UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. ERISA LITIGATION II THIS DOCUMENT RELATES TO: All Actions	MASTER FILE: 08 Civ. 5722 (LTS) (KNF) ECF Case

CONSOLIDATED SECOND AMENDED COMPLAINT

"**This is a corporation that finds itself in financial distress due to recklessness and greed.**"

—President Barack Obama, March 16, 2009, speaking about AIG

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I. INTRODUCTION

1. Plaintiffs, Kevin R. Hoffman, Walter Earl Lewis, Mark Ludwig, Grace Baxter, and Thomas L. West, Jr., individually and on behalf of all similarly situated persons (the "Class") who participated in the American International Group, Inc. Incentive Savings Plan ("ISP") and the American General Agents' & Managers' Thrift Plan ("AGC Plan") (jointly referred to as "the Plans"), allege the following based upon the investigation of Plaintiffs' counsel. Plaintiffs' counsel's investigation includes: (1) discovery conducted to date, including review of documents produced by Defendants and various third parties regarding the management of the Plans' assets and the business operations of American International Group, Inc. ("AIG" or the "Company") from August 7, 2007 to May 1, 2009 (the "Class Period"), as well as deposition testimony of the named Defendants, former and current members of AIG's senior management, Company auditors, and other third party witnesses; (2) interviews with participants of the Plans; (3) a review of the U.S. Securities and Exchange Commission ("SEC") filings of AIG, including AIG's proxy statements (Form 14A), annual reports (Form 10-K), quarterly reports (Form 10-Q), current periodic reports (*e.g.*, Form 8-K), and registration statements (Form S-8); (4) a review of the Form 5500s filed by the Plans with the U.S. Department of Labor ("DOL"); (5) a review of documents produced in response to Plaintiffs' ERISA § 104(b), 29 U.S.C. § 1024(b) request; and (6) a review of publicly available articles, books, reports, government testimony, government investigations, related lawsuits, and interviews regarding AIG.

II. NATURE AND SUMMARY OF THE ACTION

2. This is a class action brought against the fiduciaries of the Plans on behalf of the Plans for losses to the Plans pursuant to the Employee Retirement Income Security Act of 1974,

as amended ("ERISA") § 502(a)(2), 29 U.S.C. § 1132(a)(2), and for equitable and injunctive relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

3. Plaintiffs' claims arise out of the failure of Defendants, who are the fiduciaries of the Plans, to act solely in the interest of the participants and beneficiaries of the Plans, and to exercise the required skill, care, prudence, and diligence in administering the Plans and the Plans' assets.

4. Plaintiffs allege that during the Class Period, Defendants imprudently permitted the Plans to acquire, at artificially inflated prices, and hold millions of dollars in AIG stock. Defendants' breaches have caused the Plans to lose hundreds of millions of dollars of retirement savings during the Class Period.

5. AIG was once the world's leading insurance company until it precipitated its own failure—resulting in a Class Period stock collapse of 97.9%, in which AIG stock reached a Class Period low of $0.35 per share. The Company only avoided bankruptcy because the United States government bailed the Company out with over $182 billion—making it the biggest federal bailout in United States history and resulting in the government owning as much as over 92% of AIG. As the President of the United States put it when commenting on the Company's collapse: "This is a corporation that finds itself in financial distress due to recklessness and greed."

6. Publicly available information alone demonstrates—and discovery done to date confirms—that AIG's collapse is tied to the imprudent risks knowingly assumed by AIG's Financial Products ("AIGFP"), as well as AIG's Global Securities Lending ("Securities Lending" or "GSL") program. Poor risk management and weak internal controls resulted in multi-billion dollar losses by AIG during the Class Period and led to a massive rescue by the federal government.

7. Prior to and during the Class Period, AIGFP amassed a huge portfolio of unregulated Credit Default Swaps ("CDS"). These exotic derivative products carried enormous downside risk if AIG's credit ratings slipped. AIG failed to manage the risks embedded in the CDS portfolio which grew as the underlying Collateralized Debt Obligations ("CDOs") inevitably lost value with subprime mortgage defaults, and illiquid markets forcing AIG to deplete its capital threatening its liquidity to the point of insolvency in September 2008. The largest insurance company in the world allowed its thirst for generating seemingly "easy money" profit centers (which translated into larger bonuses for the executives leading these offending business units) to lead AIG well outside its core insurance expertise and bet the Company on volatile and exotic financial markets derivative instruments.

8. As detailed by the Financial Crisis Inquiry Commission ("FCIC"),[1] this failure exposed the Company to cash collateral payments to the counterparties of the CDS beyond AIG's capital means. The FCIC wrote in its final report:

> The Commission concludes AIG failed and was rescued by the government primarily because its enormous sales of credit default swaps were made without putting up initial collateral, setting aside capital reserves, or hedging its exposure—a profound failure in corporate governance, particularly its risk management practices.

FCIC, The Financial Crisis Inquiry Report 352 (2011) (hereinafter "FCIC Report")

9. AIG was wholly complicit in and aware of its financial subsidiaries' risky business activities. As one of the major revenue drivers for the Company, AIGFP and its head,

[1] The FCIC "was created to 'examine the causes, domestic and global, of the current financial and economic crisis in the United States' in May of 2009. This independent, 10-member panel was composed of private citizens with experience in areas such as housing, economics, finance, market regulation, banking and consumer protection." *See* FCIC, History of the Commission, at http://www.fcic.gov/about/history. The FCIC examined the following: (a) "capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities"; (b) "derivatives and unregulated financial products and practices, including credit default swaps"; and (c) "financial institution reliance on numerical models, including risk models and credit ratings." *Id.*

Joseph Cassano ("Cassano"), were center stage on nearly every investor call and report for AIG during the Class Period. AIG's top management stated that it reviewed every CDS transaction and oversaw AIGFP's activities on a regular basis. The sheer size of AIGFP's CDS portfolio made AIG intimately aware of AIGFP's practices, which AIG blessed, choosing to ignore the risks to which AIGFP exposed the entire Company. All the while, AIG promoted the image of a company based on sound principles of conservative risk management, when it was, instead, a poorly managed "hedge fund" with too little excess capital to cover its obligations on its CDS portfolio.

10. While AIGFP actually stopped writing credit protection on multi-sector CDOs in or around December 2005, in recognition of the fact that mortgage underwriting standards had severely deteriorated during the housing bubble, and that the vast majority of the loan collateral underlying AIG's multi-sector CDO book of business was compromised from a risk perspective due to improper origination and underwriting processes, AIGFP still had massive exposure remaining from the $78 billion in heavily subprime mortgage-exposed multi-sector CDO-based CDS within its portfolio. Further many of the underlying CDOs were structured such that newer mortgages (with even-worse underwriting standards, from the 2006 and 2007 "vintages") could be substituted for the older mortgages within the portfolio.

11. Further, in an attempt to manufacture additional investment returns, AIG recklessly poured tens of billions of dollars of its affiliated insurance companies' assets, by investing their cash collateral from AIG's GSL program in residential-mortgage-backed securities ("RMBS"), in another ill-conceived gamble on the real estate market. Through this program, for a fee, AIG would lend out securities (generally owned by its subsidiary insurance companies) to third parties, who put up cash collateral in exchange. Then AIG would invest the

cash collateral in short-term securities that could be sold quickly when the third party wanted his cash back—resulting in a small but low-risk return for AIG and its subsidiaries.

12. By 2004, AIG had already begun the dangerous practice of investing some of its cash in RMBS, which generated a higher return for AIG, but hardly the kind of short-term, liquid securities that could easily be sold. [redacted]

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[redacted]

13. Incredibly, AIG's GSL program increased AIG's bet on the mortgage markets at the very same time that the AIGFP division had decided to stop insuring the super-senior tranches because underwriting standards in those markets had severely deteriorated. AIG's allowing one division to take on more risk in the exact area where another division, far better versed in these kinds of securities, was cutting back, revealed that AIG's risk oversight function was in total disarray. [redacted]

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[redacted]

Indeed, shortly after AIG was bailed out by the government, Larry Fink, the respected Chairman of BlackRock who had been brought in to assist AIG, after reviewing the details of AIG's GSL program, stated, "In all my years, I have never seen such disregard for managing money." This

massive GSL program within AIG was another creation which strayed far from the Company's core competencies in the insurance business, into areas the Company had no business mortgaging its future on.

14. While AIG's multi-sector CDS portfolio and GSL program were suffering ever increasing and massive losses, the Company's consumer finance businesses at United Guaranty and American General were likewise experiencing loss and erosion of their assets and capital.

15. Tellingly, some of the very same fiduciaries of the Plans at issue here, including the Retirement Board Defendants (defined below), who failed to protect these Plans' assets from the risks presented by AIG stock, [redacted] Redacted - Confidential [redacted] Thus, although Defendants had concluded that AIG stock was not a prudent investment for the Retirement Plan, and that neither was AIG stock worth buying back by AIG, they ignored the Plans at issue here and allowed Plan participants' investments in AIG stock to continue unabated until May 2009.

16. Indeed, in acknowledging the government's rescue of AIG, AIG's post-bailout CEO Edward Liddy ("Liddy") told Congress that AIG had come to operate an "internal hedge fund" and the Company made mistakes "on a scale few could ever [have] imagined possible":

> Mistakes were made at AIG on a scale few could have ever imagined possible. The most critical of those mistakes was that the company strayed from its core competencies in the insurance business. This was typified by the creation of what grew to become an internal hedge fund, which then became substantially overexposed to market risk.
>
> Those missteps have exacted a very high price, not only for AIG but for America's taxpayers, the federal government's finances and the economy as a whole.

> Our new management team concluded very quickly that the company's overall structure is too complex, too unwieldy, and too opaque for its component businesses to be well-managed as one company.

Testimony of Liddy before the House Fin. Servs. Subcommittee on Capital Markets, Ins. and Gov't-Sponsored Enters., Mar. 18, 2009, at 3 (hereinafter "Liddy Testimony").

17. Thus, AIG was brought to the brink of collapse by eschewing its core insurance businesses and careening into new high-risk ventures, which investigating lawmakers and AIG employees alike have called "casino"-like businesses. AIG's new CEO acknowledged that the ill-conceived nature and magnitude of the blunders was on an unfathomable scale and pointed out that the new management had very quickly identified the structural problems that should have, at a minimum, constituted red flags.

18. As explained more fully below, at least by the beginning of the Class Period on August 7, 2007—by which time AIG was aware that AIG's counterparties on its CDS, led by Goldman Sachs ("Goldman"), began to make multi-billion collateral calls forcing AIG to put up billions of dollars in collateral, draining its liquidity—through the end of the Class Period on May 1, 2009, when the AIG Stock Fund was finally closed to new investments, Defendants knew or should have known that AIG was in dire straits.

19. As further set forth below, at least throughout the Class Period, if not earlier, Defendant AIG, and the individual Defendants knew or should have known, that AIG's stock was an imprudent investment for the participants of the Plans. An adequate investigation undertaken by Defendants would have revealed to a reasonable fiduciary that the Plans' investments in Company stock were imprudent. Defendants would have learned sufficient facts about AIG's financial situation, detailed herein, through an adequate investigation so that they would have learned about AIG's interconnected losses of billions of dollars which foreseeably placed AIG into insolvency (but for the federal bailout).

20. As more fully described below, members of AIG's Board, as well as members of AIG's Retirement Board (the "Retirement Board"), and the Investment Committee of the Retirement Board (the "Investment Committee") had fiduciary duties towards the Plans and their participants, which required them to keep themselves fully informed of all material information relevant to the discharge of their Plan-related duties and to use the diligence and due care required by ERISA in their management and/or monitoring of the Plans' assets, including the AIG Stock Fund.

21. Pursuant to their ERISA-mandated fiduciary duties, the Director Defendants (defined below), as well as the Retirement Board and Investment Committee Defendants (defined below), were required to implement proper investment procedures and processes to enable the proper execution of their fiduciary duties towards the Plans. These Defendants were further required to implement these investment procedures and processes diligently, faithfully, and to take action regarding the Plans on a fully advised basis, utilizing all resources available to them, including outside, independent financial and legal advisers.

22. Despite their fiduciary obligations to the Plans and their participants, Defendants—who for the most part were unqualified to serve as fiduciaries with little or no relevant background for overseeing such plans, and received little or no training—failed to do *anything* to protect the Plans' assets during the Class Period from losses stemming from the freefall of AIG's stock. As the factual allegations below demonstrate, during the Class Period, the Director Defendants (defined below), in dereliction of their mandate to monitor their fiduciary appointees, failed to oversee the Plan-related activities of the Retirement Board and the Investment Committee, especially with respect to the AIG Stock Fund. All the while, the Retirement Board and the Investment Committee Defendants (defined below) failed to, *inter*

alia, [redacted]

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[redacted]—even as the Company's stock price was decimated throughout the Class Period, upon increasing public revelations of AIG's internal state, and even as AIG collapsed into the arms of the federal government.

23. [redacted]

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[redacted]

24. In addition to failing to investigate the prudence of the continued investment of the Plans' assets in AIG Stock Fund during the Class Period, as discussed below, Defendants failed to [redacted]

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[redacted]

[redacted] Schick Dougall, AIG's Associate General Counsel was also the principal legal advisor to the Retirement Board and the Investment Committee. Toohey, of AIG Investments ("AIGI"), who was a consultant to the Investment Committee, likewise had no fiduciary duties to the Plans at issue here.

25. ERISA fiduciaries faced with the task of addressing an imprudent investment alternative have at their disposal a plethora of options to protect plan assets, such as:

a. consulting with the DOL regarding appropriate action;

b. retaining or consulting independent investment advisors, outside counsel and/or independent fiduciaries regarding appropriate measures to take to prudently and loyally serve the plan participants and beneficiaries;

c. limiting the amount of company stock in the plan, including ceasing purchasing additional shares for the plan;

d. resigning as fiduciaries of the plan to the extent that, as a result of their employment by the parent company, they cannot loyally serve the plan and its participants in connection with the plan's holding of company stock;

e. making appropriate disclosures; and

f. divesting the plan of company stock.

26. Despite these available mechanisms, Defendants did nothing to protect the Plans. What little action they took—disallowing further new investments of AIG stock as of May 2009—was far too little and far too late to be meaningful, as AIG stock had already plummeted to below $2.00 per share. On a split-adjusted basis (accounting for a 1-for-20 reverse split effective June 30, 2009), what was left of AIG still traded for approximately $1.55-$1.70 in the month leading up to the filing of the initial complaint in this matter, almost four years after the bailout.

27. While fact discovery is complete, Plaintiffs continue to review and analyze the documents produced and testimony provided. It is possible that further review will reveal that

Defendants knew or should have known, even prior to the beginning of the Class Period on August 7, 2007, that AIG faced a foreseeable dire situation and that AIG stock had become an imprudent investment for the Plans. Moreover, Defendants have withheld and/or redacted numerous documents based on assertions of privilege, which remain in dispute. Should any of such documents be produced and/or unredacted, they may well augment the allegations herein. Accordingly, Plaintiffs reserve the right to modify the Class Period as appropriate under the circumstances. At present, however, based on the information accessible to Plaintiffs, the Class Period begins on August 7, 2007 and ends on May 1, 2009.

28. Plan participants were unable to evaluate the risk of investing in the AIG Stock Fund because, throughout the Class Period, AIG failed to inform the Plan participants about the threat to their retirement savings stemming from the unsound (and at that time undisclosed) business practices the Company was engaged in, and the lack of proper fiduciary oversight over the Plans' investments in the AIG Stock Fund. As former SEC Chief Accountant Lynn Turner ("Turner") testified before Congress regarding AIG's collapse and its exposures to credit derivative instruments, "The only thing I take away from this is I don't think the Company ever was honest with the investors about the potential impact of these things." Testimony of Lynn Turner before the House of Representatives Committee on Oversight and Government Reform, Oct. 7, 2008 (hereinafter "Turner Testimony").

29. This action seeks to recover for the Plans and their participants the losses caused by Defendants' breaches of fiduciary duty. Specifically, Plaintiffs allege in Count I that the Defendants responsible for investment of the Plans' assets, breached their fiduciary duties, in violation of ERISA, by failing to prudently and loyally manage the Plans by continuing to allow the investment of AIG stock in the Plans, when AIG faced a dire situation and AIG stock was no

longer a prudent investment for participants' retirement savings. In Count II, Plaintiffs allege that Defendants responsible for the selection, removal, and, thus, monitoring of the Plans' fiduciaries, failed to properly monitor the performance of their fiduciary appointees and remove and replace those whose performance was inadequate. In Count III, Plaintiffs allege that Defendants breached their fiduciary duty of loyalty by acting in furtherance of their personal interests as employees or executives of AIG at the expense of the Plans' and the participants' best interests. Finally, in Count IV, Plaintiffs allege that Defendants breached their duties as co-fiduciaries by enabling the co-fiduciary breaches and failing to prevent their co-fiduciaries from breaching their duties of prudent and loyal management of the Plans' assets and proper monitoring of the Plans' assets, including the AIG Stock Fund.

30. This action is brought on behalf of the Plans and seeks to recover losses to the Plans for which Defendants are personally liable pursuant to ERISA § 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2). In addition, pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, a constructive trust, restitution, equitable tracing, and other monetary relief.

31. ERISA §§ 409(a) and 502(a)(2) authorize participants such as Plaintiffs to sue in a representative capacity for losses suffered by the Plans as a result of breaches of fiduciary duty. Pursuant to that authority, Plaintiffs bring this action as a class action under Federal Rule of Civil Procedure 23 on behalf of all participants and beneficiaries of the Plans whose Plan accounts were invested in AIG stock during the Class Period.

III. PARTIES

A. Plaintiffs

32. Plaintiff Kevin R. Hoffman was a participant or beneficiary, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), of the AGC Plan during the Class Period, and AIG stock was purchased or maintained on his behalf in the AIG Stock Fund by means of the Plan. Plaintiff Hoffman invested in the AIG Stock Fund in his retirement account and his interest in the Plan has suffered substantial diminution in value as a result of the damages to the Plan.

33. Plaintiff Walter Earl Lewis was a participant or beneficiary, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), of the AGC Plan during the Class Period, and AIG stock was purchased or maintained on his behalf in the AIG Stock Fund by means of the Plan. Plaintiff Lewis invested in the AIG Stock Fund in his retirement account and his interest in the Plan has suffered substantial diminution in value as a result of the damages to the Plan.

34. Plaintiff Mark Ludwig was a participant or beneficiary, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), of the AGC Plan during the Class Period, and AIG stock was purchased or maintained on his behalf in the AIG Stock Fund by means of the Plan. Plaintiff Ludwig invested in the AIG Stock Fund in his retirement account and his interest in the Plan has suffered substantial diminution in value as a result of the damages to the Plan.

35. Plaintiff Grace Baxter was a participant or beneficiary, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), of the AGC Plan during the Class Period, and AIG stock was purchased or maintained on her behalf in the AIG Stock Fund by means of the Plan. Plaintiff Baxter invested in the AIG Stock Fund in her retirement account and

her interest in the Plan has suffered substantial diminution in value as a result of the damages to the Plan.

36. Plaintiff Thomas L. West, Jr. was a participant or beneficiary, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a), of the ISP during the Class Period, and AIG stock was purchased or maintained on his behalf by means of the Plan in the AIG Stock Fund. Plaintiff West invested in the AIG Stock Fund in his retirement account and his interest in the Plan has suffered substantial diminution in value as a result of the damages to the Plan.

B. Defendants

37. All Defendants are fiduciaries of the Plans as described *infra*, in Part VI.

AIG

38. **Defendant AIG**. AIG is a Delaware corporation with its principal executive offices located at 70 Pine Street, New York, New York. During the Class Period, AIG's common stock traded on the New York Stock Exchange. AIG is the Sponsor of the ISP and the AGC Plan and, as explained in more detail below, had fiduciary responsibilities with respect to both Plans.

AIG Director Defendants

39. **Defendant Martin Sullivan**. During the Class Period, Martin Sullivan was the CEO of AIG. Defendant Sullivan began his career at AIG in 1971, when he became an employee of American International Underwriter's ("AIU") finance division in London, a member company of AIG that offers commercial and individual risk management products. Defendant Sullivan later held a succession of underwriting and management positions in the United Kingdom and Ireland. In 1996, Defendant Sullivan became a senior vice president of AIG's foreign operations and was also appointed Chief Operating Officer of AIU in New York,

to which he was named President in 1997. In 1998, Defendant Sullivan became an executive vice president of foreign operations. Defendant Sullivan was elected to AIG's Board in May 2002. Defendant Sullivan was also a director of International Lease Finance Corporation and Transatlantic Holdings, Inc., subsidiaries of AIG. Sullivan succeeded Maurice R. (Hank) Greenberg ("Greenberg"), who stepped down as AIG's Chief Executive Officer amidst an accounting scandal on March 15, 2005.

40. Among other things, during the Class Period, Defendant Sullivan attended AIG's senior management and Board meetings where AIG's financial predicament was discussed in depth. [redacted]

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[redacted]

Prior to and during the Class Period, Defendant Sullivan also had a direct line of communication with Cassano, the head of AIGFP, and was thereby apprised of, *inter alia*, the adverse developments pertaining to AIG's multi-sector CDS portfolio.

41. Defendant Sullivan was replaced as CEO by Defendant Robert Willumstad on June 15, 2008. Upon his departure, Defendant Sullivan received a severance package valued at approximately $47 million, which included $15 million in severance pay, a bonus of $4 million, and equity and long-term cash awards valued at about $28 million. Defendant Sullivan's compensation totaled $14.3 million in 2007, including a $3.63 million bonus.

42. During the Class Period, Defendant Sullivan participated in the day-to-day management and overall direction of AIG and was privy to information concerning AIG and its business, operations, products, growth, financial statements, and financial condition, based on which he knew or should have known of the serious risks to AIG stock alleged in the Complaint.

Moreover, Defendant Sullivan had the authority to appoint, remove, and monitor the Retirement Board members, identified below, as well as to monitor the investment funds of the Plans, including the AIG Stock Fund.

43. **Defendant Robert Willumstad**. On June 15, 2008, Defendant Willumstad became the CEO of AIG after Defendant Sullivan was ousted. Prior thereto, and throughout 2007 and 2008, Defendant Willumstad was a key Board member involved with (non-defendant) director Morris Offit ("Offit") in addressing AIG's pronounced liquidity issues. [redacted]

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[redacted]

44. Defendant Willumstad was elected to AIG's Board in January 2006 and became the Board's chairman in November 2006. Prior to this, he worked at Citigroup, and certain of its predecessor entities, since 1987, and, prior to that, for Chemical Bank for over 20 years. Defendant Willumstad left Citigroup as President and Chief Operating Officer; before that he served as Chief Executive Officer at Citicorp Credit Services, Inc., Citicorp, and Citibank N.A.; President and Chief Operating Officer at Citigroup Asset Management; President and Chief Operating Officer at Global Investment Management at Citigroup Inc., and Head of Global Consumer Lending from 1998 to 2000. Defendant Willumstad served for three months as CEO of AIG, during which time AIG's stock price declined by 97 percent.

45. During the Class Period, Defendant Willumstad participated in the day-to-day management and overall direction of AIG and was privy to information concerning AIG and its business, operations, products, growth, financial statements, and financial condition, based on

which he knew or should have known of the serious mismanagement alleged in the Complaint. Moreover, Defendant Willumstad had the authority to appoint, remove, and monitor the Retirement Board members, identified below, as well as to monitor the investment funds of the Plans, including the AIG Stock Fund.

46. **Defendant Edmund S.W. Tse**. Defendant Tse began his career with American International Assurance Co. ("AIA") in Hong Kong, later acquired by AIG, in 1961. Defendant Tse held a number of executive positions at various AIG companies, becoming the Chairman and CEO of AIA in 2000. Defendant Tse additionally served as AIG's Senior Vice Chairman and Co-Chief Operating Officer (in 2002-2003, Defendant Tse served as AIG's co-Chief Operating Officer with Defendant Sullivan). Defendant Tse joined the AIG Board of Directors in 1996 and served as a director of AIG during the Class Period.

47. During the Class Period, Defendant Tse was privy to information concerning the Company and its business, operation, growth, financial statements, and financial condition, based on which he knew or should have known of the serious mismanagement alleged in the Complaint. Moreover, Defendant Tse had the authority to appoint, remove, and monitor the Retirement Board members, identified below, as well as to monitor the investment funds of the Plans, including the AIG Stock Fund.

48. Defendants Sullivan, Willumstad, and Tse are referred to as the "Director Defendants."

Retirement Board Defendants

49. The Retirement Board is the Plan Administrator and the named fiduciary to the Plans. As explained in more detail *infra*, during the Class Period, the Retirement Board was charged with the administration of the Plans, as well as the management of the Plans' assets,

including the AIG Stock Fund. As part of its Plan-related responsibilities, the Retirement Board was empowered to direct the investment of the Plans' assets, to establish investment guidelines with respect to the investment of the Plans' assets, and to monitor the investment funds, including the AIG Stock Fund, offered to the participants of the Plans. Additionally, the Retirement Board was authorized to appoint or retain outside advisors, including legal counsel and investment consultants, to render advice with respect to any of Retirement Board's responsibilities respecting the Plans, including the management of the Plans' investments, and in particular, the management of the AIG Stock Fund. In the event the Retirement Board determined that any investment option of the Plans, including the AIG Stock Fund, was no longer a prudent retirement investment, the Retirement Board could undertake a number of protective measures, including, suspending or limiting contributions to that fund, removing that fund, or, for certain funds, recommending removal or replacement of that fund to AIG's Board.

50. At all relevant times, the members of the Retirement Board included high-level AIG officers, some of whom also served as directors of various AIG subsidiaries. The following individuals were members of the Retirement Board during the Class Period:

51. **Defendant Richard A. Grosiak**. Defendant Grosiak joined AIG in 1988 and became a member of the Retirement Board the same year, or shortly thereafter. Defendant Grosiak served on the Retirement Board throughout the Class Period. Defendant Grosiak was also the Secretary and, at certain times, the Interim Chair of the Retirement Board during the Class Period. As noted below, Defendant Grosiak additionally served as Chair of the Investment Committee during the Class Period. Defendant Grosiak also served as the Senior Director of Employee Benefits during the Class Period. Defendant Grosiak is identified as the individual

signing the Form 5500 for the Plans year-end 2007 as the ISP and AGC Plan Administrator. *See* 2007 AIG 5500; 2007 AGC 5500.

52. **Defendant Charles R. Schader**. Defendant Schader joined AIG in 1984, and held executive posts at AIG insurance subsidiaries, including AIG Commercial Insurance Group, Inc., American Home Assurance Company ("American Home"), Commerce and Industry Insurance Company, New Hampshire Insurance Company, and National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"). Defendant Schader became a member of the Retirement Board in the late 1980s. Defendant Schader served on the Retirement Board throughout the Class Period. As noted below, Defendant Schader also served on the Investment Committee during the Class Period.

53. [redacted] Redacted - Confidential [redacted] At all relevant times, Defendant Schader further served as AIG's Chief Claims Officer. Defendant Schader additionally served as an officer, president and director of a number of AIG subsidiaries.

54. [redacted] Redacted - Confidential [redacted]

[redacted] Defendant Schader understood that problems in the market for the underlying CDOs made it difficult to value the CDS and exposed AIG to collateral calls.

55. Defendant Schader is currently AIG's Senior Vice President for Applied Research.

56. **Defendant Nicholas Tyler**. Defendant Tyler joined AIG in 1972 and became a member of the Retirement Board in 1989. Defendant Tyler served on the Retirement Board until his resignation from the Retirement Board in July 2007. As noted below, Defendant Tyler also served on the Investment Committee during the Class Period.

57. [redacted]

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[redacted] At the beginning of the Class Period, Defendant Tyler was the CFO of AIG's Foreign General Insurance, becoming the Executive Vice President of AIG's International Insurance Division in 2009. Defendant Tyler retired from AIG in May 2011.

58. **Defendant Howard Greene**. Defendant Greene joined AIG in 2008 and became a member of the Retirement Board in June 2008. Defendant Greene served as the Chair of the Retirement Board until he resigned from the Retirement Board in 2010. As noted below, Defendant Greene also served on the Investment Committee during the Class Period. Defendant Greene was the Vice President of Global Compensation and Benefits at AIG from 2008 until October 2010, when American Life Insurance Co. ("ALICO"), the subsidiary Defendant Greene worked for at the time, was sold.

59. **Defendant Joseph Cella**. Defendant Cella joined AIG in 1997 and became a member of the Retirement Board in May 2006. Defendant Cella served on the Retirement Board until he resigned from the Retirement Board in July 2008. Defendant Cella was a Vice President and Global Pension Actuary for AIG from March 2003 to August 2008. From September 2008 to November 2010, when ALICO, the subsidiary Defendant Cella worked for at the time, was sold, he was the Head of the Corporate Annuity Department for AIG in the United Kingdom.

60. **Defendant John Q. Doyle**. Defendant Doyle has been with AIG since 1986, and became a member of the Retirement Board in May 2006. Defendant Doyle served on the Retirement Board until he resigned from the Retirement Board effective April 2008. Defendant Doyle has held various senior executive positions at a number of AIG's commercial insurance subsidiaries, and is currently the CEO of Global Commercial Insurance Business at Chartis Inc. ("Chartis"), an AIG subsidiary through which the Company's property and casualty operations are conducted. During the Class Period, Defendant Doyle served as Senior Vice President, Domestic General Insurance, and was also CEO of multiple insurance subsidiaries of AIG. Defendant Doyle also served on the Board of Directors of AIG's main insurance subsidies, including American Home; National Union, and Lexington Insurance Company.

61. [redacted]

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62. **Defendant Robert Thomas**. Defendant Thomas joined AIG in January 1978 and became a member of the Retirement Board in April 2008. Defendant Thomas served on the

Retirement Board during the Class Period. From 2006-2008, he was based in New York and was President of the Corporate Accounts Practice of the AIG Foreign General subsidiaries ("Foreign General"), for all commercial insurance products outside the United States and Canada. In 2009, Defendant Thomas became the President of the Commercial Lines Division at Foreign General and is currently the Chief Operating Officer of Global Commercial Insurance Business at Chartis.

63. **Defendant Kathleen Shannon**. Defendant Shannon joined AIG in or around 1977 and became a member of the Retirement Board in or around May 2000. Defendant Shannon served on the Retirement Board throughout the Class Period.

64. Defendant Shannon was also the Corporate Secretary of AIG during the Class Period and is currently the Senior Vice President and Deputy General Counsel at AIG. As the Corporate Secretary of AIG, Defendant Shannon attended the meetings of AIG's Board during the Class Period, and was the Secretary for the meetings of AIG's Board. At all relevant times, Defendant Shannon also attended, recorded the minutes, and was the Secretary (or acting secretary) for the meetings of, *inter alia*, the following corporate committees of AIG: Finance Committee, Audit Committee, Compensation and Management Resources Committee, Executive Committee, the Group Risk Committee, and CSFT Committee. Defendant Shannon was also the Company's chief disclosure attorney during the Class Period and attended meetings of the Disclosure Committee.

65. **Defendant Robert Cole**. Defendant Cole joined AIG in 2001, when AIG acquired American General Life Insurance Co. ("American General"), a company Defendant Cole worked for at the time. Defendant Cole became a member of the Retirement Board in February 2006 and served on the Retirement Board throughout the Class Period until American

General was sold in 2010. Defendant Cole was the Senior Vice President, Marketing and Insurance Operations at American General from 2001 to 2010.

66. **Defendant Gary Reddick**. Defendant Reddick joined AIG in 1986 and became a member of the Retirement Board in February 2006. Defendant Reddick served on the Retirement Board throughout the Class Period. Defendant Reddick also served in various executive offices within the Company until he retired as the Senior Vice President, AIG Worldwide Life Insurance and Retirement Services, and as the Senior Operations and Systems executive for AIG American General and SunAmerica in October 2010.

67. **Defendant David Fields**. Defendant Fields joined AIG in or around July 1982. Defendant Fields became a member of the Retirement Board in June 2008 and served on the Retirement Board throughout the Class Period.

68. Prior to and during the Class Period, Defendant Fields was President of Risk Finance at AIG. Defendant Fields is currently the Senior Vice President of AIG and the President of Global Casualty Commercial Division of Chartis, reporting directly to Defendant Doyle. Defendant Fields has served on the boards of a number of the domestic property casualty companies of Chartis, including, National Union. Defendant Fields has also served on, *inter alia*, the Risk and Capital Committee of Chartis.

69. During the Class Period, Defendant Fields was, [redacted]

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[redacted]

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[redacted]

70. **Defendant Georgia Feigel**. Defendant Feigel joined AIG in November 2000, when AIG acquired Hartford Steam Boiler Inspection Insurance Co. ("Hartford Steam"), a company Defendant Feigel worked for at the time. Defendant Feigel became a member of the Retirement Board sometime between 2000 and 2002, and served on the Retirement Board until her resignation from the Retirement Board in April 2009, following the sale of Hartford Steam by AIG. Defendant Feigel was the Director of Human Resources at Hartford Steam during the Class Period.

71. **Defendant Anthony Galioto**. Defendant Galioto joined AIG in May 1985 and became a member of the Retirement Board in May 2000. Defendant Galioto served on the Retirement Board until he ceased service at AIG in November 2008 as the Senior Executive for AIG Companies – East Region.

72. **Defendant Andrew J. Kaslow**. Defendant Kaslow joined AIG in May 2007 and was appointed as Chairman of the Retirement Board on July 18, 2007. Defendant Kaslow served on the Retirement Board until he resigned from the Retirement Board in or around April 2008. Defendant Kaslow was also the Senior Vice President and Chief Human Resources Officer ("CHRO") of AIG until he ceased service at AIG in October 2009.

73. The Retirement Board and its members (Grosiak, Schader, Tyler, Greene, Cella, Doyle, Thomas, Shannon, Cole, Reddick, Fields, Feigel, Galioto, and Kaslow) are referred to as the "Retirement Board Defendants."

Investment Committee Defendants

74. As explained in more detail *infra*, the Investment Committee assisted the Retirement Board in managing the Plans' assets during the Class Period. As part of their Plan-related responsibilities, the Investment Committee, as the Retirement Board, was charged with monitoring of the Plans' investment options, including the AIG Stock Fund. At all relevant times, the Investment Committee had the fiduciary discretion to recommend the removal or replacement of the Plans' investment options, including the AIG Stock Fund, to the Retirement Board. Moreover, during the Class Period, the Investment Committee, as the Retirement Board, had the fiduciary discretion to retain outside investment consultants to render advice with respect to any investment option of the Plans, including the AIG Stock Fund. At all relevant times, the members of the Investment Committee included, senior AIG officers, some of whom also served as directors of AIG subsidiaries. The following individuals were members of the Investment Committee during the Class Period:

75. **Defendant Grosiak**. Defendant Grosiak, described *supra*, was a member of the Investment Committee since its formation sometime between 2002 and 2004, and served on the Investment Committee throughout the Class Period. Defendant Grosiak was also the Chair of the Investment Committee during the Class Period.

76. **Defendant Schader**. Defendant Schader, described *supra*, was a member of the Investment Committee since its formation and served on the Investment Committee throughout the Class Period.

77. **Defendant Tyler**. Defendant Tyler, described *supra*, became a member of the Investment Committee in April 2006 and served on the Investment Committee until he resigned from the Committee in July 2007.

78. **Defendant Greene**. Defendant Greene, described *supra*, became a member of the Investment Committee in July 2008 and served on the Investment Committee until he resigned from the Committee in 2010.

79. **Defendant David Junius**. Defendant Junius joined AIG in 1997 and became a member of the Investment Committee in December 2005. Defendant Junius served on the Investment Committee throughout the Class Period. During the Class Period, Defendant Junius was a Managing Director in the AIG Strategic Planning group, with access to the highest levels of AIG senior management and across numerous divisions of the Company, including those at the heart of the collapse of AIG. [redacted] Redacted - Confidential [redacted] Junius also assisted with presentations to rating agencies in 2008. Defendant Junius is currently the Executive Vice President and CFO for Asia Pacific at Chartis.

80. **Defendant Stephen Schoepke**. Defendant Schoepke joined AIG in or around 1999, upon AIG's acquisition of SunAmerica Asset Management ("SunAmerica"), for whom Defendant Schoepke worked at the time. Defendant Schoepke became a member of the Investment Committee in or around January 2006 and served on the Investment Committee until he resigned from AIG in September 2008. From 1999 until he left AIG in September 2008, Defendant Schoepke was the Vice President Research and Product Development at AIG's SunAmerica subsidiary. According to SunAmerica prospectuses during the Class Period,

Schoepke was "responsible for the day-to-day management" of certain of the SunAmerica portfolios; [redacted]

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81. **Defendant Edward Bacon**. Defendant Bacon joined AIG in 1996 and became a member of the Investment Committee in or around 2005. Defendant Bacon served on the Investment Committee until he resigned from the Committee in September 2008. Defendant Bacon served as the Vice President of Financial Reporting at American General, an AIG subsidiary, during the Class Period.

82. **Defendant Thomas Wright**. Defendant Wright joined AIG in or around 2003 and became a member of the Investment Committee in or around April 2006. Defendant Wright served on the Investment Committee until he resigned from the Committee in August 2008. Defendant Wright was the Manager of Global Benefits at AIG from 2003 until ALICO was sold in December 2010.

83. The Investment Committee and its members (Grosiak, Schader, Tyler, Greene, Junius, Schoepke, Bacon, and Wright) are referred to as the "Investment Committee Defendants."

IV. JURISDICTION AND VENUE

84. **Subject Matter Jurisdiction**. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

85. **Personal Jurisdiction**. ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the Defendants are either residents of the United States or subject to service in the United States, and the Court therefore has personal jurisdiction over them. The Court also has personal jurisdiction over them pursuant to Federal

Rule of Civil Procedure 4(k)(1)(A) because they would all be subject to the jurisdiction of a court of general jurisdiction in New York State.

86. **Venue**. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plans are administered in this District, some or all of the fiduciary breaches for which relief is sought occurred in this District, and/or some Defendants reside and/or transact business in this District.

V. THE PLANS

A. Nature of the Plans

87. The Plans are "employee pension benefit plan[s]" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). Further, they are "eligible individual account plan[s]" within the meaning of ERISA § 407(d)(3), 29 U.S.C. § 1107(d)(3), and also "qualified cash or deferred arrangement[s]" within the meaning of I.R.C. § 401(k), 26 U.S.C. § 401(k). While the Plans are not parties to this action, pursuant to ERISA, the relief requested in this action is for the benefit of the Plans under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

88. At all relevant times, the Plans had two separate components: (1) a participant-contribution component; and (2) a matching component, which consisted entirely of employer contributions.

B. The Plan Documents

89. An employee benefit plan, including the Plans here, must be "established and maintained pursuant to a written instrument." ERISA § 402(a)(l), 29 U.S.C. § 1102(a)(1). Upon information and belief, during the Class Period, the Plans were maintained under the following instruments:

a. the American International Group, Inc. Incentive Savings Plan, Amended and Restated as of January 1, 2008 ("2008 ISP Plan Document") (*see* Consolidated Amended Complaint, Dkt. No. 34, Ex. A); and

b. the American General Agents' and Managers' Thrift Plan, Amended and Restated Effective January 1, 2008 ("2008 AGC Plan Document") (attached hereto as Exhibit A).

90. ERISA requires that every participant in an employee benefit plan be given a Summary Plan Description ("SPD"). The SPDs that were in force for the ISP and the AGC Plan during the Class Period include:

a. the July 2008 American International Group, Inc. Incentive Savings Plan SPD ("2008 ISP SPD") (Dkt. No. 34, Ex. D); and

b. the July 2008 AGC Plan SPD ("2008 AGC SPD") (Dkt. No. 34, Ex. E).

91. ERISA and the Internal Revenue Code require that plans file an Annual Report, Form 5500, with the DOL and the Department of the Treasury. The Annual Report for the ISP during the Class Period included the 2007 Form 5500, for the Plan year ending December 31, 2007 ("2007 ISP 5500"), and the Annual Report for the AGC Plan during the Class Period included the 2007 Form 5500 for the Plan year ending December 31, 2007 ("2007 AGC 5500").

92. The assets of an employee benefit plan, such as the Plans, must be "held in trust by one or more trustees." ERISA § 403(a), 29 U.S.C. § 1103(a). During the Class Period, the assets of the Plans were held in trust pursuant to various trust and service agreements. *See*, *e.g.*, December 28, 1989 Trust Agreement for the ISP (as Amended January 1, 1993) ("1993 ISP Trust Agreement") (Dkt. No. 34, Ex. F); December 31, 2002 Trust Agreement for the AGC Plan ("2002 AGC Plan Trust Agreement") (attached hereto as Exhibit B).

C. Plan Descriptions and Provisions

1. AIG Incentive Savings Plan

93. Throughout the Class Period, participants in the ISP were permitted to defer a percentage of their base compensation for investment in the ISP. Of this deferred compensation, AIG would match a certain percentage of each employee's salary and contribute it to each participant's Plan account (referred to herein as "Employer Matching Contributions").[2] During the Class Period, only Employer Matching Contributions could be invested in the AIG Stock Fund.

94. Participants directed the investment of their contributions and the Employer Matching Contributions to various investment options in the ISP that were selected by the Plan fiduciaries. Most of these options were diversified mutual funds. However, among these options was the AIG Stock Fund.

95. The ISP did not require the fiduciaries to offer and maintain the AIG Stock Fund; rather, the decision to offer and maintain the fund was made by the Plan fiduciaries. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 6.4 (a) ("[A]ll contributions to the Plan shall be invested and reinvested by the Trustee exclusively in shares of one or more of the Funds or in other investments authorized under this Plan and the Trust Agreement as directed by the Participants, Plan Administrator or other named fiduciary . . . ."); § 6.4(b) (the fiduciaries may "impose reasonable limitations regarding the types of investments available…."); § 12.2(a) ("The Plan Administrator shall have all powers necessary to administer the Plan, including the

[2] For participants with fewer than five years of service, the match is 33.333 percent of the participant's first 6 percent of salary contributed; between five and ten years of service, the match is 75 percent of the participants' first 6 percent of salary contributed; after ten years of service, the match is 116.667 percent of the participants' first 6 percent of salary contributed. 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 4.4.

power to…establish investment guidelines with respect to the investment of the assets of the Plan…."); 2008 ISP SPD, Dkt. No. 34, Ex. D, at 5.

96. Similarly, the ISP Trust Agreement provides broad discretion with regard to the selection of and investment in Plan options:

> The Employer shall have the exclusive authority and discretion to select the Investment Funds available for investment under the Plan. In making such selection, the Employer shall use the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. The available investments under the Plan shall be sufficiently diversified so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

1993 ISP Trust Agreement, Dkt. No. 34, Ex. F, § 2.1.

97. Likewise, while the only allowed contributions to the AIG Stock Fund were Employer Matching Contributions, nothing required Employer Matching Contributions to be in the form of AIG stock. Defendants were not *required* by the governing Plan documents to make those contributions to Participants' accounts in the form of AIG common stock, to the extent such a form of the contribution was no longer prudent under the circumstances.

98. In fact, the Plans contemplated the investment of the AIG Stock Fund in investment instruments other than the AIG common stock at any time. For instance, under the AIG Stock Fund Master Trust Agreement, dated January 1, 2003 (attached hereto as Exhibit C), the trustee of the Plans, Vanguard Fiduciary Trust Co. ("Vanguard" or "Trustee"), was permitted "to dispose of all or any part of the instruments, securities, or other property which may from time to time or at any time constitute the Fund in accordance with the directions by the Plan Administrator." *Id*. Art. II, § 2.2(b). Further, Vanguard was permitted to "distribute cash or stock (and shall stop distributions) from the Fund at such time or times, to such person or persons or agent or agents designated by the Plan Administrator, and for such purposes, as

the Plan Administrator shall direct in writing or telephonically, in accordance with the terms of the applicable Plan. Any cash or stock." *Id*. Art. III, § 3.7. Additionally, throughout the Class Period, the AIG Stock Fund was partially comprised of the Vanguard Prime Money Market Fund. Accordingly, Plan fiduciaries were not precluded during the Class Period from directing the Plans' trustee to make Employer Matching Contributions to employee Plan accounts in cash or other investment instruments, to the extent it was deemed prudent to do so under prevalent circumstances.

99. Certain restrictions apply to the AIG Stock Fund. If a participant transfers any money out of the AIG Stock Fund, he or she cannot reinvest that money into the AIG Stock Fund at a later time. 2008 ISP SPD, Dkt. No. 34, Ex. D, at 8. This provision had the effect of discouraging ISP participants from reducing their holdings in AIG stock and worked against the participants' interest in situations such as the revelations of AIG's dire conditions. When participants may have wanted to reduce their Plan holdings in AIG stock to stem losses, they may have been reluctant to do so for fear of potentially precluding their ability to reinvest those monies in AIG stock at a later time if true and accurate information were provided, and the conditions for such an investment and the risks pertaining thereto became appropriate for participants' retirement savings.

2. The AGC Plan

100. Participants in the AGC Plan are able to contribute Basic Contributions of 3% of their Base Pay, as well as Additional Contributions of 1% to 47% of their Base Pay. 2008 AGC Plan Document, Exhibit A, § 4.3.

101. AGC matched participants' contributions by making contributions to the employees' accounts. AGC contributed 33 1/3 percent of the first 3 percent of the participants' contributions. *Id.* § 4.1.

102. Participants were entitled to invest in one of several funds selected by the Plan fiduciaries. Most of these funds were diversified mutual funds. However, among the funds selected by the Plan fiduciaries was the AIG Stock Fund.

103. As of July 2008, only employer contributions could be made to the AIG Stock Fund. *See* 2008 AGC SPD, Dkt. No. 34, Ex. E, at 3.

104. The AGC Plan did not require the fiduciaries to offer and maintain the AIG Stock Fund; rather, the decision to offer and maintain the fund was made by the AGC Plan fiduciaries. *See* 2008 AGC Plan Document, Exhibit A, § 2.17 ("Investment funds selected from time to time for the investment of plan assets . . . . The number and selection of Investment Funds shall be determined from time to time by the Plan Administrator [the AGC Plan fiduciary]."); § 11.1 (the fiduciary "shall have the sole responsibility for . . . the investment functions as described in the Plan"); § 11.2(A) (the fiduciary "shall have the powers necessary to administer the Plan, including the power to . . . establish investment guidelines with respect to the investment of the assets of the Plan . . . .").

105. The AGC Plan Trust Agreement provides broad discretion with regard to the selection of and investment in Plan options:

> The Company shall have the exclusive authority and discretion to select the investment funds ("Investment Funds") available for investment under the Plan. In making such selection, the Company shall use the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. The available investments under the Plan shall be sufficiently diversified so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

2002 AGC Plan Trust Agreement, Exhibit B, § 2.1.

106. Upon information and belief, effective January 1, 2002, the AGC Plan was amended to allow participants to reallocate employer contributions in AIG stock to other funds

offered by the AGC Plan. However, AIG stock remained as an investment option for participant contributions until January 1, 2003, and remained as an investment option for employer contributions until May 4, 2009. The Employer Matching Contributions were not required to be in the form of AIG stock. During the Class Period, as with the ISP, the Plan fiduciaries were not precluded from making the Company match to employee Plan accounts in cash or other investment instruments if deemed prudent to do so under prevailing circumstances.

D. The AIG Stock Fund

107. The AIG Stock Fund holds the Plans' shares of AIG stock. The AIG Stock Fund was designed to invest "mainly," not exclusively, in AIG stock. 2008 ISP SPD, Dkt. No. 34, Ex. D, at 8. The Plan Documents do not mandate that the AIG Stock Fund itself be invested in any particular manner.

108. The Master Trust for the AIG Stock Fund required that the Company, the Plan Administrator, and Master Trustee (Vanguard), discharge their duties and responsibilities: "solely in the interest of Participants and their Beneficiaries…(a) for the exclusive purpose of providing benefits…(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matter would use in the conduct of an enterprise of a like character and with like aims; (c) by diversifying the available investments under the Participating Plans so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (d) in accordance with the provisions of each of the Participating Plans and this Trust agreement insofar as they are consistent with the provisions of [ERISA]."

109. As discussed above, the Plans' documents also do not in any way purport to mandate that the AIG Stock Fund must, regardless of all circumstances, be offered as an

investment option for the Plans—which, at any rate, would not be permitted by ERISA. *See* ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D) (dictating that fiduciaries are to discharge their duties in "accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with" ERISA).

110. [redacted]

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111. As noted above, while the only allowed contributions to the AIG Stock Fund during the Class Period were Employer Matching Contributions, these contributions could take the form of cash or other investment instruments if AIG common stock was deemed to be an imprudent investment under the prevailing circumstances.

112. Throughout the Class Period, and before, the Plans' assets were heavily invested in the AIG Stock Fund, [redacted]

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In particular, the ISP purchased $24,475,447, $26,641,971, and $5,429,892 of AIG common stock during the years ended December 31, 2007, 2008, and 2009, respectively. The ISP held 5,796,005, 9,213,179, and 13,557,775 shares of AIG common stock with a fair value of $243,432,200, $10,595,155, and $14,875,590 at December 31, 2007, 2008, and 2009, respectively. The AGC Plan purchased $1,996,953, $898,022, and $133,223 of AIG common stock during the years ended December 31, 2007, 2008, and 2009, respectively. The

AGC Plan held 696,732, 743,548, and 736,049 shares of AIG common stock with a fair value of $29,262,726, $855,080, and $807,593 at December 31, 2007, 2008, and 2009, respectively.

113. As discussed in more detail below, effective at 4:00 pm May 1, 2009, when the stock had plummeted to well below $2.00 per share (closing at $1.38 on April 30 and May 1, 2009), Defendants disallowed further investment into the AIG Stock Fund, although prior investments, which they never timely acted to divest, could still remain invested in the AIG Stock Fund. This action, however, was simply "too little too late" to save the Plans' participants from losing hundreds of millions of dollars.

VI. DEFENDANTS' FIDUCIARY STATUS

A. The Nature of Fiduciary Status

114. ***Named Fiduciaries***. ERISA requires every plan to provide for one or more named fiduciaries of the plan pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The person named as the "administrator" in the plan instrument is automatically a named fiduciary, and, in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

115. ***De Facto Fiduciaries***. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA § 402(a)(1), but also any other persons who, in fact, perform fiduciary functions. Thus, a person is a fiduciary to the extent: "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management of disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

116. Each of the Defendants was a fiduciary with respect to one or more of the Plans and owed fiduciary duties to those Plans and the Plans' participants under ERISA in the manner and to the extent set forth in the Plan Documents, through their conduct, and under ERISA.

117. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plans, as well as the Plans' investments, solely in the interest of the Plans' participants and beneficiaries. As fiduciaries, Defendants were required to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

118. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of the Plans' management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

119. ERISA permits the fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries must still act solely in the interest of participants and beneficiaries, not in the interest of the sponsor. Moreover, all fiduciaries of the Plans were obliged, when wearing their fiduciary hat(s), to act independently of AIG. AIG had no authority under the governing Plan's documents to direct the conduct of any of the fiduciaries with respect to the Plan, investments therein, or the disclosure of information between and among fiduciaries or from fiduciaries to the participants.

B. AIG's Fiduciary Status

120. Defendant AIG is the named Sponsor of the ISP and AGC Plan. *See* 2008 ISP SPD, Dkt. No. 34, Ex. D, at 24; 2007 ISP 5500; 2007 AGC 5500.

121. Pursuant to the Plan Documents, Defendant AIG is responsible for appointing, removing, and monitoring each Plan's Administrator (the Retirement Board, as described below), the Plans' trustees, and any and all other persons to whom it assigned fiduciary responsibility. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, §12.1; 2008 AGC Plan Document, Exhibit A, § 11.1.

122. If Defendant AIG did not designate the Retirement Board to serve as the Plan Administrator for the ISP or the AGC Plan, then pursuant to the Plans' documents, AIG would have served as the Plan Administrator. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 2.37; 2008 AGC Plan Document, Exhibit A, § 2.29.

123. According to the 1993 ISP Trust Agreement, effective January 1, 1993, and the 2002 AGC Plan Trust Agreement, Defendant AIG has "the exclusive authority and discretion" to select the investment funds available in the Plans. Additionally, "[i]n making such selection, [AIG] shall use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The available investments under the Plan shall be sufficiently diversified so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so." *See* 1993 ISP Trust Agreement, Dkt. No. 34, Ex. F, § 2.1; 2002 AGC Plan Trust Agreement, Exhibit B, § 2.1.

124. Defendant AIG, in its fiduciary capacity, is required under the 1993 ISP Trust Agreement, effective since January 1, 1993, and the 2002 AGC Plan Trust Agreement to

discharge its assigned duties and responsibilities under the Trust Agreements and the Plans "solely in the interest of Participants and their Beneficiaries in the following manner":

> (a) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
>
> (b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
>
> (c) by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
>
> (d) in accordance with the provisions of the Plan and this Trust Agreement insofar as they are consistent with the provisions of [ERISA].

See 1993 ISP Trust Agreement, Dkt. No. 34, Ex. F, § 3.1; 2002 AGC Trust Agreement, Exhibit B, § 3.1.

125. Upon information and belief, Defendant AIG also had the discretion and authority to replace, eliminate, or reduce any of the Plans' investments, including investments in the AIG Stock Fund.

126. Thus, Defendant AIG had direct responsibility for managing the Plans' investment options, including the AIG Stock Fund.

127. Defendant AIG was also responsible for designating the procedures for the investment of Trust assets for the Plans. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, §12.1; 2008 AGC Plan Document, Exhibit A, § 11.1.

128. Moreover, Defendant AIG, at all applicable times during the Class Period, exercised control over the activities of its officers and employees who performed fiduciary functions with respect to the Plans, including the Director Defendants, the Retirement Board Defendants and the Investment Committee Defendants, and could terminate and replace such

directors, officers, and employees at will. Defendant AIG is thus responsible for the activities of its officers and employees through principles of agency and *respondeat superior* liability.

129. Finally, as a matter of corporate law, Defendant AIG is imputed with the Defendants' knowledge of the misconduct alleged herein, even if not communicated to AIG.

130. Consequently, in light of the foregoing duties, responsibilities, and actions, Defendant AIG was a fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that it exercised discretionary authority or discretionary control respecting management of the Plans, exercised authority or control respecting management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

131. Defendant AIG, as a corporate entity, cannot act on its own without any human counterpart. In this regard, during the Class Period, AIG relied and continues to rely directly on the AIG Board, the Retirement Board, and the Investment Committee to carry out its fiduciary responsibilities under the Plans and ERISA.

C. AIG Director Defendants' Fiduciary Status

132. AIG's Board of Directors (defined *supra* as the "Board") served as one of the human counterparts to Defendant AIG. To this end, the Director Defendants share the same role and responsibilities to the Plans as Defendant AIG with regard to approving the appointment of the Retirement Board members, selecting the Plans' investment alternatives, and monitoring the Plans' investments.

133. The Director Defendants were the ultimate decision-makers with regard to the AIG Stock Fund. [redacted]

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134. As such, the Director Defendants were fiduciaries of the ISP and the AGC Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that they exercised discretionary authority or discretionary control respecting the management of the Plans, exercised authority or control respecting management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

D. Retirement Board Defendants' Fiduciary Status

1. The Retirement Board's Fiduciary Duties in General

135. As set forth in the Plan Documents for the ISP, the Defendant Retirement Board, as the Plan Administrator, is a named fiduciary of the ISP. *See* 2008 ISP SPD, Dkt. No. 34, Ex. D, at 24; Amendment No. 1 to ISP, effective Jan. 1, 2008, at 1 ("2008 ISP Amendment") (Dkt. No. 34, Ex. G). It is also the Plan Administrator of the AGC Plan. *See* 2008 AGC SPD, Dkt. No. 34, Ex. E, at 20.

136. As the Plan Administrator, the Defendant Retirement Board had all powers necessary to administer the ISP and AGC Plan during the Class Period including the power to construe and interpret the Plan documents. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, §12.2(a); 2008 ISP Amendment, Dkt. No. 34, Ex. G, at 1; 2008 AGC Plan Document, Exhibit A, § 11.2. All construction, interpretation, and application of the ISP and AGC Plan by the Defendant Retirement Board, as the Plan Administrator, was final, conclusive and binding. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 12.2(a); 2008 AGC Plan Document, Exhibit A, § 11.2(A).

137. According to Plan Documents, during the Class Period, the Defendant Retirement Board, as Plan Administrator, could "adopt such rules as [it] deems necessary, desirable, or appropriate in the administration of the Plan." *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 12.2(d), 2008 AGC Plan Document, Exhibit A, § 11.2(D).

138. In addition to charging AIG with such duties and responsibilities, the 1993 ISP Trust Agreement and the 2002 AGC Plan Trust Agreement also required the Defendant Retirement Board, as the Plan Administrator, to discharge its assigned duties and responsibilities under the Trust Agreements and the Plans "solely in the interest of Participants and their Beneficiaries in the following manner":

> (a) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
>
> (b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
>
> (c) by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
>
> (d) in accordance with the provisions of the Plan and this Trust Agreement insofar as they are consistent with the provisions of [ERISA].

See 1993 ISP Trust Agreement, Dkt. No. 34, Ex. F, § 3.1; 2008 AGC Plan Trust Agreement, Exhibit B, § 3.1.

139. Further, during the Class Period, the Defendant Retirement Board was empowered to designate other persons to carry out any of its duties and responsibilities under the ISP and the AGC Plan. As the Plan Administrator for the Plans, the Defendant Retirement Board also had the power to appoint or employ advisors, including, but not limited to, legal counsel, to render advice with respect to the Retirement Board's responsibilities under the Plans.

See 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 12.2; § 12.3; 2008 AGC Plan Document, Exhibit A, § 11.3.

140. In 2008, the Defendant Retirement Board amended the ISP to add the following section regarding the Plan Administrator's appointment of independent fiduciary (also stated in the 2008 AGC Plan Document): "Notwithstanding any other provision of the Plan, and in addition to (and not in limitation of) any other authority provided to the Plan Administrator under this Plan, the Plan Administrator may in its sole discretion from time to time designate one or more persons or entities to be an 'independent fiduciary' of the Plan to carry out some or all of the Plan Administrators' fiduciary responsibilities under the Plan." *See* 2008 ISP Amendment, Dkt. No. 34, Ex. G, § 1; 2008 AGC Plan Document, Exhibit A, § 11.2A. The Defendant Retirement Board was also authorized to appoint an independent fiduciary as an investment manager authorized to invest or otherwise manage some or all of the assets of the Plans and any trust maintained in connection with the Plans.

141. Moreover, as the Plan Administrator, the Defendant Retirement Board was responsible for furnishing the Trustee with written instructions regarding all contributions to the Trust, all distributions to participants, all withdrawals by participants, along with providing the Trustee with any further information respecting the Plans that the Trustee may request. *See* 2008 ISP Plan Document, Dkt. No. 34, Ex. A, § 12.2(c); 2008 AGC Plan Document, Exhibit A, § 11.2(D).

142. Upon information and belief, the Defendant Retirement Board exercised responsibility for communicating with participants regarding the Plans and providing participants with information and materials required by ERISA. In this regard, on behalf of AIG and the AIG Board, the Defendant Retirement Board disseminated the Plans' documents and materials.

2. Fiduciary Duties with Respect to Monitoring Investment Funds, including the AIG Stock Fund

143. As the Plan Administrator, the Defendant Retirement Board had the power to establish investment guidelines with respect to the investment of the assets of the ISP and the AGC Plan. According to ISP and AGC Plan documents, the Defendant Retirement Board selected certain investment options available to participants in the Plans, including the AIG Stock Fund. *See* 2008 ISP SPD, Dkt. No. 34, Ex. D at 7; 2008 AGC SPD, Dkt. No. 34, Ex. E, at 4.

144. [redacted]

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145. In or around July 2002, the Defendant Retirement Board exercised its power to designate other persons to carry out certain of its duties under the Plans by appointing the Investment Committee, and hence had the ensuing duty to monitor the Investment Committee and its members.

146. Defendant Investment Committee was charged with assisting the Defendant Retirement Board with evaluating and overseeing the Plans' investment funds and making recommendations regarding maintaining or discontinuing the Plans' investment funds to the Retirement Board. However, the Defendant Retirement Board retained for itself the responsibility to make actual decisions regarding any changes to the Plans' funds.

147. During the Class Period, on January 31, 2008, the Defendant Retirement Board exercised its power to remove the Plans' investment funds by removing the Templeton Foreign Fund as an investment option for the Plans. On June 30, 2008, Defendant AIG Retirement Board

further exercised its power to remove the Plans' investment funds by removing the Fidelity Dividend Growth Fund as an investment option for the Plans.

148. At all relevant times, the Defendant Retirement Board had in its fiduciary discretion the power to suspend or limit the Plans' investments in any investment fund offered under the Plans, to remove or replace the Plans' investment funds, or, for certain funds, to recommend removal or replacement of that fund to AIG's Board.

149. During the Class Period, the Defendant Retirement Board exercised its power to make investment recommendations regarding the Plans' investment options, including the AIG Stock Fund, to AIG's Board, acting on behalf of AIG. [redacted]

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150. Consequently, in light of the foregoing duties, responsibilities, and actions, the Retirement Board Defendants were named fiduciaries of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and were *de facto* fiduciaries within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary authority or discretionary control respecting management of the Plans, exercised authority or control respecting management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

E. Investment Committee Defendants' Fiduciary Status

151. The Defendant Retirement Board appointed Defendant Investment Committee to assist the Retirement Board in monitoring the investments of the Plans, including investments in the AIG Stock Fund. Upon information and belief, the Investment Committee Defendants had,

inter alia, the ensuing duties: to develop investment policy guidelines and objectives for the Plans; to manage the Plans' assets, including the Plans' investments in AIG Stock Fund; to monitor the performance results of the Plans' investment options to ensure that the guidelines and objectives were met; to recommend to the Defendant Retirement Board the removal or replacement of any investment option of the Plans, including the AIG Stock Fund, to the extent prudent to do so; to retain or assist the Defendant Retirement Board in retaining or appointing investment managers, investment consultants, independent fiduciaries, or outside legal counsel to render advice with respect to the investments of the Plans; to supervise and consult with any such investment managers and consultants for the Plans to review their investment results; to take the appropriate action if investment managers or consultants fail to perform as expected; and to monitor legal and regulatory issues applicable to investment policy.

152. The Investment Committee Defendants were responsible for assisting the Retirement Board Defendants in establishing the parameters or guidelines for the types of investment alternatives that would be offered to Plan participants.

153. [redacted]

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154. Defendant Investment Committee had the ability to retain consultants to assist them in the performance of their duties.

155. [redacted]

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156. [redacted]

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[redacted]
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157. [redacted]
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158. During the Class Period, Defendant Investment Committee had the power to replace Hewitt if necessary. Defendant Investment Committee had the power to retain or appoint additional investment consultants during the Class Period to render advice with respect to any investment option of the Plans, including the AIG Stock Fund.

159. Defendant Investment Committee used the data from Hewitt reports to make their decisions about the Plans' investments. Funds that were in the bottom two quartiles would typically be put on a watchlist, and if they continued with that type of performance for approximately a year, Defendant Investment Committee would recommend to the Defendant Retirement Board eliminating or replacing the fund.

160. For example, as discussed above, two fund options of the Plans, the Templeton Foreign Fund and Fidelity Dividend Growth Fund, were removed based on their poor performance vis-à-vis their respective benchmarks. Each of these Plan fund options had performed in the bottom two quartiles for a year and been on "watch" before Defendant Investment Committee recommended, and the Defendant Retirement Board approved, their removal.

161. [redacted]
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[redacted]

162. Consequently, in light of the foregoing duties, responsibilities, and actions, the Investment Committee Defendants were fiduciaries of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that they exercised discretionary authority or discretionary control respecting management of the Plans, exercised authority or control respecting management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

VII. FACTS BEARING ON FIDUCIARY BREACH

163. Three quotations from AIG insiders introduce the tone of the attitude within AIG during the Class Period:

a. "*All units were apprised regularly of our concerns about the housing market. Some listened and responded; others simply chose not to listen and then, to add insult to injury, not to spot the manifest signs. 'Nero playing the fiddle while Rome burns' is my assessment of that.*" – Kevin McGinn, AIG Chief Credit Officer and Risk Management Committee Managing Director Chairman, November 19, 2007 (emphasis added)..

b. [redacted]
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[redacted]

c. [redacted]
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[redacted]

A. AIG's Risky And Imprudent CDS Activities and Global Securities Lending Program Investments Brought The Company To The Brink Of Its Collapse

164. AIG's ultimate collapse into the arms of the federal government resulted from a Company-wide liquidity crisis that, had it not been for the government bailout, would have pushed the Company into bankruptcy. This liquidity crisis was in many ways tied to residential mortgages; however, AIG's collapse was not caused by a sudden and unforeseen downturn in the residential mortgage market or in the economy at large. Rather, AIG sowed the seeds of its own destruction years before the subprime mortgage crisis reached its peak, and AIG senior management and others within the Company became aware of the looming disaster well in advance of its culmination. AIG took on grossly excessive risk by placing outsized bets on the residential mortgage market—most notably through AIGFP's CDS portfolio, but also through the direct investments of cash collateral from AIG's GSL program in RMBS. These reckless mortgage bets not only consumed the Company's cash, but shattered the once lofty credit ratings on which myriad aspects of its business depended, and, in turn, decimated its ability to access the capital and credit markets. AIG management saw these problems coming well before their impact was felt. The Defendants named herein, including AIG itself, either were participants in this dance of death, or had front-row seats to it.

165. Much of the disappearance of AIG's liquidity can be attributed to the imprudent risks assumed by AIGFP, and to AIG's failure to mitigate these risks even as senior management understood their potential effects. As AIG's CEO acknowledged in March 2009, AIGFP had operated as a "hedge fund" within the insurance giant, using AIG's high credit rating to gamble away the entire Company's fortune. Despite its status as a separate subsidiary, AIGFP's business model was completely dependent upon the balance sheet strength and credit rating of the parent company, AIG. The fate of AIG was inextricably intertwined with the activities at

AIGFP, a fact the Defendants knew or should have known. AIGFP was not a quasi-autonomous operation, nor was it headed by a rogue executive. AIG and its executives were intimately aware of AIGFP's activities and purportedly oversaw every credit default transaction. Moreover, given the enormous size of AIGFP's CDS portfolio—an item on AIG's balance sheet—AIG knew that if AIGFP's investment positions suffered losses, the losses would be borne by AIG. Thus, AIGFP's counterparties' ability to demand cash collateral on the CDS was known to AIG and its directors and officers.

166. AIGFP's sales of CDS, a credit derivative contract akin to insurance on securities, forced the Company to choose between bankruptcy and nationalization. In becoming one of the leading sellers of CDS, AIGFP sold over $500 billion worth of CDS, generating massive short-term profits with even larger liability in the near future. It did so without proper internal controls, risk management, or oversight. AIGFP's unhedged wager in the CDS market centered on its errant focus on a single risk—the possibility of default on the assets underlying each CDS—to the exclusion of all other real and predictable risks. This focus was both incorrect and entirely imprudent. As the world's largest insurance company, whose business was to understand risk, AIG cannot pretend that it was not or should not have been aware of the true risks of its activities. Recklessness and greed clouded its vision.

167. Specifically, AIG and AIGFP discounted and dismissed the relevance of two critical risks embedded in every CDS sold: mark to market risk (also referred to as "market risk") and pre-settlement risk. The increase of both of these known risks, which work in tandem, caused AIG to face requests for cash collateral beyond its capital means, and forced the

Company to the brink of collapse.[3] AIG did not properly provide controls to manage these risks, and, as its auditor found, it had a material weakness with regard to these risk management controls. Thus, in selling over $500 billion in CDS, AIG simply overlooked, discounted, and ignored these critical risks.

168. Instead, AIGFP and AIG looked at the CDS transaction as an insurance contract, and measured and valued only the risk of a potential default on the underlying asset. The models AIG employed to gauge the risk in its CDS portfolio made the same assumptions and permitted AIGFP to sell over $500 billion of CDS by the end of 2007. Relying on this flawed model, AIG consistently told investors that there was virtually no risk of default loss in its CDS portfolio. Indeed, AIG made little to no mention of the either market or pre-settlement risk. Moreover, even assuming that the risk of default in each CDS was slim, this did not mean that AIG did not face the likelihood that it would have to pay real cash to counterparties throughout the life of each CDS.

169. During the Class Period, roughly $80 billion of AIG's CDS portfolio was tied to speculative, volatile, and, ultimately, illiquid subprime MBS, with many more billions tied to risky asset-backed securities ("ABS") and CDOs. As those reference assets declined in value as the real estate and real estate derivatives markets collapsed, the market and pre-settlement risks increased dramatically. As a result, starting in late July 2007, counterparties began to demand

[3] "Mark to market" or "market risk" is the risk that underlying collateral or "reference assets" to each CDS might decline or increase in value, triggering a collateral call commensurate with the mark to market value of the swap. "Pre-settlement risk" is the risk that a counterparty to a CDS transaction will default prior to the derivative instrument's final settlement. That is, if a party to a CDS becomes riskier with which to do business, the second party may request collateral from the first to satisfy itself that the first party is good for the full amount of the deal. These two risks can compound each other. Where one party is forced to pay collateral due to increased market risk, that party's credit rating may decline, causing an increase in the pre-settlement risk and an increase in the amount of collateral then demanded.

that AIG make cash payments on collateral calls tied to these CDS. Given the billions wrapped up in AIG's CDS portfolio, it did not take many multi-billion dollar collateral call payments of actual cash to exceed AIG's available capital, which rarely totaled over $20 billion throughout the Class Period.

170. Moreover, as AIG was forced to pay cash on these collateral calls, its own debt was downgraded, prompting the counterparties to demand yet more capital as the pre-settlement risk increased. This compounded the impact of collateral calls, which increased not only because the reference assets declined in value, but also because AIG's credit was downgraded. This convergence drained AIG's cash reserves and helped to bring the Company to the brink of collapse. As the market and the federal government observed, AIG lacked even a remote chance of posting all the cash required by the collateral calls.

171. Having ventured into new, high-risk areas of business, AIG should have at a minimum acknowledged, modeled, and heeded the risks inherent in its CDS portfolio, and taken steps to limit its exposure to both market and pre-settlement risk. Instead, the Company strayed from its core competencies as an insurer and began running a hedge fund that it failed to understand or control. As such, the Company's risk profile increased dramatically, despite its assurances to the contrary. These failures in management put the Company in a dire situation and caused AIG stock to become wholly inappropriate and far too risky for participants' retirement savings. Making matters worse and further contributing to losses in this case, AIG withheld critical information regarding the true risks AIG faced, so the participants and beneficiaries acquired additional AIG stock through the Plans at artificially inflated prices.

172. The following subsections illustrate the business practices that led to AIG's catastrophic failure, and which caused the Company stock to become an imprudent investment.

Subsection 1 details the central role that AIGFP played in selling over $500 billion in CDS without proper risk management and oversight. Subsection 2 describes CDS generally. Subsection 3 discusses AIG's GSL program. Subsection 4 explains the boom and inevitable bust of the real estate market and the related derivatives market and their natural adverse impact on AIG's CDS portfolio. Subsection 5 explores the precipitous fall of AIG's empire as it was forced to make collateral call payments beyond the Company's excess capital resources to counterparties to the CDS it sold beyond the Company's excess capital resources. Subsection 6 describes the federal government's bailout and takeover of AIG. Subsection 7 explains the failures in AIGFP's risk models that it employed to grow its CDS portfolio beyond $500 billion. Subsection 8 explains in detail the material weakness which existed in AIG and AIGFP during critical points at which AIG made and expanded its wager on CDS. Together, these subsections detail the disastrous business gambles within AIG that caused the Company to face a dire situation and its stock to be an imprudent investment alternative throughout the entire Class Period.

173. As explained in more detail below, starting at the very latest on August 7, 2007, by which time AIG was aware that AIG's counterparties on its CDS, led by Goldman, began to make multi-billion collateral calls forcing AIG to put up billions of dollars in collateral, draining its liquidity, and through May 1, 2009, after which date the AIG Stock Fund was finally closed to new investments, AIG faced a dire situation. As detailed herein, AIG contained ticking time bombs within AIGFP and the AIG GSL program, each of which had bet scores of billions on assets that were inextricably correlated to the U.S. residential housing market and RMBS, as well as credit ratings. Worse yet, these high-risk holdings contained triggers—particularly collateral call triggers—which had exponential, domino-like effects that could, and did, devastate the

Company's liquidity. [redacted]

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1. The AIGFP Unit Was a Key Driver of The Company's Collapse

174. Located in London, England and Wilton, Connecticut, AIGFP was one of the primary drivers of AIG's collapse. AIGFP wielded major clout within AIG due to its uncanny ability to generate massive revenue with little outlay of actual capital through its sale of CDS. Far from being a rogue division, AIGFP was tightly linked to and prized by AIG, which oversaw every CDS transaction. AIGFP grew in strength not by running itself as a stable insurer or even as an investment firm, but rather by running itself as a massive hedge fund. As former CEO Liddy explained in an interview, "It's an interesting structure where you have an insurance company that works really well and on top of it is a holding company and the holding company's biggest asset is this huge hedge fund"—*i.e.*, AIGFP. Andrew Sorkin, *The Case for Saving A.I.G., by A.I.G.*, N.Y. Times, Mar. 2, 2009.[4] "It just doesn't make sense to me." *Id.*

[4] AIGFP possessed all three traditional qualities of a hedge fund: (1) leverage, (2) the ability to make short investments, and (3) an alignment between compensation of the manager and performance of the underlying investment. In other words, AIGFP focused on short-term revenue generation at any cost through highly leveraged and novel derivatives. It did so without adequately protecting or hedging its bets or balancing the risk of failure against short-term profits. Instead, it recklessly exposed the insurance giant to massive losses through a series of risky gambles on novel derivatives whose risk it failed to manage properly. Moreover, it lacked proper internal controls and risk management.

175. As a hedge fund with failed internal controls and oversight, failed risk management, a lack of regulatory capital requirements, and a ready supply of credit (derived from AIG's once triple-A corporate rating) with which to gamble, AIGFP helped to cause AIG's collapse through its risky CDS activities. *See* Liz Rappaport, *Cuomo Widens His Probe To a Unit's Swap Deals*, Wall St. J., Mar. 27, 2009, at C2 ("Losses tied to credit-default swaps sold by AIG's financial products unit nearly toppled the company last year . . . ."); Jo Becker & Gretchen Morgenson, *Member and Overseer of the Finance Club---Geithner Forced Close Ties to Wall St.*, N.Y. Times, Apr. 27, 2009, at A18 (AIGFP's "derivative business . . . brought it to the brink of collapse in September" 2008); Jeannine Aversa, *Meltdown 101: Why did the AIG bailout get bigger?*, The Mercury News, Nov. 10, 2008 ("AIG was pushed to the brink of bankruptcy in September when its credit rating was downgraded and it could not post the collateral for which it was obligated under the 'credit default swap' contracts it had issued."); Liam Plevin, *Crisis on Wall Street: AIG Faces Hurdle In a Sale of a Unit*, Wall St. J., Jan. 13, 2009, at C3 ("AIG needed the government bailout largely because of obligations associated with the financial products unit, which operated independently from the company's highly regulated insurance subsidiaries around the world."). AIGFP thus led AIG to "stray[] from its core competencies in the insurance business" and suffer a virtual collapse. Liddy Testimony at 3.

176. AIG created AIGFP in 1987 to get AIG into the small, but growing derivatives market. AIGFP was originally a joint venture between AIG and three former employees of the now-defunct Drexel Burnham Lambert investment firm. According to AIG's former CEO, Greenberg, "[f]rom the beginning, AIG's policy was that AIGFP conduct its business on a 'hedged' basis—that is, its net profit should stem from the differences between the profit earned from the client and cost of offsetting or hedging the risk in the market." Greenberg Statement

before U.S. House of Reps. Committee on Oversight and Gov't Reform, Oct. 7, 2008, at 4 (hereinafter "Greenberg Testimony"). In 1987, AIGFP broke ground by entering into a $1 billion interest rate swap with the Italian government that earned the firm $3 million. At the time, this was a massive deal, roughly 10 times larger than any other swap transaction to date.

177. In 1993, Cassano became the head of AIGFP, when AIG and the three co-founders ended the venture and AIGFP became a wholly owned subsidiary of AIG. Liam Plevin & Randall Smith, *Big Shareholders Rebel at AIG --- Letter to the Board Cites Problems With Senior Management*, Wall St. J., June 9, 2008, at A1 (hereinafter "Plevin, *Big Shareholders Rebel*"). Cassano previously worked under the tutelage of convicted financial felon Michael Milken at Drexel Burnham Lambert. Cassano brought with him several others from the Drexel firm when he became head of AIGFP. He was known for a merciless, no-nonsense approach. *See id.*

178. Cassano, well known throughout AIG, built AIGFP into one of the prime revenue sources for AIG, using AIG's top credit rating to build AIGFP into a massive and risky hedge fund. AIGFP increased its revenue generation by growing its CDS portfolio at an accelerated and exponential pace. Through the sales of CDS, AIGFP increased its operating income to $949 million in 2006, a 47 percent increase from 2005. In 2006, it also increased its revenue by a glaring 86 percent from 2005. Plevin, *Big Shareholders Rebel*; Third Quarter 2007 Investor Call. By the end of 2007, AIGFP had sold, alarmingly, over a half-trillion dollars of CDS, which generated massive revenue for AIG, but exposed the Company to a host of risks that were not properly managed, controlled, hedged, or disclosed.

179. AIGFP saw its CDS portfolio as an easy way to make money with very little capital outlay. The CDS portfolio was far from risk free, but it had the attraction of requiring

little capital expenditure. AIGFP was able to sell such massive quantities of CDS, given AIG's formerly triple-A credit rating, which was derived from AIG's core insurance business. That is, the entire CDS portfolio was built on counterparties' perception that AIG could satisfy its promise to pay on the full amount of every CDS it sold. In reality, AIG was unable to cover the required payments on AIGFP's CDS portfolio.

180. AIGFP's CDS business model was a change from its original strategy prior to 1998. From 1987 to 1998, AIGFP hedged its financial trades to avoid exposure to major losses. However, in 1998, JP Morgan approached the firm and proposed that AIGFP start selling CDS to "insure" corporate debt. Based on the models AIGFP created, it believed that "the fees [from the CDS] were almost free money." AIGFP and AIG liked the idea, and from 1998 to mid-March 2005, it entered into 200 CDS contracts.

181. [redacted]

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182. By mid-2005, AIGFP executives were expressing great concern about the size of AIGFP's subprime mortgage exposure. On or about July 21, 2005, Forster sent an email both to Frost, the AIGFP sales executive primarily responsible for the Company's booming CDS business, and to Gary Gorton ("Gorton"), who had engineered the formula to determine how much risk AIG was taking on each CDS it wrote. "We are taking on a huge amount of sub prime

mortgage exposure here," Forster wrote. "Everyone we have talked to says they are worried about deals with huge amounts [of high-risk mortgage] exposure yet I regularly see deals with 80% [high-risk mortgage] concentrations currently." FCIC Report, at 200.

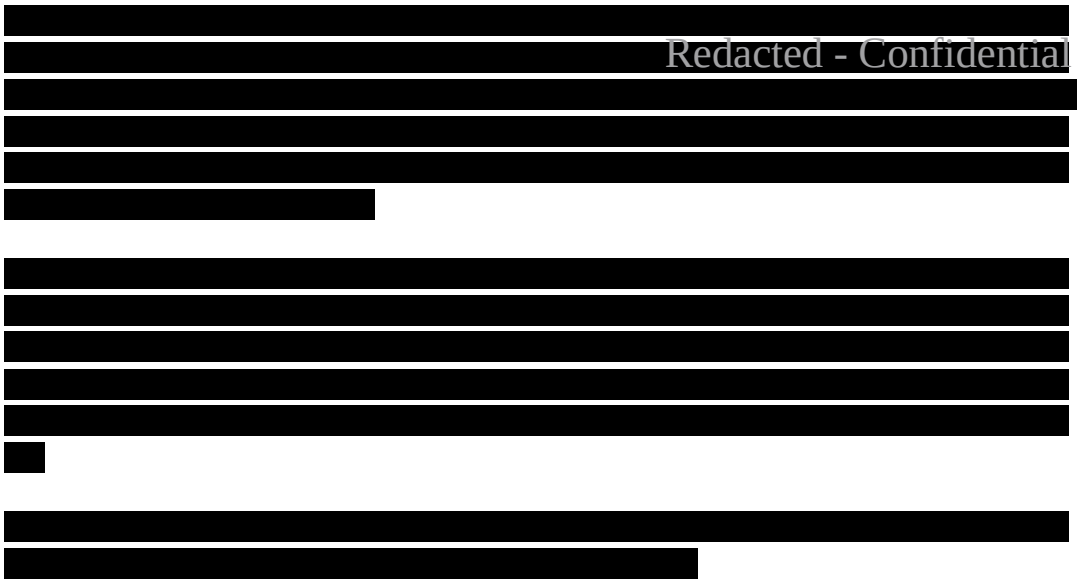
183. During 2005, AIGFP was also concerned by the drop in the underwriting standards of mortgage lenders and told investors that it had stopped selling CDS on multi-sector CDOs. [redacted] Redacted - Confidential [redacted] As confirmed by the FCIC in January 2011, however, AIGFP did not cease selling CDS on subprime-related MBS and CDOs at that time. In its final report, the FCIC wrote:

> [AIGFP] continued to work on deals that were in the pipeline, even after February 2006. Overall, they completed 37 deals between September 2005 and July 2006—one of them on a CDO backed by 93% subprime assets. By June 2007, AIG had written swaps on $79 billion in multi-sector CDOs, five times the $16 billion held at the end of 2005.

FCIC Report, at 201. *See also* AIG Investor Conference Dec. 5, 2007. Regardless of whether AIGFP stopped selling new CDS tied to subprime MBS and CDOs, by the end of 2007, AIGFP had already sold roughly $80 billion of CDS on multi-sector CDOs without any hedge to manage the risk. And even though AIGFP and AIG, like all Defendants, were aware of the downturn in the housing and related derivative markets, they did not take steps to hedge the massive exposure to subprime MBS in the CDS on multi-sector CDOs because doing so would have diminished the firm's profit.

184. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential [redacted]



185. Moreover, by mid-2007, AIGFP had sold $79 billion of CDS on multi-sector CDOs without any hedge to manage the risk. And even though AIGFP and AIG, like all Defendants, were aware of the downturn in the housing and related derivative markets, they did not take steps to hedge the massive exposure to subprime MBS in the CDS on multi-sector CDOs because doing so would have diminished the firm's profit.

186. Nonetheless, up to and throughout 2007, AIGFP's CDS portfolio continued to grow, in part due to the deals involving portfolios of multi-sector CDOs that AIGFP chose to continue to work on, and/or its CDS on corporate loans and non-U.S. mortgage-related assets. As of June 30, 2007, AIGFP reported $465 billion in "total net CDS exposure across all asset classes." Second Quarter 2007 Investor Call. Of this, AIG told investors that $258 billion was related to corporate loans, $128 billion was related to "prime mortgages, none of which represent US residential exposure," and $79 billion related to "multi-sector CDOs that [AIG]FP helped to structure." Second Quarter 2007 Investor Call. As of the Second Quarter 2007, AIG had $64 billion in exposure to subprime RMBS, according to Lewis, AIG's Chief Risk Officer. *Id.*

187. By the Third Quarter 2007, AIGFP had sold another $48 billion in CDS, swelling its portfolio to $513 billion. The size of this wager exposed AIGFP and AIG "to potentially large collateral calls because it had agreed to insure so much debt without protecting itself adequately through hedging." Carrick Mollenkamp, Serena Ng, Liam Plevin & Randall Smith, *Behind AIG's Fall, Risk Models Failed to Pass Real-World Test*, Wall St. J., Nov. 3, 2008 at A1 (hereinafter "Mollenkamp, *Behind AIG's Fall*"). Indeed, as detailed further *infra*, these collateral calls had already begun by July 26, 2007.

188. AIGFP told investors that the risk of loss tied to its CDS portfolio was extremely remote and that the overwhelming size of the CDS portfolio was not indicative of the risk of loss. To quiet investor concern, AIG told its investors that it only sold "Super Senior" CDS. AIG stated that the "Super Senior" CDS had "*extremely remote* risk" and, accordingly, "AIG d[id] not expect to incur any losses from this exposure." AIG Residential Mortgage Presentation, Aug. 9, 2007, at 28-29 (emphasis in original). This was purportedly true because the "risk portion [AIG holds] is the last tranche to suffer losses, which are allocated sequentially within the capital structure." *Id.* at 28. Thus, even though the notional amount on the CDS portfolio was tremendous, AIG claimed the portfolio was virtually risk-free. But, as it knew, this was far from the case.

189. AIGFP also downplayed the risk in its CDS portfolio by touting its care and skill in entering into every CDS transaction. Cassano stated that he "handpicked" the CDOs and other reference assets on which to sell CDS. Second Quarter 2007 Investor Call, Cassano comments. He also claimed that he relied on "intuition" in regards to managing the risk in CDS.

190. At the same time, AIG's Board was aware of the massive risk involved in the CDS portfolio. According to Andrew Ross Sorkin's 2009 book, *Too Big to Fail*:[5]

> In late January of 2008 [Robert] Willumstad . . . noticed something startling in a monthly report issued to AIG board members: [AIGFP] had insured more than $500 billion in subprime mortgages, mostly for European banks . . . . Willumstad did the math and was appalled: With mortgage default rapidly mounting, AIG could soon be forced to pay out astronomical sums of money.

Sorkin, *Too Big to Fail*, at 160 (2009).

191. Yet, AIGFP failed to manage its risk from mark to market and pre-settlement risk, which were primary components of every CDS it sold. Blinded by the lure of easy revenue and huge bonuses for its managers and employees, AIGFP issued more and more CDS.

192. As AIGFP grew its CDS practice, it did not employ proper or adequate risk management, as its auditors so concluded. Documents released by the FCIC reveal that in a November 29, 2007 meeting, PwC, AIG's auditor, voiced concerns to AIG management that a material weakness existed in AIG's oversight of AIGFP and in AIGFP's risk management and valuation of its CDS portfolio. The notes from the meeting state, among other things, that one of the PwC auditors "wanted to raise a concern that he had around the roles and responsibilities over risk management." Among other things, the auditor was concerned with "The late adjustment by [AIGFP] to their [CDS Super Senior] valuation in Q3 as well as the posting of the $2bn collateral [to Goldman] without an active involvement of ERM and senior management. Also the way in which AIGFP have been "managing" the [Super Senior CDS] valuation process . . . ." The auditor went on to say, "We believe that these items together raised control concerns around risk management which could be a material weakness." PwC notes to November 29, 2007 meeting with AIG executives, *available at* http://www.fcic.gov/resource/document-archive.

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[5] Published after the filing of the Consolidated Amended Complaint.

See also AIG Audit Committee Meeting Minutes, Jan. 15, 2008, at 14-15. [redacted]
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193. In spite of this weakness in oversight, AIG assured its investors and auditors that it oversaw every transaction entered into by AIGFP and, thus, knew everything about AIGFP's CDS portfolio. In May 2008, the *Wall Street Journal* reported that "Mr. Sullivan and a top deputy told investors at a conference that they kept close tabs on the unit." Plevin, *Big Shareholders Rebel*. At the meeting, Defendant Sullivan said AIG's top executives received a "daily report" from AIGFP.

194. AIG was aware of, involved in, and promoted AIGFP's risk-taking in part through its compensation structure which rewarded revenue generation based on highly leveraged activities—AIGFP's forte. Moreover, AIG permitted AIGFP to operate without regulatory capital requirements and instead trade on AIG's triple-A credit rating. AIGFP took every advantage to build its CDS portfolio, whose risks it both misunderstood and failed to manage in any remotely sound fashion. Ultimately, this amalgam of missteps, errors, and brazenly foolhardy activities caused AIG's virtual collapse.

195. AIGFP's hedge fund operation forced AIG into the untenable risky position as an insurer on novel and highly risky derivatives, the riskiest of which were tied to the overinflated and volatile real estate and real estate derivatives market. AIG was well aware of this fact, as AIG oversaw and reviewed every CDS transaction. Indeed, on October 7, 2008 before the House Committee on Oversight and Government Reform, Defendant Sullivan testified that AIG had no capital reserves behind the swaps. As that market collapsed, so did AIG, at an uncontainable rate. AIGFP's gross mismanagement and risky hedge-fund operation caused AIG stock to be an imprudent investment throughout the Class Period. As discussed *infra*,

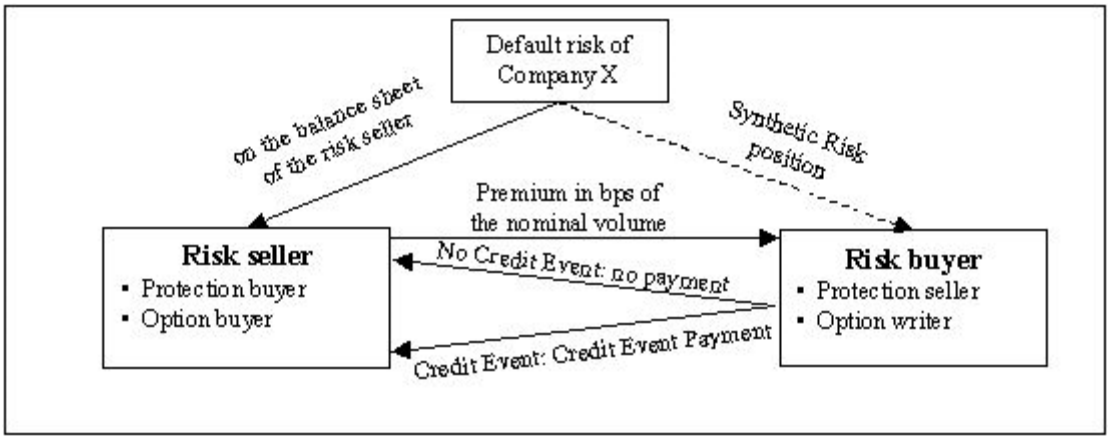
Defendants knew or should have known that AIGFP's irresponsible and improperly managed CDS activities caused the Company stock held by the Plans to be an imprudent investment.

2. Background on Credit Default Swaps

196. At its most basic level, a CDS is a private contract in which one party promises to pay another if a reference asset suffers a "credit event," such as a default or bankruptcy. AIG believed that a CDS is "essentially a kind of insurance on a bond." Willumstad Testimony before U.S. House of Reps. Committee on Oversight and Gov't Reform on Oct. 7, 2008, at 5 (hereinafter "Willumstad Testimony"). However, a CDS has only a superficial resemblance to ordinary insurance.

197. A CDS is "a bilateral derivative contract that transfers from one party to another the risk that a specified reference entity will experience a 'credit event.'" Edward Murphy, *Credit Default Swaps: Frequently Asked Questions*, Congr. Research Serv., Sept. 9, 2008, at 1 (hereinafter "Murphy, *Credit Default Swaps*"). In a typical scenario, "the protection buyer pays a periodic fee to a protection seller in return for compensation if a reference entity experiences a credit event." *Id.* Credit events may include "default, bankruptcy, restructuring, or credit rating downgrade." *Id.* The reference entity, however, is not a party to the contract. Rather, the purchaser of a bond or other offering from the reference entity purchases the CDS to insure against losses from default by the reference entity.

198. Visually, a typical CDS looks like this (Company X is known as the "reference entity"):



199. Each CDS is an unregulated, private contract between two parties, rendering each CDS opaque and not subject to reporting requirements. Although AIG was a regulated entity, its CDS portfolio was not directly regulated. As such, AIG was able to take on unregulated risks in its CDS portfolio with no disclosure or regulatory capital requirements. CDS have evolved to permit a party to purchase a CDS on a reference asset it does not own. This allows parties to essentially gamble on the fate of securities in which they have no interest, a practice known as a "naked swap." As the Superintendent of the New York Insurance Department explained, "just as with short selling of stock, most swaps are now used by speculators who do not own the bonds and the value of the swaps outstanding are generally much more than the value of a company's debt. Swaps bought by speculators are known as 'naked swaps' because the swap purchasers do not own the underlying bond. Speculation in a company's bonds can under some circumstances hurt that company's ability to borrow." Testimony of Eric Dinallo before U.S. House of Reps. Committee on Oversight and Gov't Reform on October 7, 2008, at 7 (hereinafter "Dinallo Testimony"). While CDS were meant to mitigate risk, "with a 'naked' swap, there is no risk mitigation. In fact, there is risk creation." *Id.* at 7-8. "[T]hese contracts are not really swaps at all because there is no transfer of risk. Instead, the contract allows the buyer to place a one-sided bet." *Id.* at 8.

200. Moreover, a CDS's duration does not have to match the maturity of the underlying security. For example, while a 10-year bond may be the reference asset in a CDS, the CDS itself may only provide protection for a year. Murphy, *Credit Default Swaps* at 2.

201. CDS generally protect against the risks inherent in corporate bonds, which are two-fold for an investor. On the one hand, if the bond defaults, it loses most of its value. On the other hand, if credit spreads increase, the bond's price declines, causing unrealized or even realized losses within a portfolio. The purchaser of a CDS receives protection from both types of risk. While a CDS seller will make the buyer whole in the event of a default event, the mark to market feature of the CDS provides a hedge as against price decline. That is, if the reference asset changes in value, the parties must readjust their positions by transferring cash to return the CDS to its original value. Thus, although the CDS looks like an insurance contract, it is far different because the parties to the CDS will adjust and negotiate their financial position over the life of the CDS. And unlike a life insurance policy, the CDS issuer exposes itself not only to payment in the event of default, but to payment of actual cash on collateral calls.

202. The CDS was created as the rise of CDOs and other innovative asset-based investment products hit Wall Street. The CDS permitted investment banks, banks, and, more generally, portfolio managers in hedge funds, to hedge otherwise risky positions, while allowing others to meet capital regulatory requirements. Indeed, CDS were originally created as legitimate instruments to help investors hedge or manage the risk they took on. However, with the rise of novel and complex derivatives composed of MBS, ABS, and CDOs, many investors and hedge fund operators sought CDS both to enhance the credit rating of the underlying securities and to provide protection to CDO originators who backstop the securities structures. Murphy, *Credit Default Swaps* at 4.

203. The valuation of CDS is based on a simple (approximate) fact, that a corporate bond and a corresponding CDS purchased to hedge against default of the bond should equal the value of a treasury bond. Since a corporate bond pays a spread to compensate for the probability of default, an investor should be able to pay a comparable spread to purchase a CDS to eliminate that risk. A typical CDS might look like the following: The buyer of the CDS agrees to pay 2 percent of the value of the bond per year to the seller, and if at any time within the next 5 years the reference asset suffers a default (or a pre-defined "credit event"), the seller pays the buyer the original value of the defaulted bond. Default in a CDS is called a "credit event," which is defined differently by each CDS. For example, a credit event might be the failure of the reference entity to make an interest payment or to pay principal, or it could be a restructuring of the reference entity's debt or the reference entity's bankruptcy.

204. CDS are valued using mark to market accounting, which assigns a value to a position held in a financial instrument based on the current fair market price for the instrument or similar instruments. Where no market is available, the instrument is marked to the next best indicator or a model. This method of accounting has been part of the Generally Accepted Accounting Principles ("GAAP") since the early 1990s.

205. At the time a CDS is purchased, the net present value of the CDS is zero. This means that the premium paid by the purchaser offsets an expected payout in the event of default (the "credit event"). The market equates a fixed payment stream to some, often large, contingent payment. If that probability increases, the swap is no longer a "fair" deal. The market will view the likelihood of default as higher and, as such, the fair premium for the swap should increase. In other words, the existing swap has a net positive value to the buyer, as the swap is now more likely to have to make a default driven payment than originally contemplated. Consistent with

market convention, the seller makes collateral payment to offset this difference from fair value. The protection buyer will often make a collateral call and demand actual cash to reset the net value to zero—the value at the time of the CDS's inception. The opposite would be true if the swap has a negative value: the buyer would be forced to make a collateral payment to the seller. Collateral calls are thus a significant component in every CDS.

206. Every CDS exposes the parties to three key risks: (1) default risk, (2) pre-settlement risk, and (3) market risk. Default risk is tied to the likelihood that the credit event of the CDS will occur. AIG modeled this risk. Pre-settlement risk is the risk that the counterparty to the CDS will have its credit rating downgraded and thus become a more risky party to deal with (and possibly unable to make good on its obligations under the CDS). Accordingly, the party whose credit has been downgraded may have to pay a collateral call if requested by the counterparty. Payments of collateral calls have the potential to force changes in the pre-settlement risk and therefore increase the amount demanded in a collateral call. Market risk is the potential that the reference asset's value will increase or decrease over the life of the CDS. If the mark to market value increases, the CDS buyer may have to pay a collateral call, and, if it decreases, the CDS seller may have to pay a collateral call. Market and pre-settlement risk work in tandem. As the market risk increases, forcing a party to make collateral payments, its own credit may be downgraded as a result. This will then cause the pre-settlement risk to increase and permit the counterparty to request even more collateral. AIG's failure to model and manage these risks ultimately caused the Company to collapse.

3. AIG's Global Securities Lending Program

207. Unlike the "hedge fund" that was AIGFP, AIG's GSL program was not ordinarily where one would expect to find risky exposure to the subprime mortgage market. The business of securities lending had, for many years, been a steady and low-risk one for the Company.

Managed by the subsidiary previously known as AIG Global Investment Corp. ("AIGI"), and later known as AIG Investments (defined *supra* as "AIGI"), AIG's GSL program operated by taking high-grade corporate bonds owned by the Company's various insurance subsidiaries and lending them out to third parties such as hedge funds and investment brokers. In return, the GSL program would receive cash collateral in the amount of 102% of the value of the loaned security. The GSL program would then invest the cash collateral in highly rated, highly liquid Fannie Mae and Freddie Mac securities, earning a small return on the transaction and splitting the profits with the insurance subsidiary that loaned the security, before returning the cash collateral to the security borrower. As Roddy Doyle explained in his book *Fatal Risk: A Cautionary Tale of AIG's Corporate Suicide* ("*Fatal Risk*"):

> This was a long-running Wall Street business, if a very low-margined one. From 1999 to 2004, AIG's program made about two basis-points profit on its growing portfolio. Greenberg had started it as a way of generating some excess return from the tens of billions of dollars in corporate debt that were literally sitting around in life insurance company portfolios.

Id. at 166. In other words, during Greenberg's tenure as CEO, the goal of the GSL program had been to earn a small but dependable and extremely low-risk return on insurance company assets.

208. Under the direction of AIG's Chief Investment Officer Neuger, all of that changed. Beginning at about the time Greenberg departed AIG, Neuger sought to dramatically increase profits from securities lending by investing the pool's cash collateral in triple-A-rated ABS with much higher yields than the Fannie Mae and Freddie Mac securities previously purchased. With that higher yield, however, came far greater risk, especially since those ABS included billions of dollars in RMBS with heavy exposure to subprime and alt-A mortgages.

209. For a few years, Neuger's profit-driven approach to securities lending produced record profits for the program. [redacted]

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4. The Rise and Fall of the Subprime and Alt-A Lending Industry, Debt Securitization, and the U.S. Housing Market to Which AIG Tied Its Fortunes Precipitate Its Collapse

210. AIG's fate was tied to the real estate market because real estate-related securities and derivatives were reference assets for many of its CDS, and because its GSL program had tens of billions of dollars directly invested in RMBS. The disruption and collapse of the real estate market and the secondary real estate securities market had a direct, predictable, and adverse impact on AIG's CDS activities and its GSL program, triggering collateral calls and draining liquidity such that the Company was brought to the brink of collapse. AIG and all of the Defendants knew or should have known by no later than the August 7, 2007, the start of the Class Period, that both the Company's directly held RMBS, through GSL, and the real estate-related securities tied to its CDS were extremely volatile and in rapid decline. Indeed, AIG boasted that it was aware that the "real estate market softened in late '05," and told investors it had taken steps to protect itself from resulting losses. Second Quarter 2007 Investor Call, Lewis comments. Yet, AIGFP and AIG failed entirely to manage the risks they created in its CDS

portfolio and its Securities Lending portfolio, large portions of which had direct and indirect exposure to the collapse of the subprime lending, securities, and derivatives market.

211. Industry experts have attributed the proliferation of subprime loans to a confluence of factors that occurred in 2004 and 2005, including rising home prices, declining affordability, historically low interest rates, intense lender competition, innovations in the structure and marketing of mortgages, and an abundance of capital from lenders and mortgage securities investors. *See Fed. Deposit Ins. Corp. on Mortgage Market Turmoil: Causes and Consequences: Hearing Before the S. Comm. on Banking, Housing and Urban Affairs*, 110th Cong. (Mar. 22, 2007) (prepared statement of Sandra L. Thompson, Dir., Div. of Supervision and Consumer Prot.) (hereinafter "Thompson Testimony") *available at* http://www.fdic.gov/news/news/speeches/archives/2007/chairman/spmar22071.html. This massive increase in mortgages, which were packaged into securities, was followed by an equally large and devastating collapse, as explained below.

a. The Boom and Bust in Subprime and Alt-A Loan Origination

212. To increase mortgage sales, lenders relaxed underwriting standards, including:

- reducing the minimum credit score borrowers need to qualify for certain loans;
- allowing borrowers to finance a greater percentage of a home's value or to carry a higher debt load;
- introducing new products designed to lower borrowers' monthly payments for an initial period; and
- letting borrowers take out loans with little, if any, documentation of income and assets.

See Ruth Simon, *Mortgage Lenders Loosen Standards—Despite Growing Concerns, Banks Keep Relaxing Credit-Score, Income and Debt-Load Rules*, Wall St. J., July 26, 2005, at D1

(hereinafter "Simon, *Concerns*"). By relaxing underwriting standards, however, the mortgage companies invited increased delinquency and default rates.

213. While subprime loans are issued to borrowers who have poor credit histories or a history of delinquency in mortgage payments, Alt-A mortgages generally fall loosely in between these subprime loans and traditional prime mortgage loans. Alt-A loans are typically offered to borrowers with good credit scores but other negatives. Features of Alt-A mortgages include: (1) reduced documentation requirements, including stated income loans where there borrower merely states his or her income; (2) "no ratio" loans, where the borrower's assets are fully disclosed and verified, but neither the amount nor the source of the borrower's income is disclosed; (3) "no documentation" or "liar loans"[6] loans, where neither assets nor income are disclosed or verified, and underwriting is based on credit score and property value alone; (4) financing for second homes and investment properties; and (5) high loan-to-value ratio ("LTV") loans, where the borrower puts very little down on the total purchase price.

214. Alt-A mortgage origination volumes surged during the housing boom, growing from $36 billion in 2001 to $390 billion in 2005—accounting for 12.5 percent of all residential mortgages that year. Brenda B. White, *The Emergence of Alt-A*, Mortgage Banking, Apr. 2006, *available at* http://findarticles.com/p/articles/mi_hb5246/is_7_66/ai_n29277268/?tag=content;col1. Alt-A loans were the loans of choice for real estate speculators, particularly in California and Florida. Luke Woodward & Sudhakar Raju, *The Implosion of the Alt-A Mortgage-Backed Securities Market*, J. of Risk Mgmt. in Fin. Ins., Vol. 2.2, 214-25, 218 (Oct. 14, 2008).

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[6] "No documentation" loans constituted as much as 40 percent of subprime mortgages issued in 2006, up from 25 percent in 2001. *See* Gretchen Morgenson, *Crisis Looms In Mortgages*, N.Y. Times, Mar. 11, 2007 (hereinafter Morgenson, *Crisis Looms*). Overstatement of income in "liar loans" was staggering. *Id.*

215. AIG sold CDS on derivatives composed of both subprime and Alt A loans, with direct exposure to nearly $80 billion in such derivatives. And AIG further invested tens of billions of dollars from its GSL collateral pool in securities with heavy subprime and Alt-A exposure.

216. By 2006, lowered credit standards further "blurred the line" between Alt-A and subprime asset classes. White, *supra*. In addition to lowering underwriting standards and skimping on documentation requirements, as described above, lenders began to offer novel loan products to entice borrowers which put them at greater risk of defaulting, including "piggy-back loans," interest-only mortgages, and option adjustable-mortgages ("ARMs").

217. However, by mid-2005, "bank regulators [were] sounding the alarm bells about rising risks in the mortgage market." Ruth Simon & James R. Hagerty, *Mortgage Lenders Tighten Standards—Amid Concern Over Rising Risk, Banks Make It Harder to Qualify for Certain Home Loans*, Wall St. J., Sept. 29, 2005, at D1. Then Federal Reserve Chairman Alan Greenspan testified that "the apparent froth in housing markets may have spilled over into mortgage markets" and stated that the "dramatic increase" in interest-only mortgages and "more exotic forms of adjustable rate mortgages" were "developments that bear close scrutiny." *Id.* Some lenders moved to curtail the availability of new mortgage products such as ARMs and interest-only loans. *Id*.

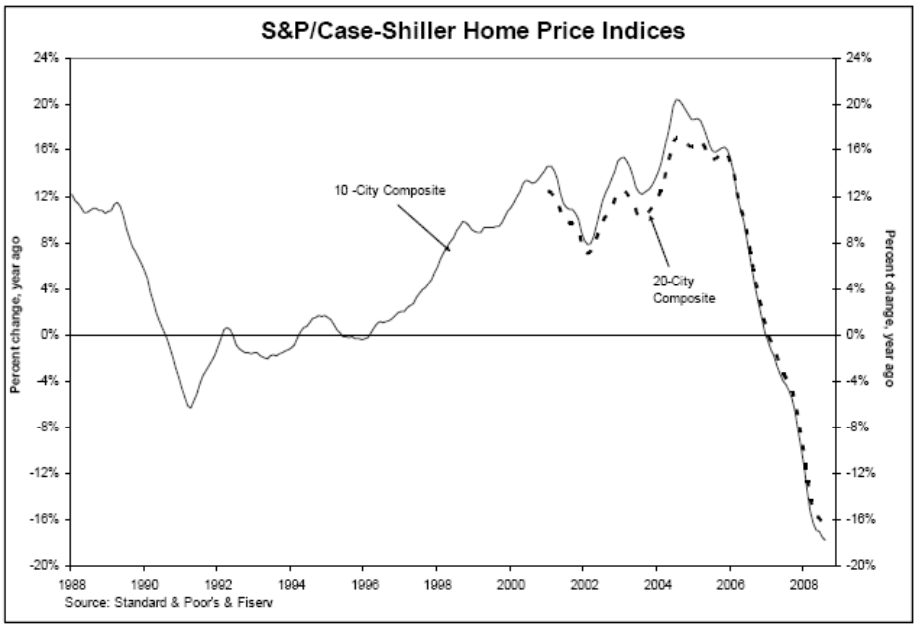
218. Between February and March 2005, properties in foreclosure available for sale jumped 50 percent. Janet Morrissey, *Home Foreclosure Listings Surged in March, Study Shows*, A.P., Apr. 7, 2005. In March 2005, new foreclosure inventory rose in 47 out of 50 states—signifying a "national trend." Michele Derus, *Foreclosures Jump 57% from Last Year; Higher Interest Rates, Job Losses are Cited*, Milwaukee J. Sentinel, Apr. 7, 2005, at D1.

219. In July 2005, the Center for Economic and Policy Research described the risks of a housing bubble collapse in terms of the effect on mortgage holders—and holders of MBS. The report explained that the "collapse of the housing bubble is likely to lead to record levels of mortgage defaults" that would cause the MBS market, which "now exceeds $6 trillion . . . [to] be put in danger by a large wave of defaults following the collapse of the housing bubble." Dean Baker, *Ctr. for Econ. & Pol'y Research, Issue Brief: The Housing Bubble Fact Sheet* 3-4 (July 2005). The report concluded that "[i]t is likely that the federal government will have to bail out the market in mortgage-backed securities to prevent a cascading series of defaults." *Id.*

220. In 2005 and 2006, the Federal Reserve instituted a series of interest rate hikes and the interest rates on variable-rate loans, including mortgage loans, began to rise. Subprime borrowers who were able to afford the initially low "teaser rate" loan payments could no longer meet their monthly payment obligations. As interest rates rose, even subprime borrowers became scarcer, and foreclosed homes diluted the real estate market. Artificially inflated home values began to decline sharply. This led some borrowers to walk away from loans when they could not afford the increased monthly payments and could not readily re-sell the property for a profit. As a result, many borrowers no longer paid their mortgages, causing a significant increase in defaults.

221. The Case-Shiller Price Index illustrates the bubble and bust expressed as year-over-year change in the Composite 10 and Composite 20 indices: [7]

[7] Source: Standard & Poors, Press Release: National Trend of Home Price Declines Continues into the Second Half of 2008 According to the S&P/Case-Shiller Home Price Indices, Oct. 28, 2008, *available at* http://www2.standardandpoors.com/spf/pdf/index/CSHomePrice_Release_102831.pdf.



As this chart shows, the sharp decline in home values began well before the start of the Class Period.

222. Subprime loans with ARMs accounted for the largest rise in delinquency rates, an increase from 9.83 percent to 14.44 percent between the fourth quarter of 2004 and the fourth quarter of 2006; and foreclosures rose from 1.5 percent to 2.7 percent during the same period. *Id.*

223. In December 2006, the *Wall Street Journal* reported that "delinquency rates on subprime mortgages originated in the past year . . . soared to the highest levels in a decade." The trend began in mid-2005, but accelerated in the last two to three months of 2006. The article cited a UBS analysis stating that, "[i]n October [2006], borrowers were 60 days or more behind in payments on 3.9% of the subprime home loans packaged into mortgage securities this year [2006]"—a figure that was twice as large as the rate seen for new loans just a year earlier. *See* Simon & Hagerty, *More Borrowers*, *supra*.

224. By the end of 2006, industry experts forecast the imminent collapse of the subprime lending industry. In December 2006, the Center for Responsible Lending issued a report predicting the worst foreclosure crisis in the modern mortgage market. Ron Nixon, *Study Predicts Foreclosure For 1 In 5 Subprime Loans*, N.Y. Times, Dec. 20, 2006, at C4.

225. Shortly thereafter, several major mortgage lenders disclosed extraordinary loan defaults rates, triggering inquiries from the SEC and the FDIC, and resulting in several bankruptcy filings. For example, Ownit Mortgage Solutions, Inc. ("Ownit")—one of the largest subprime lenders in the United States—closed its doors in December 2006. Bradley Keoun, *Ownit Mortgage, Part-Owned by Merrill, Shuts Down This Week*, Bloomberg.com, Dec. 7, 2006. In 2006, non-bank mortgage lenders began to suffer significant losses as well, and in the first nine months of 2007, "at least 90 [subprime] lenders [had] gone out of business." Darryl E. Getter, Mark Jickling, Marc Labonte, & Edward V. Murphy, Gov't & Fin. Div., Cong. Research Serv., *CRS Report for Congress: Financial Crisis? The Liquidity Crunch of August 2007*, at 6 (Sept. 21, 2007), (hereinafter "Getter *et al.*, *CRS: Financial Crisis?*"). On January 3, 2007, Consumer Affairs warned that "as the housing market slows to a crawl, many subprime lenders are collapsing faster than homes made of substandard materials, and the signs point to even more pain in the housing market as a result." Martin H. Bosworth, *Subprime Lender Implosion: Bad Omen For Housing Market*, ConsumerAffairs.com, Jan. 3, 2007.[8]

[8] Between April 2007 and January 2008, the following subprime lenders failed or were on the verge of collapse: New Century Financial Corp. (the largest subprime lender at the time) failed on April 2, 2007; and in August 2007, American Home Mortgage filed for Chapter 11 bankruptcy, Countrywide Financial Corporation narrowly avoided bankruptcy with $13 billion in emergency loans, and Ameriquest (the largest subprime lender in 2005) announced that it was going out of business. On January 11, 2008, Bank of America agreed to a fire sale purchase of Countrywide.

226. On March 27, 2007, Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, testified about the growing risks of foreclosures and the exit by several lenders from the subprime market due to defaults on an unusually large number of subprime loans. *Subprime Mortgages: Hearing Before the Subcomm. on Financial Institutions and Consumer Credit, H. Comm. on Financial Services*, 110th Cong. (Mar. 27, 2007) (prepared statement of Sandra F. Braunstein, Dir., Div. of Consumer and Comm. Affairs), *available at* http://www.federalreserve.gov/newsevents/testimony/Braunstein2007032.

227. In September 2007, the Congressional Research Service reported that "surveys of mortgages originated in 2005 suggest that defaults and foreclosures will rise even higher in late 2007 and the first half of 2008." Getter *et al.*, *CRS: Financial Crisis?*, *supra* at 4.

228. AIG, including its officers and directors, and all Defendants, knew or should have known of these dire circumstances in the mortgage industry. They also knew or should have known that these circumstances would prompt a rise in the market risk in its enormous CDS portfolio as the reference assets tied to the mortgage market declined in value, and that this would trigger collateral calls from its counterparties.

229. [redacted]

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230. Yet, as described *infra*, AIG increased its CDS business as regulators, analysts, and the financial press warned of the risks of loss on real estate-related assets, and as the

mortgage industry was showing serious signs of strain. Moreover, AIG downplayed the risks it faced in its communications with the market and the Plan participants.

b. High Volumes of Mortgage-Backed Securities Compounded the Effect of Foreclosures

231. Mortgage securitization works as follows: (1) hundreds of mortgage loans are "packaged as a portfolio and moved into securitization vehicles owned by a third-party," creating MBS, which create revenue to purchase more loans; (2) cash flows from pooled mortgages are divided among debt classes, "subdivided into senior, mezzanine and subordinate, with ratings from triple-A to double-B . . . [and] losses on the underlying loans are allocated to the lowest-rated bonds initially and then move up the ratings scale as the face amount of each class is eroded due to higher and higher losses"; (3) the value of an MBS is less than the value of the mortgages making up the MBS and the difference is "over-collateralization." Equity holders keep the over-collateralization and get "the difference between the net of servicing expenses and the weighted average cost of debt"; (4) lower-rated MBS tranches are bought by CDOs who issue debt to finance these purchases; and (5) "at the lower end of the capital structure, hedge funds tend to purchase the speculative grade and unrated equity portion of the MBS." *Subprime Mortgage Market Turmoil: Examining the Role of Securitization: Hearing Before the Securities, Insurance and Investment Subcomm. of the S. Comm. on Banking, Housing and Urban Affairs*, 110th Cong. 2-3 (Apr. 17, 2007) (prepared statement of Gyan Sinha, Senior Managing Director, Head of ABS & CDO Research, Bear, Stearns & Co. Inc.). These securities are called "structured products." Getter *et al.*, *CRS: Financial Crisis?*, *supra* at 6.

232. By March 2007, the U.S. mortgage securities market was $6.5 trillion, larger than the U.S. treasury market. Morgenson, *Crisis Looms*, *supra*. This volume resulted from a surge in securitizations in the several years prior, many of which were subprime or Alt-A mortgages.

In 2005, $507.9 billion in subprime mortgage loans were pooled and sold as MBS, a sharp increase from $18.5 billion in 1995. Getter *et al.*, *CRS: Financial Crisis?*, *supra* at 3. In 2006, 35 percent of all mortgage securities issued were subprime, up from 13 percent in 2003. Morgenson, *Crisis Looms*, *supra*. By 2006, "[n]onconforming originations [had] replaced agency originations as the dominant source of securitization volume," and Alt-A collateral underpin[ned] nearly 15 percent of "private label" securitizations. White, *supra*. Within the category of subprime MBS, the share of ARMs was nearly 80 percent in 2006. *The Housing Bubble and Its Implications for the Economy: Hearing Before the Subcomm. on Economic Policy and Subcomm. on Housing and Transportation, S. Comm. on Banking, Housing and Urban Affairs*, 109th Cong. (Mar. 13, 2006) (prepared statement of Richard A. Brown, Chief Economist, FDIC) *available at* http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spsep1306.html.

233. Overall, investors had become skittish about MBS by the end of 2006. For example, "hedge funds that specialize in MBS had an outflow of $1.8 billion in 2006, down from an inflow of $1.8 billion in 2005." Bajaj & Haughney, *supra*.

234. According to the SEC, "[i]n terms of large drops in market prices and large asset write-downs on mortgage-backed securities, the subprime crisis began to affect the U.S. around December 2006." OIG CSE Report, *supra* at 26. Given all the warning signs that had materialized by this time, AIG knew or should have known by the start of the Class Period that its CDS business related to MBS and other real estate-related securities carried serious risk—and Defendants knew or should have known that AIG stock was an imprudent investment for the Plans.

235. More warning signs continued to pile up. For example, in May 2007, researchers Joshua Rosner and Joseph Mason "concluded in an 84-page study that the U.S. ratings companies Standard & Poor's, Moody's and Fitch had been wrong to bless billions of dollars of mortgage securities with AAA and BBB ratings." Pittman, *supra*; *see also* Joseph R. Mason & Joshua Rosner, *Where Did the Risk Go? How Misapplied Bond Ratings Cause Mortgage Backed Securities and Collateralized Debt Obligation Market Disruptions* (presented at The Hudson Institute, May 3, 2007). Moreover, a version of this paper had been published and presented months earlier. *See* Joseph R. Mason & Joshua Rosner, *How Resilient Are Mortgage Backed Securities to Collateralized Debt Obligation Market Disruptions?* (Draft presented at The Hudson Institute, Feb. 15, 2007), *available at* http://www.hudson.org/files/publications/Mason_RosnerFeb15Event.pdf.[9]

236. On February 16, 2007, S&P announced that it would no longer wait for foreclosures before downgrading associated MBS. Bloomberg News, *S&P to Speed Mortgage Warnings; The Ratings Company, Responding to Rising Delinquencies, Will Alert Bond Investors Before Foreclosures Occur*, L.A. Times, Feb. 16, 2007. An S&P analyst commented that the agency had "equal concerns" about Alt-A loans and subprime loans based on early delinquencies. *Id.*

237. Indeed, risks related to Alt-A mortgages were a topic of much press coverage by early 2007. *See* Gretchen Morgenson, *Will Other Mortgage Dominoes Fall?*, N.Y. Times, Feb. 19, 2007 (discussing strain in the Alt-A sector of the CDO market); Chris Isidore, *"Liar Loans" Mortgage Woes Beyond Subprime*, CNNMoney.com, Mar.19, 2007 (describing how growth of Alt-A had surpassed subprime and underpinned much of the real estate boom in 2004 and 2005).

[9] Final versions available at http://ssrn.com/abstract=1027472 and http://ssrn.com/abstract=1027475.

238. AIG had direct exposure to MBS. As of late 2005, AIG's securities lending business (AIGI) began investing approximately 75 percent of its cash collateral (which was subject to being returned to the borrowers of the securities being lent through the securities lending business) in MBS. By mid-2007, that exposure reached approximately $94 billion. When the borrowers were ready to cover (*i.e.*, return the borrowed securities), AIGI was unable to return the full amount of the collateral because the value of the MBS in which the collateral had been invested had dramatically declined and the MBS were, in any event, too illiquid, thereby requiring AIG to make good for the return of the collateral. This further reduced AIG's overall liquidity.

239. Significantly, in February 2007, the ABX Home Equity ("ABX.HE") index, a synthetic ABS index of U.S. home equity ABS, materially declined. In early February 2007, the ABX index was above 90. It then declined from 72.71 to 69.39 between February 22 and 23. Alistair Barr, *Subprime Mortgage Derivatives Index Plunges*, MarketWatch, Feb. 23, 2007. The plunge was sparked in part by a rash of bankruptcy filings by subprime lenders. *Id.* By February 2007, 15 subprime lenders had gone under since 2005. *Id.*

240. AIG vociferously resisted using the ABX indices to track the risks related to its CDS portfolio. Cassano went as far as to say that the ABX index was "nonsensical" in regard to valuing AIG's CDS portfolio, and barred investors from discussing it: "Don't mention the ABX any more . . . ." AIG Investor Conference, Dec. 5, 2007. Cassano also stated that "the ABX index is not at all in any way representative of our portfolio." *Id.* AIG ignored the ABX and the volatility in CDOs and MBS and as noted above, added more CDS tied to those very risky securities throughout 2007.

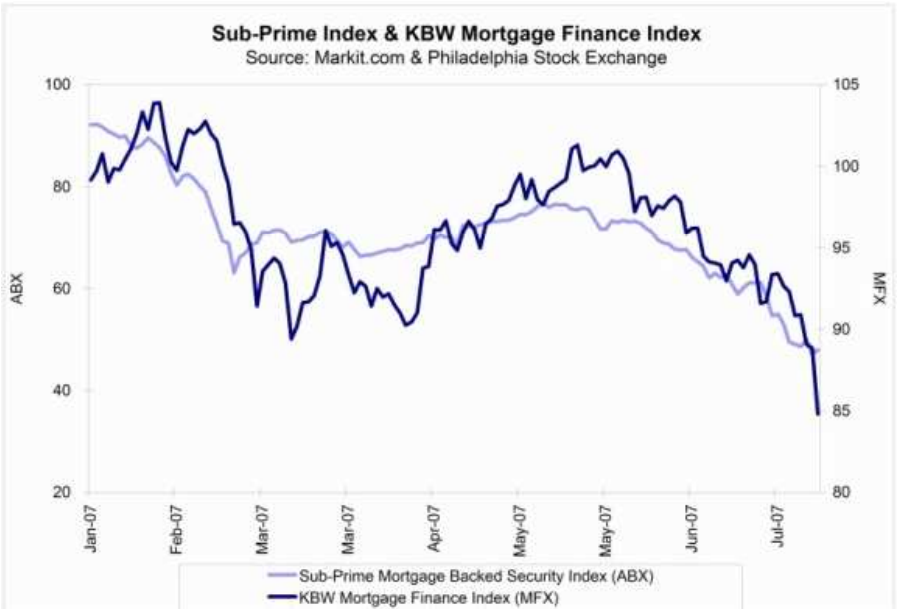
241. The *Wall Street Journal* reported at the time that "the bond market [was] signaling heightened fears about the ability of America's more financially stretched borrowers to keep up their mortgage payments," and that "Wall Street's worry about mortgage defaults is showing up in a set of indexes called ABX.HE." James Hagerty & Michael Hudson, *Mortgage-Default Risks Rattle Bond Investors*, Wall St. J., Jan. 27, 2007, at B4; *see also* HSBC Finance Corp., Current Report for the Period Ending Feb. 7, 2007 (Form 8-K), at Ex. 99 (Feb. 8, 2007) [hereinafter "HSBC Feb. 2007 Form 8K"].

242. Worries about a wave of defaults were confirmed in February 2007, when the second largest U.S. subprime mortgage lender, HSBC Holdings PLC, announced that "a substantial increase in [its] provision for loan losses with respect to the Mortgage Services operations in the fourth quarter," and that the "loan impairment charges and other credit risk provisions for 2006 [would] exceed the current market consensus estimate of $8.8 billion by 20 percent." Hagerty & Hudson, *supra*; *see also* HSBC Feb. 2007 Form 8K, at Ex. 99.

243. A *Wall Street Journal* article on the day of the HSBC press release stated that the housing boom "party [was] over," quoting HSBC's statement that "[t]he impact of slowing house price growth is being reflected in accelerated delinquency trends across the U.S. subprime market." Carrick Mollenkamp, *Faulty Assumptions: In Home-Lending Push, Banks Misjudged Risk—HSBC Borrowers Fall Behind on Payments; Hiring More Collectors*, Wall St. J., Feb. 8, 2007, at A1. An HSBC executive stated in the article that "[they] made some decisions that could have been better." *Id.*

244. Toward the end of February 2007, the already-nervous and declining ABX housing market tracker dove from the 80-90 percent range to the 60-70 percent range on the news from HSBC. Press Release, Hennessee Group LLC, Ledge Funds Profit off Subprime

Collapse—Funds Benefit from Decline in ABX Index (Aug. 21, 2007), *available at* http://www.hennesseegroup.com/releases/release20070821.html. The following chart shows the ABX dive:



Id.

245. Moreover, in late March 2007, "Moody's Investors Services warned . . . that defaults and downgrades of subprime MBS could have 'severe' consequences for CDOs that invested heavily in the sector." Alistair Barr, *Mortgage Crisis To Hit Holders of Risky Derivatives*, MarketWatch, Apr. 2, 2007.

246. By June 2007, AIGFP insiders were severely worried about the consequences of ratings downgrades of MBS for the CDS portfolio. [redacted]

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247. In a July 11, 2007 phone call, Forster, the head of credit trading at AIGFP, told Frost, "About a month ago I was like, you know, suicidal. . . . The problem that we're going to face is that we're going to have just enormous downgrades on the stuff that we've got. . . . Everyone tells me that it's trading and it's two points lower and all the rest of it and how come you can't mark your book. So it's definitely going to give it renewed focus. I mean we can't . . . we have to mark it. It's, it's, uh, we're [unintelligible] f***ed basically." FCIC Report, at 243.

248. The ABX-HE-BBB (designed to track the lowest investment-grade subprime mortgage bonds sold in the second half of 2005) "traded as high as 102.19 cents on the dollar when it started in January 2006," and by the middle of December 2007, it traded for 30 cents on the dollar. Pittman, *supra*.

249. [redacted]
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250. The subprime MBS dive in early 2007 was only the beginning. "While the deterioration of the subprime MBS market has received a great deal of attention, the implosion of the Alt-A MBS market [in the first quarter of 2008] has received far less attention. The

outstanding amount of Alt-A securities poses a significant systemic risk that is already becoming evident." Woodward & Raju, *supra* at 224.

251. Far from being sudden or unexpected, both the housing market crisis and the resulting problems within AIG were both foreseeable and foreseen by AIG insiders. In a November 19, 2007 internal e-mail, McGinn wrote "All units were apprised regularly of our concerns about the housing market. Some listened and responded; others simply chose not to listen and then, to add insult to injury, not to spot the manifest signs. 'Nero playing the fiddle while Rome burns' is my assessment of that."

252. As detailed further *infra*, by August 7, 2007, AIG knew or should have known of the risks that the collapse of the MBS market would have on its CDS holdings. Specifically, AIG knew or should have known that the declines in the value of MBS would trigger collateral calls on the $70 to $80 billion in CDS tied to subprime MBS in its portfolio—which they had done already. AIG should have taken steps to limit its exposure to CDS tied to MBS by the start of the Class Period based on these red flags which were well known and recognized throughout the industry. At the very least, AIG should have recognized the risk in its portfolio and taken steps to hedge its level of exposure.

253. The boom in subprime and Alt-A mortgage derivative markets helped fuel AIGFP's CDS business. By selling billions of dollars worth of CDS on subprime MBS and CDOs, AIGFP tied the fate of the Company to this unstable market. *See* Second Quarter 2007 Investor Call. And as the subprime and Alt-A mortgage and derivatives bubble burst, AIG found itself overexposed without protection from enormous losses. Yet, the losses AIG suffered were foreseeable and avoidable, certainly by August 7, 2007. As the "rapid rise in housing prices stopped in 2006, it was inevitable that many subprime borrowers would have difficulty making

payments, particularly those with adjustable rate mortgages scheduled to reset in 2007 and 2008." Mark Jickling, *Containing Financial Crisis*, CRS Report for Congress, Nov. 24, 2008 (citation omitted). Indeed, as the CEO of a Swiss bank stated, the subprime collapse was "'probably the longest anticipated crisis we have ever seen.'" *Id.* Despite this, AIGFP and AIG failed to insulate themselves in any manner from these losses.

254. Indeed, AIG was well aware that the "real estate market softened in late '05," and consistently told investors that it had taken steps to protect itself from losses caused by problems in the real estate sector. Second Quarter 2007 Investor Call, Lewis comments. Defendant Sullivan noted that:

> During 2005, AIG began to see mounting evidence that lending standards and pricing in the U.S. residential housing market were deteriorating at a significant pace. Each of our businesses with exposure to that sector saw the same environment and *took corrective action at that time*, consistent with their individual business models.

AIG Investor Conference, Dec. 5, 2007 (emphasis added). In spite of this assurance, AIG and AIGFP failed to take steps to limit their risk exposure, appreciate the magnitude of the risks in their CDS portfolio, or take adequate "corrective action." *Id.*

255. Moreover, AIG's exposure to subprime mortgages was open-ended because of almost all of the CDOs to which it was exposed allowed the CDO manager to substitute subprime mortgages into the collateral pool. Thus as 2005, 2006 and 2007 progressed, AIG became increasingly exposed to the riskiest vintages of subprime-stuffed securitizations.

256. As AIG's Chief Risk Officer explained on AIG's Second Quarter 2007 investor call, the increase in delinquencies in the mortgage industry impacted many investment funds "where high leverage and strained liquidity have forced them to realize large losses, and in some cases, cease operations." Second Quarter 2007 Investor Call. This is precisely the scenario that caused AIG massive losses: too much leverage and a lack of liquidity. Given AIG's purported

sophistication in the markets in which it operated, and the Director Defendants' high-ranking positions in the Company, Defendants knew or should have known that the risks created by this gross mismanagement of the CDS portfolio made AIG stock an imprudent investment for retirement.

5. With the Collapse of the Mortgage Derivatives Market, AIG Was Crippled by Collateral Calls Arising Out of its CDS Portfolio and by the Seizing Up of Its Global Securities Lending Program

257. When the mortgage derivative and securities market went into free-fall, AIG faced growing demands for collateral from its CDS counterparties. As the reference assets lost value, the market risk increased and the counterparties to AIG's CDS demanded cash collateral. These were "arguably the primary cause of the financial problems of the company." Marc Labonte, *Financial Turmoil: Federal Reserve Policy Responses*, Cong. Research Serv., Dec. 4, 2008, at 16.

258. [redacted]

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259. [redacted]

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260. On August 8, 2007, AIG filed with the SEC its Form 10-Q for the quarter ended June 30, 2007, and for the first time publicly disclosed the existence of AIGFP's CDS portfolio that insured CDOs "exposed" to "residential mortgage backed securities," including "subprime collateral." The 10-Q and accompanying press release made no mention of the collateral call issue.

261. [redacted]

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[redacted]

262. AIG knew almost immediately that the Goldman collateral call would not be an isolated event; more would soon follow; further, AIG already knew that the market for the underlying assets was drying up and that AIG would be vulnerable to low valuations of the underlying assets, triggering larger calls. [redacted]

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263. [redacted]
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264. Unsurprisingly, AIG's senior management was aware of the risks posed by the CDS portfolio and were raising serious concerns. [redacted]
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265. According to *Fatal Risk*, in the Fall of 2007, Defendant and then AIG chairman Defendant Willumstad realized that AIG "could be brought to its knees by an esoteric derivative contract no one had understood" until recently, namely, CDS.

266. In October 2007, Goldman again asked for collateral from AIG, this time an additional $3 billion. *See, e.g.*, Mollenkamp, *Behind AIG's Fall*. AIG disagreed, and ultimately posted $1.5 billion. As *The New York Times* reported, "Goldman hedged its exposure by making a bearish bet on AIG, buying credit-default swaps on AIG's own debt . . . ." *Id.* While Goldman was gambling on AIG's potential misfortune, AIG itself did not make the basic and defensive move to hedge or phase out its own CDS portfolio. Instead, it focused on short term profits by selling more CDS, despite the enormous risks inherent in its existing portfolio.

267. The import of these collateral calls cannot be overstated. By the end of 2007, AIG professed to have roughly $20 billion in excess capital. The collateral calls from Goldman alone required AIG to give 10 percent of its purported excess capital to a single counterparty, whose CDS holdings from AIG totaled only 4 percent of AIG's total CDS portfolio. The rate at which Goldman's requests for collateral increased showed AIG that collateral demands would expand nearly exponentially. And, as AIG knew well, Goldman was not alone.

268. In the first two weeks of November 2007, Merrill Lynch, JPMorgan, and Société Générale SA also made collateral calls, with SocGen alone asking for $1.7 billion on a portfolio with a $13.6 billion notional value, and Merrill Lynch asking for $610 million. *Fatal Risk*, at 250. [redacted]

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269. Far from being sudden or unexpected, the housing market crisis and the resulting problems within AIG were foreseeable. In a November 19, 2007 internal e-mail, McGinn wrote "All units were apprised regularly of our concerns about the housing market. Some listened and responded; others simply chose not to listen and then, to add insult to injury, not to spot the manifest signs. 'Nero playing the fiddle while Rome burns' is my assessment of that."

270. As collateral calls on the CDS portfolio continued to pour in, the market for the reference securities continued to dry up, making it nearly impossible even to value the securities for purposes of determining the size of collateral calls. [redacted]
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[redacted] This illiquidity was not temporary, but reflected very real and justified doubts about the values of the mortgages underlying the reference securities. _And as a result, AIGFP was left extremely vulnerable to further large collateral calls.

271. By the end of 2007, UBS AG, Barclays PLC, Crédit Agricole SA's Calyon investment-banking unit, and Royal Bank of Scotland Group PLC all demanded substantial collateral totaling billions of dollars from AIG on CDS contracts. Mollenkamp, *Behind AIG's Fall*. Deutsche Bank and Canadian banks CIBC and Bank of Montreal also demanded collateral at various points. *Id.* Thus, a year before its collapse, Defendants knew or should have known

that collateral calls were coming at a rapid pace that would soon stretch AIG beyond its available cash reserves. The FCIC noted in its report that defendant Sullivan was fully aware of the danger the collateral calls posed:

> Inputting generic CDO collateral data into the Moody's model would result in a $1.5 billion valuation loss; using Goldman's marks would result in a $5 billion valuation loss, which would wipe out the quarter's profits . . . . [Andrew] Forster recalled that Sullivan said that he was going to have a heart attack when he learned that using Goldman's marks would eliminate the quarter's profits.

FCIC Report, at 271. Clearly, again, Defendants knew or should have known to divest the Plans of Company stock in recognition of the stock's high risk and dire situation, or at a minimum cease purchasing additional shares at prices which were artificially inflated due to the non-disclosure of these highly material and adverse facts.

272. Still, AIG was slow to report publicly any losses to its CDS portfolio even though through their extensive dealings with counterparties they knew that the mark to market value of the reference assets was in rapid decline, forming the basis of the collateral calls. On November 7, 2007, AIG reported its first losses tied to its CDS portfolio in the Third Quarter 2007, stating that it had taken a $352 million valuation loss to its CDS tied to multi-sector CDOs for the Third Quarter 2007; however, this amount would have been substantially higher, but, [redacted] Redacted - Confidential [redacted] The same disclosure, however, indicated that "AIG estimates a *further* unrealized market valuation loss through October 2007 of approximately $550 million before tax for AIGFP's super senior credit default swap portfolio." Thus, AIG estimated that AIGFP's CDS tied to multi-sector CDOs had lost an additional $550 million in just one month, following the end of the Third Quarter 2007.

273. These rapidly mounting valuation losses, combined with the multi-billion dollar collateral calls AIGFP was receiving, were, by themselves, severe enough to put AIG on notice

that the Company faced dire circumstances. But compounding matters, the Company was also experiencing extreme and alarming strains on its GSL program—which had increased its exposure to subprime mortgage-backed assets even as AIGFP took steps to limit its own exposure. [redacted]

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274. Although AIG claimed inaccurately that its cash reserves were sufficient to cover any losses, such claims were clearly wrong. In May 2007, AIG claimed that it had between $15 to $20 billion in "excess capital" at the end of 2006. However, such amounts were obviously insufficient considering that just a handful of collateral calls on AIGFP's $80 billion in CDS on

multi-sector CDOs (not to speak of its hundreds of billions of dollars worth of other CDS contracts), could quickly soak up all of AIG's excess liquidity, especially if combined with further liquidity strains on the Securities Lending program. By March 2008, members of AIG's Board were aware of a liquidity crisis that threatened AIG's solvency, and saw the need to raise as much capital as possible—leading, ultimately, to the raising of $20 billion through debt and equity offerings in May 2008. Yet even this enormous capital raise was clearly inadequate, and by September 2008, AIG needed over $85 billion in cash, over four times the maximum available capital AIG purported to have.

275. The collateral calls in 2007 gave AIG's auditor, PwC, cause to examine AIG's valuation of its CDS portfolio. Mollenkamp, *Behind AIG's Fall*. Numerous analysts and investors hounded AIG with questions about the potential for greater losses on the CDS portfolio, though the information about the risks was extremely limited and difficult to assess. AIG decided to hold a special investor conference on December 5, 2007 in an effort to assuage investors about its CDS portfolio, changing the previously planned topic of the conference and focusing the entire presentation solely on AIGFP and its CDS portfolio, as AIG had not been able to interest analysts and investors in any other topic besides that in its recent communications with the public. Thus, analysts and investors were highly focused on AIG's CDS, CDO and RMBS exposures, and the Defendants were, or certainly should have been, as well.

276. Six days before the December 5, 2007 investor conference, PwC held a meeting with AIG's senior management at which PwC told Defendant Sullivan, AIG's then-CEO, and Bensinger, AIG's then-CFO, that AIG could have a "material weakness" in its risk management controls and oversight of AIGFP and in the valuation of the CDS portfolio. *See* AIG Audit Committee Meeting Minutes, Jan. 15, 2008, Dkt. No. 34, Ex. I; *see* Mollenkamp *et al.*, *Behind*

AIG's Fall. This fact was not disclosed to investors during the December 5, 2007 Investor Conference.

277. Contrary to PwC's findings, AIG falsely reported in its 2007 Annual Report that it had strong and adequate controls over its risk management. The Company stated that "AIG devotes considerable resources, expertise and controls to managing its direct and indirect credit exposures, such as investments, deposits, loans, reinsurance recoverables and leases, as well as *counterparty risk in derivatives activities*, cessions of insurance risk to reinsurers and customers and credit risk assumed through credit derivatives written and financial guarantees." AIG 2007 Annual Report (Form 10-K), filed Feb. 28, 2008, at 113 (emphasis added). This was not a complete or accurate statement.

278. Moreover, at the investor conference on December 5, 2007, AIG falsely told investors that it had little risk of loss in its CDS portfolio. As explained more fully, *infra*, AIG told investors that it hand-selected every CDS deal and used its proprietary risk model to ensure that the risk of losses tied to its portfolio was a fraction of a percent. The meeting confirmed that AIGFP treated its CDS as a traditional insurance contract and did not measure or place any value on the market or pre-settlement risk embedded in every deal. For example, AIGFP stated that its models were "actuarial," which looked almost exclusively to default risk as one might in a traditional insurance contract. Investor Conference, Dec. 5, 2007. Even though AIG stated routinely that it applied "severe recessionary" stresses to its valuation models, it did so only to measure default risk, not mark to market or pre-settlement risk. *Id.*

279. At the December 5, 2007 Investor Conference, Cassano tried hard to downplay the import of increases in market and pre-settlement risk with regard to collateral calls. Yet after the Investor Conference, concern about AIG's CDS increased. Mollenkamp, *Behind AIG's Fall*.

Within two days, AIG's stock price began to fall precipitously as news of write-downs to its CDS portfolio continued, in effect destroying Cassano's, and AIG's, credibility. Between December 7 and December 14, 2007, AIG's shares fell from $61.45 to $55.65, nearly a 10 percent decline.

280. Although the Securities Lending program was less on the public radar than AIGFP, key parties both within and outside AIG were aware of the risks facing the GSL. AIG's various U.S. insurance subsidiaries are subject to the jurisdictions of state insurance regulators in their respective states, and some of these state regulators took notice of the shift to riskier investments in the Securities Lending program early on. [redacted] Redacted - Confidential [redacted] TDI was tasked with monitoring Texas-based insurance companies for risks to the well-being of Texas consumers, and this RMBS exposure represented a serious risk. "The disaster of the summer of 2007 took risks that had long been held to be theoretical and made them real. The securities lending program was looking like it was going to hurt a lot of people, and not just in Texas." *Fatal Risk*, at 270-271. [redacted] Redacted - Confidential [redacted]

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281. [redacted]

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282. [redacted]

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283. In the Third Quarter of 2007, ended September 30, 2007, the value of the GSL portfolio declined by $1.8 billion. [redacted]
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284. By November 2007, all four major rating agencies had expressed concern about the Securities Lending program, particularly the program's size and its liquidity risk. A November 29, 2007 e-mail from Watson to Defendant Doyle and others described [redacted]
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285. Also in November 2007, AIG began having to inject capital into its insurance subsidiaries to cover their losses in its Securities Lending program, initially agreeing to cover $500 million in losses, then $1 billion, and later $5 billion. And at the same time, ratings agencies were also questioning the capitalization of AIGFP as well as AIG's United Guaranty

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("UG") subsidiary. [redacted]

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286. In a February 6th meeting with Defendant Willumstad, AIG's external auditors questioned the aptitude of management, including Defendant Sullivan. According to the FCIC:

> [T]he auditors were broadly critical of Sullivan; [Steven] Bensinger, whom they deemed unable to compensate for Sullivan's weaknesses; and [Robert] Lewis, who might not have "the skill sets" to run an enterprise-wide risk management department. The auditors concluded that "a lack of leadership, unwillingness to make difficult decisions regarding [Financial Products] in the past and inexperience in dealing with these complex matters" had contributed to the problems.

FCIC Report, at 273. Despite these concerns, Defendant Sullivan continued to run the Company for four and half months, until just three months before AIG's collapse. And, in keeping with their consistent inattentiveness to it, the Defendants still did not even discuss the AIG Stock Fund.

287. [redacted]

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[redacted] Thus, by this point, Defendants knew that downgrades to its own credit would increase pre-settlement risk and the amount counterparties could demand through collateral calls.

288. On February 11, 2008, AIG filed a Form 8-K with the SEC, dropping two bombshells. First, it disclosed that it had a material weakness regarding the oversight, risk

management, and valuation of AIGFP's CDS portfolio. AIG Current Report (Form 8-K), filed Feb. 11, 2008. AIG stated that its auditor, PwC, directed it to hire more people in risk management and to improve its systems for monitoring AIGFP's accounting. Second, AIG disclosed that it had devalued its CDS portfolio by a further $5.9 billion as of November 30, 2007. *Id.* This was more than $4 billion greater than the losses on the CDS portfolio AIG had reported to shareholders (for the same time period) at its December 5, 2007 Investor Conference, which was about $1.4 - $1.5 billion. Moreover, the Feb. 11, 2008 8-K revealed that AIG had reduced the $5.96 billion dollars in "gross" losses down to approximately $1.4 to $1.5 billion through the use of "cash flow diversion features" and "negative basis adjustments," which it now (through the filing of the 8-K) admitted were improper. Or, as others pointed out, "That day, AIG said that losses it had earlier estimated at around $1 billion for October and November would actually be almost five times as high for those two months alone." Plevin, *Big Shareholders Rebel*. This was yet another moment—in a continuum of moments from the beginning of the Class Period—at which Defendants knew or should have known to cease offering AIG common stock as a Plan alternative, much less permitting further investments in it, and another example of AIG attempting to conceal its true risks from the market and the Plan participants, which had spiraled too out of control to contain. As a response to this news, AIG's stock closed at $43.85, a dramatic decline of nearly 12 percent from AIG's share price of $49.67 on February 11.

289. [redacted]

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[redacted] Redacted - Confidential [redacted] This statement shows that AIG well understood that the fate of its CDS portfolio was inextricably tied to the housing and mortgage derivatives markets through its CDS based on multi-sector CDOs. Moreover, it demonstrates that AIG knew that it faced increased collateral calls and further write-downs. Again, Defendants knew or should have known to divest the Plans of Company stock or cease additional purchases of it, as they should have by the beginning of the Class Period, but instead they did absolutely nothing.

290. In its investor materials for the year-end 2007 data, AIG reported that several credit rating agencies had downgraded some of the collateral underlying the CDS portfolio. Conference Call Credit Presentation Supplemental Materials for Year End 2007 Results, Feb. 29, 2008. For example, AIG reported in that $6.4 billion or 10.5 percent of its multi-sector CDO-related CDS portfolio suffered downgrades. *See id.* at 19. Specifically, $2.3 billion was downgraded to AA, $2.0 billion to single A, and $2.1 billion to BBB. AIG reported that credit rating agencies put another $8.7 billion of AAA rated super senior CDOs (representing twelve transactions) on credit watch. This was yet another obvious sign that the market risk had increased dramatically on this portion of the portfolio. However, AIG continued to misleadingly assure investors that "[t]he 'Super Senior' credit derivative transactions [were] significantly out-of-the-money put options that are insensitive to normal changes in market credit spreads." *Id.* at 9. The Defendants, however, knew, or should have known, better.

291. In the days leading up to the release of AIG's 2007 Annual Report in February 2008, [redacted] Redacted - Confidential [redacted]

[redacted]
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[redacted]

292. On February 28, 2008, AIG filed its 2007 Annual Report, disclosing further downgrades to the CDS portfolio, totaling $11.5 billion at December 31, 2007. AIG Annual Report for Year End 2007 (Form 10-K), filed Feb. 28, 2008 at 37. And yet, AIG was still selling more CDS, increasing its portfolio to $527 billion by the end of December 2007. *Id.* at 121-22. AIG also disclosed that it paid $5.3 billion in response to collateral calls to counterparties on the CDS as of February 26, 2008. This was roughly one third of AIG's purported excess capital at the time. Defendant Sullivan also announced that Cassano would retire "with our concurrence," though he would remain a paid consultant through 2008. Plevin, *Big Shareholders Rebel*. This was yet another obvious red flag that AIGFP was imploding, and that Cassano's actions and denials – already contradicted by the February 11, 2008 8-K – were effectively being disavowed by the Company, and more obvious cause for investigation by the Defendant fiduciaries. Yet, the Investment Committee and Retirement Committee never inquired of AIG senior management, or AIGFP management, or management of AIG's GSL program, about any of the issues that caused AIG's demise, nor did they discuss the AIG Stock Fund until after the government bailout.

293. AIG's stock price dropped again on the release of the 2007 Annual Report. It closed at $45.93 on February 29, 2008, down from $51.21 on February 27, 2008—another 10 percent drop over two days. But no reaction at all from the Defendant fiduciaries at all was forthcoming.

294. Collateral calls on AIGFP and cash problems in GSL continued to mount. [redacted]

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[redacted]

295. By the end of March 2008, AIG insiders realized that the entire Company was in dire need of massive amounts of additional capital. [redacted]

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[redacted]

[redacted]

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[redacted]

296. [redacted]

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[redacted]

[redacted]
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[redacted]

297. Throughout this period of chaos and panic for the Company, again, Defendants not only failed to take action to protect the Plan participants from losses in the AIG Stock Fund, but according to testimony, did not even discuss the idea—with one apparent exception. [redacted]
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[redacted]

298. On May 8, 2008, AIG reported a $7.81 billion loss in the First Quarter 2008 and an adjusted net loss of $3.56 billion, which raised the total losses on the CDS portfolio to $20 billion. By March 31, 2008, approximately $11 billion or 18 percent of the multi-sector CDO-related CDS portfolio had been downgraded by the rating agencies, with an additional $19.5 billion placed on credit watch. Conference Call Credit Presentation for First Quarter 2008, May 9, 2008 at 20. Remarkably, and at a near exponential rate, another $7.8 billion of the portfolio was downgraded by April 30, 2008. *Id.* This represented 31 percent of the total multi-sector

CDO related CDS portfolio. As of April 30, 2008, AIG posted $9.7 billion to meet collateral calls, up from $5.3 billion only two months earlier. Defendants, who knew or should have known of these developments, took no action to protect the Plans.

299. At the same time it announced huge first quarter losses, AIG publicly announced that it needed to raise new capital. Thus, during the First Quarter 2008 investor call held on May 9, 2008, Defendant Sullivan discussed the process to raise $12.5 billion (almost immediately raised to $20 billion) in capital through issuance of common stock, and fixed income securities. In addition, at the same time it announced huge first quarter losses, and the planned capital raise, AIG announced a 10% dividend increase in attempt to appease investors—which imposed a further drain on liquidity, and at a critical time when AIG needed to raise $20 billion in capital.

[redacted]
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[redacted]
[redacted]
[redacted] AIG also announced that it was looking for a new chief financial officer after moving the then-current CFO, Bensinger, to vice chairman of the Financial Services division. "AIG Seeks New CFO as Bensinger Moves to Financial Services." Insurance Journal, May 8, 2008, *available at* www.insurancejournal.com/news/national/2008/05/08/89854.htm). Defendants, who knew or should have known of these developments, took no action to protect the Plans.

300. On the evening of May 8, 2008, after AIG's announcement, AIG's credit was downgraded one notch by two of the four major ratings agencies. This dramatically increased the pre-settlement risk for AIG and the amount of cash it would have to post on collateral calls from its CDS counterparties. Defendant Sullivan downplayed this risk, stating that "we don't

believe that is significant to the operations," [redacted]

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[redacted] Bensinger noted that while the credit downgrade resulted "in about $1.6 billion of additional collateral posting . . . these actions should not have any significant effect at all on the operations." First Quarter 2008 Investor Call, May 9, 2008. Thus, Bensinger and Defendant Sullivan actively tried to minimize and obfuscate the true import of the downgrades, [redacted] Regardless, these disclosures contributed to the dive AIG's stock took on May 9, 2008 when AIG stock fell to $39.65, down from $43.46 on May 8, 2008—a drop of nearly 9 percent in one day.

301. Although AIG was ultimately able to raise $20 billion in capital, it was immediately questioned whether even $20 billion in new capital was enough. Analysts Joshua Shanker and Yaron Kinar of Citigroup – one of the lead underwriters on the May 2008 Offering – authored a May 27, 2008 analyst report that doubted the adequacy of the capital raise:

> Despite the capital raise, we are not certain that AIG's capital position is sufficient. The capital raise only seems to replenish capital loss. And, despite AIG's statements to the contrary, we do not believe the company is or was in an excess capital position. The rating agencies merely have been slow to re-rate a company like no other. Moreover, AIG's financial condition may be materially adversely affected by the ongoing downward cycle in the US housing market and the potential of market disruption continuing to expand beyond residential mortgages. Similarly, the CDS portfolio will consume more collateral should credit spreads continue to widen.

302. The Citigroup report also took note of the recent ratings agency downgrades, pointing out that the downgrades took place "despite the capital raise" and noting that "the ramifications of another downgrade would be devastating for AIG," so devastating, in fact, that the two analysts could not believe AIG would allow such a thing to happen: "The company is likely to acquiesce to any rating agency requirements and, if necessary, would certainly raise an

additional $5-10 billion…in order to maintain its current rating….” Shanker and Kinar pointed out that further downgrades would likely trigger $10 billion in additional collateral calls, increased borrowing costs company-wide, and decreased insurance premiums, among other things. If Shanker and Kinar could reach these conclusions looking at AIG from the outside, based only on public information—conclusions that largely bore out in the following months—the real picture looked even much worse to AIG insiders including Defendants. And in fact, an additional $5-10 billion capital raise would prove impossible given market conditions.

303. Pressure continued to mount on both the AIGFP CDS portfolio and the GSL portfolio. [redacted]

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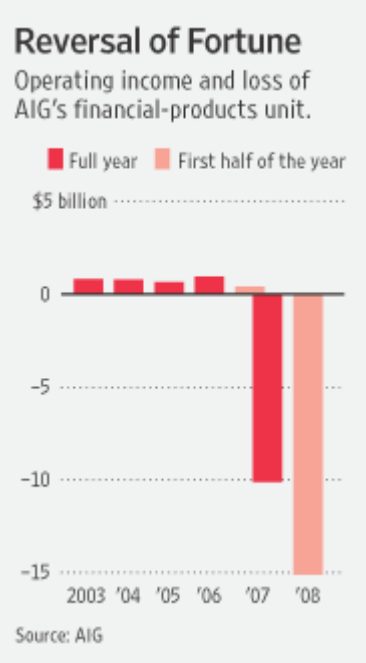
304. That AIGFP was a significant cause of AIG’s collapse is seen easily in a graph of its operating income and losses at this time:



Mollenkamp, *Behind AIG's Fall*.

305. Two days before AIG held its May 14, 2008 Annual Meeting, three major shareholders who effectively controlled more than 100 million shares, or roughly 4 percent of the company's stock at the time, sent a blistering letter to the Company's board. Plevin, *Big Shareholders Rebel*. These major shareholders cited "a staggering breakdown of risk controls" and "an unequivocal loss of investor confidence." *Id.* The three shareholders asked the board for a meeting to discuss "steps that can be taken to improve senior management and restore credibility." *Id.*

306. This outcry from shareholders came at a time when AIG reported two consecutive quarterly losses totaling $13 billion, nearly as much as the firm made in all of 2006. This was the second time in three years that AIG faced "significant turmoil . . . threatening [AIG's] efforts to return to stability." Plevin & Smith, *Big Shareholders Rebel at AIG*.

307. As collateral calls multiplied, AIG employed a "full model valuation" to determine its available excess capital. AIG Economic Capital Modeling Results and

Applications, May 2008 Update at 4. This led to a dramatic reduction in the Company's excess capital. AIG's "conservative 'roll forward'" estimate of excess capital as of March 31, 2008 was reduced to a range of $2.5 to $7.5 billion. *Id.* This represented an enormous drop from AIG's 2007 projections that it had around $20 billion in excess capital, revealing that the cash collateral calls were bleeding the company dry.

308. Yet remarkably, AIG stated five months later with "99.95 percent confidence" that it had adequate capital, despite admitting that "it is very difficult to develop a stable measure of excess capital at the present time." AIG Economic Capital, August 2008 Update at 1, 3. AIG provided no figure for its estimated excess capital, which was uncharacteristic of earlier reports where specific figures were stated and perhaps a sign that it had no excess capital.

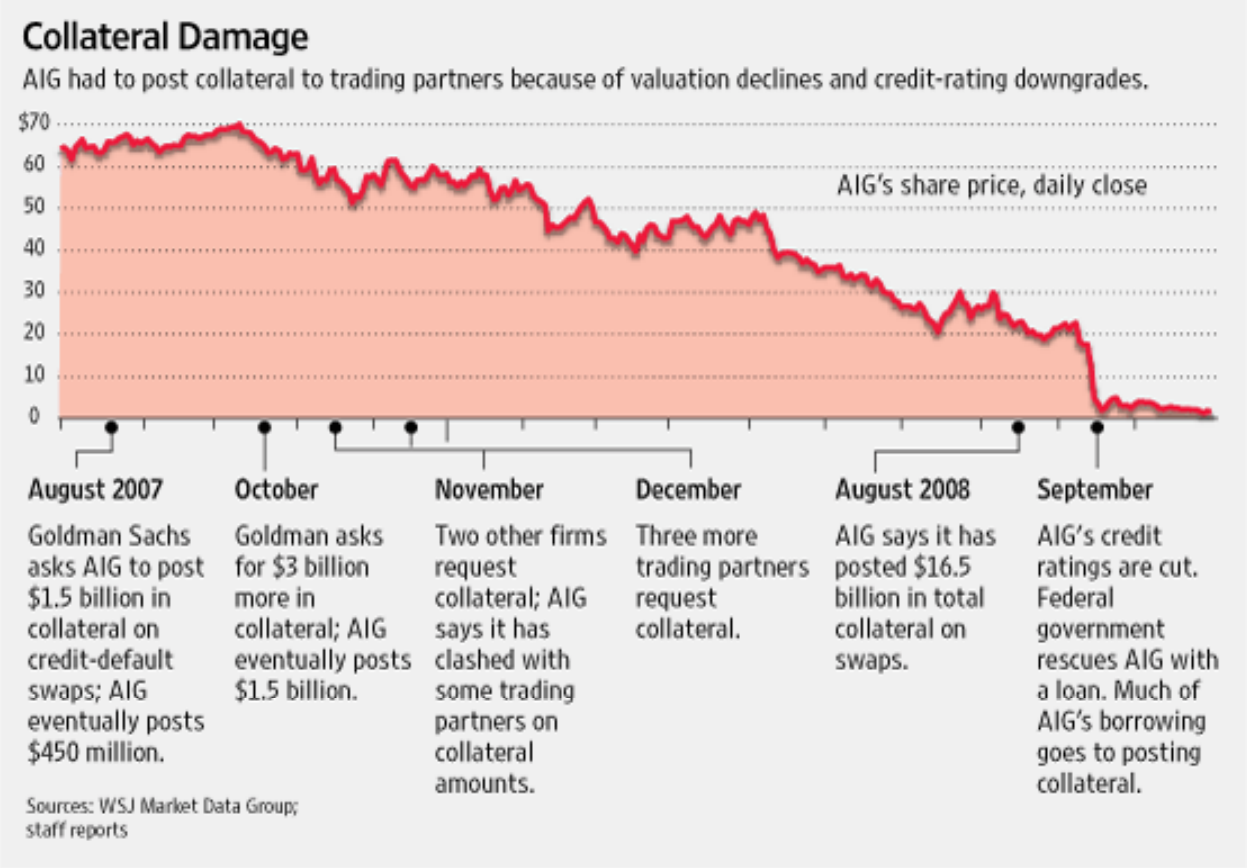
309. In June 2008, the SEC publicly announced an investigation into whether AIG overstated the value of its CDS portfolio. Amir Efrati & Liam Plevin, *SEC, Justice Scrutinize AIG on Swaps Accounting*, Wall St. J., June 8, 2008, at C1. The SEC investigation was prompted by AIG's announcement that it had a material weakness in the valuation of its CDS portfolio in February 2008 and by AIG's write-down of over $20 billion on its CDS portfolio through the First Quarter 2008. *Id.* By mid-2008, the U.S. Justice Department also opened an investigation into the CDS valuation at AIGFP. *See* Randall Smith *et al.*, *AIG Group Tied to Swaps Draws Focus Of Probes*, Wall St. J., June 13, 2008, at C1. As of June 2008, AIG stock had plunged over 41 percent from the start of the year. The stock dropped another 6.8 percent on June 6, 2008 on news of the SEC's investigation. Still the Investment Committee and Retirement Board Defendants did nothing to even discuss the AIG Stock Fund, or make any inquiries into any aspect of the Company's liquidity, finances, or operations.

310. On June 15, 2008, Defendant Sullivan resigned as CEO after running AIG since March 14, 2005. Defendant Sullivan received a $47 million severance package. Reuters, *AIG Pays its Ex-Chief $47 Million*, N.Y. Times, July 2, 2008, at C10. Defendant Sullivan was replaced by the Chairman of the AIG Board, Defendant Willumstad. This likewise did not prompt any protective action with respect to the Plans' assets invested in the AIG Stock Fund by the Investment Committee or Retirement Board Defendants.

311. On August 7, 2008, the day after AIG posted its Second Quarter 2008 losses of $5.36 billion, the stock tumbled another 18 percent (or $5.25) to close at $23.84. Tom Petruno, *Shaky economy gives stocks shivers; The Dow drops 225 as AIG posts a huge loss*, N.Y. Times, Aug. 8, 2008 at C4; *see* AIG Current Report (Form 8-K) Ex. 99.1, Aug. 6, 2008.

312. By late August and into September 2008, AIG received more collateral calls. When Lehman Brothers filed for bankruptcy protection on September 15, 2008, the rating agencies slashed AIG's credit ratings. AIG's "executives figured the downgrade would require AIG to post more than $18 billion in additional collateral to its trading partners." Mollenkamp, *Behind AIG's Fall*.

313. By early September 2008, AIG sat on the brink of collapse without sufficient funds to meet collateral calls on its CDS portfolio. AIG had burned through the entire $20 billion it had raised only three months earlier, with little hope of raising more capital. The following graphic illustrates the effect of the collateral calls on AIG's stock price and the resulting precipitous decline:



Mollenkamp, *Behind AIG's Fall* (The initial Goldman call was actually a $1.8 billion call.)

314. According to *Too Big to Fail*, AIG executives, including Defendant Willumstad, were informed in a September 12, 2008 meeting that they were days away from bankruptcy:

> [AIG Head of Strategy Brian Schreiber, who worked with Defendant Junius] passed around a one-page summary of the firm's cash outflows . . . . By [September 17th], the [document] indicated, [AIG] would be negative $5 billion, with the shortfall each successive day only growing worse.

SORKIN *supra,* at 292.

315. As stated in the FCIC Report, the fact that AIG, the largest insurance company in the world, reached this point was the result of a failure by AIG executives to manage the mark to market and pre-settlement risks in their CDS portfolio:

> The Commission concludes AIG failed and was rescued by the government primarily because its enormous sales of credit default swaps were made without putting up initial collateral, setting aside capital reserves, or hedging its

> exposure—a profound failure in corporate governance, particularly its risk management practices.

FCIC Report, at 352. As shown above, it was also the due to the gross mismanagement and bets on RMBS by AIG's GSL program.

316. AIG and the other Defendants knew or should have known that AIG's overleveraged position on its CDS portfolio would suffer massive losses as the housing market and the mortgage securities markets crumbled, and that its obligations on the CDS portfolio would require it to post collateral beyond its capital resources. Despite acknowledging that the housing market was in disarray as early as 2005, AIG failed to take steps to protect itself from losses tied to that market. Specifically, AIG failed: (1) to understand and manage both mark to market and pre-settlement risk in its CDS; (2) to take any measures to protect itself from the known and obvious risks of selling CDS tied to the mortgage markets; and (3) failed to take measures to curtail the risks of exposing tens of billions of dollars in the GSL cash collateral portfolio to an alarming deteriorating RMBS market, which virtually literally ground to a halt during the Class Period and essentially stopped trading, with no liquidity—and actually raised the GSL program's exposure to these toxic instruments at the same time AIGFP was exiting them. AIG simply ignored these risks in exchange for short term revenue generation that could not be sustained. These gross errors in management, of which Defendants knew or should have known, along with AIG's persistent efforts to conceal the problems and misrepresent AIG's true risks, caused AIG stock to be an imprudent investment for the Plans.

6. The Government Bailed out AIG and Took A 79.9 Percent Stake in the Company

317. Unable to meet the collateral calls on its CDS portfolio, and faced with a severe drain on liquidity due to its GSL program, AIG entered a desperate phase to avoid total collapse. According to *The New York Times*, AIG "sought a lifeline from some of the nation's largest

banks, as well as from big private investment funds on Wall Street, but no one dared come to the rescue." Eric Dash, *Throwing a Lifeline to a Troubled Giant*, N.Y. Times, Sept. 18, 2008 at C1 [hereinafter "Dash, *Throwing a Lifeline*"]. Yet, "[t]he sharpest minds on Wall Street could not fathom where the bottom was." *Id.*

318. By September 12, 2008, AIG executives entered a frenzied drive to obtain private or public assistance to prop up the insurance giant. [redacted] Redacted - Confidential [redacted]

319. Though AIG initially believed it only needed $30 billion to avoid catastrophic failure, on September 16, 2008, it received an unprecedented $85 billion credit service window from the Federal Reserve Bank of New York to avoid "potential financial catastrophe of unknown proportions." Dash, *Throwing a Lifeline*. *The New York Times* called this "the unthinkable" and "a watershed event." *Id.* [redacted] Redacted - Confidential [redacted] Defendant Willumstad testified before Congress that "[o]n Tuesday, September 16, 2008, AIG was preparing for the unthinkable: bankruptcy." Defendant Sullivan agreed, stating that "AIG avoided potential bankruptcy only with the help of the government." Sullivan Testimony before the U.S. House of Representatives Committee on Oversight and Government Reform, Oct. 7, 2008.

320. From September 11 to September 16, 2008, AIG's stock fell from $17.55 a share to just $3.75, a massive 78 percent drop.

321. As a result of the bailout, the federal government took a 79.9 percent stake in the Company. Yet, the bailout was not merely to protect AIG or Wall Street. United States Senator Charles Schumer stated that "[i]f A.I.G. went down, it would affect Main Street more than Wall Street." Dash, *Throwing a Lifeline*. Plaintiffs were not alone in suffering the adverse impact of AIG's unsound business management that caused AIG stock to be an imprudent investment for retirement savings. The FCIC Report confirmed the massive effect an AIG collapse would have had on the greater economy:

> AIG was so interconnected with many large commercial banks, investment banks, and other financial institutions through counterparty credit relationships on credit default swaps and other activities such as securities lending that its potential failure created systemic risk. The government concluded AIG was too big to fail and committed more than $180 billion to its rescue. Without the bailout, AIG's default and collapse could have brought down its counterparties, causing cascading losses and collapses throughout the financial system.

FCIC Report, at 352.

322. On September 17, 2008, at the insistence of the federal government, AIG replaced CEO, Defendant Willumstad, putting Liddy at the helm. Michael J. De La Merced, *At A.I.G., the New Chief Seeks to Reassure Workers*, N.Y. Times, Sept. 19, 2008, at C4. Liddy was unable to stop the losses in the Company or organize any recovery for the Company.

323. AIG received yet more financial assistance in October 2008, raising the federal aid to roughly $123 billion. Even after AIG received massive federal assistance, collateral calls continued consuming much of the government's initial $85 billion loan commitment, requiring a further infusion of $123 billion by October 8, 2008. Mollenkamp, *Behind AIG's Fall*. [redacted]

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[redacted]

324. AIG's 83 percent "free fall" over the previous three quarters "dragged the [Dow Jones] industrial average down sharply" and prompted Dow Jones & Company to remove AIG

from the Dow Jones Industrial Average, effective September 21, 2008. *Kraft to Replace A.I.G. in the Dow*, N.Y. Times, Sept. 19, 2008 at C4. Companies included in the Dow Jones Industrial Average are considered "leaders in their industries." *Id.*

325. AIG's stock continued to decline, reaching $1 a share on February 5, 2009, falling to a mere 35 cents a share one month later on March 5, 2009. [redacted]

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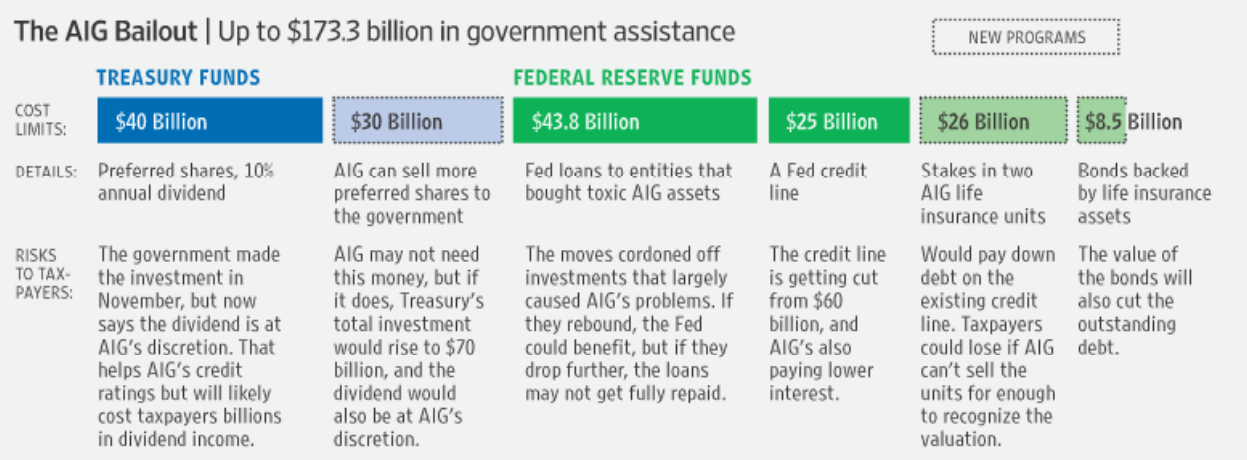
[redacted]

326. On September 24, 2008, the FBI announced that it was investigating possible criminal wrongdoing at AIG. Eric Lichtblau, *F.B.I. Looks Into 4 Firms At Center Of The Storm*, N.Y. Times, Sept. 24, 2008, at C1. FBI Director Robert Mueller told the Senate that this investigation looked at companies that "'may have engaged in misstatements in the course of what transpired during this financial crisis.'" *Id.*

327. On November 10, 2008, reporting its Third Quarter 2008 figures, AIG posted its largest ever quarterly loss, totaling $24.47 billion or $9.05 a share. *Troubled insurer AIG posts $24 billion loss*, Business Insurance, Nov. 10, 2008. This was after receiving a $123 billion bailout from the government. *Id.* The losses included write-downs of $7.05 billion on its CDS portfolio and $18.31 billion in capital losses. *Id.*

328. In March 2009, AIG posted a $61.7 billion loss for the Fourth Quarter 2008 and received $30 billion more in federal aid on March 3, 2009. Kevin Hall, *Bigger AIG bailout means a bigger stake for U.S.*, The Miami Herald, Mar. 3, 2009 at A1. AIG's stock closed at 42 cents on March 2, 2009 and AIG's credit rating fell yet again.

329. The following chart summarizes the extent of federal assistance AIG had received as of March 2009:



Sudeep Reddy & Liam Plevin, *For AIG, a Buy-and-Hold Strategy: U.S. Resigned to Long Stewardship After Failing to Sell Insurer in Pieces*, Wall St. J., Mar. 3, 2009 at C1.

330. Eli Broad, an ex-AIG executive and director, stated in March 2009 that he thought AIG had little to no chance of recovery. Lilla Zuill, *CORRECTED—INTERVIEW—AIG investor Broad abandons hope of recovery*, Dow Jones Factiva, Mar. 10, 2009. Of the bailout, he stated "If you look at what has happened, I think it's too little too late." *Id.*

331. As stated above, in the month prior to the filing of this pleading, AIG stock still trades in the approximately $1.55 - $1.70 range (on a split-adjusted basis accounting for a 1-for-20 reverse split effective June 30, 2009), almost four years after the bailout, with little hope of any meaningful recovery for the foreseeable future, especially give the massive equity dilution, and the divesting of some of its best operating assets that were required, leaving it a vastly different company.

7. AIG's Risk Models Failed to Account for Mark to Market and Pre-Settlement Risk in its CDS Portfolio

332. AIG's and AIGFP's risk modeling failed to account for the need to protect against market and pre-settlement risks on the CDS portfolio. The failure to do so both permitted AIGFP to sell over $500 billion in CDS and exposed the Company to collateral calls well in excess of its best estimate of available excess capital.

333. The death blows to AIG were from the two risks it did not model, consider, hedge against or disclose to its investors: market and pre-settlement risk.

334. Professor Gorton was one of the key architects of AIGFP's inaccurate and incomplete risk model. Mollenkamp, *Behind AIG's Fall*. "AIG relied on those models to help figure out which swap deals were safe. But AIG didn't anticipate how market forces and contract terms not weighed by the models would turn the swaps, over the short term, into huge financial liabilities." *Id.* Professor Gorton was also reported to have been a key player in convincing "'Cassano that these things [CDS] were only gold, that if anybody paid you to take on these risks, it was free money' because AIG would never have to make payments to cover actual defaults, according to the former senior executive at the unit." *Id.* The Gorton Model was the "rigorous internal model" referred to in the August 9, 2007 earnings call.

335. The trouble with Gorton's work, however, was that it did not predict market losses—it did not address the potential impact of write-downs to the reference assets or downgrades on AIG's own credit on collateral payments to AIG's trading partners. *Id.*

336. As *The Wall Street Journal* reported, AIG knew that its models did not assess the risk of mark to market risk: "AIG didn't assign Mr. Gorton to assess those threats, and knew that his models didn't consider them." Mollenkamp, *Behind AIG's Fall*.

337. Instead, Gorton's models treated CDS like insurance contracts, which did not gauge market or pre-settlement risk. Gorton's model "harnessed mounds of historical data to focus on the likelihood of default, and his work may indeed prove accurate on that front. *But as AIG was aware*, *his models didn't attempt to measure the risk of future collateral calls or write-downs*, which have devastated AIG's finances." Mollenkamp *et al.*, *Behind AIG's Fall* (emphasis added).

338. AIG glossed over these defects and touted the fact that it applied severe recessionary stresses, purportedly the worst since World War II, to test the potential losses on its CDS portfolio. AIG Investor Conference, Dec. 5, 2007, Gorton comments. But such testing was fruitless as it did not measure pre-settlement or market risk.

339. AIG stated that its models were accurate simply by treating CDS as a form of insurance. This model allowed AIG to ignore that the contracts covered assets that were valued based on a fluid model using mark to market accounting. Thus, unlike in an insurance contract, AIG could not simply overlook a change in value of the reference assets, because such changes can trigger collateral calls requiring posting of real cash to the counterparty. Nor could it ignore that a decrease in AIG's credit could increase the amount of cash required on each collateral call.

340. AIG applied its erroneous model to every transaction through 2007. At the December 5, 2007 investor conference, Gorton clarified that "no [CDS] transaction is approved" by the chief of AIG's financial-products unit "if it's not based on a model that we built." Mollenkamp, *Behind AIG's Fall*.

341. When challenged by investors on its use of historical data, AIG responded that its model was effective. Specifically, one investor asked "[b]ut isn't that unrealistic just to take the

model at the time, [when] you didn't have ARMs, you didn't have teaser rates, you had much lower loan to value ratios." AIG Investor Conference Dec. 5, 2007. Forster stated that:

> the model will not capture all of these things. But *we never expected it to* and that is why we have a fundamentally different approach of saying, yes we can use the model but the model will not capture everything. So if you just run a model you will have problems. *We think if you combine the model with fundamental analysis and credit analysis deciding whether we think these are good assets before they're going in, that we capture an awful lot more of the risks that are in there.*

Id. (emphasis added). This statement both reveals the errors in AIG's risk evaluation and the extent to which AIG misrepresented its risk control measures: it looked only at the risk at the beginning of the CDS deal, not at the potential for variations in the value of the reference assets or AIG's credit throughout the life of the swap—*e.g.*, market and pre-settlement risk.

342. Another major gap in AIG's risk modeling and management was its failure to consider the ABX index as a means to measure market risk in its CDS portfolio linked to the mortgage securities. The ABX indexes were some of the more accurate and accessible indexes of traded real estate derivatives and CDOs from which AIG could have understood the risks of collateral calls due to market changes in the value of the mortgage-related CDS. Yet, Cassano dismissed the ABX as "nonsensical." AIG Investor Conference Dec. 5, 2007. Cassano stated incorrectly that "[t]he ABX is just not representative of the pool of business we have." Yet, roughly one fifth of AIG's CDS portfolio, over $80 billion in 2008, was in multi-sector CDOs and ABS, which the ABX index tracked.

343. AIG eventually reversed course on its flippant dismissal of the ABX index. On March 4, 2008, AIG's CFO told investors that AIG had implemented a "Modified Binomial Expansion Technique" model ("BET") "using credit spread inputs on generic ABS obtained from a third party source and other inputs like Moody's historical recovery rates." AIG Fourth Quarter 2007 Investor Call, Mar. 4, 2008, Bensinger comments. The BET was later refined to

"enhance[] the existing data inputs by adjusting RMBS, and CDO credit spreads for the relative change in the ABX Home Equity Index." *Id.* While this model was an improvement, it was too little too late. By the time AIG implemented and "refined" the BET model, the Company already had over $500 billion in CDS on its books and already faced an unending stream of collateral calls. And when the model started to predict higher losses, AIG was already being forced to post collateral to the limit of its capital resources. [redacted]

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344. Thus, throughout the Class Period, AIG's models failed to provide any guidance by which AIG could predict, model, or control the risks it took on in its CDS portfolio or thereby contest any collateral calls with any credible basis. AIG knew this to be the case. These failures further caused AIG's stock to be an imprudent investment for the Plans, which Defendants knew or should have known.

8. AIG Failed to Employ Adequate Internal Controls and Risk Management Oversight, Leading to a Material Weakness at AIGFP

345. During the Class Period, AIG suffered from failures in oversight, internal controls, and risk management. These failures caused its stock to be artificially inflated and an imprudent and overly risky investment for the Plans.

346. As former SEC Chief Accountant, Turner, testified, regarding AIG's collapse, "[i]f a company does not have adequate controls to even figure out if its valuation of assets is proper, then how can the company expect to ensure accurate, complete and transparent information is supplied to investors on a timely basis." Turner Testimony at 4.

347. As early as March 2006, the Office of Thrift Supervision ("OTS") had notified AIG's Board that it had found "weaknesses in AIGFP's documentation of complex structures transactions, in policies and procedures regarding accounting, in stress testing, in communication of risk tolerances, and in the company's outline of lines of authority, credit risk management and measurement." Testimony of Scott M. Polakoff, OTS, before Subcommittee on Capital Markets, Insurance, and Gov't Sponsored Enterprises, U.S. House of Representatives, Mar. 18, 2009, at 11 (hereinafter "Polakoff Testimony"). The OTS held monthly meetings with AIG's Regulatory and Compliance Group, Internal Audit Director and external auditors, quarterly meetings with the AIG Chief Risk Officer, the Treasury Group, and senior management, and annual meeting with AIG's Board. *Id.* at 10-11. OTS' primary contacts at AIG were the following departments: Enterprise Risk Management, Internal Audit, Legal/Compliance, Comptroller, and Treasury. OTS also maintained an on-site investigation team at AIG headquarters in New York. Thus, well before the CDS portfolio collapsed, AIG, its executives, and its directors were aware of the threat posed to AIG from activities at AIGFP.

348. As a publicly traded company, AIG was required by the Securities Exchange Act of 1934 ("the Act") to maintain books and records in sufficient detail to reflect the transactions of the Company. Specifically, AIG was required to possess a system of internal controls to provide reasonable assurance that its financial statements are prepared in conformity with GAAP. Moreover, AIG was required to "keep books, records, and accounts, which, in

reasonable detail, accurately and fairly reflect the transactions and dispositions of [its] assets." 15 U.S.C. § 78m(b)(2). AIG failed to abide by these requirements.

349. The Sarbanes Oxley Act ("SOX") required AIG to evaluate and report on the effectiveness of its internal controls over financial reporting. SOX also required that AIG's independent auditors audit AIG's internal assessments of internal controls. The report must affirm "the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting." 15 U.S.C. § 7262(a). The report must also "contain an assessment, as of the end of the most recent fiscal year of the Company, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting." *Id.*

350. Internal control is broadly defined as a process that an entity's board of directors, management and other personnel must carry out which is designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(A) Effectiveness and efficiency of operations.

(B) Reliability of financial reporting.

(C) Compliance with applicable laws and regulations.

See The Committee of Sponsoring Organizations (COSO), http://www.coso.org. AIGFP's internal controls were ineffective and therefore, its financial reporting lacked the required transparency regarding, at least, the valuation of its CDS portfolio.

351. An overriding element of importance in preventing fraudulent financial reporting is management's stated or unstated policies regarding transparency and disclosure of accurate financials. Report of the National Commission on Fraudulent Financial Reporting, Oct. 1987, at 11. This is referred to as the "tone at the top." At AIGFP, the tone at the top promulgated by Cassano and his cohorts was one that favored overlooking problems in accounting, ostracizing

dissenters, and isolating the knowledge of complex transactions to a select few individuals. *See* Testimony of Joseph St. Denis ("St. Denis") before the House of Representatives Committee on Oversight and Government Reform, Oct. 7, 2008 (hereinafter "St. Denis Testimony"). Rather than address and correct inaccuracies or possible risks of loss, Cassano promoted a tone of ignorance and indifference. This inappropriate, blasé attitude towards proper accounting and transparency ultimately forced AIG, at the insistence of its auditor, to disclose that its system of internal control was ineffective and contained a material weakness regarding AIGFP transactions. And although Cassano operated his enterprise without proper oversight, AIG touted that it supervised every CDS transaction and that it had adequate controls over AIGFP. Indeed, on every investor call in 2007, Cassano was one of the first to speak to investors after Defendant Sullivan.

352. The Public Company Accounting Oversight Board ("PCAOB") Auditing Standard No. 5 ("AS 5"),[11] defines a material weakness as "a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a *reasonable possibility* that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis." AS 5 at ¶ A7 (emphasis in original). Furthermore, "[i]f there are deficiencies that, individually or in combination, result in one or more material weaknesses, the auditor must express an adverse opinion on the company's internal control over financial reporting." *Id.* at ¶ 90. Also, AS 5 provides that ineffective oversight of the company's external financial reporting and internal control reporting by the company's audit committee is an indicator of material weaknesses in internal control over financial reporting. *Id.* at ¶ 69.

[11] The title of AS 5 is "*An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*."

353. By October 2007, AIG was on notice from the OTS that it lacked proper internal controls, especially with regard to its subprime mortgage-related exposure. The OTS increased its scrutiny of AIGFP and AIG and instructed AIG to revisit its modeling assumptions in light of deteriorating subprime market conditions. In the Fourth Quarter 2007, OTS increased the frequency of meetings with AIG's risk managers and AIG's auditor, PWC. In October 2007, the OTS required AIG's Board to monitor remediation efforts with respect to certain material control deficiencies or weaknesses, ensure implementation of a long term approach to solving organizational weaknesses and increasing resources dedicated to solving identified deficiencies, monitor the continued improvement of corporate control group ability to identify and monitor risk, complete holding company risk assessment, risk metrics, and reporting initiatives and fully develop risk reporting, increase involvement in the oversight of the firm's overall risk appetite and profile and be fully informed as to AIG catastrophic Risk exposures, on a full spectrum (credit, market, insurance, and operational) basis, and ensure the prompt, thorough and accountable development of the Global Compliance program, a critical risk control function where organizational structure impediments have delayed program enhancements. Polakoff Testimony at 13-14.

354. [redacted]

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356. [redacted]

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357. [redacted]

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358. [redacted]

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359. [redacted]

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360. AIG finally disclosed to the public in a Form 8-K filed on February 11, 2008 that PwC had "concluded that at December 31, 2007, AIG had a material weakness in its internal control over financial reporting and oversight relating to the fair value valuation of the AIGFP super senior credit default swap portfolio." AIG Current Report (Form 8-K), filed Feb. 11, 2008 at Item 8.01. AIG added that its "assessment of its internal controls relating to the fair value valuation of the AIGFP super senior credit default swap portfolio is ongoing, but [it] believes that it currently has in place the necessary compensating controls and procedures to appropriately determine the fair value of AIGFP's super senior credit default swap portfolio for purposes of AIG's year-end financial statements." *Id.* [redacted]

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[redacted]

361. [redacted]

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362. AIG's 2007 Annual Report and Form 10-K, filed with the SEC on February 28, 2008, revealed that both AIG and PwC had concluded that AIG's internal controls over financial

reporting were ineffective as there was a material weakness in controls as of December 31, 2007.

AIG's 2007 Annual Report contained the following disclosure:

> During the evaluation of disclosure controls and procedures as of December 31, 2007 conducted during the preparation of AIG's financial statements to be included in this Annual Report on Form 10-K**,** *a material weakness in internal control over financial reporting relating to the fair value valuation of the AIGFP super senior credit default swap portfolio was identified*. As a result of this material weakness, described more fully below, AIG's Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2007, *AIG's disclosure controls and procedures were ineffective*.

AIG 2007 Form 10-K, at 202 (emphasis added).

363. The 2007 Annual Report's required Management Report on Internal Control Over Financial Reporting disclosed that "[a]s of December 31, 2007, controls over the AIGFP super senior credit default swap portfolio valuation process and oversight thereof were not effective." The Annual Report stated further that:

> AIG had insufficient resources to design and carry out effective controls to prevent or detect errors and to determine appropriate disclosures on a timely basis with respect to the processes and models introduced in the fourth quarter of 2007. As a result, AIG had not fully developed its controls to assess, on a timely basis, the relevance to its valuation of all third party information. Also, controls to permit the appropriate oversight and monitoring of the AIGFP super senior credit default swap portfolio valuation process, including timely sharing of information at the appropriate levels of the organization, did not operate effectively. As a result, controls over the AIGFP super senior credit default swap portfolio valuation process and oversight thereof were not adequate to prevent or detect misstatements in the accuracy of management's fair value estimates and disclosures on a timely basis, resulting in adjustments for purposes of AIG's December 31, 2007 consolidated financial statements. In addition, this deficiency could result in a misstatement in management's fair value estimates or disclosures that could be material to AIG's annual or interim consolidated financial statements that would not be prevented or detected on a timely basis.
>
> Solely as a result of the material weakness in internal control over the fair value valuation of the AIGFP super senior credit default swap portfolio described above, AIG management has concluded that, as of December 31, 2007, AIG's internal control over financial reporting was not effective based on the criteria in Internal Control — Integrated Framework issued by the COSO.

Id.

364. AIG's 2007 Annual Report also states that the Company did not use hedge accounting prior to 2007 and that, as a result, "revenues and operating income were exposed to volatility resulting from differences in the timing of revenue recognition between the derivatives and the hedged assets and liabilities." *Id.* at 37. This further exposed the Company to risks of loss.

365. In addition to AIG's disclosures, PwC's audit opinion stated that "AIG did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2007 . . . because a material weakness in internal control over financial reporting related to the AIGFP super senior credit default swap portfolio valuation process and oversight thereof existed as of that date." *Id.*

366. On March 10, 2008, the OTS sent a letter to the AIG Board expressing its concerns about AIG's oversight of key subsidiaries and material weaknesses. The March 10, 2008 OTS Letter stated that "[a] material weakness exists within corporate management's oversight of AIGFP's super senior Credit Default Swap (CDS) valuation process and financial reporting." OTS Letter to AIG, Mar. 10, 2008 at 1. The March 10, 2008 OTS Letter stated that "AIGFP was allowed to limit access of key risk control groups while material questions relating to the valuation of the super senior CDS portfolio were mounting. The control groups included Enterprise Risk Management (ERM), the Corporate Comptroller's Group, and the CFO of the Financial Services Division." *Id.* This showed again that the tone at the top within AIGFP was one of lack of disclosure or corrective action.

367. The OTS further found that "[t]he super senior CDS valuations reviewed by corporate management lacked the accuracy and granularity necessary to understand the impact of key valuation components of AIG's accounting and financial reporting disclosures. Corporate

management did not obtain sufficient information to assess the applicability of the negative basis adjustment, a critical component of the valuation method." *Id*. Accordingly, the OTS was "concerned that risk metrics and financial reporting provided to corporate management by AIGFP and other key subsidiaries may lack the independence, transparency, and granularity needed to provide effective risk management oversight." *Id*. The March 10, 2008 OTS Letter also took "note that two business units, AGF [American General Finance] and AIGFP, limited their exposures to subprime markets in view of deteriorating market conditions, while two other units, United Guaranty Corporation and AIGI, the division managing the GSL program, increased their subprime exposures. The lack of a cohesive mechanism to share information on subprime exposures leads to incomplete central oversight across the conglomerate." *Id*. at 2. The OTS also downgraded certain of AIG's ratings. *Id*.

368. [redacted]

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369. In addition, throughout the Class Period, AIG has filed "out of period adjustments," which are "another way of saying it continued to have errors in its financial statements." Turner Testimony at 3. In regard to collateral calls, for example, AIG disclosed that as of June 30, 2007 a downgrade in its long-term senior debt ratings "would permit counterparties to call for approximately $847 million." AIG Quarterly Report (Form 10-Q) filed Aug. 8, 2007 at 76. Yet, a mere six months later, without mentioning any ratings downgrade, AIG disclosed that it had already paid $5.3 billion to its CDS counterparties. AIG 2007 Annual

Report (Form 10-K), filed Feb. 27, 2008. By June 30, 2008, this figure had increased to $16.5 billion. AIG Quarterly Report (Form 10-Q) filed Aug. 6, 2008 at 121.

370. These opaque disclosures are indicative of AIG's improper tone at the top and its pervasive failure to disclose and provide complete information to Plan participants.

371. The Congressional hearing held regarding AIG on October 7, 2008 confirmed that AIG knew well before its September 2008 crisis that the CDS valuation was improper. *The Wall Street Journal* reported that "[t]op officials at American International Group Inc. knew of potential problems in valuing derivative contracts long before these risky transactions caused the insurers shareholders severe pain . . . ." Liam Plevin and Amir Efrati, *Documents Show AIG Knew Of Problems With Valuation*, Wall St. J., Oct. 11, 2008, at B1 [Plevin, *Documents Show*]. Indeed, Liddy has affirmed that AIG lacked proper risk management oversight of AIGFP. Kate Phillips, *Watching the A.I.G. Hearing on the Hill*, N.Y. Times, Mar. 18, 2009.

372. St. Denis, a former SEC accountant who worked at AIGFP, submitted a letter dated October 4, 2008 in lieu of subpoenaed testimony before a Congressional hearing on or about October 7, 2008 asserting that he had concerns about the CDS valuation by mid to late 2007, but that he had been systematically excluded from any accounting oversight. St. Denis Letter in Lieu of Testimony. This is yet another indication that the tone at the top within AIGFP emphasized ignoring accounting errors and failing to take corrective action. [redacted] Redacted - Confidential [redacted] Cassano told St. Denis that he was "pollut[ing] the process." *Id*. at 5.

373. Moreover, the FCIC's notes of its interview with Mr. St. Denis strongly support that AIG's senior management, whose knowledge is imputed to Defendant AIG, knew or should have known at the time that the implications of the July 26, 2007 Goldman collateral call were devastating for the Company. As Mr. St. Denis stated regarding collateral calls and the Goldman call in particular, according to the FCIC's notes of its interview:

> [T]he company was potentially in serious trouble because they've now received a margin call, so the contracts were obviously written to allow for margin calls - how does that happen? So they've paid it, and started down a slippery slope, and their fate's in the hands of their counterparties because they don't have a valuation system.
>
> * * *
>
> It's the margin calls. Your ship is out of control and you're not telling people that there's water pouring in through the hull and that the pirates are aboard. I remember having dinner with my brother saying it doesn't take much from here to take out AIG because you have $50 billion in equity and that's just a percentage of the notional value of these super seniors. It doesn't take much to take this company down.

FCIC Memorandum for the Record ("MFR"), pp. 6, 11 (Group Interview with Joseph St. Denis, April 23, 2010).

374. The October 7, 2008 Congressional hearing revealed to the public that PwC told Defendant Sullivan and Bensinger on November 29, 2007 that "AIG could have a material weakness" in its risk management. Plevin, *Documents Show*. But this was not disclosed publicly until February 2008.

375. AIG's failure to provide complete and accurate disclosures has prompted federal criminal investigations into whether "AIG executives misled PwC about market indications that showed the value of AIG's swaps should be lowered." Plevin, *Documents Show*. Misleading PwC would constitute "criminal fraud." *Id.*

376. The material weakness in AIGFP's internal controls and risk management, as well as AIG's ineffective oversight and risk management also rendered AIG stock to be an imprudent retirement investment throughout the Class Period, contributed to the dire circumstances at AIG throughout the Class Period, and should have been further inquired into by any Defendant who, unlike Defendants Sullivan, Willumstad, and Shannon, did not already clearly know about it well ahead of the February 11, 2008 8-K. AIG's ineffective control over AIGFP permitted it to operate without proper risk controls on its massive wager on CDS, obligating the Company beyond its capital means. Defendants knew or should have known about these improper risk management controls and the adverse impact this had or was likely to have on Company stock. Defendants also knew or should have known that AIG misrepresented to the market and Plan participants the true risks the Company faced, causing AIG stock to be artificially inflated in value. Accordingly, Defendants should not have invested or continued to offer Company stock as an investment alternative given the risks posed by AIG's accounting improprieties, high-risk business strategies, and dire circumstances then faced by the Company.

B. Defendants Failed To Provide Complete And Accurate Information To Class Members Regarding The Risks Of Holding And Purchasing AIG Stock For Retirement Investment

377. ERISA-mandated duty of loyalty requires plan fiduciaries to speak truthfully to the plan and its participants when communicating with them. A fiduciary's duty of loyalty to plan participants under ERISA includes an obligation not to mislead materially, or knowingly allow others to mislead materially, plan participants and beneficiaries, or to fail to provide critical information to plan participants that they need to make informed decisions regarding the investment of their plan account.

1. Summary of the Inaccurate, Incomplete, and Misleading Statement to Plan Participants

378. Throughout the Class Period, Defendants failed to provide complete and accurate information about the risks of investing in AIG stock for them to make informed investment decisions. Indeed, Defendants provided misinformation to Plan participants about the risks of continued investment in AIG stock. These communications included, but are not limited to, communications in SEC filings, annual reports, press releases, Company newsletters, press releases, and intranet postings made by the Company to Plan participants. As a result of these failures, Plaintiffs were unable to make informed investment decisions with regard AIG stock in their Plan accounts. Defendant Shannon, as AIG's primary disclosure attorney during the Class Period, was closely familiar with all material events at the Company, as more fully described herein, and was particularly in a position to ensure that Plan participants received complete and accurate information.

379. More particularly, throughout the Class Period, Defendants failed to provide complete and accurate information and provided misinformation, among other things, about AIG's CDS portfolio, the risks inherent in the CDS portfolio, the lack of proper risk management, the lack of oversight by AIG of AIGFP and AIGFP's CDS portfolio, and the risk of massive losses to AIG from collateral calls on CDS, the true value of the CDS portfolio, the true amount of excess capital reserves, and the details of the collateral calls, as well as the risks and exposures in the GSL program, including that [redacted]

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a. Risk. Defendants consistently made brazen and materially inaccurate and misleading statements about the risks inherent in AIG's CDS portfolio to Plan participants and the market as a whole. For example, Defendants stated that the CDS "are insensitive to normal changes in market credit spreads," even though they absolutely were. Conference Call Credit Presentation Supplemental Materials for Year End 2007 Results, Feb. 29, 2008 at 9. These misstatements about risk meant that Plan participants could neither assess nor appreciate the true risks presented by AIG's CDS portfolio, and therefore could not make informed decisions regarding their investment in Company stock.

b. Losses. Defendants made limited, untimely and inaccurate disclosures about the losses to its CDS portfolio throughout the Class Period. Despite knowing that counterparties measured substantial losses to the market value of many of AIG's CDS, AIG disclosed only minimal write-downs, which either ignored known facts, or were based on "models" which AIG knew did not reflect reality or true market value as required by the applicable accounting standards. Defendants thus hid from Plan participants the true value and risks of the CDS portfolio throughout the Class Period.

c. Faulty risk models. Defendants failed to provide complete and accurate information about AIG's risk models. AIG stated that its risk modeling was extremely robust and that it employed "conservative modeling assumptions." AIG Investor Conference Dec. 5, 2007 (comments of Cassano). But the models ignored any calculation of mark to market and pre-settlement risk, two key and inescapable risks in every CDS.

d. Untimely disclosures. Defendants did not disclose the risks of adverse changes in its credit rating and the impact on collateral calls in any meaningful or timely fashion. [redacted]

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Yet, in May 2008, after AIG's credit was downgraded one notch by two of the four ratings agencies Defendant Sullivan stated that "we don't believe that is significant to the operations." Defendant Sullivan was not the only Defendants that failed to make complete or accurate disclosures about pre-settlement risk until AIG was already in a tail spin (for example, Defendant Shannon was also well aware of it, being privy to many committee meetings as recording secretary, and as AIG's chief disclosure attorney whose responsibility it was to be aware of such material information).

e. Mark to market risk. Defendants failed to provide accurate or complete information about the mark to market risks embedded in its CDS portfolio and the adverse impacts that changes in the fair value of the CDS would have on AIG's cash reserves. Instead, AIG and its senior management, including Defendant Sullivan, downplayed these risks and emphasized that the CDS portfolio was sound because AIG properly measured the default risk of its CDS.

f. Collateral calls. Throughout the Class Period, AIG and all other Defendants failed to provide investors and Plan participants with accurate information about the magnitude of the demands for collateral.

g. Material weaknesses. Defendants failed to provide complete, accurate, or timely information about the material weaknesses within AIG and AIGFP. All Defendants either knew or should have known that PwC believed there to be a material weakness before both the December 5, 2007 Investor Conference and before the release of the 2007 Annual Report. However, AIG and the other Defendants failed to make any disclosure at that time. Subsequent disclosures were vague, delayed, and never complete or accurate. AIG made of a practice of "constant reporting of 'new' material weaknesses and errors—out of period adjustments—that call into question how one can have confidence and trust in the financial statements." Turner Testimony, at 8.

h. Excess capital. Defendants also failed to provide complete and accurate information about the true extent of its excess capital reserves. Throughout 2007 and into 2008, AIG represented that it had adequate capital reserves, even though it was forced to raise $20 billion by April 2008 and then obtain $85 billion from the Federal Government in September 2008.

380. As a result of these omissions, misstatements, and misrepresentations, AIG stock was artificially inflated in value, and was an imprudent investment.

381. Further, as a result of Defendants' persistent failure to provide complete and accurate information and their concerted efforts to provide misinformation regarding the true risks of investing in AIG stock, Plan participants lacked critical information that they needed to make informed decisions regarding their Plan account investments in AIG stock.

382. Upon information and belief, Defendants regularly communicated with employees, including the Plan participants, about AIG's performance, future financial and business prospects, and AIG stock. These communications were directed specifically at employees/Plan participants. These communications occurred, for example, in newsletters, Plan documents, and the Plan materials that were disseminated to all participants and beneficiaries. As such, these communications were acts of the Plan administration, and the persons responsible for the communications were ERISA fiduciaries in this regard. These statements included inaccurate information through both direct statements and omissions as summarized above.

2. Inaccurate, Incomplete and Misleading Securities Filings

383. As a non-exclusive list, the following SEC filings include false, misleading, incomplete, and/or inaccurate information or omissions:

a. On August 8, 2007, AIG filed its Quarterly Report (Form 10-Q) with the SEC regarding the quarter ending June 30, 2007. In this filing, AIG reported for the first time that it had CDS tied to CDOs that were "exposed [to] . . . residential mortgage-backed securities," including "subprime collateral." However, AIG falsely told investors and Plan participants that despite the fact that the "U.S. residential market is experiencing serious disruption":

> [t]he effect of the downward cycle in the U.S. housing market on AIG's other operations, investment portfolio and overall consolidated position, is *not expected to be material* due to AIG's disciplined underwriting and active risk management, as well as the high credit ratings for assets collateralized by subprime and non-prime mortgages and the structural protections against loss afforded AIG by its senior position in the investments and exposure that it holds.

AIG Quarterly Report (Form 10-Q) filed Aug. 8, 2007 (emphasis added). This falsely led the market and Plan Participants to believe that AIG would not suffer any material losses or did not have material exposure due to its enormous CDS portfolio, even with the collapse of the subprime and Alt-A mortgage markets, and that AIG had "active risk management" that had the situation under control.

b. On November 7, 2007, AIG filed its Quarterly Report (Form 10-Q) with the SEC for the quarter ending September 30, 2007. In the 10-Q, Defendant Sullivan stated inaccurately that "our active and strong risk management processes helped contain the exposure" AIG had to the deterioration of the residential mortgage and credit markets. This was not true, as AIG failed to employ proper risk management over its CDS portfolio's exposure to the residential mortgage market. Although AIG disclosed a

relatively small $352 million unrealized loss to its $500 billion CDS portfolio (which itself did not disclose that, as AIG senior executives knew, [redacted] Redacted - Confidential [redacted], it stated that there was little to no likelihood of losses on the CDS portfolio: "AIG continues to believe that it is highly unlikely that AIGFP will be required to make payments with respect to these derivatives." Although this may have been an effort to address the risk of payment on default, it clearly speaks to collateral calls, which are "payments with respect to these derivatives [CDS]." Moreover, the amount of this valuation loss was not complete or accurate, especially given that AIG had already paid Goldman $450 million of a "down payment" on a collateral call to remedy the valuation loss to just a limited pool of its CDS holdings, and the fact that AIGFP had "not [been] mark[ing] the super senior book to market." For the first time, AIG disclosed that counterparties to its CDS had made collateral calls based on the decrease in the fair value of the CDS, which AIG disputed. AIG did not disclose the number of and amount requested by its counterparties as collateral calls to date. This hid from the market and Plan participants the true condition of the Company.

c. On December 7, 2007, AIG released a Current Report (Form 8-K), which it amended on December 12, 2007 with Amended Current Report (Form 8-K/A), both of which led the market and Plan Participants to believe that the total decline in AIG's CDS portfolio's value through November 2007 was $1.4 to $1.5 billion (unrealized losses). This information was not accurate, as AIG itself disclosed in a February 11, 2008 Current Report (Form 8-K). In fact, the numbers disclosed in December were materially understated by at least $4.3 billion given errors in AIG's valuation methods which AIG's auditors found had no real basis. Thus, the information in the December 7, 2007 Form 8-

K and the December 12, 2007 Form 8-K/A were not accurate and contained misleading information.

d. On February 11, 2008, AIG filed a Current Report (Form 8-K) in which it admitted that it had understated the losses in its CDS portfolio, and that it had not provided complete or accurate information at the December 5, 2007 Investor Conference or in its Form 8-K filed December 7, 2007. AIG disclosed a huge increase to the losses on its CDS portfolio, $5.96 billion in total, from what had been disclosed in December 2007 (an increase of $4.3 billion). Yet, this disclosure of losses, while increased, was not complete or accurate as the Annual Report released February 28, 2008 revealed. Moreover, AIG continued to state that it did not believe any of these losses would be realized and that any material impact would last but one quarter:

> Based upon its most current analyses, AIG believes that any credit impairment losses realized over time by AIGFP will not be material to AIG's consolidated financial condition, although it is possible that realized losses could be material to AIG's consolidated results of operations for an individual reporting period. Except to the extent of any such realized credit impairment losses, AIG expects AIGFP's unrealized market valuation losses to reverse over the remaining life of the super senior credit default swap portfolio.

AIG also disclosed that it had a material weakness as of December 31, 2007, according to PwC, a fact that it did not disclose until 2 months later. [redacted]

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e. AIG filed its 2007 Annual Report (Form 10-K) on February 28, 2008. In it, AIG disclosed AIG reported a massive $11.12 billion fourth quarter decline in the value of its CDS portfolio, resulting in a fourth quarter net loss of nearly $5.3 billion, the

Company's largest-ever quarterly loss. In spite of this revelation, Defendants Sullivan stated that "*any credit impairment losses realized over time by AIGFP will not be material* to AIG's consolidated financial condition, although it is possible that realized losses could be material to AIG's consolidated results of operations for an individual reporting period. Except to the extent of any such realized credit impairment losses, *AIG expects AIGFP's unrealized market valuation losses to reverse over the remaining life of the super senior credit default swap portfolio*." 2007 Annual Report (emphasis added). AIG further misrepresented that it had adequate capital to ride out any decline in its CDS portfolio, which it knew or should have known was false and inaccurate: "with a diverse portfolio of global businesses, a strong capital base and outstanding talent, AIG has the ability to absorb the current volatility while committing the resources to grow and take advantage of opportunities." And for the first time, AIG admitted that collateral calls could impair its liquidity, but assured investors and Plan participants that it had sufficient access to "liquid assets, cash provided by operations and access to the capital markets . . . to meet its anticipated cash requirements" which was untrue. [redacted] Redacted - Confidential [redacted] These statements further obfuscated the full reality that AIG faced and hid its true condition from Plan participants.

f. On May 8, 2008 AIG filed a Quarterly Report for the First Quarter 2008 ending March 31, 2008. AIG surprised investors and Plan participants not only by disclosing a net loss of $7.8 billion and an unrealized loss of $9.11 billion on its CDS portfolio, but by stating that it would seek to raise $12.5 billion in capital, when in fact it

planned to raise $20 billion, which it shortly disclosed after gauging market reaction. Defendant Sullivan further attempted to mask the urgency for raising new capital, stating "AIG's results do not reflect the underlying strengths and potential of AIG . . . . With the support of the newly added capital, we have every confidence in our ability to respond to today's market conditions and opportunities that may arise." Moreover, AIG increased its dividend by 10 percent based on the statement that it had a strong financial condition, solely in an attempt to falsely reassure investors, but which was in contradiction to its need to raise new capital and hurt the Company when it desperately need the money. This misinformation further obfuscated for Plan participants and the market AIG's true financial condition. AIG also disclosed that it had not remediated the material weakness in the valuation of its CDS portfolio; this was a further admission that the previous reports of the portfolio's valuation were not complete or accurate.

g. On August 6, 2008, AIG filed a Quarterly Report (Form 10-Q) for the quarter ending June 30, 2008. Although AIG Form 10-Q disclosed, belatedly, that the Company had a very high a concentration of risk exposure to the U.S. housing market, it failed to disclose that it was facing an imminent liquidity crisis due to continuing significant collateral calls tied to its CDS portfolio.

384. As a consequence of these communications, AIG fostered an inaccurately rosy picture of the soundness of AIG stock as an investment in the Plan. As such, AIG stock was artificially inflated, and the participants of the Plans could not appreciate the true risks presented by investments in AIG stock and therefore could not make informed decisions regarding investments in the Plans.

385. Indeed, despite AIG's public assurances to investors about the strength of AIG's business and its CDS portfolio, Defendants AIG, and at a minimum Defendants Sullivan, Williamstad, Shannon, Junius, Schader, Tyler and Doyle knew, and the remaining Defendants either knew or should have known, that AIG's financial condition was nowhere as secure as it was described, and that it was only a matter of time before AIG's CDS portfolio would require it to post collateral to counterparties beyond its capabilities due to the collapse of the mortgage derivatives market's collapse. By the time the above-referenced statements referenced above were made, AIG's stock had already suffered enormous losses.

386. Yet Defendants failed to provide complete and accurate information about these risks to Plan participants. Instead, Defendants continued to offer AIG stock as an investment option in the Plans, and allowed the Plans to purchase additional AIG shares and to hold existing shares as the stock price continually collapsed further throughout 2008.

C. Defendants Knew or Should Have Known AIG Stock Was An Imprudent Investment For Participants' Retirement Savings and that AIG Faced a Dire Situation.

387. Plaintiffs' discovery and investigation reveal what Defendants knew or should have known about AIG's dire situation and the imprudence of AIG company stock as an investment option. The first section below details specific internal facts showing what specific Defendants knew or should have known, concluding with the facts Defendant Shannon knew as senior counsel responsible for AIG's public disclosures. The second section shows that if any of the Defendants had conducted a reasonable investigation, they would have learned that AIG was in a dire situation and that company stock was an imprudent investment. The third section focuses on the Hewitt quarterly reports, reviewed at a minimum by the Investment Committee Defendants which detailed the serious underperformance of AIG company stock in relation to all of other investment options in the Plans. The final section outlines the public "red flags" that

should have compelled all the Defendants to conduct a thorough investigation thorough which they would have learned of AIG's dire situation and the imprudence of AIG Company stock.

1. Discovery Has Revealed the Facts Defendants Knew or Should Have Known

a. Internal Facts Demonstrating Knowledge Before the Class Period

a. Investment Committee minutes from May 10, 2006 show Toohey, Managing Director of AIGI, [redacted] Redacted - Confidential [redacted]

b. [redacted], Defendants Schader and Doyle, both senior executives at numerous AIG insurance subsidiaries, [redacted] Redacted - Confidential [redacted]

c. Defendant Junius worked on a [redacted] Redacted - Confidential [redacted]

d. [redacted], Defendants Sullivan, Schader, and Doyle [redacted] Redacted - Confidential [redacted]

e. [redacted], Defendant Schader [redacted] Redacted - Confidential [redacted]

f. [redacted], Defendant Schoepke [redacted] Redacted - Confidential [redacted]

g. [redacted], Defendants Shannon and Tyler [redacted] Redacted - Confidential [redacted]

[redacted]

h. [redacted] Defendant Schader that [redacted]

[redacted]

i. [redacted], Defendant Shannon and others [redacted] In fact, AIG did not publicly disclose any information about unrealized losses in its subprime-mortgage related investments until the release of its 10-Q for the 3rd Quarter of 2007, filed November 7, 2007. Thus, Defendant Shannon was aware of unrealized losses (and the potential for more) on the Company's subprime-related assets months before the public was given even an inkling of them.

j. On or about July 26, 2007, Goldman gave notice that it was demanding $1.8 billion in collateral from AIG due to increases in the market risk on Goldman's $20 billion in CDS that it purchased from AIG. By at least August 7, 2007, AIG had already offered Goldman $300 million to settle the dispute, and three days later, in a side letter dated August 10, 2007, AIG agreed to pay Goldman $450 million, [redacted]

[redacted]

k. [redacted] a Bloomberg story of the same date which estimated that AIG's exposure to the subprime crisis was $33 billion. The Bloomberg article noted that "AIG is exposed to subprime from a variety of angles." The Bloomberg article also noted that AIG, through AIGFP, had gross notional exposure in its CDO portfolio of $560 billion across 255 portfolios,

with a net exposure of $460 billion (or $1.8 billion per portfolio). The magnitude of the exposure should have raised a red flag for Defendant Thomas and other AIG personnel.

b. Internal Facts Demonstrating Knowledge During the Class Period

388. Discovery has revealed that Defendants knew or should have known that AIG was in a dire situation and AIG stock was artificially inflated and far too risky for the participants' retirement savings. Key facts *during the Class Period* demonstrating that Defendants knew or should have known include, without limitation, the following:

a. On August 7, 2007, members of AIGFP held a teleconference with representatives of PwC during which they discussed Goldman's $1.8 billion collateral made on July 26, 2007. During that meeting, AIGFP head Cassano told PWC that AIG had already offered Goldman $300 million to settle the dispute. [redacted] Redacted - Confidential [redacted]

b. On August 9, 2007, AIG makes and posts a presentation on its website attempting to address investors' and analysts' demands for information on its subprime exposures. Among other things, AIG acknowledges AIGFP's $79 billion portfolio of CDSs on super senior tranches of multi-sector CDOs, of which $64 billion included deals with exposure to subprime.

c. [redacted] Redacted - Confidential [redacted]

d. [redacted], Defendants Grosiak, Schader, Bacon, Junius, Wright and Schoepke [redacted] Redacted - Confidential [redacted]

e. [redacted], Defendant Bacon [redacted] Redacted - Confidential [redacted]

[redacted]

Redacted - Confidential

[redacted]

f. [redacted], Defendant Bacon [redacted]

Redacted - Confidential

[redacted]

g. Defendant Junius [redacted]

Redacted - Confidential

[redacted]

h. [redacted]

Redacted - Confidential

[redacted]

[redacted] and Defendants Shannon, Schader, and Tyler also were made aware of it as CSFT Committee members.

i. [redacted], Defendant Bacon [redacted]

j. [redacted]

k. In November 2007, Merrill Lynch and Société Générale SA also made collateral calls on AIG from their CDS holdings.

l. [redacted], Defendant Shannon, relates that [redacted]

m. [redacted], Defendant Doyle [redacted] 2nd and 3rd [redacted]

n. [redacted]

o. [redacted]

Redacted - Confidential

p. [redacted], Defendant Schader [redacted]

Redacted - Confidential

[redacted] This reflects Defendant Schader's knowledge of the financial situation at the time, particularly as is related to the scope, nature and extent of information would be disclosed to the public and why. Defendant Schader insisted that [redacted] Yet, barely two months later, AIG publicly disavowed key representations at the Investor Conference. Defendant Schader, [redacted], should have been on alert when, on February 11, 2008, AIG announced that PwC had found material weakness, and that AIG had further devalued the CDS portfolios by $5.9 billion, and AIG stock dropped by 12%.

Redacted - Confidential

q. [redacted], Defendant Junius [redacted] Defendants Bacon and Schader [redacted]

[redacted] Redacted - Confidential [redacted] Defendant Junius and his colleagues, thus, would have been equally aware of [redacted] with respect to investments in the Plans at issue here, specifically the AIG Stock Fund.

r. On January 8, 2008, a subsidiary of AIG, SunAmerica, released its Form N-CSK for the fiscal year ended October 31, 2007. The portfolio analysis was prepared by portfolio managers at AIG SunAmerica Asset Management Corp., headed by team leader Defendant Schoepke. The SunAmerica report recognized [redacted] Redacted - Confidential [redacted]

s. [redacted], Defendant Bacon [redacted] Redacted - Confidential [redacted]

c. AIG Reacts to Further Losses; PwC Confirms Material Weakness and Forces Re-Valuation

389. Documents and deposition testimony show that Defendants knew or should have known about AIG's continued financial distress *during the Class Period* began include, without limitation, the following:

a. [redacted] Redacted - Confidential [redacted] leading to the announcement in the February 11, 2008 Form 8-K that PwC had declared a material weakness in AIG's reporting.

b. According to a January 30, 2008 e-mail from Swift to Defendant Shannon, Bensinger, and others, Defendant Shannon was made personally responsible for modifying AIG's Securities Lending support agreement—whereby the AIG parent company agreed to backstop some of its subsidiaries' losses—to substantially increase the total amount of unrealized losses AIG would have to cover. The same e-mail makes

[redacted] Redacted - Confidential [redacted]

c. [redacted] Redacted - Confidential [redacted]

d. Defendant Shannon [redacted] Redacted - Confidential [redacted]

e. [redacted] Redacted - Confidential [redacted]

f. [redacted] Redacted - Confidential [redacted]

g. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential

h. [redacted] Redacted - Confidential [redacted] Bloomberg News' critical assessments of AIG's February 11, 2008 Form 8-K/A as a "model of obfuscation."

i. [redacted] Redacted - Confidential [redacted] The losses suffered by that plan from its participation in the securities lending program should have led to a further inquiry regarding the losses therefrom to AIG as a whole.

j. [redacted] Redacted - Confidential [redacted]

k. [redacted] Redacted - Confidential [redacted]

l. [redacted] Redacted - Confidential [redacted]

m. [redacted] Redacted - Confidential [redacted]

[redacted]
Redacted - Confidential
[redacted]

n. [redacted]
Redacted - Confidential
[redacted] AIG proceeded with its $20 billion May 2008 Capital Raise/Offering. [redacted]
Redacted - Confidential
[redacted]

o. [redacted]
Redacted - Confidential
[redacted]

[redacted] Redacted - Confidential

p. [redacted] Redacted - Confidential [redacted]

q. Defendant Junius also [redacted] Redacted - Confidential [redacted] Such massive additional charges, on top of the determination already made to seek $20-21 billion in additional capital, clearly posed the risk of a rating agency downgrade, which unsurprisingly did occur, on May 8, 2008—the same day AIG announced both its Q1 earnings, and the planned capital raise. [redacted] Redacted - Confidential

r. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential [redacted] The aim of the capital raise as presented in the road show was to "[m]aintain ability to absorb potential near-term volatility" and AIG's losses due to "continued volatility in credit markets."

s. [redacted] Redacted - Confidential [redacted]

t. [redacted] Redacted - Confidential [redacted]

u. [redacted] Redacted - Confidential [redacted]

v. [redacted] Redacted - Confidential [redacted] The earnings release included the disclosure of "$9.11 billion of net unrealized market valuation losses on Capital Markets [redacted] super senior credit default swap portfolio in the first quarter of 2008." Redacted - Confidential

w. On May 8, 2008, AIG publicly announced huge first quarter losses, among other things, a net loss of $7.8 billion and an unrealized loss of $9.11 billion on its CDS portfolio, along with a planned $12.5 billion capital raise (almost immediately raised to $20 billion); at the same time, AIG announced a 10% dividend increase—in attempt to

appease investors—which imposed a further drain on liquidity, and at a critical time when AIG was already seeking $20 billion in capital. [redacted] Redacted - Confidential [redacted]

x. [redacted] Redacted - Confidential [redacted]

d. Collateral Calls Continue to Mount and the Liquidity Crisis Deepens

a. [redacted] Redacted - Confidential [redacted]

b. [redacted] Redacted - Confidential [redacted]

c. Defendants who were executives with AIG's insurance units participating in the securities lending program, such as Defendants Bacon, Doyle, Tyler, as well as Defendants Schader and Shannon, would have been aware, as reflected in June 27, 2008 Bloomberg article by Miles Weiss, entitled *AIG to Absorb $5 Billion Loss on Securities Lending*, that

> American International Group Inc. plans to absorb losses for a dozen insurance units after their securities-lending accounts suffered $13 billion of writedowns tied to the subprime-mortgage collapse during the past year. [AIG] will assume as much as $5 billion of any losses on sales of the investments, up from a previous commitment of $500 million, said Christopher Swift, vice president for life and retirement services.... AIG also will inject an undisclosed amount of capital into some of the subsidiaries, he said. Moody's Investors Service and A.M. Best Co. both cited the writedowns in May when they downgraded New York-based AIG's credit ratings. State regulators in Texas said they didn't know AIG was investing

cash collateral from the securities-lending business in subprime-linked assets and were concerned the insurance units hadn't put aside enough capital to cover potential losses. “We were aware of this portfolio, but we didn’t have transparency on what was in it because it was off-balance sheet” in the company's statutory accounting reports, said Doug Slape, chief analyst at the Texas Department of Insurance in Austin, which oversees three AIG insurers that have suffered about 60 percent of the writedowns.

d. [redacted]

Redacted - Confidential

[redacted]

e. [redacted]

Redacted - Confidential

[redacted]

f. [redacted]

Redacted - Confidential

[redacted]

[redacted]
Redacted - Confidential
[redacted]

g. [redacted]
Redacted - Confidential
[redacted]

h. [redacted]
Redacted - Confidential
[redacted]

i. On July 29, 2008, Defendant Willumstad met with Timothy Geithner, then president of the Federal Reserve Bank of New York, to ask if AIG could have access to the Fed's borrowing window, and was rebuffed.

j. [redacted]
Redacted - Confidential
[redacted]

k. [redacted]
Redacted - Confidential
[redacted]

[redacted] Redacted - Confidential [redacted]

l. [redacted] Redacted - Confidential [redacted]

m. [redacted] Redacted - Confidential [redacted]

n. [redacted] Redacted - Confidential [redacted]

o. On August 18, 2008, Goldman issued an analyst research report with a "sell" recommendation on AIG; [redacted] Redacted - Confidential [redacted]

p. On September [redacted], 2008, Defendant Willumstad asked the Federal Reserve Bank of New York for a $40 billion bridge loan for AIG as AIG continued to try to sell assets.

q. [redacted] Redacted - Confidential [redacted]

r. [redacted] Redacted - Confidential [redacted]

s. [redacted] Redacted - Confidential [redacted]

t. [redacted] Redacted - Confidential [redacted]

u. [redacted] Redacted - Confidential [redacted]

v. [redacted] Redacted - Confidential [redacted]

w. [redacted] Redacted - Confidential [redacted]

x. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential [redacted]

y. On the evening of September 15, 2008, the major rating agencies, including S&P and Moody's, downgraded AIG again.

z. [redacted] Redacted - Confidential [redacted]

aa. [redacted] Redacted - Confidential [redacted]

bb. [redacted] Redacted - Confidential [redacted]

cc. [redacted] Redacted - Confidential [redacted]

dd. [redacted] Redacted - Confidential [redacted]

ee. On September 23, 2008, AIG announced it had entered into an agreement with the Federal Reserve Bank of New York for an $85 billion revolving credit facility.

ff. [redacted] Redacted - Confidential [redacted]

e. Defendant Shannon's Corporate Position Gave Her Direct Knowledge of AIG's Dire Situation throughout the Class Period

390. Notwithstanding the other Defendants' positions at AIG and its subsidiaries, Defendant Shannon's various corporate positions gave her direct knowledge of AIG's dire situation throughout the Class Period.

391. Defendant Shannon served as AIG's corporate secretary from 1986 to 2010. As corporate secretary, she attended and took minutes as AIG Board meetings as well as meetings of the Audit, Finance, Management Resources and Compensation, and Executive Committees of the AIG Board. She was senior vice president and deputy corporate counsel, and AIG's primary disclosure attorney. As an attendee at the meetings of the Board and these Board subcommittee throughout the Class Period, and as someone responsible to know all material facts within the Company to determine its disclosure duties, Defendant Shannon was privy to extensive and detailed internal financial reporting.

392. Thus, as the senior disclosure attorney, Defendant Shannon routinely received detailed internal financial reports throughout the Class Period which provided her with information about valuation of the CDO and CDS portfolios, securities lending losses and problems and deficiencies with credit risk management.

393. In her senior executive roles, Defendant Shannon attended multiple additional committee meetings either as a member or as the recording secretary, or both. These included, *inter alia*, the CSFT Committee; the AIG Group Risk Committee, the senior risk committee at AIG; and the Disclosure Committee. [redacted]

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394. [redacted]

Redacted - Confidential

395. [redacted]

Redacted - Confidential

396. [redacted]

Redacted - Confidential

397. [redacted]

Redacted - Confidential

[redacted]

Redacted - Confidential

[redacted]

398. [redacted]

Redacted - Confidential

[redacted]

399. [redacted]

Redacted - Confidential

[redacted]

400. [redacted]

Redacted - Confidential

[redacted]

401. [redacted]

Redacted - Confidential

[redacted]

[redacted]

Redacted - Confidential

[redacted]

2. A Full Investigation by Defendants Would Have Revealed that AIG Was in a Dire Situation and that AIG Stock was an Imprudent Investment Option

402. Defendants had a fiduciary duty to conduct an appropriate investigation into whether AIG company stock remained a prudent investment option in the Plans, an investigation which, further, the numerous red flags detailed herein cried out for. [redacted]

Redacted - Confidential

[redacted]

403. Members of the Defendant Investment Committee and the Defendant Retirement Board with actual knowledge of AIG's dire situation, and with detailed knowledge of the reasons for AIG's increasingly desperate financial position, such as Defendants Shannon and Junius, and others, were sitting in the room as members of these Committees, yet chose never to impart their knowledge to their fellow fiduciaries. Correspondingly, the remaining Defendants never asked

their knowledgeable fiduciary committee members what they knew about what was going on with AIG's finances, despite the numerous and shocking red flags detailed herein.

404. Both the public and internal information and red flags about AIG's dire situation, taken separately or together, were more than sufficient to require an ERISA fiduciary to conduct an extensive, far-reaching investigation into AIG's financial stability and the prudence of allowing company stock to remain in the Plans. [redacted] Redacted - Confidential [redacted] Yet, even questions across the table during the Investment Committee and Retirement Board meetings would have revealed the imprudence of Company stock and AIG's dire situation. A proper investigation, for which both the Defendant Investment Committee and the Defendant Retirement Board had authority, [redacted] Redacted - Confidential [redacted]

405. All of the pieces of the "death spiral"—increasing collateral calls leading to ratings downgrades, which led to even higher collateral calls and more ratings downgrades, and the freezing up of the markets for RMBS securities in which the GSL was investing the cash collateral in the GSL program—were in place and in motion by the beginning of the Class Period on August 7, 2007. Defendants knew the CDS contracts required huge increases in cash collateral with ratings downgrades either of the underlying securities or of AIG itself. They knew the subprime CDO market froze in March and April 2007 and that CDOs were becoming worthless as a result. There were also numerous red flags, described herein, between August 7, 2007 and AIG's inevitable collapse in September 2008, as more information came to light, and

Defendant Shannon worked to manage AIG's financial position and its public disclosures, and [redacted] Redacted - Confidential [redacted] Yet, the fundamental drivers of AIG's collapse, the collateral calls and the ratings downgrades that followed, and the exposure of the Securities Lending collateral pool to tens of billions of dollars in highly risky and insufficiently liquid MBS—were in place and in motion from the very beginning of the Class Period and nothing could stop the death spiral that resulted once it started. From an objective perspective, a fiduciary reasonably could and should known of AIG's dire situation during the Class Period and the rank imprudence of AIG company stock as a retirement investment. Further, while the CDS agreements and the GSL program were complex and the risks at ground level detailed, the simple facts that (i) putting up billions in collateral would cause ratings downgrades, and (ii) the collapse of the RMBS market would cause collateral calls, and prompt counterparties in the GSL program to ask for the return of their collateral—compounding the liquidity crisis—were not. Defendants had a fiduciary duty to protect the Plan participants' hard-earned retirement savings from catastrophic losses. Defendants had multiple opportunities, month after month as the alarming red flags mounted, but ignored the obvious, and took no steps at all to protect AIG's own loyal employees.

406. Defendants' failure to disclose the truth about the value of, and risks embedded, in AIG's CDS portfolio and GSL program and their failure to investigate the Company's exposures, despite highly public turmoil in the mortgage and mortgage derivative markets, resulted in the Plans purchasing and holding huge amounts of unduly risky Company stock at inflated prices.

407. AIG and the other Defendants disregarded sound business practices and failed to implement sound risk-management processes despite numerous warnings from industry

observers and regulators regarding the risks of subprime markets and looming trouble in credit markets.

408. In spite of these red flags and Defendants' actual knowledge, Defendants took no meaningful action to protect the Plans and participants from the significant losses that they have suffered.

409. [redacted]

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[redacted] Redacted - Confidential [redacted]

410. [redacted] Redacted - Confidential [redacted] By that time, AIG had already been bailed out by the Federal Government and its stock had lost nearly all of its value, closing at just $2.01 per share on the day of the meeting. [redacted] Redacted - Confidential [redacted] By this time, the value of AIG Stock had fallen even further— closing as low as $0.35 per share on March 6, 2009. [redacted] Thus, even the collapse of the Company was insufficient to prod the Defendants into acting with any urgency or speed to protect Plan participants.

411. Prudent fiduciaries would not have ignored the numerous red flags and allowed the risk of loss to the participants of the Plans to increase to unacceptable levels. However, the Defendants did just that, causing a significant portion of the Plans' assets to be wiped out.

412. Any generalized warnings of market and diversification risks that Defendants may have made to Plan participants regarding AIG stock did not effectively inform Plan participants of the actual past, immediate, and future dangers of investing in AIG stock, in part because

Defendants knew of and/or helped create and maintain public misconceptions of the Company's true financial condition, and knew or should have known of the adverse facts indicating dire circumstances described herein.

413. Even in the wake of numerous investigations by the SEC, Defendants failed to conduct an appropriate investigation into whether AIG stock was a prudent investment for the Plans and failed to provide the Plan participants with information regarding AIG's risky business operations to enable participants to make informed decisions regarding the Company stock in their Plan accounts.

414. An adequate investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plans in AIG stock, under these circumstances, detailed herein, was imprudent. A prudent fiduciary acting under similar circumstances would have acted to protect participants against unnecessary losses and would have made different investment decisions; specifically, a prudent fiduciary would have divested the Plans of AIG stock, and/or, at a minimum, ceased purchasing additional AIG stock at artificially inflated prices.

415. Because Defendants knew or should have known that AIG stock was not a prudent investment option and that AIG was in a dire situation, they had an obligation to protect the Plans and their participants from unreasonable and entirely predictable losses incurred as a result of the Plans' continued investment in Company stock.

416. It was imprudent for the Plans' fiduciaries to continue offering AIG stock as a Plan investment option, to continue holding AIG stock in the Plans, and/or to continue to make new investments in Company stock during the Class Period. AIG stock was an imprudent investment for the Plans as it was artificially inflated and posed an inordinate risk of significant loss, on a scale that could not reasonably have been imagined by the Plans' drafters, and that

should not have been borne by the participants and beneficiaries of the Plans. The Plans' fiduciaries disregarded the Company's deteriorating and dreadful financial circumstances described herein when it came to managing the Plans' investment in AIG stock, and were unwilling or unable to act prudently to rescue the Plans' investments. Under the circumstances, the continued investment of hundreds of millions of dollars of participants' retirement savings in AIG stock was reckless and imprudent, and contrary to the best interests of the Plans' participants, and an abuse of the Defendants' discretion as fiduciaries.

417. Defendants had available to them several options for satisfying their duties, including: making disclosures to co-fiduciaries; making appropriate public disclosures as necessary; discontinuing or limiting further investment in AIG stock under the Plans; consulting independent fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the participants of the Plans; divesting the Plans of Company stock; and/or resigning as fiduciaries of the Plans to the extent that, as a result of their employment by AIG, they could not loyally serve the Plans and their participants in connection with the Plans' acquisition and holding of AIG stock.

418. Despite the availability of these and other options, Defendants failed to take any meaningful action whatsoever to protect participants from losses as a result of the Plans' investment in AIG stock. The Defendants' utter lack of attention regarding the AIG Stock Fund during the Class Period was not due to any exercise of discretion, but, on the contrary, a complete abdication of any responsibility or standard of care whatsoever.

419. As a result of Defendants' breach of fiduciary duties, the Plans and their participants have lost hundreds of millions of dollars in retirement savings.

3. [redacted]

Redacted - Confidential

420. [redacted]

Redacted - Confidential

[redacted][12] [redacted]

Redacted - Confidential

[redacted]

421. [redacted]

Redacted - Confidential

[redacted]

12 [redacted]

Redacted - Confidential

[redacted]

[redacted]

Redacted - Confidential

[redacted]

Redacted - Confidential

[redacted]

422. [redacted]

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[redacted]

[redacted]

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[redacted]

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[redacted]

423. [redacted]

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[redacted]

[redacted]

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424. [redacted]

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425. [redacted]

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426. [redacted]
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427. [redacted]

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428. [redacted]

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429. [redacted]

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[redacted]

430. [redacted]

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[redacted]

431. [redacted]

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[redacted]

4. Public "Red Flags" Should have Alerted Defendants to AIG's Dire Situation and the Imprudence of AIG Company Stock as an Investment Option in the Plans

a. Public "Red Flags" Predating the Class Period

432. Defendants failed to heed myriad industry-wide and AIG-specific public red flags indicating that AIG stock was an improper retirement investment. These publically available red flags leading up to the beginning of the Class Period on August 7, 2007 include, without limitation, the following:

a. In 2002-2005, AIG was rocked by a number of accounting scandals, including transactions involving PNC Financial Services Group and AIGFP. The SEC and U.S. Department of Justice brought civil and criminal actions against AIG, resulting in AIG paying an $80 million fine and forfeiting some $40 million in fees earned on the transactions.

b. A second scandal involved a $500 million questionable transaction with a re-insurer, over thirty separate other accounting frauds alleged by regulators or civil plaintiffs, an investigation by the New York Attorney General, the restatement of financial results for 2000 through 2004, and the ouster of longtime Chairman Greenberg. All of these facts did or should have put Defendants, who were duty-bound to manage the Plans' investment in AIG stock, on heightened alert to scrutinize AIG's operations and divisions, especially its more aggressive lines of business, foremost among them the AIGFP division.

c. In early 2005, mortgage foreclosures began to jump dramatically, signifying a "national trend."

d. In May 2005, in response to rising mortgage defaults and subprime lending, bank regulators issued their first-ever guideline for credit-risk management for home-equity lending and, in December 2005, new guidelines for mortgage lenders were issued as well;.

e. Risks of subprime mortgage securitization were the subject of research at the Center for Economic and Policy Research in July 2005.

f. In September 2005, the *Wall Street Journal* reported that bank regulators were sounding "alarm bells" about rising risks in the mortgage market, and then-Federal Reserve Chairman Greenspan testified about the risks of "exotic" mortgages such as "interest-only" loans and ARMs.

g. By October 2005, delinquencies on subprime mortgage payments were doubled their level from a year earlier.

h. By December 2005, the housing bubble had "burst" in the residential mortgage market, and industry analysts expected the situation to deteriorate.

i. In 2005 and 2006, interest rate hikes, coupled with declines in home values made delinquencies and foreclosures rise considerably, particularly as to subprime and Alt-A mortgages with "interest-only" or ARM features.

j. On September 25, 2006, *Reuters* reported that "rising delinquencies and forecasts of a deepening deterioration in housing had prompted big investors, including hedge funds, to bet against [mortgage-related] securities since late 2005."

k. On October 4, 2006, the Federal Reserve and other banking agencies issued their final guidelines, Interagency Guidance on Nontraditional Mortgage Product Risks, in response to relaxing of underwriting standards and lax risk management practices of subprime lenders.

l. In early December 2006, Ownit, an issuer of subprime home loans, closed its doors and filed for Chapter 11 bankruptcy a few weeks later. Ownit's bankruptcy prompted *The New York Times* to report that "Wall Street's big let on risky mortgages that may be souring a lot faster than had been previously thought." ("Tremors at the Door," New York Times, Jan. 26, 2007). Moreover, as *The New York Times* noted, Ownit's bankruptcy was ominous for the entire economy: "A sharp contraction in subprime mortgages would have *ripple effects*, reducing consumers' access to credit and affecting investors like foreign central banks, *pensions and mutual funds* that have been big buyers of mortgage-backed securities." *Id*. (emphasis added).

m. On December 20, 2006, the Center for Responsible Lending issued a report predicting the worst foreclosure crisis in the modern mortgage market.

n. Well before the start of the Class Period, AIG knew that CDOs contained market risk, which is measured by marked-to-market accounting, a GAAP, since the early 1990s. Changes in the market risk exposes the CDS seller and buyer to having to make collateral calls via cash payments.

o. On February 8, 2007, HSBC, the largest originator of subprime loans during 2006, raised its subprime loan loss reserves to $10.6 billion to cover anticipated losses from its subprime lending, making the scale of subprime risks widely apparent and precipitating further and severe contraction in subprime origination.

p. In February 2007, the ABX index, which tracks CDOs on certain risky subprime loans, materially declined from above 90 to below 70. AIG's CDSs had direct credit exposure to the MBS and CDO markets that the ABX index tracked. AIG refused to manage its market risk based on the ABX index, even though it was the most accurate indicator of the volatility of the CDO market—AIG told investors the volatility was not to be believed.

q. On March 11, 2007, *The New York Times* reported that more than two dozen subprime mortgage lenders had failed or filed for bankruptcy.

r. In late March 2007, Moody's Investors Services warned that defaults and downgrades of subprime MBS could have "severe" consequences for CDOs invested in that sector.

s. On April 2, 2007, New Century Financial Corp., the largest U.S. subprime lender at the time, filed for Chapter 11 bankruptcy.

t. On June 20, 2007, Merrill Lynch seized $800 million in assets from two Bear Stearns hedge funds that were involved in securities backed by subprime loans, which Merrill Lynch then sold.

u. AIG's CDS portfolio had a notional exposure of $465 billion in the Second Quarter 2007.

v. In July 2007, the two Bear Stearns subprime hedge funds collapsed, filing for bankruptcy on July 31, 2007.

w. On July 26, 2007, Goldman demanded $1.8 billion in collateral from AIG due to increases in the market risk on Goldman's $20 billion in CDS that it purchased from AIG. AIG immediately offered to pay Goldman $300 million, as AIG discussed in a call with PWC on August 7, 2007, and by August 10, 2007, it agreed to pay $450 million as a "deposit" and sought to negotiate with Goldman regarding the remainder of the amount, although it had no credible data with which to dispute the call.

x. On August 6, 2007, American Home Mortgage filed for Chapter 11 bankruptcy.

b. Public "Red Flags" During the Class Period

433. The publically available red flags during the Class Period include, without limitation, the following:

a. By August 9, 2007, AIG publically acknowledged that its CDS portfolio exposed the Company to risks embedded in the mortgage and mortgage derivative market, even as it misrepresented that the Company managed all of the pertinent risks.

b. On August 9, 2007, French bank BNP Paribas froze three of its funds exposed to United States subprime mortgages, blaming "a complete evaporation of liquidity."

c. On August 16, 2007, Countrywide Financial Corporation ("Countrywide"), the largest U.S. mortgage lender, narrowly avoided bankruptcy by taking out an emergency loan of $11 billion from a group of banks.

d. [redacted]

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e. On August 31, 2007, Ameriquest, the largest subprime lender in the United States, at the time, announced it was going out of business.

f. In September 2007, the Congressional Research Service reported that defaults and foreclosures were likely to rise even higher in 2007 and the first half of 2008.

g. In October 2007, Merrill Lynch announced the largest quarterly loss in its 93-year history after taking $8.4 billion in write-downs on its mortgage-related securities.

h. On November 7, 2007, AIG reported its first losses tied to its CDS portfolio in the Third Quarter 2007, taking a valuation loss of $352 million to its multi-sector CDS portfolio at September 30, 2007. Moreover, this amount would have been substantially higher, but, as AIG senior executives knew at the time, "AIG-FP has not marked the super senior book to market."

i. In the same filing, AIG also disclosed that AIGFP took another valuation loss, $550 million for losses in October 2007, to its multi-sector CDS portfolio. During the ensuing conference call, the only thing the analysts wanted to talk about was AIG's super-senior exposure.

j. At the December 5, 2007 Investor Conference, Defendant Sullivan told investors that AIG saw the trouble in the housing market as early as 2005 and that each of its subsidiaries, including AIGFP, took corrective action at that time.

k. At the December 5, 2007 Investor Conference, AIG was peppered with questions about risk of losses tied to counterparty collateral calls, although Cassano tried to downplay them.

l. At the December 5, 2007 Investor Conference, AIGFP's risk consultant Gorton told investors that AIGFP ignored market risk exposure in its CDS risk modeling, focusing instead on the risk of default. AIGFP's models thus failed to measure mark-to-market risk in its CDS portfolio.

m. In an SEC filing filed on December 5, 2007, AIG disclosed another $1.05 to $1.15 billion in unrealized losses on the CDS portfolio, bringing the total to $1.5 billion in 2007.

n. Between December 7 and December 14, 2007, AIG's shares fell from $61.45 to $55.65, nearly a 10 percent decline, on news of further write-downs to the CDS portfolio.

o. On December 22, 2007, the *Economist* estimated subprime defaults would reach a level between $200 billion and $300 billion.

p. As of December 31, 2007 AIGFP's CDS portfolio grew another $14 billion to close at $527 billion for the Fourth Quarter 2007. Approximately $79 billion

of the CDS portfolio was tied to multi-sector CDOs, which were heavily linked to subprime mortgages.

q. On January 11, 2008, Bank of America agreed to bail out Countrywide by purchasing it for $7.16 per share, approximately 16 percent of its value of $44.55 per share less than a year before.

r. On February 11, 2008, AIG also disclosed that it had taken further writedowns on its CDS portfolio of $5.9 billion as of November 30, 2007. AIG stock price closed at $43.85 per share that day, down from $49.67, representing nearly a 12 percent decline in one day.

s. On February 12, 2008, Lehman Brothers analysts downgraded AIG from "overweight" to "equal-weight."

t. On February 15, 2008, Bloomberg published an article critical of AIG's February 11, 2008 disclosures, saying that AIG's "explanation for this revision was a model of obfuscation and something about it doesn't ring true."

u. On February 26, 2008, AIG disclosed that it had actually suffered an $11.1 billion valuation loss to its CDS portfolio for the Fourth Quarter 2007 alone. AIG also disclosed that $6.4 billion or 10.5 percent of its CDS tied to multi-sector CDOs had been downgraded.

v. On February 26, 2008, AIG also disclosed that it had paid $5.3 billion in collateral calls to counterparties on the CDS as of February 26, 2008.

w. AIG stock closed at $45.93 on February 29, 2008, down from $51.21 on February 27, 2008—another 10 percent drop over two days. AIG stock closed at $45.93 on February 29, 2008, down from $51.21 on February 27, 2008—another 10 percent drop over two days.

x. In March 2008, Cassano, the head of AIGFP, was compelled to retire (but was retained as a consultant, earning $1 million a month).

y. In March 2008, Bear Stearns as an entire company collapsed due to its subprime mortgage hedge funds' collapse, forcing a distressed sale to JP Morgan Chase.

z. On March 10, 2008, following a March 3, 2010 meeting with AIG senior management, the OTS wrote a letter communicating to AIG's senior management and Board: (1) a number of supervisory concerns regarding the lack of oversight of key AIG subsidiaries (*e.g.*, AIGFP); (2) concerns about disclosures in AIG's SEC filings, (3) concerns about AIG's handling of risk management over AIGFP; (4) material weaknesses that it noted existed at AIG; and (5) the OTS' downgrading of certain of AIG's ratings.

aa. By March 31, 2008, approximately $11 billion or 18 percent of the multi-sector CDOs underlying AIG's CDS portfolio was downgraded by the rating agencies, with an additional $19.5 billion placed on credit watch.

bb. As of March 31, 2008, AIG's conservative estimate of its excess capital was reduced to a range of $2.5 to $7.5 billion, down from $14.5 to $19.5 billion as of December 31, 2007.

cc. On April 28, 2008, Credit Suisse analysts downgraded AIG from "outperform" to "neutral" based on publically available information.

dd. By April 30, 2008, another $7.8 billion worth of the multi-sector CDOs underlying the CDS portfolio was downgraded, which represented 31 percent of the total multi-sector CDS portfolio.

ee. By April 30, 2008, AIG had posted $9.7 billion in collateral calls on its CDS portfolio.

ff. On May 8 and 9, 2008, AIG and Defendant Sullivan informed investors that AIG planned to raise $12.5 billion through issuance of common stock, although the Company actually planned to seek approximately $20 billion, which it announced within days.

gg. Also on May 8, 2008, AIG reported a $7.81 billion loss on its CDS portfolio for the First Quarter 2008 and an adjusted net loss of $3.56 billion, which raised the total losses on the CDS portfolio to $20 billion. AIG stock fell to $39.65 on May 9, 2008, down from $43.46 on May 8, 2008—a drop of nearly nine percent.

hh. By May 9, 2008, two of the four major rating agencies downgraded AIG's credit by one notch.

ii. On June 6, 2008, the SEC and the DOJ announced that they were investigating whether AIG overstated the value of its CDS portfolio. AIG's stock fell 6.8 percent in one day on this news.

jj. On June 15, 2008, Defendant Sullivan was ousted as CEO of AIG; AIG's Chairman, Defendant Willumstad, took over for Sullivan as the new CEO.

kk. As of June 2008, AIG stock had plunged over 41 percent from the start of the year based on publically available information.

ll. On August 7, 2008, the day after AIG posted its Second Quarter 2008 losses of $5.36 billion, its stock tumbled 18 percent (or $5.25) to close at $23.84.

mm. In August 2008, New York State Attorney General Andrew Cuomo threatened to sue Merrill Lynch over its misrepresentation of the risk on MBS, putting Defendants on still further notice to inquire regarding the risks of the vast amounts of such securities held by AIG.

nn. In August 2008, AIG told investors it had posted $16.5 billion in total on collateral calls on its CDS portfolio.

oo. On August 18, 2008, Goldman issued an analyst research report with a "sell" recommendation on AIG.

pp. In September 2008, AIG's credit rating was downgraded. AIG executives believed that a one-notch downgrade to AIG's credit rating would require AIG to post $18 billion in collateral calls.

qq. In early September 2008, Merrill Lynch also faced collapse, as its mortgage-related derivative exposure continued to cause it substantial losses. On September 14, 2008, it was sold to Bank of America at a fire-sale price.

rr. By early September 2008, AIG in the last stages of its collapse. Despite burning through tens of billions of new capital in a couple of months, on September 12, 2008, AIG asked the Federal Reserve Bank of New York for a $40 billion bridge loan as it continued to try to sell assets. AIG's stock closed at $12.14 on September 12, 2008, down from $17.55 on September 11, 2008, representing a 30 percent drop. AIG was unable to secure any private investors, who valued AIG's capital needs much higher than AIG did.

ss. On September 15, 2008, AIG's credit rating by major rating agencies was cut upon news that AIG now believed it needed $85 billion to cover its collateral needs. AIG's stock dropped over 60 percent, closing at $4.76.

tt. On September 16, 2008, the Federal Reserve Bank agreed to extend AIG an $85 billion credit facility.

uu. On September 16, 2008, Edward Jones analysts downgraded AIG from a "hold" to a "sell."

vv. On September 17, 2008, the federal government required AIG to replace Defendant Willumstad with Liddy.

ww. On September 21, 2008, the Dow Jones removed AIG from its Industrial Average, which had been drawn down substantially by AIG's 83 percent drop over just the previous three quarters.

xx. On September 24, 2008, the FBI announced that it was investigating possible criminal wrongdoing at AIG.

yy. Collateral calls continued to be made on AIG, requiring AIG to obtain another $37.3 billion from the federal government on October 8, 2008.

zz. On October 7, 2008, Nell Minow testified before Congress that AIG had been a serial offender with regard to executive compensation excess, a fact that Defendants knew or should have known about and which put or should have put

Defendants on heightened alert to increased risk-taking activity within AIG that made its stock imprudent throughout the Class Period.

aaa. On October 31, 2008, the Federal Reserve Bank gave AIG access to an additional $20.9 billion through the Federal Reserve Bank's "commercial paper" program.

bbb. On November 10, 2008, AIG posted its largest ever quarterly loss, totaling $24.47 billion or $9.05 a share. The losses included write-downs of $7.05 billion on its CDS portfolio and $18.31 billion in capital losses.

ccc. By year-end 2008, AIG had become 13.7 times leveraged, or nearly 4 times more leveraged than in the prior year.

ddd. In a remarkable comment about the pervasiveness of the culture of financial shenanigans at AIG in the recent past, in a February 2009 opinion denying motions to dismiss by certain AIG-related defendants in a case concerning many of the events of 2002-2005, Judge Strine of the Delaware Chancery Court found that "the complaint fairly supports the assertion that AIG's inner circle led a—I use this term with knowledge of its strength–criminal organization."

eee. After AIG posted a $61.7 billion loss for the Fourth Quarter 2008, its stock closed at 42 cents on March 2, 2009 and it received an additional $30 billion in federal aid on March 3, 2009.

fff. On March 5, 2009, AIG's stock reached a new all-time low of 35 cents a share; and AIG's continued viability remained in question.

D. Defendants Breached Their Duty to Employ a Prudent Process to Monitor, Evaluate and Remove Company Stock as an Investment Option

434. Defendants had a fiduciary duty under ERISA to employ a prudent process to satisfy their fiduciary duty to act for the exclusive purpose of providing benefits to plan participants. In the absence of a prudent process, Defendants cannot satisfy their ERISA duty of prudence and loyalty.

435. Instead of employing a prudent process, Defendants abrogated their fiduciary duty to monitor, evaluate and, when necessary, remove or close the AIG Stock Fund as an investment option in the Plan if company stock became an imprudent retirement investment and/or AIG faced a dire situation. Rather than employing the required prudent process, Defendants employed no process at all.

436. The fact that Defendant's abrogation of their fiduciary duty to monitor, evaluate and remove Company stock as an investment option is reflected in the Defendants' failure to take any steps to employ follow a prudent process during the Class Period as follows:

a. Defendants failed to conduct an independent investigation of the prudence of the Plans' continued investment in AIG Stock Fund despite the consistent significant underperformance of the AIG Stock Fund during the Class Period and the plethora of warning signs evidencing the dire situation facing AIG and the serious threat to the value of the Plans' assets, due to, *inter alia*, the failure of internal controls at AIG and the significant risks the Company was taking with its CDS portfolio and its Securities Lending business. [redacted]

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b. [redacted]

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[redacted] That Defendants *could* do something about the AIG Stock Fund's exposure is evidenced by the fact that they *did* do something about it (closing the AIG Stock fund to new investments in March-April 2009)—only they awoke from their slumber and closed the barn door long after the horse was gone.

c. [redacted]

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[redacted]

d. [redacted]
Redacted - Confidential
[redacted]

e. [redacted]
Redacted - Confidential
[redacted]

f. [redacted]
Redacted - Confidential
[redacted] Defendants cannot escape liability for breach of fiduciary duty by appointing people to the Investment Committee and the Retirement Board who are unqualified to perform their fiduciary obligations.

g. [redacted]
Redacted - Confidential
[redacted]

h. [redacted]
Redacted - Confidential
[redacted]

i. [redacted] Redacted - Confidential [redacted]

j. [redacted] Redacted - Confidential [redacted]

k. Defendants failed to retain an outside investment consultant to advise on the continued prudence of investing the Plans' assets in the AIG Stock Fund even though the Fund was consistently underperforming both its benchmarks and the other investment options in the Plans. Notably, both the AIG Retirement Board and the Investment Committee had the authority to retain one or more investment consultants to advise them on *any* Plan investment option. The Investment Committee Defendants engaged Hewitt as an investment consultant who reported quarterly on each of the Plan options, including the AIG Stock Fund.

l. Defendants failed to appoint an independent fiduciary despite the conflicts of interest inherent in their role as ERISA fiduciaries, even after the Investment Committee's investment consultant, Hewitt, identified the conflicts of interest in an August 2008 report and despite the Investment Committee's retention of an independent fiduciary to handle the Retirement Plan's investment of Company stock.

m. Defendants failed to consult with the Department of Labor regarding appropriate protective actions with respect to the Plans in light of the consistent underperformance of the AIG Stock Fund during the Class Period, and the numerous other red flags detailed herein.

n. [redacted] Redacted - Confidential [redacted]

o. Correspondingly, although other Defendants knew Defendants Junius and Shannon's job responsibilities, none of the other Defendants asked Defendant Junius and Shannon for any information about the financial situation AIG faced. No other Defendant asked Junius and Shannon to apply their vast knowledge of the reasons for AIG's financial problems to the question of whether AIG company stock was a prudent investment option for the Plans or whether AIG faced a dire situation. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential [redacted]

p. During the Class Period, Defendants never considered or discussed at the meetings of the Investment Committee or the Retirement Board information material to the appropriateness, from a prudent fiduciary's point of view, of continuing to offer the AIG Stock Fund as an investment alternative for the Plans, including, among other things: (a) the current Company stock price; (b) AIG's financial condition; (c) AIG's subprime exposure; (d) AIG's financial performance and outlook; (e) the performance and outlook of AIG's industry sector; (f) the potential for ratings agency downgrades of AIG; (g) the impact of increasingly large collateral calls on AIG's liquidity and solvency; (h) the potential for AIG's bankruptcy; (i) the impact of losses in AIG's securities lending program on the prudence of Company stock; or (j) any other of the public or internal red flags detailed herein.

q. Defendants never convened or conducted formal meetings after any significant corporate event, such as the Form 8-K in February 2008 announcing a material weakness that resulted in restatement of AIG's losses and ratings agency downgrades, or any of the other red flags detailed herein.

r. [redacted] Redacted - Confidential [redacted]

s. [redacted] Redacted - Confidential [redacted]

t. [redacted] Redacted - Confidential [redacted]

437. Defendants, and the Retirement Board and the Investment Committees of which they were members, should have had a written procedure for the monitoring, evaluation and removal, if necessary, of company stock as an investment option and they should have followed that procedure. Given that Defendants cannot show that they had any process, much less a

prudence process to satisfy their fiduciary duty to monitor, evaluate and remove company stock, Defendants are liable under ERISA for their breach of the duty to employ a prudent process.

E. Defendants Breached their Duty of Loyalty by Failing to Avoid Conflicts of Interest

438. Defendants owed Plan participants a fiduciary duty of loyalty which required Defendants to select and maintain Plan investment options based solely on the best interests of Plan participants. Although plan fiduciaries may wear multiple management "hats," when deciding whether to retain company stock as a plan investment option, Defendants have a fiduciary duty to consider only the best interests of participants in reaching their retirement savings goals.

439. The record demonstrates that no amount of bad financial news was going to prompt Defendants to remove or limit Company stock as a Plan investment option during the Class Period—even though these Defendants testified that there was nothing prohibiting them from doing so. In violation of their ERISA fiduciary duties and at the expense of heavy losses to Plan participants, Defendants retained Company stock both because they were asleep at the switch, and because it served the Company's interests to do so.

440. Instead of treating Plan holdings in AIG stock as the hard won retirement savings of the Company's loyal employees, Defendants treated Company stock in the Plans as a means of controlling a large block of Company stock. By retaining Company stock in the Plans throughout the Class Period, Defendants avoided sending a signal to the market that the Company no longer had confidence in its own stock.

441. [redacted]

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[redacted] Redacted - Confidential [redacted]

442. Defendants were well aware of the conflicts of interest presented by their role as ERISA fiduciaries by retaining Company stock as an investment option in the Plans, yet took no steps to avoid the conflicts. [redacted] Redacted - Confidential [redacted]

[redacted] Redacted - Confidential [redacted]

443. Defendants never took any steps to meet the obligation of prudent conduct in the first place, therefore, they cannot prove that they acted with single minded devotion and in the sole interest of the Plan participants. Instead and by default, they acted solely in the interest of the Company, failing to take any action whatsoever to protect the Plans from persistent and heavy losses resulted from the Plans' imprudent investment in AIG Stock Fund, for which they are liable under ERISA for breach of the duty of loyalty.

VIII. THE RELEVANT LAW

444. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

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

446. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants to seek equitable relief from plan fiduciaries, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

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

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

a. The duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives of a plan, including in

this instance the AIG Stock Fund, which invested in AIG stock, to ensure that each investment is a suitable option for the plan; and

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

449. ERISA requires a plan fiduciary to manage the investment of plan assets, including in this instance the AIG Stock Fund, which invested in AIG stock. Such a plan fiduciary must also ensure that only prudent investments are offered as plan options, and monitor such investments to ensure that they remain prudent and suitable for the plan. This includes the duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives of a plan, including in this instance the AIG Stock Fund, which invested in AIG stock, to ensure that each investment is a suitable option for the Plans.

450. A fiduciary must avoid conflicts of interest and resolve them promptly when they do occur. As such, a plan fiduciary must always administer a plan with a single eye to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

451. ERISA § 405(a), 29 U.S.C. § 1105(a), "Liability for Breach by Co-Fiduciary," provides, in pertinent part:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

> (2) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

452. Co-fiduciary liability is an important part of ERISA's regulation of fiduciary responsibility. Because ERISA permits the fractionalization of the fiduciary duty, there may be, as in this case, several ERISA fiduciaries involved in a given issue, such as the role of company stock in a plan. In the absence of co-fiduciary liability, fiduciaries would be incentivized to limit their responsibilities as much as possible and to ignore the conduct of other fiduciaries. The result would be a setting in which a major fiduciary breach could occur, but the responsible party could not easily be identified. Co-fiduciary liability obviates this. Even if a fiduciary merely knows of a breach, a breach he had no connection with, he must take steps to remedy it:

> [T]he most appropriate steps in th[is] circumstance may be to notify the plan sponsor of the breach, or to proceed to an appropriate Federal court for instructions, or bring the matter to the attention of the Secretary of Labor. The proper remedy is to be determined by the facts and circumstances of the particular case, and it may be affected by the relationship of the fiduciary to the plan and to the co- fiduciary, the duties and responsibilities of the fiduciary in question, and the nature of the breach.

1974 U.S.C.C.A.N. 5038, 1974 WL 11542, at 5080.

453. Plaintiffs therefore bring this action under the authority of ERISA § 502(a)(2) for relief to the Plan under ERISA § 409(a) to recover losses sustained by the Plan arising out of the breaches of fiduciary duties by the Defendants in violation of ERISA § 404(a)(1) and ERISA § 405(a).

454. Insofar as any Defendant is sued alternatively as a knowing participant in a breach of fiduciary duty for equitable relief, Plaintiffs proceed, pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

IX. CAUSES OF ACTION

A. Count I: Failure To Prudently And Loyally Manage The Plans And Assets Of The Plans

455. Plaintiffs incorporate by this reference the paragraphs above.

456. This Count alleges fiduciary breach against the following Defendants: AIG, the Director Defendants, the Retirement Board Defendants, and the Investment Committee Defendants (collectively, the "Prudence Defendants").

457. As alleged above, during the Class Period the Prudence Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

458. As alleged above, the scope of the fiduciary duties and responsibilities of the Prudence Defendants included managing the assets of the Plans for the sole and exclusive benefit of the Plans' participants and beneficiaries, and with the care, skill, diligence, and prudence required by ERISA. As such, the Prudence Defendants were responsible for, among other things, selecting prudent investment alternatives and eliminating imprudent investment alternatives for the Plans. Further, with respect to the Plans, each Prudence Defendant were responsible for, among other things, determining whether and to what extent the assets of the Plans (including those that would otherwise be invested in Company stock) should be held in short term low risk investments. The Prudence Defendants were responsible for determining the extent to which employees would be permitted to invest in those investment alternatives (including the AIG Stock Fund). As alleged previously, the Prudence Defendants thus exercised *de facto* authority and control with respect to the *de jure* responsibilities of the other Prudence Defendants, making themselves fully responsible for the prudent and loyal fulfillment of the *de*

jure responsibilities assigned by the governing Plan documents to the other Prudence Defendants, without relieving them of any such responsibility. In carrying out these responsibilities, the Prudence Defendants were required to evaluate the merits of the Plans' investments on an ongoing basis and take all necessary steps to ensure that the Plans' assets were invested prudently.

459. Yet, contrary to their duties and obligations under ERISA, the Prudence Defendants failed to loyally and prudently manage the Plan assets. Specifically, during the Class Period, these Defendants knew or should have known that AIG common stock was no longer a suitable and appropriate investment for the Plans, but was, instead, a highly speculative, risky investment in light of the Company's improper business practices, serious mismanagement, accounting improprieties, misstatements, and omissions that caused the price of AIG stock to be artificially inflated. Further, the Prudence Defendants knew or should have known that AIG was in a dire situation. The impending collapse of the stock price resulted from these dire circumstances. Nonetheless, during the Class Period, these Defendants exercised the authority and control that made them fiduciaries to continue to offer AIG stock as an investment alternative in the Plans. Although AIG stock was removed as a Employer Matching Contribution option after May 1, 2009, this action was too little too late—the stock had already plummeted in value to under $2 a share, and the Defendants failed to take any action to divest the Plans of AIG stock.

460. Throughout the Class Period, Defendant AIG and, at a minimum, Defendants Sullivan, Willumstad, Shannon, Junius, Schader, Tyler Doyle, and others as set forth above, had actual knowledge that its shares had become a risky and inappropriate investment and that AIG faced a dire situation, based on, *inter alia*, the following: (a) the aggressive growth of its CDS

business tied to the failing mortgage securities markets, even after subprime mortgage defaults increased, housing prices fell, credit markets deteriorated, the subprime MBS markets became illiquid, and the CDO markets took major losses, (b) the accumulation of over $500 billion in exposure to CDS, with roughly $80 billion of that directly tied to subprime related securities, which constituted nearly four times the amount of AIG's claimed available excess capital during the Class Period; (c) the failure to acknowledge, control, and manage the risks embedded in the CDS portfolio, including market and pre-settlement risk; (d) the failure to hedge the over $500 billion CDS portfolio; (e) the failure to provide complete and accurate information and the omissions of material fact regarding the risks embedded in the CDS portfolio; (f) the lack of proper internal controls over risk management and AIGFP; (g) their knowledge that collateral calls could and eventually would stretch the company beyond its available excess capital and its failure to take timely steps to obtain more capital, close out the CDS transactions, or otherwise limit the collateral calls; (h) failure to measure and hedge against downgrades by credit agencies —both to the underlying securities and to AIG itself—and the impact this would have on collateral calls during the Class Period; and (j) lack of oversight and risk controls over the GSL program, which exponentially increased AIG's exposure to a collapsing RMBS market (as AIGFP was pulling out of that market), and subjected it to another liquidity crisis [redacted] as counterparties in the GSL program demanded return of their collateral.

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461. Moreover, at a minimum, Defendants Sullivan, Willumstad, Shannon, Junius, Schader, Doyle, and Tyler knew, and the remaining Defendants should have known of the facts causing an investment in AIG stock to be imprudent and causing AIG to face dire circumstances and would have learned such facts had they conducted an appropriate independent investigation.

Had Defendants conducted an appropriate investigation, they would have learned the facts already known by Defendants Sullivan, Willumstad, Shannon, Junius, Schader, Doyle, Tyler, and others to whom Defendants had access. The investigation would have revealed to a reasonable fiduciary that the investment in AIG stock was imprudent and that AIG was in a dire situation. These facts include, *inter alia,* the following:

a. [redacted]

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[redacted]

b. [redacted]

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[redacted]

c. [redacted]

Redacted - Confidential

[redacted]

d. [redacted]

Redacted - Confidential

[redacted]

e. [redacted]

Redacted - Confidential

[redacted]

f. [redacted]

Redacted - Confidential

[redacted]

g. A May 27, 2008 analyst report stating that it was not clear that AIG's $20 billion capital raise would be sufficient to meet AIG's needs.

h. [redacted]

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[redacted]

i. [redacted]

Redacted - Confidential

[redacted]

j. [redacted]

Redacted - Confidential

[redacted]

[redacted]

Redacted - Confidential

[redacted]

k. Defendants Sullivan, Shannon, Junius, Schader, Doyle, and Tyler's knowledge that AIG was not invulnerable. These Defendants understood that AIGFP's CDS portfolio and AIG's GSL Portfolio used AIG's formerly solid credit rating to generate income in the financial markets. They also knew that by doing so, both programs put AIG's financial stability as extreme risk without maintaining sufficient reserves to cover the potential for extraordinary losses. Once the bets placed by these programs began to unravel, these Defendants knew by the beginning of the Class Period that the die was cast and AIG faced a dire situation.

462. Nevertheless, the Prudence Defendants failed to conduct an appropriate independent investigation. Had the Prudence Defendants asked Defendants Junius and Shannon, they would have learned that [redacted]

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[redacted]

[redacted]

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463. The Prudence Defendants' decisions respecting the Plans' investment in AIG stock, under the circumstances alleged herein, constituted an abuse of their discretion as ERISA fiduciaries because a prudent fiduciary acting under similar circumstances would have made different investment decisions. Specifically, a prudent fiduciary could not reasonably have believed that further and continued investment of Plan assets in AIG stock was in keeping with the Plans' settlors' expectations of how a prudent fiduciary would operate.

464. The duties of loyalty and prudence also require fiduciaries to speak truthfully to plan participants, not to mislead them regarding the plan or plan assets, and to disclose all material information that participants need in order to exercise their rights and interests under the Plans. This duty to inform participants includes an obligation to provide participants and beneficiaries of the Plans with complete and accurate information, to refrain from providing inaccurate or misleading information or concealing material information, and to correct inaccurate, incomplete or misleading information provided by others if the fiduciary knows or should know that the plan participants may relying upon that information in making decisions.

465. Here, particularly because Plan participants had the right to transfer out of the AIG Stock Fund, all Defendants had the fiduciary responsibility for ensuring that Participants had full, complete, and accurate information such that participants could make fully informed decisions about how to handle their accounts. Defendants had the fiduciary obligation to provide all such necessary information to participants or, alternatively, the Prudence Defendants were

required to take all necessary steps to protect the financial interests of plan participants in light of Defendants' knowledge that the participants lacked such knowledge.

466. The Prudence Defendants were obligated to discharge their duties to the Plans with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

467. According to DOL regulations and case law interpreting this statutory provision, a fiduciary's investment or investment course of action is prudent if (a) he or she has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (b) he or she has acted accordingly.

468. Defendants also breached their fiduciary duty of prudence and loyalty by failing to monitor, evaluate and remove AIG company stock from the Plans when it became an imprudent investment option. Defendants had a fiduciary duty to employ a prudent process which include, *inter alia*, the following:

a. Routinely and regularly reviewing the performance of AIG stock and considering all factors relevant to whether the stock remained a prudent investment option;

b. Retaining an independent fiduciary to advise Defendants;

c. Retaining independent counsel to advise on Defendants' fiduciary duties and legal issues regarding the inclusion of employer stock as in investment option;

d. Meet following significant events impacting AIG's financial status and the value of company stock to consider the continued prudence of retaining Company stock in the Plans;

e. Routinely and regularly reviewing the financial performance of AIG and ensuring that Defendants' understand the financial information required to properly review and evaluate AIG's performance;

f. Provide training for Defendants in their obligations as ERISA fiduciaries and financial literacy.

469. Given the conduct of the Company as described above, the Prudence Defendants could not possibly have acted prudently when they continued to invest the Plans' assets in AIG stock.

470. The Plans did not purport to require the Defendants to offer AIG stock as a Plan investment option or invest any Plan assets in AIG stock regardless of circumstances, and the Defendants testified that they believed they were not under any restrictions indicating they should not disturb the AIG Stock Fund in any way. Even if the Plans had sought to require investment in AIG stock, Defendants, as ERISA fiduciaries, were duty-bound to adhere to this direction only insofar as it was consistent with ERISA. Because AIG stock was not a prudent investment during the Class Period, Defendants were required by ERISA to suspend investment in the stock and take appropriate action to protect the Plans; nor did this requirement conflict with any provision of the Plans, as Defendants' testimony confirmed. Nonetheless, Defendants failed to satisfy this fundamental ERISA obligation.

471. As a consequence of the Prudence Defendants' breach of fiduciary duties alleged in this Count, the Plans suffered significant losses. If the Prudence Defendants had discharged their fiduciary duties to prudently invest the Plans' assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breach of fiduciary duties alleged herein, the Plans, and indirectly Plan participants and beneficiaries, lost over hundreds of millions of dollars of retirement savings.

472. Defendant AIG profited from its breach of fiduciary duties because, *inter alia*, its failure to perform its duties resulted in a diminution of the contribution obligation it owed to the Plans regarding the Employer Matching Contribution.

473. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Prudence Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

B. Count II: Failure To Monitor Fiduciaries

474. Plaintiffs incorporate by this reference the allegations above.

475. This Count alleges fiduciary breach against the following Defendants: Defendant AIG, the Director Defendants and the AIG Retirement Board Defendants (collectively, the "Monitoring Defendants").

476. As alleged above, during the Class Period the Monitoring Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence set forth in ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B).

477. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, remove, and thus, monitor the performance of other fiduciaries as follows:

Monitoring Fiduciary	**Monitored Fiduciary**
AIG	AIG Retirement Board
Director Defendants	AIG Retirement Board
AIG Retirement Board	AIG Investment Committee

478. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries and the appointing fiduciaries whom they appoint are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

479. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession which they know or reasonably should know that the monitored fiduciaries must have to prudently manage the plan and the plan assets, or which may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

480. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing, at least with respect to the Plans' investment in Company stock, to monitor their appointees, to evaluate their performance, or to have any system in place for doing

so, and standing idly by as the Plans suffered enormous losses as a result of their appointees' imprudent actions and inaction with respect to Company stock; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of AIG's highly risky and inappropriate business practices, and the likely impact of such practices on the value of the Plans' investment in AIG stock; (c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans' assets; and (d) failing to remove appointees whose performance was inadequate in that they continued to make and maintain investments in AIG stock despite their knowledge of practices that rendered AIG stock an imprudent investment during the Class Period for participants' retirement savings in the Plans, and who breached their fiduciary duties under ERISA.

481. As a consequence of the Monitoring Defendants' breach of fiduciary duties, the Plans suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plan participants and beneficiaries, lost hundreds of millions of dollars in retirement savings.

482. Defendant AIG profited from its breach of this duty because, *inter alia*, its failure to perform its duties resulted in a diminution of the contribution obligation it owed the Plans.

483. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plans caused by their breach of fiduciary duties alleged in this Count, to disgorge profits made and to provide other equitable relief as appropriate.

C. Count III: Breach Of Duty To Avoid Conflicts Of Interest

484. Plaintiffs incorporate by this reference the allegations above.

485. This Count alleges fiduciary liability against all Defendants.

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

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

488. The fiduciary duty of loyalty entails, among other things, a duty to avoid conflicts of interest and to resolve conflicts promptly when they occur. A fiduciary must always administer a plan with single-minded devotion to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

489. Here, instead of being independent fiduciary entities that could serve the interests of the Plan participants with undivided loyalty, the Defendant Retirement Board and the Defendant Investment Committee were comprised of high-level AIG officers, privy to inside corporate information that could affect the prudence of investing the Plans' assets in AIG Stock Fund. Furthermore, the Director Defendants, charged with monitoring their fiduciary appointees, were likewise, by virtue of their Board positions, privy to such inside corporate information.

490. Moreover, on information and belief, the compensation and tenure of the Defendants named in this Count was tied to the performance of AIG stock and/or the publicly reported financial performance of AIG. More specifically, as previously alleged, the Prudence Fiduciaries with respect to the Employer Matching Contributions were aware that the fair market

value of the stock allocated to participants' accounts reduced the amount of the Company's contribution obligations, dollar for dollar. Accordingly, to the extent that AIG stock was inflated by the existence of undisclosed material information that upon disclosure would cause the stock to be revalued downward, the Plans and their participants and beneficiaries were injured and the Company benefited. Since the Prudence Defendants encompass the Company itself and certain of its officers and employees, these fiduciaries faced a stark conflict: exposing the truth about the risks presented by Company stock would benefit the Plans at the expense of the Company.

491. Fiduciaries laboring under such conflicts, must, to comply with the duty of loyalty, make special efforts to assure that their decision making process is untainted by the conflict and made in a disinterested fashion, typically by seeking independent financial and legal advice obtained only on behalf of the plan.

492. Defendants breached their duty to avoid conflicts of interest and to resolve them promptly by, *inter alia*: failing to retain outside investment consultants or outside counsel, or to engage independent fiduciaries, including independent investment managers, who could make unbiased judgments concerning the Plans' investment in the AIG Stock Fund. Instead, as alleged *supra*, Defendants permitted non-fiduciary AIG employees, such as

493. Additionally, Defendants breached their duty to avoid conflicts of interest, by failing to notify appropriate federal agencies, including the DOL, of the facts and transactions which made AIG stock an unsuitable investment for the Plans; failing to take such other steps as were necessary to ensure that Plan participants' interests were loyally and prudently served; with respect to each of these above failures, doing so to prevent drawing attention to the Company's inappropriate practices; and by otherwise placing the interests of the Company, their co-

Defendants, and themselves above the interests of the Plan participants with respect to the Plans' investment in Company stock.

494. Here, Defendants cannot show that they acted solely in the best interests of Plan participants for the exclusive purpose of providing benefits to Plan participants. Among other things, there is no documentation reflecting any discussion or consideration of the prudence of continued investment of the Plans' assets in AIG stock during the Class Period. Given that Defendants never undertook any measures to meet the obligation of prudent fiduciary conduct in the first place, they cannot prove that they acted with single-minded devotion and in the sole interest of the Plan participants. Instead and by default, Defendants acted solely in the interest of the Company, to the detriment of Plan participants.

495. [redacted]

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496. Furthermore, even though as alleged *supra,* Defendants were on notice throughout the Class Period that they could be subject to fiduciary liability by virtue of their knowledge, as corporate directors and insiders of AIG, of adverse inside corporate information threatening the value of Plans' assets, they failed to resign as fiduciaries of the Plans and instead appoint independent investment managers for the AIG Stock Fund.

497. As a consequence of all Defendants' breach of fiduciary duties, the Plans suffered losses. If Defendants had discharged their duties as described above, the losses suffered by the Plans would have been minimized or avoided. As a direct and proximate result of the breach of fiduciary duties alleged herein, the Plans, and indirectly Plan participants and beneficiaries, lost a significant portion of their retirement investments.

498. Defendant AIG profited from its breach of this duty because its failure to perform its duty resulted in a diminution of the contribution obligation it owed to the Plans regarding its Employer Matching Contribution.

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

D. Count IV: Co-Fiduciary Liability

500. Plaintiffs incorporate by this reference the allegations above.

501. This Count alleges co-fiduciary liability against the following Defendants: all Defendants (the "Co-Fiduciary Defendants").

502. As alleged above, during the Class Period the Co-Fiduciary Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

503. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. The Co-Fiduciary Defendants breached all three provisions.

504. **Failure to Disclose Knowledge to a Co-Fiduciary.** As alleged above, Defendants Sullivan, Willumstad, Shannon, Junius, Schader, Doyle, and Tyler had actual knowledge of AIG's dire situation and the imprudence of AIG company stock as an investment option in the Plan. They had detailed knowledge of AIG's financial situation, including, *inter alia,* the scope and nature of the CDS portfolio, the collateral calls allowed under the CDS contracts and the fact that ratings agency downgrades resulted in huge cash collateral requirements, and AIG's exposures, losses and liquidity shortfalls in the GSL program. These Defendants also knew that AIG did not have sufficient liquidity to cover projected collateral requirements, leaving AIG with a liquidity crisis in August and September 2008.

505. Defendants AIG, Sullivan, Willumstad, Shannon, Junius, Schader, Doyle, and Tyler possessed non-public information during the Class Period about the risks posed by AIG stock and AIG's dire situation, which they knew could be used by other fiduciaries of the Plans to protect the Plans and their participants and beneficiaries. The remaining Defendants knew or should have known about AIG's dire situation and the imprudence of AIG company stock as a retirement investment and should have informed other fiduciaries of this information.

506. **Knowledge of a Breach and Failure to Remedy**. ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. As detailed below, each Defendant knew of certain breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

507. The Investment Committee Defendants and the Retirement Board Defendants were aware of each other's failure to conduct an independent investigation of the merits of the

Plan's investments in Company stock (especially as several of them served on both the Investment Committee and Retirement Board, as set forth above). These Defendants were likewise aware of Defendant AIG's direction of their activities which resulted in the breach of their own duties, and at various times during the Class Period, the Company's failure to provide them with information they needed to perform their duties as they related to the Plans investment in Company stock.

508. Defendants on the Investment Committee and Retirement Board were aware of each others' failure to employ a prudent procedure to the monitor, evaluate, and remove Company stock as an investment option and their failure to accomplish any of the requirements of a prudent process as set forth above. The Investment Committee and Retirement Board Defendants allowed the company insiders to delay the closing of the AIG Stock Fund until May 2009, even though they voted to recommend same in November 2008.

509. The Director Defendants and Defendant AIG were aware of the failure of the Defendants on the Investment Committee and the Retirement Board to conduct a thorough, independent investigation and to employee a prudence procedure to monitor, evaluate and remove Company stock as an investment option.

510. Because Defendants knew of such breaches, they are each liable for those breaches.

511. **Knowing Participation in a Breach**. ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), imposes liability on a fiduciary for a breach of fiduciary duty of another fiduciary with respect to the same plan if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach.

512. **Enabling a Breach**. ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which gives rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

513. The Retirement Board Defendants and the Investment Committee Defendants were aware of each other's failure to employ a prudent procedure to the monitor, evaluate and remove Company stock as an investment option and their failure to accomplish any of the requirements of a prudent process as set forth above. As a result, the Retirement Board Defendants and the Investment Committee Defendants enabled each others' breach of fiduciary duty.

514. The Retirement Board Defendants further enabled fiduciary breaches by the Investment Committee Defendants by not evaluating the performance of the members of the Investment Committee with respect to their oversight of the Plans' investment options, and by not establishing a proper reporting and/or oversight mechanism with respect to the Plans' investment options, including the AIG Stock Fund.

515. The Retirement Board Defendants and the Investment Committee Defendants were likewise aware of Defendant AIG's direction of their activities which resulted in the breach of their own duties, and, at various times in the Class Period, the Company's failure to provide them with information they needed to perform their duties as it related to the Plans' investment in Company stock.

516. The Retirement Board Defendants and the Investment Committee Defendants were also aware of the failure of the Director Defendants to monitor their Plan-related activities

pertaining to the selection and oversight of the Plans' investment options, yet failed to remedy that breach by reporting this lack of oversight to authorities such as the DOL officials.

517. The Director Defendants enabled the fiduciary breaches by the Retirement Board Defendants and the Investment Committee Defendants by, *inter alia*, failing to monitor their Plan-related activities, especially those pertaining to the selection and oversight of the Plans' investment options. During the Class Period, the Director Defendants failed to, among other things, request or review any reports by the Retirement Board or the Investment Committee regarding the performance of any Plan investment options, including the AIG Stock Fund. The Director Defendants, enabled the breaches by the Retirement Board Defendants and the Investment Committee Defendants by, *inter alia*, failing to establish a proper reporting and/or oversight mechanism with respect to the Plans' investment options, including the AIG Stock Fund

518. Defendant AIG, through its directors, officers and employees, was aware of the breaches of each of the other fiduciaries. Defendant AIG knowingly participated in the fiduciary breaches of the other Defendants in that it exercised control over their conduct.

519. Defendant AIG and the Director Defendants, by committing the breaches described previously, enabled the breaches of the Retirement Board Defendants and the Investment Committee Defendants.

520. Because Defendants knew of the breaches of other Defendants detailed above, yet failed to undertake any effort to remedy these breaches, they are each liable for those breaches.

521. As a consequence of the Co-Fiduciary Defendants' breach of fiduciary duties, the Plans suffered excessive losses. If the Co-Fiduciary Defendants had discharged their duties as described above, the losses suffered by the Plans would have been minimized or avoided. As a

direct and proximate result of the breaches of fiduciary and co-fiduciary duties alleged herein, the Plans, and indirectly the Plan participants and beneficiaries, lost hundreds of millions of dollars in retirement savings.

522. Defendant AIG profited from its breach of fiduciary duty because its failure to perform its duty resulted in a diminution of contribution it owed to the Plans regarding Employer Matching Contribution.

523. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Co-Fiduciary Defendants are liable to restore the losses to the Plans caused by their breach of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

X. CAUSATION

524. The Plans suffered hundreds of millions of dollars in losses because, *inter alia*, substantial assets of the Plans were imprudently invested or allowed to be and remain invested by Defendants in AIG stock during the Class Period, in breach of Defendants' fiduciary duties.

525. Had the Defendants properly discharged their fiduciary and co-fiduciary duties, including the monitoring and removal of fiduciaries who failed to satisfy their ERISA-mandated duties of prudence and loyalty, eliminating AIG stock as an investment alternative when it became imprudent, limiting its availability for investment and/or new investment, divesting the Plans of AIG stock when maintaining such an investment became imprudent, and causing the disclosure of complete and accurate material information about AIG stock to co-fiduciaries, the Plans would have avoided some or all of the losses that they and, indirectly, the participants and beneficiaries suffered.

XI. REMEDY FOR BREACHES OF FIDUCIARY DUTY

526. The Defendants breached their fiduciary duties because they knew or should have known the facts as alleged above, and therefore knew or should have known that the Plans' assets should not have been invested in AIG stock during the Class Period.

527. As a consequence of the Defendants' breaches, the Plans suffered significant losses.

528. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries…to make good to such plan any losses to the plan . . . ." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate . . . ." and the disgorgement of profits made from a breach. Here, in addition to causing losses, Defendant AIG profited from its breach and the breaches of its co-fiduciaries by, *inter alia,* allowing stock to be allocated to participants' accounts at prices inflated by the failure to disclose material information, resulting in the reduction of its contribution obligation. These profits must be disgorged to the Plans.

529. With respect to calculation of the losses to the Plans, breach of fiduciary duties result in a presumption that, but for the breach of fiduciary duties, the Plans would not have made or maintained their investments in the challenged investment and, instead, prudent fiduciaries would have invested the Plans' assets in the most profitable alternative investment available to them. Alternatively, losses may be measured not only with reference to the decline in stock price relative to alternative investments, but also by calculating the additional shares of AIG stock the Plans would have acquired had the Plans' fiduciaries taken appropriate steps to protect the Plans. The Court should adopt the measure of loss most advantageous to the Plans.

In this way, the remedy restores the Plans' lost value and puts the participants in the position they would have been in if the Plans had been administered properly.

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

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

XII. CLASS ACTION ALLEGATIONS

532. **Class Definition**. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plaintiffs and the following class of persons similarly situated (the "Class"):

> All persons, other than Defendants, who were participants in or beneficiaries of the Plans at any time between August 7, 2007 to May 1 2009 and whose Plan accounts included investments in AIG stock.

533. **Class Period**. The Class Period begins on August 7, 2007 and continues to the present. The fiduciaries of the Plans knew or should have known at least by August 7, 2007, that the Company's material weaknesses and financial mismanagement were so serious that AIG

stock could no longer be offered as a prudent investment for retirement Plans, and/or that corrective disclosures to co-fiduciaries, participants and beneficiaries were required.

534. **Numerosity**. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to the Plaintiffs at this time, and can only be ascertained through appropriate discovery, based on the Plans' Form 5500s for Plan year 2007, Plaintiffs believe there are over 70,000 participants or beneficiaries in the Plans.

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

a. whether Defendants each owed a fiduciary duty to Plaintiffs and members of the Class;

b. whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to act prudently and solely in the interests of the Plans' participants and beneficiaries;

c. whether Defendants violated ERISA; and

d. whether the Plans have suffered losses and, if so, what is the proper measure of damages.

536. **Typicality**. Plaintiffs' claims are typical of the claims of the members of the Class because: (a) to the extent Plaintiffs seek relief on behalf of the Plans pursuant to ERISA § 502(a)(2), their claim on behalf of the Plans are not only typical to, but identical to a claim under this section brought by any Class member; and (b) to the extent Plaintiffs seek relief under

ERISA § 502(a)(3) on behalf of themselves for equitable relief, that relief would affect all Class members equally.

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

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

539. **Other Rule 23(b) Requirements**. Class action status is also warranted under the other subsections of Rule 23(b) because: (1) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (2) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (3) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

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

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

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

D. Imposition of a Constructive Trust on any amounts by which any Defendant profited at the expense of the Plans as the result of breach of fiduciary duties;

E. An Order requiring Defendants to appoint one or more independent fiduciaries to participate in management of the Plans' investment in AIG stock;

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

G. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

H. An Order awarding attorneys' fees pursuant to the common fund doctrine, 29 U.S.C. § 1132(g), and other applicable law; and

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

Date: New York, New York
September 5, 2012

Robert I. Harwood
rharwood@hfesq.com
James G. Flynn
jflynn@hfesq.com
Tanya Korkhov
tkorkhov@hfesq.com
HARWOOD FEFFER LLP
488 Madison Avenue
New York, NY 10022
Telephone: (212) 935-7400
Facsimile: (212) 753-3630

Interim Co-Lead Counsel

Marian P. Rosner
mrosner@wolfpopper.com
Andrew E. Lencyk
alencyk@wolfpopper.com
Joshua H. Saltzman
jsaltzman@wolfpopper.com
WOLF POPPER LLP
845 Third Avenue
New York, NY 10022
Telephone: (212) 759-4600
Facsimile: (212) 486-2093

Interim Co-Lead Counsel

Lee Squitieri
lee@sfclasslaw.com
Stephen John Fearon, Jr
stephen@sflcasslaw.com
Garry T. Stevens, Jr.
garry@sfclasslaw.com
Caitlin Duffy
caitlin@sfclasslaw.com
SQUITIERI & FEARON LLP
32 East 57th Street, 12th Floor
New York, NY 10022
Telephone: (212)421-6492
Facsimile: (212) 421-6553

Interim Co-Lead Counsel

Lynn Lincoln Sarko
lsarko@kellerrohrback.com
Derek W. Loeser
dloeser@kellerrohrback.com
Erin M. Riley
eriley@kellerrohrback.com
Margaret Wetherald
mwetherald@kellerrohrback.com
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

David S. Preminger
dpreminger@kellerrohrback.com
KELLER ROHRBACK L.L.P.
275 Madison Ave, Suite 1425
New York, NY 10016
Telephone: (212) 878-8890
Facsimile: (212) 878-8895

Interim Co-Lead Counsel

Kenneth A. Wexler
kaw@wtwlaw.com
WEXLER TORISEVA WALLACE LLP
55 W. Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312)-346-2222
Facsimile: (312)-346-0022

Counsel for Plaintiff Walter Earl Lewis

Robert A. Izard
rizard@izardnobel.com
William Bernarduci
wbernarduci@izardnobel.com
IZARD NOBEL, L.L.P.
20 Church Street, Suite 1700
Hartford, CT 06103
Telephone: (860) 493-6292
Facsimile: (860) 493-6290

Additional Counsel for Plaintiffs

Lori G. Feldman
lfeldman@milberg.com
Arvind Khurana
akhurana@milberg.com
MILBERG, L.L.P.
One Pennsylvania Plaza, 48th Floor
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212 868-1229

Additional Counsel for Plaintiffs

Carolyn G. Anderson
carolyn.anderson@zimmreed.com
June P. Hoidal
june.hoidal@zimmreed.com
ZIMMERMAN REED, P.L.L.P.
1100 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile (612) 341-0844

Additional Counsel for Plaintiffs