related to these risks, and BSAM worked on the development of plans to mitigate any business impact should the disclosed risks materialize post go-live.

82. BSAM aggressively worked on its risk mitigation plan for the known risks throughout December 2011 and understood that IBM had lowered the level of the potential risks based on IBM's work and the risks mitigation work. BSAM simultaneously drove the project toward go-live, commencing the scheduled December 24, 2011, cut-over to SAP OTC from BSAM's existing COPS mainframe system and major COBOL based application modules such as SMA (Sales and Marketing Applications), and CARMS (Computerized Accounts Receivable Management System). On December 28, 2011, IBM delivered a letter to Diane Drum of BSAM asserting that BSAM assumed all potential risk associated with the decision to proceed with go-live. The letter detailed the same specific risks and anticipated consequences which had been the subject of BSAM mitigation efforts since earlier in the month and had been worked on by IBM until its project leadership left for a Christmas holiday. However, on their return on December 27, Cliff Hughes, Charlie Miller, and Anthony Ippolito appeared to have re-evaluated the risks related to the status of IBM's work. By that time, the cut-over process from the COBOL systems to the IBM SAP OTC solution and other applications was well underway. It was therefore too late to roll back the go-live, which had already proceeded too far at that point. Moreover, BSAM business representatives had worked out schedules with customers, leading to advance shipments to accommodate the planned go-live and stabilization and requiring BSAM to be back in business by a date certain after cut-over. Given the significance of the planning and the BSAM personnel and assets, and the customers' requirements, the business operation risks associated

with the January 2012 go-live, which IBM had detailed in its letter, were the precise risks for which BSAM had developed mitigation plans.

83. The IBM SAP OTC solution design went live in stages in early January 2012. Immediately following the switch over of all systems integrated to SAP with IBM WPS, the OTC system experienced crippling defects that had a devastating impact on BSAM's business. BSAM was flooded with trouble tickets as chaos disrupted BSAM's OTC business cycle. Notably, these defects were not the potential failures IBM disclosed in its December 28, 2011, letter. Rather, the system defects that engulfed BSAM following the go-live were far more serious and widespread than anything BSAM could have reasonably anticipated.

84. Over the first several weeks after go-live, it became apparent that there were extremely serious defects in the IBM SAP design solution as implemented which BSAM had no reason to expect and for which IBM offered no explanation consistent with the purported concerns IBM had raised. These wholly unanticipated SAP OTC system failures included, but were not limited to, the following:

- a. WPS interfaces, including interfaces which IBM had supposedly fixed, tested, and approved, were not properly transmitting the information being delivered to them by both SAP and non-SAP applications. WPS was losing inventory information, customer order information, and the information vital to the operation of its business of making and selling tires.
- b. SAP was not properly coordinating OTC activities which had been working well when integrated with the old COPS system as part of the risk mitigation plan developed by BSAM. Specifically newly implemented Warehouse Management Systems and Transportation Management systems, which were working virtually flawlessly for new orders received through the COPS system before cutover from COPS to SAP, simply did not properly communicate with SAP.
- c. IBM WPS Middleware – the primary OTC tool for SAP integration with BATO and BSRO business process applications – repeatedly shut down throughout the first quarter of 2012 on one application or another, and it often took an extended

time for IBM to determine the cause of its middleware failure and to get the system back on line.

- d. Customer orders were not consistently processed, or if processed, were not processed accurately because of failures originating in both SAP configuration and programing, and within the workings of WPS.
- e. Customer orders which were processed could not be picked in the product warehouse and Distribution Centers, or shipped to the customers because the application systems were not communicating, providing accurate instructions, or providing the necessary and/or accurate documentation.
- f. When customer orders managed to get through the system, Advance Shipping Notifications were not sent to customers, and the customers were not prepared to receive the orders, which in many cases, were not what the customer had actually ordered.

85. In response to wholesale IBM SAP OTC system failures, BSAM was forced to institute a “Save January” initiative in which top company executives and their support teams developed manual work-around processes to assure delivery of critical customer requirements based on potentially disastrous consequences to its customers. The entire company sought ways to get some critical product deliveries to customers. In some cases, this involved simply shipping what the business unit anticipated the customer needed without any sales documentation. New work-around procedures were developed continuously by the separate business divisions as the magnitude and scope of the impact of SAP OTC system failures and the inability to identify and resolve root causes were becoming increasingly apparent.

86. The inability to process orders and deliver product threw BSAM’s entire business operation into chaos. Tires which should have been delivered to fill customer orders submitted piled up in Distribution Centers, smaller warehouses, and trailers parked in parking lots. Ultimately, BSAM was forced to lease an enormous amount public warehouse space at great expense as it incurred product handling, shipping, and other logistics execution expenses just to

move BSAM products around within its own distribution system, and when possible, to customers.

87. In an effort to hold its solution design and implementation together as it was failing across the SAP OTC system, IBM personnel began to implement theoretical “fixes” with little or no notice to or communication with BSAM. In several cases these undocumented “fixes” made the problems worse, or introduced more significant system failures which were not visible to BSAM until customers reported the system failures. These events aggravated already strained customer relations.

88. BSAM realized the situation was not improving fast enough to mitigate its damages, so it contracted with SAP to bring a team of “de-escalation” specialists on site to identify and correct – to the extent possible – defects in IBM’s SAP configuration and programming. This team was on site for three months and was then replaced by another SAP team which continued working to attempt to clean up IBM’s defective SAP implementation and integration work. In fact, recent evaluations give BSAM reason to believe that the IBM implementation of SAP for BSAM was years behind the available SAP technology which should have been designed into IBM’s SAP OTC design solution and could not be brought up to date without significant additional expense to BSAM.

89. Because all IBM and BSAM project resources were working on the effort to make the SAP OTC solution design and implementation work, BSAM also had to contract with Fujitsu to perform additional work which would not have been required absent IBM’s delivery of an unmitigated disaster of an implementation to BSAM.

90. Consistent with IBM’s approach during 2011, during 2012, IBM again consistently asserted that BSAM was primarily responsible for the SAP OTC system failures

post go-live, that BSAM should not have pursued the system-wide go-live IBM contracted to deliver, and that the system failures during go-live, and in the following months, resulted from deficiencies in BSAM's project performance rather than defects in IBM's design, development, or implementation work. Notwithstanding the massive failures of the defective SAP OTC system that IBM designed and implemented, IBM continued to invoice BSAM for its time on the project post go-live, and insisted on being paid as a condition to assisting with remediation work until Summer 2012, when BSAM finally refused to pay IBM to rebuild defective integration interfaces from the ground up.

91. Despite IBM's denials of responsibility, many IBM efforts to improve the performance of interfaces within its own WPS middleware, which were solely IBM's responsibility, actually degraded the performance of its own product, forcing the reimplementing of WPS interfaces it had deemed in need of replacement.

92. The system-wide failures of the IBM SAP OTC solution in the first three months of 2012 completely disrupted every aspect of BSAM's business operations – including sales order processing, warehouse management, transportation management and logistics, cross-application visibility, inventory and product tracking, company report generation, and many others. The efficiencies promised in BATO's sales order processing and distribution systems not only failed to materialize, the entire OTC system slowed to a crawl.

93. Following the go-live of the IBM SAP OTC design solution, some 17,810 trouble tickets were generated in connection with numerous defects and malfunctions relating to, among other things, the following: products for which customers had placed orders could not be delivered because the orders were not received; orders that were received were not processed or,

were not processed correctly; the Distribution Center did not receive instructions concerning orders; and the Distribution Center did not receive transportation documentation.

94. After paying IBM approximately \$74,000,000 for services alone on the SAP OTC Implementation project, BSAM had received an IBM SAP OTC solution which was poorly designed and even more poorly developed, tested, and implemented. Integration functions had to be disabled or disconnected to return to any reasonably acceptable, functioning OTC business cycle. The part of the integration which was partially functional by the second quarter was not fully integrated, robust, or was not reliable. The system, as delivered, was unduly complex, slow, difficult to maintain, and was of substantially less value than the BSAM system it replaced.

95. Despite extraordinary measures taken by BSAM to mitigate the impact of IBM system failures, BSAM suffered lost profits on lost sales during the first six months of 2012 of not less than \$75,000,000. BSAM also incurred additional expenses as a direct result of the defective IBM SAP OTC design solution, including logistics and supply chain management costs, plus additional post go-live IT costs of approximately \$38,000,000. These amounts do not include all excess personnel costs incurred by BSAM and other damages yet to be determined which were proximately caused by IBM's wrongful conduct as more fully set out in the counts below.

96. Pursuant to the requirements of the 2009 IBM MSA, BSAM notified IBM in Summer 2012 of its desire to resolve its disputes with IBM through good faith negotiations in accordance with paragraph 17.4 of the agreement. The parties executed a valid and binding tolling agreement which tolled the running of all time-related affirmative defenses. Mediation was unsuccessful.

97. During its fact investigation related to the mandatory good faith negotiation process, BSAM first learned that IBM had been engaged in a course of intentional deception, fraud, and misrepresentation throughout the project. BSAM obtained evidence reflecting that IBM had intentionally concealed material facts from BSAM which IBM had a duty to disclose. Without the material facts that IBM withheld, BSAM made decisions and took actions it otherwise would not have made or taken. Such acts of deception, fraud, and misrepresentation include, but are not limited to, the following:

- a. IBM's representations that when it submitted its Response to the BSAM RFQ it had the ability and intention to assign to BSAM's project then existing and available personnel with the required expertise, knowledge, skills, capabilities, and automotive OTC integration design solution and system implementation experience for BSAM's project were false. Based on facts discovered during post go-live investigation, IBM knew or should have known at the time it made these representations that the design and implementation team it provided to BSAM lacked the necessary skills, expertise, experience, and the basic management skills necessary to successfully deliver the promised SAP OTC solution implementation to BSAM. This included key personnel such as Phillip Hartman, Don Mark, and others who clearly lacked these requirements. Even after IBM concluded internally that critical IBM development work on BSAM's project was a disaster and removed Mr. Hartman from the project for incompetence in Summer 2011, IBM intentionally concealed from BSAM the reasons for and the deficiencies in IBM WPS interface development, and other fundamental project management deficiencies, to induce BSAM to both continue with IBM on the project, and to

agree to more favorable contract terms on PCR No. 8 than IBM could have obtained had it made full disclosure.

- b. At every stage of IBM's work on the design of the SAP OTC solution for BSAM, IBM repeatedly and falsely assured BSAM that it was providing qualified experts who had complete access to IBM and SAP computer engineers and experts, and that the solution design it developed over the two years leading up to SAP OTC Implementation SOW in December 2009 was capable of delivering the functionality described in that SOW. In reasonable reliance on IBM's false representations, BSAM contracted with IBM in December 2009 to provide expert, arcane services required to develop and implement IBM's integration solution for BSAM, BATO, and BSRO, including the SAP ERP implementation and its integration with all OTC business systems through IBM's WebSphere middleware.
- c. At each step as the SAP OTC All Division project proceeded from January 2010 through and after go-live in 2012, IBM utilized its position of superior knowledge and skill to conceal its fraudulent conduct and defective work. IBM utilized this same position of superior expertise and system integration knowledge and experience to falsely assert that BSAM was primarily responsible for project delays and setbacks and for escalating project costs in the form of additional IBM services fees, additional BSAM internal costs, and additional hardware and software expenses identified as the project proceeded.
- d. After working beyond the scheduled design finalization phase of the SAP OTC Implementation SOW, allegedly because of additional BSAM CPS interfaces,

IBM represented in Fall 2010 that its architectural solution was complete, reliable, and would provide the bargained-for system. In reliance on IBM's representations, BSAM agreed to changes in the coverage of IBM's solution, to additional IBM project service fees, and to a delay of the original go-live date. IBM knew or should have known at the end of 2010 that the SAP OTC solution design it had created and sold to BSAM was fundamentally flawed and would never deliver the represented results, but IBM concealed this and other material facts from BSAM while it continued to bill BSAM for services being performed in a grossly negligent manner, and to insist that all project delays were primarily the result of BSAM failures to discharge its contractual obligations.

- e. The IBM Bridgestone Project OTC – Assessment dated June 7, 2011, and delivered by Anthony Ippolito of IBM on or about June 15, 2011, continued the pattern of deception, intentional misrepresentation, and concealment by IBM of the most significant findings made by IBM during its Project Assessments. The June 7 Assessment delivered to BSAM contained knowing, material misrepresentations of fact, and omitted material facts IBM had a contractual and common law duty to disclose, including but not limited to, the following:

- i. [REDACTED]
implying that “the Assessment” had not covered these topics. In fact, following the request for an assessment of IBM's work on the project, IBM defined its task as a request to conduct an assessment of the entire IBM WPS design and implementation with a holistic view of the current design and development approach for improvement, including IBM's core

design, project management, and interface coding work. Further, IBM actually conducted such an assessment but concealed its most important findings from BSAM. This internal assessment concluded, for example, the following finding with regard to the IBM solution design, which it intentionally concealed from BSAM:

- a. That WebSphere Process Server *was not* the appropriate middleware for the design solution because it added too much unnecessary complexity and instability to the solution when better IBM middleware products were available and should have been used on the project.
- ii. IBM's internal assessments also found that IBM Project Management, leadership, and team members were not qualified to design, develop, or implement the project, but IBM hid and concealed these facts from BSAM. As a result, despite the entire project being managed under IBM's methodology since its re-design and reorganization in 2010, IBM's Assessment found the following gross deficiencies in IBM's project management in Summer 2011:
 - a. No clear understanding existed between IBM development teams – or even among team members – of the types of defects in IBM's work which needed to be reported (i.e., functional specification, missed requirement, code errors);

- b. Separate IBM development teams were making changes in the dates within their project plans without any project impact analysis or approval;
- c. There was no unified system in place for reporting and tracing IBM interface development progress or defects identified, or any uniform understanding of what constituted an interface defect or how to report it; development issue logs did not have a column for “days open” and issues stayed open for weeks;
- d. There was no well defined, documented method for collaboration among IBM’s Functional, EDI, and Test teams;
- e. There was no clear understanding of IBM team member roles and responsibilities, and therefore no clear accountability within the teams;
- f. No Global Delivery Process between the on-shore and China interface development teams setting out sequences of activities with ownership existed;
- g. There was no mechanism for efficient and productive communication of IBM test results, defects, fixes, and issues with a follow-up approval process;
- h. The IBM WPS development team had not invoked the BMS log component built into WPS, which was necessary for interface development and correction of this failure would require over a thousand hours of IBM work;

- i. IBM's code promotion process was not fully automated;
 - j. Interface code release management was not controlled;
 - k. Phil Hartman, the project leader for the WPS development team should be immediately replaced by a senior integration architect with a rigid project management and technical leadership background;
 - l. Testing was truncated and insufficient; and
 - m. IBM leadership found many of its team members to be inexperienced and incapable of performing the work for which BSAM was paying.
- iii. As a result of the fundamental middleware solution design flaw recommended by IBM, and the fundamental failures of IBM's implementation project management, IBM's Assessment found, but concealed, that IBM's integration interface work in June 2011 was plagued with serious flaws and defects including, but not limited to, the following:
- a. IBM's EDI Interfaces were in the worst condition and the IDOC's necessary to integration with SAP were constantly changing;
 - b. IBM integration interfaces which were failing or functioning poorly had been hard coded, when available parameter sets which were more stable and less complex should have been used;
 - c. IBM's integration interface codes which were causing interface failures during System Integration Testing ("SIT"), had not been

written using best and reasonable practices of WPS development skills, and repairing this interface code was problematic. Examples of fundamental deviations from best and reasonable practices included, but were not limited to, the following:

1. China interface code developers had used Java custom code rather than an IBM approved development tool which created severe difficulties in fixing the code, could require a complete rewrite effort, and resulted in a maintenance nightmare;
2. China interface code developers had not used a common template or practices for code development and migration, resulting in a loss of version control and defects in code quality.

98. Rather than disclose the extent of these and other material IBM breaches of contract, gross negligence, and outright deception and misrepresentation which had, in May 2011, materially delayed BSAM's project and injected serious known, but undisclosed, risks to the project and to BSAM's business operations IBM continued to (1) conceal the material facts and unknowable risks arising from its gross failures on the project; (2) make limited and misleading disclosures which intentionally misled BSAM regarding the risks to every aspect of the project; and (3) misrepresent that primary responsibility for the project delays and setbacks laid with BSAM's work.

COUNT I

FRAUD IN THE INDUCEMENT AND CONTRACT PERFORMANCE

99. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 98, inclusive, into this Count I.

100. IBM intentionally misrepresented existing material facts and produced false impressions in order to mislead BSAM and to obtain unfair advantages in its dealings with BSAM. BSAM reasonably relied upon IBM's intentional misrepresentations and the false impressions created by IBM and proceeded with the project, entered into agreements, and accepted insufficient concessions for known breaches when it would not have done so had IBM fully represented the material facts and disclosed all material facts within its possession.

101. The relationship between BSAM and IBM was not arms length. IBM knew of and encouraged BSAM's dependence upon IBM to provide the extremely complex and technical project skills, experience, and professional expertise which BSAM did not possess, and without which the SAP OTC project could not be accomplished. IBM also knew that BSAM did not have the expertise or information to fully evaluate the project risks and perils of which IBM was aware. During the work on the SAP OTC project, IBM consistently presented itself as a trusted expert and partner capable of, and fully committed to, successfully delivering BSAM's most important and complex IT project in company history. IBM understood that by the very nature of the project, BSAM was required to place trust and confidence in its SAP OTC integration expert, which (1) would have total access to all details of BSAM's confidential, proprietary business operations and business information systems; and, (2) would be BSAM's sole source of the arcane expertise, skills, and project experience necessary to create and implement the core components of BSAM's complex SAP OTC solution. IBM also knew that BSAM did not

possess IBM's proprietary information, expertise, or experience on such projects and could not independently evaluate IBM's performance or representations. For these reasons, BSAM requested IBM corporate Assessments of the IBM project teams' performance and reasonably relied on both the IBM project team's leadership and IBM's corporate assessments throughout the project.

102. Under IBM's contracts and the common law, IBM had a duty to fully disclose all material facts relating to its performance on the BSAM SAP OTC project beginning in February 2009 and continuing through the date of this complaint.

103. As set forth in the paragraphs above, and as will be further developed during discovery, IBM engaged in a continuing pattern throughout the SAP OTC project of knowingly and intentionally misrepresenting and concealing material facts for the purpose of procuring and retaining the SAP OTC All Division North American enterprise-wide design solution and implementation work on a time and material basis. Such action included, but was not limited to, the misrepresentation and concealment of material facts relating to: IBM's designated design and implementation team's lack of expertise and comparable experience; fundamental defects in IBM's design solution; fundamental deficiencies in IBM's project management and in the performance of IBM's development teams; the quality of the IBM development teams' work in both SAP and integration middleware development configuration and code development; the actual risks to the BSAM project's schedule, budget, and system performance caused by IBM's deficient work; and the actual risks faced by BSAM at project go-live.

104. BSAM had a right to rely, and reasonably relied, on IBM's misrepresentations of material facts. BSAM had a right to rely, and reasonably relied on, IBM's discharge of its duties to fully disclose all material facts relating to the SAP OTC project. After procuring these

projects, IBM misrepresented and concealed the true reasons for project delays during 2011 and for the failures of its SAP OTC solution following go-live on January 3, 2012.

105. In reasonable reliance on IBM's material misrepresentations and omission of material facts relating to the SAP OTC project, BSAM awarded the design and implementation contracts to IBM. BSAM would not have entered into these contracts had it known the truth as set forth herein. Further, BSAM would not have continued with the project had it learned the truth as set forth herein. BSAM would not have executed PCR No. 8 nor would it have gone live had IBM truthfully disclosed all material facts known to IBM, as IBM was obligated to do under the law, equity, statutes and its duties as assumed. As a direct and proximate result of IBM's fraud and misrepresentation, BSAM (itself and through the assignments from BATO and BSRO) has suffered damages as set forth herein and is entitled to recover all such damages, as further refined during the pendency of the case, plus punitive damages, attorneys' fees, and prejudgment interest.

COUNT II

MISREPRESENTATION IN BUSINESS TRANSACTIONS

106. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 105, inclusive, into this Count II.

107. IBM, acting in the course of its business and profession and in transactions in which IBM had a pecuniary interest, supplied false information meant to guide BSAM in BSAM's business transactions. IBM failed to exercise reasonable care in obtaining and communicating that information. BSAM justifiably relied upon the false information that was supplied by IBM to BSAM for the purpose of guiding BSAM in its business transactions with IBM. The false information provided by IBM to BSAM misrepresented existing or past facts.

108. BSAM was the person for whose benefit and guidance IBM intended to supply the false information. The losses suffered by BSAM complained of herein were caused by BSAM's reasonable reliance upon the false information supplied by IBM, in transactions that BSAM entered into with IBM and transactions that IBM intended to influence by supplying the false information.

109. IBM had an ongoing duty of complete and accurate disclosure regarding all aspects of this project in order to prevent representations and disclosures that were made by IBM from being misleading.

110. IBM's misrepresentations were negligent because IBM failed to exercise reasonable care or competence in obtaining and communicating information. They were also negligent because IBM failed to exercise the degree of expertise, care, skill, and diligence that IBM was required to provide under the contracts and that IBM represented that it would provide to BSAM.

111. IBM's misrepresentations constituted gross negligence because they were a conscious neglect of duties owed to BSAM by IBM and because IBM acted with callous indifference to the consequences of its actions.

112. IBM's misrepresentations were reckless because IBM was aware of, but consciously disregarded, substantial and unjustifiable risks of harm to BSAM of such a nature that IBM's disregard of those risks constituted a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances.

113. BSAM (itself and through the assignments from BATO and BSRO) suffered the losses and damages described in paragraphs 73-74 above as a direct and proximate result of IBM's misrepresentations in business transactions with BSAM.

COUNT III

CONSTRUCTIVE FRAUD

114. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 113, inclusive, into this Count III.

115. As a result of (i) IBM's promises and representations to BSAM regarding IBM's purported knowledge, competence, experience, skill, and expertise, (ii) IBM's promises to partner with BSAM, (iii) IBM's status as a trusted consultant and advisor, (iv) IBM's representations regarding the qualifications of the persons who would perform the work that IBM promised to perform, (v) the confidential relationship between IBM and BSAM in which BSAM entrusted confidential information to IBM and relied heavily on IBM as a consultant, advisor, and partner regarding a wide variety of issues, and (vi) reports, recommendations, representations, and purported project "audits" IBM provided to BSAM, IBM had a duty of full, honest, and accurate disclosure to BSAM so that BSAM could make informed, reasonable decisions regarding every aspect of the SAP OTC project at every point during the project.

116. IBM had an equitable duty of full, honest, and accurate disclosure to BSAM because the nature of the relationship was such that BSAM could not make informed, reasonable decisions without full, honest, and accurate disclosure from IBM.

117. IBM's misrepresentations, false impressions, and failures to disclose described above constituted constructive fraud upon BSAM because they had a tendency to, and did, deceive BSAM.

118. IBM's misconduct constituted an abuse of IBM's confidential relationship with BSAM. IBM's actions constituted overreaching and taking undue advantage of BSAM in transactions in which IBM and BSAM were not dealing at arm's length.

119. IBM's misrepresentations, misleading representations, and failures to disclose constitute constructive fraud because of the tendency of that conduct to deceive BSAM and the actual deception of BSAM by that conduct.

120. BSAM (itself and through the assignments from BATO and BSRO) suffered the losses and damages described in paragraphs 94-95 above as a direct and proximate result of IBM's constructive fraud.

COUNT IV

VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT

121. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 120, inclusive, into this Count IV.

122. BSAM is a "person" as defined in T.C.A. § 47-18-103(13) and therefore is within the protection of the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101, *et seq.* The Tennessee Consumer Protection Act prohibited IBM from using unfair or deceptive acts or practices affecting the conduct of any trade or commerce in Tennessee.

123. IBM engaged in unfair and deceptive acts and practices affecting the conduct of trade or commerce in Tennessee in violation of Tennessee Consumer Protection Act, including acts and practices that violated T.C.A. §§ 47-18-104(b) (3), (5), (7), (11), (13) and (21).

124. IBM's acts and practices were deceptive because they caused and tended to cause BSAM to believe things that were false and because they misled and tended to mislead BSAM as to matters of fact.

125. IBM's acts and practices were unfair because they caused and were likely to cause substantial injury to BSAM which was not reasonably avoidable by BSAM itself and was not outweighed by countervailing benefits to BSAM.

126. IBM's conduct unreasonably interfered with BSAM's decision-making by withholding important information that IBM had a duty to disclose.

127. IBM knew that material misrepresentations had been made to BSAM and that material information that IBM had a duty to disclose had been withheld from BSAM. IBM intended to deceive BSAM.

128. IBM violated T.C.A. § 47-18-104(b)(3) because IBM caused a likelihood of, and did cause, confusion or misunderstanding by BSAM as to the affiliation, connection or association with, or certification by, another.

129. IBM violated T.C.A. § 47-18-104(b)(5) by falsely representing that goods and services provided by IBM had characteristics, uses, benefits, and qualities that they did not have.

130. IBM violated T.C.A. § 47-18-104(b)(7) by falsely representing that goods and services provided by IBM were of a particular standard, quality, or grade when, in fact, they were of a lower standard, quality, or grade.

131. IBM violated T.C.A. § 47-18-104(b)(11) by making false and misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

132. IBM violated T.C.A. § 47-18-104(b)(13) by falsely representing that services and additional work by IBM, including but not limited to interface rework and code repairs provided by IBM were needed by BSAM when they were not needed for the reasons represented by IBM.

133. IBM violated T.C.A. § 47-18-104(b)(21) by creating a false impression in its Response for Quotation from BSAM that design, development, and implementation resources and tools would be used by IBM to accomplish the defined project objectives if IBM were selected for the SAP OTC All Division project, when IBM did not intend to provide and utilize such tools absent their separate purchase from IBM.

134. BSAM (itself and through the assignments from BATO and BSRO) suffered ascertainable losses of money and property as a result of the use and employment by IBM of unfair and deceptive acts and practices described in T.C.A. § 47-18-104(b) and declared to be unlawful by the Tennessee Consumer Protection Act.

135. IBM's unfair and deceptive acts and practices were willful and knowing violations of the Tennessee Consumer Protection Act. Accordingly, BSAM is entitled to recover treble damages and such other relief as this Court considers necessary and proper pursuant to T.C.A. § 47-18-109(a)(3).

136. IBM is inferred to have actual awareness of the falsity or deception of IBM's representations and IBM's omissions of fact because objective manifestations indicate that a reasonable person in IBM's position would have known or would have had reason to know of the falsity or deception.

137. BSAM is entitled to recover reasonable attorneys' fees and costs pursuant to T.C.A. § 47-18-109(e)(1) as a result of IBM's violations of the Tennessee Consumer Protection Act.

138. By reason of IBM's actions, BSAM sues IBM pursuant to the Tennessee Consumer Protection Act and is entitled to recover BSAM's actual damages, treble damages, reasonable attorneys' fees and costs, and such other relief as this Court considers necessary and proper, plus prejudgment interest.

COUNT V

GROSS NEGLIGENCE

139. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 138, inclusive, into this Count V.

140. IBM held itself out as an expert in every aspect, specialty and sub-specialty necessary to design a fully integrated end-to-end SAP OTC computer system solution for BSAM's North American sales and distribution activities.

141. BSAM engaged IBM to provide its professional services for the design, development, build, implementation, and go-live of a custom SAP OTC system solution for BSAM's North American tire operations, and IBM was fully compensated for the services rendered by IBM. These services included, but were not limited to, expert design of the SAP OTC custom solution for BSAM, the project planning, estimating, scheduling, management, and execution of all services being provided by IBM in connection with the BSAM project.

142. Under the law of the State of Tennessee, IBM, as a provider of services, had a duty to exercise due care in the provision of all services provided to BSAM. The reckless disregard of or indifference to the consequences which will be suffered by the party to which the duty is owed constitutes gross negligence.

143. IBM's total lack of any meaningful review process for the use of its own middleware product in the SAP OTC design solution until two and one-half years into the design, development, and build of the solution and the fundamental failure to exercise any care in the planning, coordination, and management of IBM's EDI development, integration interface development, SAP configuration, and testing teams are just some examples of IBM's breach of and reckless disregard or indifference to its duties to BSAM.

144. As a proximate result of IBM's gross negligence in the discharge of its common law and contractually assumed duties to BSAM, BSAM (itself and through the assignments from BATO and BSRO) incurred the monetary damages as set forth herein, making IBM liable for all damages proximately suffered, plus punitive damages, interest, and attorneys' fees.

COUNT VI

BREACH OF CONTRACT

145. Pursuant to Fed. R. Civ. Pro. 10(c), BSAM incorporates the allegations contained in paragraphs 1 – 144, inclusive, into this Count IV.

146. Both parties have access to the contracts that were breached by IBM. The specific contracts which are the subject of this dispute are:

- a. August 3, 2009 – Project Change Request 7, Current Production Systems (CPS), eBusiness, & Business Intelligence AMS Project and all subsequent PCRs;
- b. March 30, 2010 – AMS, eBusiness Conversion & Interface to SAP Project Statement of Work;
 - i. All subsequent PCRs to the AMS, eBusiness Conversion & Interface to SAP Project Statement of Work;
- c. November 22, 2010 – BI/BW Business Analyst Services Statement of Work;
 - i. All subsequent PCRs to the BI/BW Business Analyst Services Statement of Work;
- d. June 22, 2011 – Schedule 3 OTC-Related Application Management Services Statement of Work for BSAH;
 - i. All subsequent PCRs to Schedule 3 OTC-Related Application Management Services Statement of Work for BSAH;
- e. January 9, 2009 – Master Services Agreement By and Between Bridgestone Americas Holding, Inc. and International Business Machines Corporation;
 - i. February 27, 2009 – Statement of Work for SAP Order to Cash (OTC) Enterprise Design and Roadmap;
 - ii. June 3, 2009 – Bridgestone Americas (BSAM) SAP Order-to-Cash (OTC) Common Design Project – Project Preparation Phase;
 - iii. June 30, 2009 – Statement of Work for SAP Order to Cash (OTC) Common Design Phase 0.2;
 - iv. September 18, 2009 – Statement of Work for Transportation Management System (TMS) Early Release Project Planning & Design Phase;

- a. All subsequent PCRs to the Statement of Work for Transportation Management System (TMS) Early Release Project Planning & Design Phase;
- v. December 1, 2009 – Statement of Work for Warehouse Management System (WMS) Project Planning Phase;
- vi. December 17, 2009 – Statement of Work for Transportation Management System (TMS) Early Release January Staff Augmentation;
- vii. December 17, 2009 – Statement of Work for Warehouse Management System (WMS) January Staff Augmentation;
- viii. December 21, 2009 – Statement of Work for SAP Order to Cash (OTC) All Division Rollout Project;
 - a. All subsequent PCRs to the Statement of Work for SAP Order to Cash (OTC) All Division Rollout Project;
- ix. January 28, 2010 – Statement of Work for Transportation Management System (TMS) Early Release Project Execution Phase;
 - a. All subsequent PCRs to the Statement of Work for Transportation Management System (TMS) Early Release Project Execution Phase;
- x. January 29, 2010 – Statement of Work for Warehouse Management System (WMS) Project Planning Phase;
 - a. All subsequent PCRs to the Statement of Work for Warehouse Management System (WMS) Project Planning Phase;
- xi. June 11, 2010 – Statement of Work for OTC Warehouse Management System (OTC WMS) All Division Rollout Project;
 - a. All subsequent PCRs to the Statement of Work for OTC Warehouse Management System (OTC WMS) All Division Rollout Project;
- xii. September 1, 2010 – Statement of Work for Transportation Management System (TMS) OTC Integration & Event Management Staff Augmentation;

- a. All subsequent PCRs to the Statement of Work for Transportation Management System (TMS) OTC Integration & Event Management Staff Augmentation.

147. BSAM and IBM entered into valid and binding contractual agreements for the design of a custom SAP OTC system solution for BATO and BSRO's North American Tire Operations as described herein.

148. BSAM has, at all relevant times, discharged and substantially performed all of its duties and responsibilities under the contracts with IBM.

149. By reason of its actions as set out herein, IBM has intentionally, recklessly, and materially breached express and implied duties it has undertaken in the contracts between the parties for the design and implementation of the SAP OTC system solution for BSAM. Such breaches include, but are not limited to, the following:

- a. IBM assigned individuals, including the chief technical architect for the project, who did not possess the proper knowledge, skill, education, training, experience, technical expertise, and qualifications to perform the services necessary for the successful design and implementation of a SAP OTC solution for BSAM.
- b. The individuals assigned to the SAP OTC project by IBM did not perform the services required in accordance with the service levels as set forth in the project Statement of Work.
- c. IBM did not perform its services in a skillful, careful, diligent, and workmanlike manner.
- d. IBM did not take reasonable steps to provide all services for the SAP OTC project in accordance with the terms of its agreements with BSAM on the SAP OTC project.
- e. IBM did not make full disclosure of all material facts relevant to the performance of its services contracted for on the SAP OTC project.
- f. IBM did not specify the middleware technology available at the time it submitted its final BSAM SAP OTC design solution to BSAM and charged BSAM excessive fees to implement an unnecessarily complex and unstable solution when better middleware products were available.

- g. IBM placed key members of its project team in a material conflict of interest and failed to notify BSAM in accordance with the terms of the contracts.
- h. IBM removed key IBM employees on the BSAM SAP OTC project without giving notice or explanation to BSAM as IBM was required to do.
- i. IBM did not deliver the contracted for implementation of a single instance of SAP OTC functionality for the BSAM divisions described in the project SOW and consistent with IBM's representations of quality and reliability.
- j. IBM did not properly perform its responsibilities in the creation and editing of the functional and technical specifications it attempted to make BSAM's sole responsibility.
- k. IBM abdicated its project management responsibilities for work that was solely IBM's responsibility under the contracts.
- l. IBM intentionally concealed risks and perils to the successful, on-schedule, within budget completion of the project related solely to its work which it was contractually obligated to report to BSAM.
- m. These breaches of contract were specifically identified by IBM specialists who evaluated the project middleware design and development in the May – June 2011 WebSphere Assessment; however, IBM intentionally concealed this information from BSAM throughout the project.

150. In addition to its express contractual duties, IBM had an implied duty in contract of good faith and fair dealing with respect to its performance of all aspects of its contracts with BSAM. That duty prohibited IBM from destroying or injuring BSAM's right to receive the fruits of its contracts. IBM breached its duty of good faith and fair dealing through the conduct described above, including, but not limited to, misleading BSAM regarding the causes of delays, failures, and cost overruns in IBM's work. IBM violated its duties of good faith and fair dealing with respect to its contractual duties to report to, communicate with, and collaborate with BSAM.

151. By its conduct, IBM breached its implied duty of good faith towards BSAM.

152. IBM's material breaches of contract were identified, in part, by IBM specialists who evaluated the project middleware design and development in the May – June 2011 WebSphere Assessment; however, IBM intentionally concealed this information from BSAM throughout the project.

153. IBM's actions in breaching its contract were reckless and/or intentional, and as a proximate result of IBM's breaches of contract, BSAM (itself and through the assignments from BATO and BSRO) incurred the monetary damages as described herein which are recoverable without limitation.

JURY DEMAND

BSAM demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, BSAM demands a judgment against IBM in amount of actual damages yet to be fully determined, trebled under the TCPA, together with interest, attorneys' fees, costs, punitive damages in an amount to be fixed by the jury, and such other and further general relief as this Court deems just and proper.

Dated: October 29, 2013.

Respectfully Submitted,

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