FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE OM GROUP, INC. SECURITIES LITIGATION	LEAD DOCKET NO. 1:02 CV 2163
	JUDGE NUGENT
THIS DOCUMENT RELATES TO: ALL ACTIONS	MAGISTRATE JUDGE VECCHIARELLI

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

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TABLE OF CONTENTS

Page

I. NATURE OF THE ACTION 1

II. JURISDICTION AND VENUE 7

III. THE PARTIES 8

A. Plaintiffs 8

B. Defendants 8

IV. CLASS ACTION ALLEGATIONS 12

V. SUBSTANTIVE ALLEGATIONS 15

A. The History and Business of the Company 15

i. The Formation of OMG 15

ii. OMG's Operations 16

iii. OMG's Cobalt Operations and Inventory 17

iv. The Impact of OMG's Operations on the Company's Accounting for Inventory 18

B. OMG's Period of Vast Expansion 20

i. OMG's Costly Acquisitions 20

ii. OMG's Costly Projects 22

C. OMG's Increasing Debt Levels and Compliance with its Debt Covenants are Critical Concerns for the Company 23

i. Reducing Debt Levels is Critical for OMG 23

ii. OMG Concealed a Violation of its Debt Covenants for the Year-Ended December 31, 2001 25

iii. Additional Steps Taken by OMG to Appear in Compliance with its Debt Covenants 26

D. The Cobalt Market 28

i. Cobalt Pricing 28

ii. The Declining Cobalt Market 29

E. Due to the Critical Importance of Inventory to the Company's Business, Defendants Actively Monitored and Tracked the Metals Market 33

i. Defendants' Active Monitoring of the Metals Markets including the Cobalt Market 33

ii. Defendants Actively Tracked and Reported on the Metals, including the Cobalt, in the Company's Inventory 35

F. Defendants Were Aware of the Declining Price of Cobalt 37

i. Defendants Require Clayton to Write-Down Its Cobalt Inventory to $6.66 as a Condition Precedent to OMG's Acquisition of the Facility 39

ii. OMG's Own Entities Record Write-Downs Due to the Declining Cobalt Market 40

iii. OMG's Competitors Record Write-Downs Due to the Declining Cobalt Market 41

G. OMG's Accounting for its Cobalt Inventory 42

i. GAAP Requires Inventories to Be Stated at Cost or Market, Whichever is Lower 42

ii. OMG Claimed to Be Reporting Cobalt Inventory in Accordance With GAAP 44

iii. OMG's Accounting for Cobalt Inventory at Cost, Rather than at the Vastly Lower Market Value, Materially Violated Longstanding and Fundamental GAAP 49

iv. The SEC's Comments Process Regarding OMG's Lower of Cost or Market Analysis 55

H. The Widespread Fraudulent Inventory Accounting that Existed at OMG 58

i. OMG's Culture of Fraud 58

ii. The Details of Defendants' Improper and Unsupportable Inventory Adjustments 63

VI. THE OM DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD 73

A. OMG Announces Inflated 1999 Fourth Quarter and Year End Results 73

B. OMG Files Its 1999 Form 10-K with the SEC 75

C. OMG Announces Inflated 2000 First Quarter Results 75

D. OMG Files Its 2000 First Quarter Form 10-Q with the SEC 77

E. OMG Announces Inflated 2000 Second Quarter Results 77

F. OMG Files Its 2000 Second Quarter Form 10-Q with the SEC 77

G. OMG Announces Inflated 2000 Third Quarter Results 78

H. OMG Files Its 2000 Third Quarter Form 10-Q with the SEC 78

I. OMG Announces Inflated 2000 Fourth Quarter and Year End Results 79

J. OMG Files Its 2000 Form 10-K with the SEC 80

K. OMG Announces Inflated 2001 First Quarter Results 80

L. OMG Files Its 2001 First Quarter Form 10-Q with the SEC 81

M. OMG Announces Inflated 2001 Second Quarter Results 81

N. OMG Files Its 2001 Second Quarter Form 10-Q with the SEC 82

O. OMG Announces Inflated 2001 Third Quarter Results 82

P. OMG Files Its 2001 Third Quarter Form 10-Q with the SEC 83

Q. OMG Announces Inflated 2001 Fourth Quarter and Year End Results 83

R. OMG Files Its 2001 Form 10-K with the SEC 86

S. OMG Announces Inflated 2002 First Quarter Results 89

T. OMG Files Its 2002 First Quarter Form 10-Q with the SEC 91

U. OMG Announces Inflated 2002 Second Quarter Results 91

V. OMG Files Its 2002 Second Quarter Form 10-Q with the SEC 95

W. OMG Revises Its Earnings Estimates Downward for the 2002 Third Quarter and Assures the Market of Its Financial Health 96

VII. ERNST & YOUNG'S FRAUDULENT AUDITS OF OMG'S FINANCIAL STATEMENTS RESULTS IN ADDITIONAL FALSE AND MISLEADING STATEMENTS TO THE INVESTING PUBLIC 98

year 2001 and subsequent quarterly financial statements to be materially misstated.[1] By violating this fundamental rule each time that defendants issued OMG's financial statements, the OM Defendants overstated the reported value of OMG's inventory and the Company's operating profit by at least $108 million.

3. However, Defendants LCM fraud is just the tip of the iceberg. Lead Plaintiff has recently uncovered evidence showing that the OM Defendants' violation of the LCM rule was only one part of widespread fraudulent accounting at OMG. Documents obtained by Lead Plaintiff, as well as corroborating statements provided by both current and former OMG executives, establish that fraudulent accounting was rampant at OMG going as far back as 1999. Therefore, this Complaint extends the Class Period back by approximately two years as compared with the class period in the Lead Plaintiff's Consolidated Amended Class Action Complaint (the "Prior Complaint").

4. The evidence obtained by Lead Plaintiff shows that a culture of fraudulent accounting permeated OMG – and it resulted in material overstatements of OMG's financial condition beginning at least with the Company's 1999 Annual Report and Form 10-K. Examples of fraudulent accounting at OMG during the Class Period include:

- recording unsupported amounts of work in process ("WIP") inventory at certain OMG facilities;
- recording unsupported amounts of inventory that was supposedly "in-transit." For instance, recording several millions of dollars of "in-transit" inventory when, in fact, the amount of inventory actually in-transit was "de minimus" (as acknowledged by the

[1] Specifically, Lead Plaintiff has reviewed over 1,619,988 pages of documents produced by OMG, including documents which relate to OMG's financial statements, cobalt inventory, internal operations and responses to inquiries and investigations by the SEC, NYSE and NASD. Lead Plaintiff has also reviewed documents produced by Ernst & Young LLP and documents produced by third parties Credit Suisse First Boston, Inc., Merrill Lynch & Co., Inc., Banc of America Securities LLC and Arthur Andersen LLP. In addition, Lead Plaintiff has also interviewed former OMG employees and deposed eleven individuals, including both current and former OMG employees as well as a Vice President from CSFB, OMG's primary lender.

Company);

- recording false amounts of inventory based on the disingenuous assertion (undisclosed to the investing public) that the residue and other discharge held in sludge ponds somehow constituted valuable inventory;

- double counting certain amounts related to inventory, resulting in errors of several million dollars;

- electing not to conduct physical inventories for at least one facility and then using that election as an improper basis for fabricating the recorded amount of inventory for that facility;

- disregarding the inventory figures maintained at several OMG facilities in favor of higher inventory figures fabricated by executives at OMG corporate headquarters; and

- capitalizing certain expenses which could not properly be capitalized.

5. These and other unsupportable accounting manipulations were made by OMG as part of a culture of fraudulent accounting emanating directly from the Individual Defendants – OMG's most senior officers. The fraudulent disregard of basic accounting principles and facts was discussed within the Company. For instance,

- In an e-mail dated June 6, 2002, OMG's Director of Operations (Paul Venesky), explained to the OMG's Cost Inventory Manager (Eric Beaver) that "you have a mixed bag of hard and soft inventory numbers comprising the [total figure],...it's your job to separate the 'fly crap from the pepper,' and if it's fly crap, keep it isolated ...Up until now, we've had to keep the fly crap mixed with the pepper and convince ourselves that some of the fly crap might actually be pepper." In the same e-mail, the Director of Operations explained that after "[you] go thru the exercises I just mentioned, if you find that you have EXCESS...then 'take it back' from one of the areas [where the Company would fabricate numbers]. My point here is, there are enough 'soft' areas where the difference could be hiding."

- In an e-mail dated July 18, 2001 to both OMG's Chief Financial Officer Defendant James Materna and OMG's Corporate Controller (John Holtzhauser), the Controller of OMG Americas (Jukka Savaolinen) noted: "Recall in the first quarter, we were

looking at about [a] $3.5 million difference (that was also supported...) which we did NOT book...but rather stashed it elsewhere in the inventory."

- In an e-mail dated January 25, 2002, OMG's Director of Operations (Mr. Venesky) stated to OMG's Corporate Controller (Mr. Holtzhauser): "Recall that we had made some assumptions in the past which we have carried over (WIP, resupply and [the OMG facility at] St. George)...the audit support is not strong. I believe the [cost of goods sold profit and loss] number is solid, but we've talked about the BS valuation. If I didn't mention this, I'd be negligent."

In short, it was well understood within the Company that improper accounting adjustments were being made to OMG's reported inventory.

6. The numerous accounting fabrications outlined in this Complaint were engineered, at least in part, to allow OMG to achieve its goal of meeting Wall Street expectations regarding the Company's earnings. For instance, published Wall Street guidance regarding the Company's earnings per share for the year ended 2000 was $2.95. OMG's results reported for that year claimed that the Company had achieved an earnings per share result of $2.95 – just meeting the Wall Street guidance. If the Company had not fraudulently inflated its reported inventory figures, it would have had to report that its true earnings per share were $2.50 – 15% lower than the reported figure and far below Wall Street expectations. Similarly, the fraudulent accounting entries reported by the Company for the year ended 2001 allowed OMG to claim that it had achieved earnings per share results of $3.29, just barely – $.01 – more than the $3.28 amount that consensus Wall Street estimates had predicted for the Company. If OMG had not fraudulently inflated its reported inventory figures, it would have reported true earnings per share results of only $2.82 – 14% lower than the reported figure. In short, by engaging in widespread fabrication of its inventory numbers, OMG was able to announce that it was meeting – or even

exceeding Wall Street guidance for the Company's earnings when, in fact, its true earnings per share were far below Wall Street expectations.

7. In addition to the Company's desire to meet or beat Wall Street expectations, the OM Defendants also had other strong motives to engage in the accounting manipulations discussed in this Complaint. For instance, James P. Mooney, the Company's CEO and largest individual shareholder (and one of the Individual Defendants), had secretly pledged 100% of his OMG holdings to secure a margin account he had opened at Merrill Lynch & Co. in order to leverage the value of those holdings for disposable cash. Any substantial decrease in the price of OMG stock necessarily would have required Defendant Mooney to sell those pledged shares to cover his margin loans. Defendant Mooney had the incentive, therefore, to ensure that OMG continued to report positive financial results in line with those expected from Wall Street analysts. Had OMG reported its inventory in an accurate manner and reported its true earnings per share, the price of OMG's shares would have dropped precipitously, as it ultimately did on October 29, 2002, when the need for accounting adjustments were finally disclosed, and a substantial block of Defendant Mooney's financial wealth was wiped out.

8. In addition, at the time the Company reported its financial results for the year ended December 31, 2001, the Company was in violation of the minimum debt-to-capital ratio permitted under OMG's credit facilities. Had the OM Defendants properly accounted for inventory, the Company would have violated its debt-to-capital ratio covenant, with at least the following several severe consequences: the lenders could have exercised their right to cut off the Company's credit, which would have required OMG to immediately obtain alternative funding; the Company's credit rating would have been cut, making further borrowing, if available at all, more expensive; the Company would not have been able to complete the secondary stock

offering it closed in January 2002, all of the funds of which, $223.9 million, were used to reduce the debt so that OMG was not in imminent danger of violating the debt-to-capital covenant in 2002. Any of these consequences would have negatively impacted the Company and its stock price and, consequently, Defendant Mooney's continued ownership of the stock he pledged to secure his margin loan.

9. On October 29, 2002, OMG disclosed that it would be: (i) taking a charge to write-down the value of its cobalt inventory by $108 million, (ii) "realigning" its management term, (iii) modifying its financial reporting "to improve the understanding" of OMG's business and (iv) taking a restructuring charge as a result of these significant changes. This announcement shocked the market, and OMG's common stock dropped 71% on that very day, from $30.90 to $8.95 per share, on massive trading volume of 23 million shares. Then, on October 31, 2002, the Company disclosed to investors for the first time that Defendant Mooney had pledged all of his OMG shares to secure a margin loan from Merrill Lynch and that, because the market price of the Company's shares had declined on October 29, 2002 as a result of the disclosure of the $108 million write-down, Merrill Lynch had compelled Defendant Mooney to liquidate his entire stock position. After this disclosure, OMG shares fell even further, from $7.49 per share to $6.49 per share.

10. This Complaint also names as a defendant the auditing firm of Ernst & Young LLP ("E&Y"). Throughout the Class Period, OMG engaged E&Y to audit its consolidated financial statements in accordance with Generally Accepted Auditing Standards ("GAAS") and to express its opinion concerning whether the consolidated financial statements presented fairly, in all material respects, the consolidated financial position, results of operations and cash flows of OMG in conformity with GAAP.

11. E&Y issued audit reports expressing unqualified opinions on OMG's consolidated financial statements that were included in each Form 10-K report and Annual Report to Shareholders issued during the Class Period. In addition to audit services, OMG engaged E&Y to provide accounting, tax and consulting services regarding various matters.

12. E&Y falsely represented that OMG's financial statements for fiscal years ended December 31, 1999, 2000 and 2001 were presented in conformity with GAAP and that E&Y's audits of OMG's financial statements had been performed in accordance with GAAS. E&Y's issuance of materially false reports on OMG's financial statements violated GAAS and Section 10(b) and Rule 10b-5.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action under Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa. The claims alleged herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations the SEC promulgated thereunder, including Rule 10b-5, 17 C.F.R. 240.10b-5.

14. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(c). Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the public of materially false and misleading press releases and filings with the SEC, occurred in this District. In addition, at all times relevant hereto, defendant OMG maintained its principal executive offices in this District, at Tower City, 50 Public Square, Suite 3500, Cleveland, Ohio 44113-2204.

15. In connection with the wrongful acts and conduct alleged herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mail and the facilities of a national securities market.

III. THE PARTIES

A. Plaintiffs

16. **Lead Plaintiff, Detroit P&F**, is a public pension system, located in Detroit, Michigan, organized for the benefit of current and retired policemen and firemen of the City of Detroit. Detroit P&F has over $3 billion in assets under investment. As set forth in the certification attached as Exhibit 1, Detroit P&F purchased shares of OMG common stock during the Class Period (as defined below in ¶ 24), and suffered damages as a result of the violations of law alleged herein. By Order dated March 28, 2003, the Court appointed Detroit P&F Lead Plaintiff, pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4. (*See* Docket No. 70).

17. The following additional plaintiffs purchased OMG shares on the open market and suffered damages as a result of Defendants' violations of the federal securities laws: Pinkal Sheth, Henry Rischitelli, Stephen L. Miller, Vitaly Tokar, Salomon Weiss, Terry L. Overbey, Paul Draznin, Brian Fuller, William Crayden, Ken Wessler and Patrick Martin.

B. Defendants

18. **OM Group, Inc.** ("OMG"): Defendant OMG became a public company in 1993. During the Class Period, its shares traded on the New York Stock Exchange under the symbol "OMG." The Company describes itself as a leading vertically integrated international producer and marketer of value-added, metal-based specialty chemicals. The Company, through its two current operating units – Base Metals and Combined Metals – supplies more than 625 different product offerings to more than 30 different industries. Self-described as "the global cobalt leader for more than 50 years," cobalt is OMG's legacy business. The Company purports to control

23% of global cobalt capacity, and claims to be the world's largest producer and refiner of cobalt (included in its Base Metals unit). Cobalt sales account for an estimated 30-35% of OMG's consolidated earnings.

19. **James P. Mooney** ("Mooney"): Since 1991, and at all times relevant hereto, defendant James P. Mooney has been Chairman and Chief Executive Officer of OMG. He was a founding member of the Company's Board of Directors. Defendant Mooney grew up in the cobalt business, working for his father, the founder of Mooney Chemicals, Inc., one of the two predecessor companies that merged to form OMG. As of January 31, 2000; January 31, 2001; and January 31, 2002, Defendant Mooney exercised ownership or control over approximately 4.4%; 4.6% and 4.2%, respectively, of OMG's issued and outstanding common stock. Defendant Mooney owned more of OMG's outstanding stock than any other officer or director of the Company, and was one of the largest individual shareholders of the Company. Unbeknownst to the market, however, Defendant Mooney had pledged 100% of his OMG shares as collateral for a loan he had taken in a margin account with Merrill Lynch & Co. On October 29, 2002, one day before the end of the Class Period, as the price of OMG shares plummeted, Merrill Lynch compelled Defendant Mooney to liquidate all of his shares of OMG common stock – approximately 710,000 shares – to cover his loans. The shares that were pledged as security to Merrill Lynch were owned by Defendant Mooney and Lion Investment Co. L.L.P., a limited partnership of which Defendant Mooney was the general partner and his family members were limited partners. For 2001, Defendant Mooney received compensation of $785,500 in salary and $1.14 million in bonus; for 2000, he received $640,500 in salary and $1.12 million in bonus; and, for 1999, he received $580,000 in salary and $630,000 in bonus. Defendant Mooney signed the Company's Form 10-K for the fiscal years ending December 31, 1999; December 31,

2000; and December 31, 2001, and, as required by the recently enacted Sarbanes-Oxley Act of 2002, certified the accuracy of the Company's financial statements, as presented in OMG's Form 10-Q, for the quarter ended June 30, 2002.

20. **James M. Materna** ("Materna"): Defendant James M. Materna served as Chief Financial Officer of OMG from 1992 until June 2002, when he was replaced by Thomas R. Miklich. Defendant Materna is a certified public accountant, who, prior to joining OMG, was a partner in the public accounting firm KPMG Peat Marwick. Defendant Materna signed the Company's Form 10-K for the fiscal years ended December 31, 1999; December 31, 2000; and December 31, 2001, and the Company's Form 10-Q for the quarters ended March 31, 2000; June 30, 2000; September 30, 2000; March 31, 2001; June 30, 2001; September 30, 2001; and March 31, 2002.

21. **Thomas R. Miklich** ("Miklich"): Defendant Thomas R. Miklich served as a Director of OMG from 1993 until April 2002, when he was appointed the Company's Chief Financial Officer. Defendant Miklich, who also is an attorney, served as the Company's Chief Financial Officer until April 1, 2004. Prior to joining OMG, Defendant Miklich was the chief financial officer of Invacore, a public company, and Sherwin-Williams Company. Defendant Miklich signed the Company's Form 10-K for the fiscal years ended December 31, 1999; December 31, 2000; and December 31, 2001. Defendant Miklich signed the Company's Form 10-Q for the quarter ended June 30, 2002, and, in accordance with the requirements of the Sarbanes-Oxley Act of 2002, certified the accuracy of the financial statements presented therein.

22. Defendants Mooney, Materna and Miklich (together, the "Individual Defendants") each reviewed or was aware of the false and misleading SEC filings, press releases and other statements complained of herein at or about the time they were issued or circulated;

knew or recklessly disregarded their false and misleading nature; and was in a position to control or influence their contents, or otherwise cause corrective or accurate disclosures to have been made. By virtue of his Board membership and executive and managerial position with OMG, each Individual Defendant, through access to internal corporate documents; through conversations and connections with other corporate officers and employees; through attendance at management and Board meetings; and through reports such as, among others, the Asset Management Sheet and the Monthly Summary (each discussed further below), and other information provided to him, had access to adverse non-public information about the Company's accounting practices generally and also about its cobalt inventory, finances and customer demand for OMG's cobalt products. In addition, each of the Individual Defendants is responsible for the false and misleading statements regarding OMG's inventory, accounting policies and adherence to GAAP, as complained of herein, because certain of the documents that contained those materially false and misleading statements – OMG's Forms 10-K and 10-Q and the Company's press releases – were "group published" documents.

23. **Ernst & Young LLP** ("E&Y") is a "Big 4" public accounting firm with offices throughout the United States. E&Y provides auditing, accounting, management consulting, and other services. Prior to and during the Class Period, E&Y conducted audits with respect to OMG's year-end financial statements and provided many other services, including, without limitation, review of quarterly financial statements, and various management consulting assignments. E&Y issued unqualified audit reports on OMG's financial statements for the fiscal years ended December 31, 1999, 2000 and 2001 included in OMG's Form 10-K for those years. In those unqualified audit reports, E&Y represented (i) that it had audited OMG's financial statements in accordance with GAAS; (ii) that it had planned and performed those audits "to

obtain reasonable assurance about whether the financial statements are free of material misstatement"; (iii) that OMG's financial statements "present fairly, in all material respects, the financial position" of OMG "in conformity with GAAP; and (iv) that its audits provided a "reasonable basis" for its opinions.

IV. CLASS ACTION ALLEGATIONS

24. Lead Plaintiff Detroit P&F brings this action on its own behalf and as a class action, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of a class (the "Class") consisting of all persons who purchased the common stock of OMG from January 27, 2000 through and including October 30, 2002 (the "Class Period"), and who suffered damages as a result of the violations of the federal securities laws alleged herein. Excluded from the Class are: OMG; OMG's subsidiaries and affiliates; E&Y; E&Y's partners, subsidiaries and affiliates; the Individual Defendants; members of the immediate families of the Individual Defendants; any entity in which any defendant has a controlling interest; any person who was an officer or director of OMG during the Class Period; and the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities.

25. By Order dated August 29, 2003, this Court certified this case to proceed as a class action, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of a class of all persons who purchased the common stock of OM Group, Inc. from February 5, 2002 through and including October 30, 2002. (*See* Docket No.139). In its August 29, 2003 Order, this Court also certified Detroit P&F as the class representative and Lead Plaintiff.

26. Throughout the Class Period, shares of OMG's common stock were actively traded on the New York Stock Exchange, which is an efficient market. The members of the

Class, as purchasers on that market, are so numerous that joinder of all members is impracticable. While the exact number of Class Members can only be determined by appropriate discovery, Lead Plaintiff believes that Class Members number in the thousands. There were over 28 million shares of OMG stock outstanding during the Class Period. The daily average volume during the Class Period for OMG common stock was 179,991. OMG shares were followed by securities analysts employed by major brokerage firms who wrote reports, which were distributed to the sales force and to certain customers of their respective brokerage firms. Each of those reports was publicly available and entered the public marketplace.

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

(a) Whether the federal securities laws were violated by Defendants' acts, as alleged herein;

(b) Whether the documents, press releases, reports or other public statements disseminated to the investing public during the Class Period omitted or misrepresented material facts about the balance and value of OMG's inventory, as well as OMG's accounting practices, earnings, earnings per share, operating profit and general financial condition;

(c) Whether Defendants acted with knowledge or with reckless disregard for the truth in materially misrepresenting during the Class Period the reported balance and value of OMG's inventory, as well as OMG's accounting practices, earnings, earnings per share, operating profit and general financial condition;

(d) Whether Defendants participated in and pursued the common course of conduct complained of herein;

(e) Whether, during the Class Period, the market price of OMG's common stock was artificially inflated due to the material misrepresentations or omissions concerning consumer demand for OMG's products and the value of OMG's inventory, its income, earnings per share and operating profit, as well as OMG's

accounting practices and its adherence to GAAP, as complained of herein;

(f) Whether Defendant Ernst & Young failed to conduct its audits of OMG in accordance with GAAS, and knowingly or recklessly failed to employ the appropriate procedures designed to detect fraud or to ensure that OMG's 1999; 2000; and 2001 year-end financial statements were free from material misstatement;

(g) Whether Ernst & Young knowingly or recklessly issued its Audit Opinions regarding OMG's materially false and misleading 1999, 2000, and 2001 year-end financial statements; and

(h) Whether the members of the Class have suffered damages and, if so, the appropriate measure thereof.

28. The claims of Lead Plaintiff Detroit P&F are typical of the claims of the members of the Class. Lead Plaintiff and the other members of the Class have sustained damages arising out of Defendants' wrongful conduct alleged herein in violation of the federal securities laws.

29. Lead Plaintiff Detroit P&F will fairly and adequately protect the interests of the members of the Class, and has retained counsel competent and experienced in class and securities litigation. Detroit P&F is an institutional investor with a substantial and ongoing interest in the integrity and accuracy of public companies' filings with the SEC, reports to shareholders, and public press releases. Detroit P&F has no interests that are antagonistic to, or in conflict with, those of the other members of the Class. In addition, by Order dated March 28, 2003, the Court appointed Detroit P&F Lead Plaintiff, pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4. (*See* Docket No. 70).

30. A class action is superior to other available methods for a fair and efficient adjudication of this controversy. Since joinder of all members of the Class is impracticable, and because the damages suffered by individual Class Members may be relatively small, the expense and burden of individual litigation renders it virtually impossible for members of the Class individually to seek redress for the wrongful conduct alleged.

31. Lead Plaintiff knows of no difficulty that will be encountered in the management of this action that would preclude its maintenance as a class action.

32. The names and addresses of the record owners of OMG's common stock purchased during the Class Period are available from the Company's transfer agent(s). Notice may be provided to such record owners via first-class mail, using techniques and a form of notice similar to those customarily used in class actions.

V. SUBSTANTIVE ALLEGATIONS

A. The History and Business of the Company

i. The Formation of OMG

33. OMG was formed in 1991 through the merger of Mooney Chemicals, Inc. with Kokkola Chemicals Oy, a division of Outokumpu Chemicals Oy of Finland. Prior to the merger, both Mooney Chemicals and Kokkola Chemicals Oy were predominantly involved in the cobalt industry. Specifically, Mooney Chemicals was founded in 1946 by James B. Mooney, Defendant Mooney's father. It was a family-owned company that specialized in the production of carboxylates, which are manufactured from cobalt and nickel, which Mooney Chemicals sold as driers primarily to paint and lubricant makers. Kokkola, a wholly-owned subsidiary of Outokumpu Chemicals Oy, had, since 1967, primarily produced cobalt products. Outokumpu Chemicals Oy acquired all of the Mooney family's interest in the business, except for the five percent retained by Defendant Mooney. After the completion of this merger, Defendant Mooney took over the newly-formed OMG.

34. Defendant Mooney's background in the cobalt industry encompasses more than 30 years of experience. As a child, he accompanied his father on cobalt purchasing trips to central Africa. In 1971, while in his early 20s, Defendant Mooney joined Mooney Chemicals; in

1975, he was named President and CEO. Thereafter, Defendant Mooney ran and operated Mooney Chemicals until the 1991 merger that formed OMG. Under Defendant Mooney's management, according to OMG's January 17, 2002 Prospectus, OMG grew into "the world's leading producer of cobalt-based specialty chemicals and a leading producer of nickel-based specialty chemicals and platinum group metal catalysts and products."

ii. OMG's Operations

35. Inventory is OMG's lifeblood. The Company's sole business is the refining, manufacturing and selling of the metals in its inventory. By reliance on its inventory, the Company supplies more than 1,700 customers in 50 countries with more than 625 different product offerings. Through its inventory, the Company serves more than 30 major industries, including aerospace, hard metal tools, appliance, rubber, automotive, ceramics, paints & ink, catalysts, electronics, petrochemicals, stainless steel, magnetic media, rechargeable battery chemicals and other manufacturers who use specialty chemicals. For example, it produces battery chemicals for rechargeable batteries and metal organics to meet the critical needs of producers of products such as paints and inks.

36. As a fully integrated producer and marketer of value-added, metal-based specialty chemicals, OMG handles the entire process from raw material procurement through final product production. The Company claims to be in a unique raw material position, because it refines the raw material feedstock that it obtains from ore concentrates, slag feedstock and recycled scraps to produce value-added products.

37. Accordingly, the Company's inventory consists of metals in various states and stages of production, including raw materials, works in process ("WIP") as well as finished goods. The state in which a particular unit of inventory is transferred or sold is dependent on the customer and/or the product. For instance, with respect to the cobalt in its inventory, OMG sells

it as a raw material in the form of briquettes and also as finished good in the form of fine powders and chemicals. In addition, OMG also "sells" or transfers cobalt internally to its different facilities. For some metal products, such as its lithium cobalt line, the cobalt is transferred internally between various facilities as a raw material and then as a WIP before it is turned into a finished good and sold to an outside customer. Specifically, the lithium cobalt process starts with raw material cobalt from the OMG's Kokkola, Finland facility. From there, the cobalt is transferred to the Apex facility in Utah, where the raw material is partially processed and then transferred to the Johnstown facility in Pennsylvania. After the cobalt is further processed and refined at Johnstown facility, it gets transferred back to Apex as a WIP for additional processing. At Apex, the cobalt undergoes its final processing, becomes a finished good and is then held in inventory until it is sold to an outside customer.

38. The metals inventory in OMG's Base Metals Unit, formerly known as the Base Metals Chemistry division, which is the Company's original core business, was responsible for 40% of OMG's 2001 net sales and for 80% of the Company's pro forma operating income in 2001. In 2000, Base Metals provided 78% of the Company's pro forma operating income, or nearly $140 million.

iii. OMG's Cobalt Operations and Inventory

39. Cobalt is one of the principal metals used in OMG's products. Cobalt, together with nickel and copper, comprise approximately 85% of the metals used in its Base Metals business unit. In 2000 and 2001, cobalt alone constituted 32% and 30%, respectively, of OMG's sales.

40. OMG purports to be the world's leading producer of cobalt powders. It is also one of the top producers of copper and stainless steel powders. These powders are used in numerous applications, with one of the largest and most important to OMG being the application

of cobalt powders in rechargeable batteries. In 2001, powders made up 23% of OMG's total sales. Organics, also known as metal carboxylates, are produced through the reaction of metals and organic acids, and accounted for 14% of OMG's 2001 sales.

41. Cobalt is the metal most often used by OMG in producing carboxylates. Inorganics, comprising 23% of OMG's 2001 sales, are known as metal salts, and are formed when metals, primarily cobalt and nickel, react with inorganic acids. End uses for metal inorganics include products such as steel, electronics and petrochemicals.

42. OMG claims to be the world's largest refiner of cobalt used in rechargeable batteries for electronics, such as cell-phones and lap-top computers. By supplying substantial amounts of cobalt and nickel inorganic metals and powders to battery producers like Sanyo and Sony, the rechargeable battery market is one of the largest markets that OMG serves.

43. OMG obtains as much as 85% of its cobalt from the Democratic Republic of the Congo ("DRC"). Up to 55% of OMG's cobalt needs, or 5,000 metric tons per year, may be obtained from a 24-story slag pile at OMG's Big Hill smelter joint-venture project in the DRC. Another 30% of the Company's cobalt comes from the Luiswishi mine in the DRC. OMG has a number of secondary cobalt supply sources including Finland, Australia and Zambia. These cobalt sourcing plants were acquired and improved during OMG's period of expansion (discussed further below), thus enabling the Company to increase production.

iv. The Impact of OMG's Operations on the Company's Accounting for Inventory

44. Due to the importance of its metals inventory, the Company's accounting for its inventory is also critical. In this regard, and as discussed more below, the Company had certain accounting policies in place. Company documents demonstrate that these policies were set forth and distributed company-wide in various memoranda. For instance, OMG had specific

guidelines for, among others, the five following accounting processes: (1) the determination of lower of cost or market (the "LCM determination"); (2) inventory, costing, and cost of sales process; (3) LIFO calculation;[2] (4) physical inventory process; and (5) debt covenant calculations. In addition, certain of the Company's accounting policies, such as OMG's LCM determination and LIFO calculation process were also discussed and published in the Company's SEC filings. Company documents also demonstrate that the Company was also aware of the GAAP requirements relevant to these accounting areas. For example, OMG management would often provide guidance to the Company's foreign facilities on the requirements of GAAP.

45. However, the OM Defendants disregarded the requirements of GAAP and of their own policies in their accounting for the Company's inventory. As demonstrated below, rather than report the Company's actual inventory numbers and accounting results, the OM Defendants manipulated their inventory figures and adjusted their inventory calculations, or recklessly disregarded facts indicating that the Company's inventory had been manipulated and adjusted, so that they could report numbers that made OMG look financially stronger than it was in reality. In fact, throughout the Class Period, Defendants did not report actual, supportable inventory accounting results. Instead, they reported false numbers that (1) made it appear that the Company was not in violation of its debt covenants; (2) made it appear that the Company did not need to record a LCM write-down; and (3) made it appear that the Company was meeting or beating Wall Street expectations for its earnings per share. To accomplish these goals, Defendants knowingly manipulated their inventory balances, or, recklessly disregarded facts

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[2] LIFO, or last-in, first-out, is a cost flow assumption for financial reporting purposes. As discussed in further detail below, the LIFO method – which OMG used during the Class Period – assigns the prices of the most recent inventory purchases to cost of products sold. An intended benefit of the LIFO method is that cost of goods sold is matched most closely to current costs; a detriment is that, in periods of changing prices, the remaining cost of inventory bears less relevance to current market conditions. Accordingly, when prices are declining – as was the price of cobalt from 1996 through the end of the Class Period – companies that have selected LIFO, such as OMG, must pay particular attention to the need for a lower of cost or market write-down.

indicating that the inventory balances had been manipulated, without a valid accounting reason or basis. The full extent of the accounting manipulations engaged in by the Defendants are best appreciated when considered in light of the circumstances under which the OM Defendants were operating the Company. Specifically, these circumstances include the Company's vast period of expansion; the Company's increasing debt levels; the declining trend of the cobalt market; and, as discussed below, the crucial nature of inventory, in general, and cobalt, in particular, to the Company's success. As outlined below, the OM Defendants adjusted their inventory figures and manipulated accounting calculations, or recklessly disregarded facts indicating that this had occurred, so that they could make the Company appear financially healthier than it was and conceal the true nature of OMG's financial problems from the investing public.

B. OMG's Period of Vast Expansion

i. OMG's Costly Acquisitions

46. Since its initial public offering in 1993, OMG has spent over $1.6 billion to acquire numerous metals companies, with the bulk of its acquisitions occurring just prior to, or during, the Class Period.

47. On January 21, 1997, the Company acquired SCM Metal Products, Inc. ("SCM"), a subsidiary of U.S. Industries, Inc. for a purchase price of over $122 million. SCM was one of the world's leading producers of metal-based specialty powders and chemicals.

48. Thereafter, during the first quarter of 1998, OMG pursued three acquisitions to increase its production capabilities for both nickel and cobalt. First, on January 30, 1998, the Company acquired Auric Corporation ("Fidelity") for a purchase price of over $80 million. Fidelity, with facilities in New Jersey and Malaysia, was one of the world's leading producers of electroless nickel, electroplating chemicals and metal concentrates. Second, on February 3, 1998, the Company paid over $13 million to acquire Dussek Campbell Limited ("Dussek"), a

Canadian manufacturer of metal carboxylates. Third, in April 1998, the Company acquired the rapid carbothermal reduction technology and related assets of Dow Chemical Company ("Dow") for approximately $13 million, plus a conditional amount of up to $20 million, based upon the achievement of certain performance targets, to be paid at the end of five years. In order to finance its acquisition of Fidelity, Dussek and Dow, OMG relied upon bank borrowings and amended its revolving credit facility from $180 million to $250 million.

49. Despite OMG's climbing debt, the Company continued to expand in 2000 and 2001 by acquiring several facilities for an aggregate amount of over $1.4 billion. Indeed, on April 4, 2000, OMG acquired all of the outstanding common stock of Outokumpu Nickel Oy ("OKN") for approximately $188.1 million. OKN, located in Harjavalta, Finland, was a nickel refinery that manufactured and distributed a broad range of nickel products. In order to finance this acquisition, OMG entered into a $675 million senior credit facility, composed of a $325 million revolving credit facility, a $150 million five year loan and a $200 million seven year loan.

50. On August 10, 2001, OMG acquired Degussa Metals Catalysts Cerdec ("DMC^2"), a worldwide provider of metal-based functional materials, for a purchase price of approximately $1.120 billion. To fund the DMC^2 acquisition, OMG amended its senior credit agreement to $1.31 billion and issued $550 million of senior subordinated bridge notes. In September 2001, in order to pay down some of its increasingly mounting debt levels, OMG sold the Electronic Materials and Cerdec divisions of DMC^2 to Ferro Corporation for approximately $525.5 million and used these proceeds to repay $173 million of the bridge note loans. Thereafter, on December 12, 2001 OMG issued $400 million of senior subordinated notes due in 2011. OMG used the net proceeds generated by this debt offering to repay the remaining amounts outstanding under the

bridge notes, and to repay a portion of the outstanding indebtedness under the Company's credit facilities.

51. On December 21, 2001, OMG acquired the metal organics division of Rhodia Industrial Specialties ("Rhodia") for approximately $34 million. Rhodia's metal organics division maintained manufacturing plants in Bethlehem, PA and in Manchester, England. Rhodia's Manchester, England facility, known as the Clayton facility ("Clayton"), worked primarily with cobalt and specialized in the manufacturing of cobalt carboxylate and cobalt adhesion products.

52. On December 27, 2001, just six days after the Rhodia acquisition, OMG acquired a nickel refining facility from Centaur Mining and Exploration Limited ("Cawse") for an aggregate purchase price of $45.7 million.

ii. OMG's Costly Projects

53. As a result of its numerous acquisitions, OMG had incurred approximately $1.1 billion in debt by September 30, 2001. Despite its substantial indebtedness due to its costly expansions, OMG continued to pursue additional projects. For instance, OMG made a multi-year $50 million investment, most of which was completed by 1999, to increase production at the Company's Kokkola, Finland refining facility. In February 2000, OMG entered into an agreement with Weda Bay Minerals, Inc. to develop a long-term source for OKN's raw material. Under this agreement, OMG would provide financing of up to $18 million to complete a study for the development of nickel and cobalt deposits at Halmahera Island, Indonesia.

54. In a concerted effort to increase the Company's cobalt production, OMG invested approximately $85 million to become a majority partner in the $120 million Big Hill smelting plant in Lubumbashi, DRC. As a result of this project, OMG increased its annual production of lower-grade feedstocks to 5,000 metric tons of cobalt and 4,000 metric tons of copper. In 1999,

OMG produced 6,200 metric tons of cobalt, which increased to between 7,000 and 8,000 metric tons for 2000. In 2001, OMG's cobalt production was over 10,000 metric tons, and grew to 15,000 in 2002.

C. OMG's Increasing Debt Levels and Compliance with its Debt Covenants are Critical Concerns for the Company

i. Reducing Debt Levels is Critical for OMG

55. In order to fund its operations, capital expenditures and acquisitions, OMG relied heavily on its credit facilities. As of its August 10, 2001 Amended and Restated Credit Agreement, OMG's senior secured credit lines consisted of a $325 million revolver, a total of $635 million in term loans and a $350 million asset sale term facility. OMG's credit facilities required the Company to satisfy certain debt covenants at the close of each fiscal quarter which, if violated, permitted the lender to, among other things, cut off additional funding or institute foreclosure proceedings. The two primary debt covenants required the Company to maintain its total debt at or below prescribed ratios to EBITDA (**E**arnings **B**efore **I**ncome, **T**axes, **D**epreciation and **A**mortization) and to total capitalization. Should OMG's debt exceed either of these ratios, then the Company would be in default.

56. With each additional acquisition and project, OMG became burdened with increasing debt and ran the risk of violating its debt covenants. The Company's compliance with its debt covenants was a critical concern among senior management, and was a frequent topic of discussion during meetings of the Operating Committee; the Board of Directors; and the Executive Committee.

57. OMG's Global Vice-President of Sales and Marketing for Cobalt Products, Salts and Powders ("Vice-President of Cobalt Sales") (John Torbic),[3] testified about the importance and urgency with which the Company treated its debt compliance. Mr. Torbic, who reported directly to OMG's President and Chief Operating Officer (Edward Kissel) until May 2002 when he started reporting to OMG's Group Vice-President of Base Metals (a newly created position at the time)(Charles Havill), testified that reducing the Company's debt and controlling the Company's working capital were top priorities for the Company in late 2001 and 2002. OMG's Vice-President of Cobalt Sales (Mr. Torbic) testified that, during the Company's December 17, 2001 Operating Committee Meeting, OMG's Treasurer (Kevin Durst) informed the Committee that in order to reduce the Company's debt levels, "generating cash, efficient use of working capital and controlling capital expenditures are critical over the next 12 months." In fact, Mr. Torbic explained that, due to the Company's heightened focus on reducing debt during the end of 2001 and throughout 2002, he "spent the majority of [his] time not focused on the markets, but focused on asset management issues," to reduce the Company's "debt."

58. In February 2002, OMG's Treasurer (Mr. Durst), who reported directly to OMG's Chief Financial Officer – Defendants Materna and Miklich during their respective tenures – had already anticipated potential debt covenant violations for year-end 2001 and for certain quarters of 2002. Indeed, according to an internal memorandum dated February 14, 2002, Mr. Durst informed Defendant Materna that "the debt/total capitalization ratio is very tight for the [2001] year-end reporting" and "[a]ssuming the [C]ompany meets its operating profit targets [for 2002] . . . [OMG would still be] a little short in the third and fourth quarter."

[3] For the Court's convenience, a list of the key individuals referred to in the complaint, including the names and titles of current and former OMG employees, is attached as Ex. 2. In addition, an Organizational and Chain of Command Chart of OMG is attached as Ex. 3.

59. On March 14, 2002, OMG's Treasurer (Mr. Durst) addressed a memorandum to Defendants Mooney and Materna, cautioning that "a covenant violation would be anticipated by September 30, 2002 and may be a possibility as early as June 30, 2002 if debt is not reduced from current levels."

60. In an April 11, 2002, presentation to the Board of Directors, OMG's Treasurer (Mr. Durst) characterized the Company's debt covenant compliance as a "***critical issue***." Defendants Mooney, Materna and Miklich were all in attendance at this Board of Directors meeting. Indeed, as demonstrated by internal correspondence dated April 30, 2002, Mr. Durst informed Defendants Mooney and Miklich that he was anticipating a violation of OMG's debt covenants for the fiscal quarters ending June 30, 2002; September 30, 2002; December 31, 2002; and March 31, 2003.

ii. OMG Concealed a Violation of its Debt Covenants for the Year-Ended December 31, 2001

61. Although OMG purported to come within bare compliance of its debt covenants for the year-ended December 31, 2001, internal documents show that the Company was then concealing a debt covenant violation. Pursuant to Section 9.8 of OMG's amended and restated credit agreement, the Company was required to maintain a ratio of its debt to total capitalization of not more than 70%. On March 29, 2002, OMG filed its Form 10-K with the SEC for the year-ended December 31, 2001. According to the amounts reported in the Company's 10-K, OMG's debt to total capitalization ratio was 69.9%, thus .1% below the Company's 70% requirement.

62. However, OMG's own documents demonstrate that the Company was in violation of its debt to total capitalization ratio by December 31, 2001. Specifically, a December 2001 internal Cash Flow Forecast stated that OMG's actual fourth quarter debt to total capitalization ratio was 70.4% – thus putting OMG in violation of the Company's debt covenant.

63. This violation of the Company's debt to total capitalization ratio is also confirmed by the Company's Officer's Compliance Certificate ("Compliance Certificate") for the year-ended December 31, 2001. In a draft of the Compliance Certificate, OMG's actual debt to total capital ratio was stated as ***70.3%*** with a "maximum permitted ratio" of 70.0%. A red-lined version of that same Compliance Certificate – forwarded from OMG's Corporate Controller to Defendant Materna – reflects that the Company's reported debt to total capital ratio was manually changed from 70.3% to 70%. OMG filed this latter version with the SEC. Accordingly, the Compliance Certificate that Defendant Materna signed and filed with the SEC on March 29, 2002, represented that the Company's debt to capital ratio was 70% and, therefore, in bare compliance with its debt covenants.

64. In addition, a February 14, 2002 written communication from OMG's Treasurer (Mr. Durst) to Defendant Materna states that the true debt to total capitalization ratio was actually 70.35%, which was in violation of the Company's debt covenant by 0.35%.

65. OMG's violation of its debt to total capital ratio at any level above 70.00% has also been confirmed by the testimony of Spyros Svoronos, a Vice President at Credit Suisse First Boston ("CSFB"), the Company's primary lender. Mr. Svoronos testified that any amount that exceeded 70.00% violated the Company's debt to total capital ratio level. Indeed, this fact is further confirmed by CSFB's internal correspondence, which sets forth its understanding that OMG's maximum debt to total capital ratio was 70.0%.

iii. Additional Steps Taken by OMG to Appear in Compliance with its Debt Covenants

66. OMG sought to generate cash and reduce its debt through a secondary public offering ("Secondary Offering"). On January 17, 2002, the Company successfully completed its Secondary Offering of 3.5 million shares pursuant to a registration statement and prospectus filed

with the SEC. In sum, the Secondary Offering raised approximately $223.9 million, which the Company used to repay a portion of its indebtedness. CSFB was the lead underwriter for the Secondary Offering.

67. OMG also tried to avoid a further violation of its debt covenants by transferring significant sums via inter-company loans and by amending its credit agreements. OMG's Treasury Manager (Lois Lee) who reported directly to both OMG's Treasurer (Mr. Durst) and OMG's Corporate Controller (Mr. Holtzhauser), explained, "[w]e sometimes transferred cash to pay down debt, which would have an effect on the covenant." Further, according to internal e-mails, Mr. Durst scrambled to arrange for significant and temporary inter-company loans so that the Company would appear in bare compliance with its debt covenants for the Company's one reporting day. In essence, OMG's financial statements would reflect the Company's increased cash balances which were achieved through these short-term, inter-company loans for, as Mr. Durst said, "[the quarter-end] is the only snapshot the outside world sees of [OMG's] financials."

68. Ultimately, on June 28, 2002 – the last day of the reporting period – OMG amended its credit agreement to loosen the Company's Debt to EBITDA ratio, thus avoiding other debt covenant violations.

69. Even after amending its debt covenants, the Company still needed to undertake desperate measures to try to satisfy its compliance levels. For instance, on September 24, 2002, Defendant Miklich instructed the Company's controllers to "hold all payments until the end of the month unless very critical to the operation of the business." Despite its best efforts, the Company still failed to generate sufficient cash to satisfy its debt covenants for the fiscal quarter ending September 30, 2002. In this regard, on October 8, 2002, OMG's Treasurer (Mr. Durst) informed Defendants Mooney and Miklich that the Company's "credit ratios had deteriorated"

and that "[c]ovenant compliance is in question until the third quarter EBITDA and capital expenditure numbers are determined." In short, the Company was facing a dire financial situation, and it could not afford to suffer other financial setbacks.

D. The Cobalt Market

i. Cobalt Pricing

70. Cobalt is a strategic and critical metal that is used in diverse industrial and military applications. The largest use of cobalt is in superalloys, which are used to make parts for gas turbine engines. Cobalt also is used to make magnets; high-speed tools; cemented carbines and diamond tools; catalysts for the petroleum and chemical industries; drying agents for paints, varnishes and inks; ground coats for porcelain enamels; pigments; battery electrodes; steel-belted radial tires; airbags in automobiles; and magnetic recording media.

71. Cobalt pricing is unique. Cobalt is not traded on any of the established public commodity exchanges, but instead is sold directly in a free-market either between merchants and consumers or between merchants and other merchants. The cobalt sold may originate from producers, government stockpiles or consumers. Accordingly, free market prices generally reflect overall supply and demand, as well as buyers' perceptions of metal availability.

72. Guidance for cobalt pricing is provided primarily by and through Metal Bulletin PLC ("Metal Bulletin"), which, for the last 85 years, has supplied reliable and comprehensive market information and prices twice each week, as well as goods and services, to the global metals markets. Metal Bulletin tracks several metals, including cobalt and nickel, and publishes what its analysts determine to be the prevailing fair market price for the metal. Pricing information is published twice each week, on Wednesdays and Fridays, and serves as an indicator for trades in the market. Metal Bulletin also tracks trends in the marketplace and in cobalt-based industries, and publishes this information in its monthly *Metal Bulletin Research*.

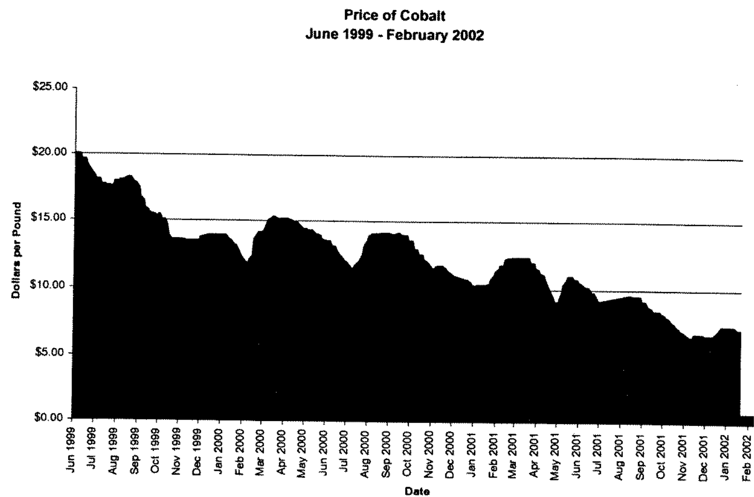
73. The Metal Bulletin is generally recognized as the market leader in its field. Indeed, according to one Wall Street securities analyst from Banc of America who covered OMG, Metal Bulletin is "widely considered the authority on the cobalt industry . . . Lacking a terminal market as is the case for nickel and copper, cobalt purchasing agreements often cite [Metal Bulletin] as the 'posted price.'" In fact, in an internal OMG e-mail, OMG's Corporate Controller (Mr. Holtzhauser) confirmed to other OMG employees that OMG's cobalt metal price is "generally the prior month [Metal Bulletin] average." Further, OMG's Vice-President of Cobalt Sales (Mr. Torbic) testified that "[m]ost of the pricing information that OMG had at [its] organization was based on the London Metal Bulletin" as it was OMG's "procedure" to use the Metal Bulletin "as the standard and as the measure for [its] contracts."

ii. The Declining Cobalt Market

74. The price of cobalt was $20.00 per pound in mid-1999. By January 17, 2001, the price of raw cobalt had dropped to $10.02. In its May 2001 issue of *Metal Bulletin Research*, Metal Bulletin stated that "[c]obalt prices collapse as the weakening economic landscape chokes demand." The downward trend continued, with the price dropping below the $10.00 mark on May 2, 2001. In the August 2001 issue of *Metal Bulletin Research*, Metal Bulletin again observed how "[p]rices for all grades of cobalt continued to slide this month as the summer gloom deepened and concerns remain over recovery in the second half of the year."

75. On September 21, 2001, the price of cobalt fell below the $9.00 mark. In its October 2001 issue of *Metal Bulletin Research*, Metal Bulletin forecasted that "cobalt prices will continue to exhibit weakness throughout the remainder of the year and into 2002." Further, Metal Bulletin reported that this decline would extend well into 2002, stating that "cobalt prices have more pain to suffer over the next twelve months as demand continues to weaken and production has the potential to increase rapidly."

76. On February 5, 2002, the day OMG announced its earnings for the quarter and year ended December 31, 2001, the price of cobalt had dropped to $7.05, marking a 30% decline from the January 2001 price and a 65% decline from the June 1999 price. Indeed, the following chart depicts the cobalt market's steady decline from June 1999 through February 5, 2002:



77. The global demand for cobalt is strongly influenced by general economic conditions and by demand from the industries that consume large quantities of cobalt products, such as manufacturers of rechargeable batteries and superalloy metals used in the aerospace industry. The declining cobalt market was in fact foreseeable as early as 2000 or 2001 due to a variety of global factors.

78. First, the rechargeable battery sector, one of the primary markets for which OMG provides cobalt, suffered a decline from as early as October 2000. Indeed, in January 2001, Ericsson and other leading electronic component manufacturers announced that they either were leaving the handset business or were undergoing difficult trading conditions and profit wariness.

Then, in June 2001, Japanese manufacturers began to destock their saturated supply of metal batteries. Moreover, in July 2001, Philips ceased its production of cell phones. In its August 2001 issue of *Metal Bulletin Research*, Metal Bulletin commented that "our sources in Asia indicate that the battery market remains very weak and looks set to continue so for the majority of the remainder of the year." Not surprisingly, in January 2002, Japanese manufacturers continued unloading their battery stockpiles.

79. Second, the superalloy sector of cobalt, which serves the aerospace industry, is another area in which OMG suffered a decline. Beginning in July 2001, airlines reported that they were facing decreased passengers and declining profits, and voiced concerns regarding a decreased demand. This downturn was further impacted by the aftermath of September 11, 2001, as airlines cut their growth rate targets due to declining profits caused by passenger fear and uncertainty. Though the superalloy decline was predictable before September 11, the terrorist attacks all but confirmed that demand would remain low for the foreseeable future.

80. Lastly, the cobalt chemicals sector experienced a similar decline, with chemical companies experiencing demand erosion and reported declines in sales. In August 2001, the *Metal Bulletin Research* reported that "[t]he Japanese market is reportedly now so weak that some of the chemical producers are trying to sell cobalt onto the alloy manufacturers in an attempt to reduce inventories." This erosion was best highlighted by DuPont Chemical Company, which issued a cautionary statement that it "expects conditions to continue to deteriorate into the third quarter" of 2001.

81. Accordingly, as the demand for cobalt and cobalt-based products decreased, cobalt prices correspondingly declined. As stated by a Metal Bulletin analyst in May 2002, the

cobalt market can be characterized as "weak, poor, depressed, subdued, fragile, brittle, frail, flimsy, shaky . . . etc. etc."

82. This decline is best illustrated by the data contained in an internal OMG document which was prepared for a meeting with the Company's lenders. This data, which is presented in the table below, clearly demonstrates, apart from a few minor deviations, the cobalt market's steady decline from January 2001 to October 2002. Despite this definitive downward trend and the fact that the price of cobalt had been below the $11.00 per pound price range since April 2001, this internal Company data demonstrates that OMG was still using an average cobalt price of $11.00 for its financial plans and calculations.

Year	Avg. Cobalt Price	2002 Plan
January 2001	$10.37	
February 2001	$11.11	
March 2001	$12.32	
April 2001	$11.31	
May 2001	$9.58	
June 2001	$10.54	
July 2001	$ 9.21	
August 2001	$ 9.51	
September 2001	$ 9.05	
October 2001	$ 8.06	
November 2001	$ 6.80	
December 2001	$ 6.67	
January 2002	$ 7.23	$11.00
February 2002	$ 6.99	$11.00
March 2002	$ 6.64	$11.00
April 2002	$ 6.85	$11.00
May 2002	$ 8.31	$11.00
June 2002	$ 7.76	$11.00
July 2002	$ 6.92	$11.00
August 2002	$ 6.27	$11.00
September 2002	$ 6.73	$11.00
October 2002	$ 6.47	$11.00

E. Due to the Critical Importance of Inventory to the Company's Business, Defendants Actively Monitored and Tracked the Metals Market

i. Defendants' Active Monitoring of the Metals Markets including the Cobalt Market

83. Based upon Company documents as well as the testimony of both former and current OMG employees, upper-level management, including Defendants Mooney, Materna and Miklich (during their respective tenures as Chief Financial Officers), monitored the market price of metals on a regular basis. According to OMG's Vice-President of Cobalt Sales (Mr. Torbic), the Company had "internal reporting, a wide range of it, that covered what prices were on a regular basis." For instance, cobalt prices were monitored through publications such as the Metal Bulletin and *Metal Bulletin Research* because the price of cobalt directly impacted the Company's finances. Similarly, OMG monitored the market price of nickel through a weekly publication called Platt's Metals Week.

84. In fact, the cobalt prices as published in the Metal Bulletin and the *Metal Bulletin Research* were regularly distributed to upper level management at OMG by, among others, a Company employee named Alice Ramsey. Ms. Ramsey distributed cobalt price reports on a bi-weekly, weekly and monthly basis. That bi-weekly report was distributed to senior managers at OMG by e-mail within hours of the release of the Metal Bulletin's bi-weekly price update. Ms. Ramsey's weekly report was distributed in hard-copy through inter-office mail and, according to OMG's Treasury Manager (Ms. Lee), included "the weekly average metal prices that people used either as reference or for whatever purposes, just to see what the market was doing." Finally, Ms. Ramsey's monthly report detailed all the metal indices, including the cobalt price from the Metal Bulletin. Similarly, OMG's Manager of Financial Accounting at OMG Kokkola, Sami Kallioinen, distributed the Daily Market Report, which contained the daily market price of cobalt, to numerous senior Company employees, including each of the Individual Defendants.

Thus, it is evident that Defendants Mooney, Materna and Miklich regularly received the most current cobalt pricing information.

85. The price of cobalt was also regularly discussed by senior management at the Company. In fact, OMG's Vice-President of Cobalt Sales (Mr. Torbic) testified that in 2001 senior management started having regular meetings on Monday to discuss issues relating to cobalt, including the price of cobalt. These meetings were held in OMG's President and Chief Operating Officer's (Mr. Kissel) office and attendees included John Torbic; Vice-President of Global Sales & Marketing of Metal Organics (Bob Strenk); Vice-President of Corporate Research & Development (H. Burnham Tinker); Group Vice-President of Base Metals, (Charles Havil); and Group Vice-President of Metals Management (Bill Lohman). Indeed, according to OMG's Vice-President of Cobalt Sales (Mr. Torbic), "the price of cobalt was the major issue" at these meetings. As part of these Monday meetings, OMG's Global Cobalt Business Manager (Markku Anttila) created and distributed a report for the participants. The reports included reference to, among other cobalt related issues, the Company's average selling prices and the Metal Bulletin cobalt prices. At least Defendant Materna, and likely others, received these reports.

86. In addition, minutes from the Company's Operating Committee meetings reflect that market prices were also regularly discussed during these monthly meetings. Operating Committee meeting minutes, copies of which were distributed to each attendee as well as other members of senior management – including the Individual Defendants – listed the market price for cobalt and regularly contained a chart depicting the market price for the Company's other metals, including nickel. Attendees of the meeting included, among others, Group Vice-President of Raw Materials & Refining (Antti Aaltonen); Group Vice-President of Precious

Metals (Rick Adante); OMG's Global Cobalt Business Manager (Markku Anttila); Treasurer (Kevin Durst); Director of Investor Relations (Greg Griffith); Group Vice-President of Base Metals, (Charles Havill); Corporate Controller (John Holtzhauser); President and Chief Operating Officer (Edward Kissel); Corporate Vice-President of Strategic Planning (Mark Labovitz); Group Vice-President of Metals Management (Bill Lohman); Vice-President of Nickel (Todd Romance); Chief Administrative Officer (Mike Scott); Vice-President of Global Sales & Marketing of Metals, Organics (Bob Strenk); Vice-President of Corporate Research & Development (H. Burnham Tinker); OMG's Vice-President of Cobalt Sales (Mr. Torbic); and Director of Operations (Paul Venesky).[4]

ii. Defendants Actively Tracked and Reported on the Metals, including the Cobalt, in the Company's Inventory

87. According to OMG's Business Manager for Cobalt Salts and Powders (Robert Middlemiss), who had over twenty-five years of service with the Company, OMG operated and maintained a software program known as BPCS in order to have access to current and up-to-date information concerning the Company's sales and inventories. Information concerning the Company's sales and inventory levels was input to the BPCS system on a daily basis; in effect, BPCS provided a "snapshot" of the Company's various metals inventories at any given point in time. Specifically, the BPCS program tracked OMG's sales, the price of such sales, and any inventory that was purchased or acquired by OMG. The BPCS system also tracked the inventory in the Company's warehouses. OMG employees in the accounting department and sales department from the business manager level and higher, including the Individual Defendants, had access to the BPCS system.

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[4] Mr. Venesky held three different positions at OMG during the Class Period. He served as Controller of Americas until September 2001; Director of Operations from September 2001 until October 2002; and Cobalt Group Controller beginning in October 2002.

88. Importantly, the BPCS system also tracked the Company's current cobalt sales and cobalt inventory because, according to OMG's Business Manager for Cobalt Salts and Powders (Mr. Middlemiss) and OMG's Vice-President of Cobalt Sales (Mr. Torbic), cobalt was always considered a critical metal for the Company. The BPCS system also provided details regarding the Company's cobalt consignment stocks – that is, the cobalt inventory that OMG stored at its customers' warehouses.

89. In addition to the BPCS system, upper level management at OMG diligently managed the Company's inventories through the preparation and review of the Asset Management Sheet or Inventory Report. According to OMG's Business Manager for Cobalt Salts and Powders (Mr. Middlemiss), the Asset Management Sheet, which was derived from the BPCS system, provided upper level management with a streamlined view of the Company's inventories broken down by the type of metal and its respective location – either OMG warehouse or consignment customer – with actual data regarding inventory turn-over. The Asset Management Sheet, which was prepared at least twice per quarter, was provided to Defendants and other senior management at the Company. The Asset Management Sheet was also discussed by upper level management at monthly meetings to assess the Company's sales and inventory turnover.

90. OMG's Business Manager for Cobalt Salts and Powders (Mr. Middlemiss) also stated that information from the Asset Management Sheet was then consolidated into what was known as the Monthly Summary. The Monthly Summary illustrated the Company's overall business operations and activities on a monthly basis and contained information relating to its metals inventories. The Monthly Summary also depicted sales, including the price at which each metal was sold, as well as the type of market or customer to which it was being sold.

Information relating to OMG's inventories from each of the Company's worldwide plants and operations was provided to the Company's Cleveland, Ohio headquarters for inclusion in the Monthly Summary. The Monthly Summary was distributed to Defendant Mooney and, at the time that they each served as Chief Financial Officer, to Defendants Materna and Miklich.

91. The Defendants and other senior management at OMG also received the Daily Report regarding the Company's sales information. According to OMG's Treasury Manager (Ms. Lee), who, along with OMG's Senior Accountant (Bonnie Demetrieu), was in charge of the creation and distribution of this Daily Report throughout some of the class period, the Report provided details of the Company's sales. "It was a report of [OMG's] sales activities. It had daily, monthly, quarterly, yearly sales by product line and by region." Further, Ms. Lee testified that the Company's executives, including "Jim Mooney, CFO, John Holtzhauser [and] Kevin Durst" received this Report. The Daily Report was created by downloading information from OMG's Analyzer system, which is a data warehouse for the Company. The Report was then distributed on a daily basis by e-mail. Similarly, Treasury Manager (Ms. Lee) testified that OMG also prepared a Monthly Inventory Report, which contained the Company's total inventory, sales volumes and average value of inventory per pound of cobalt.

F. Defendants Were Aware of the Declining Price of Cobalt

92. As early as 2001, senior employees at OMG were aware of the cobalt market's decline and communicated those concerns to the Defendants. For instance, on November 5, 2001, at an OMG Board of Director's meeting, OMG's President and Chief Operating Officer (Mr. Kissel) informed the attendees of the meeting, including the Individual Defendants, that "cobalt metal prices [were] in the tank" and that "[c]obalt [metal] prices tumbled to $7-8/lb virtually wiping out refining profits." Mr. Kissel reported directly to Defendant Mooney.

93. Then, on April 12, 2002, OMG's President and Chief Operating Officer (Mr. Kissel) again addressed the Board of Directors about the low price of cobalt and its impact on the Company. Specifically, Mr. Kissel informed the Board of Directors – with the Individual Defendants present – that the low market price of cobalt was one of the Company's "[w]eakest segments" and continued to be the "Achilles Heel" of OMG's business.

94. As the price decline continued and the cobalt market failed to rebound, concern among OMG employees continued to grow. OMG's Vice-President of Cobalt Sales (Mr. Torbic) testified that the low price of cobalt became a critical concern for the Company in late 2001 and remained that way throughout 2002. In fact, Mr. Torbic has affirmed that as of the end of 2001 and continuing through 2002 that OMG had "no concrete factual basis" to believe that the market price of cobalt would rebound. Indeed, the Company, according to OMG's Vice-President of Cobalt Sales (Mr. Torbic), did not conduct any studies of market evaluations to substantiate their empty "hope" that the price of cobalt would rebound. The Company's concern over the state of the cobalt market was also confirmed by Vice-President of Base Metals (Mr. Havill), who testified that "every single day we were concerned about the price of cobalt." Mr. Havill reported directly to OMG's President and Chief Operating Officer (Mr. Kissel).

95. Ultimately, by late September 2002, OMG's President and Chief Operating Officer (Mr. Kissel) informed certain senior employees, including Defendants Mooney and Miklich, that "[a] year of waiting for a rise in cobalt prices to solve the problem is long enough." Indeed, the impact of "waiting for a rise in cobalt prices" proved devastating to OMG's financials. By October 2002, an OMG employee alerted Defendant Miklich that, as a result of diminished demand, OMG was forced to sell cobalt that had been valued by OMG at $11.80 per pound for as low as $5.80 per pound. Moreover, OMG's financials were further impacted in late

October 2002, as the Kokkola facility had resorted to selling cobalt at $6.00 per pound, which, in turn, caused OMG's smelter operation to lose money.

i. Defendants Require Clayton to Write-Down Its Cobalt Inventory to $6.66 as a Condition Precedent to OMG's Acquisition of the Facility

96. As noted above, OMG acquired the Clayton facility of Rhodia Industrial Specialties on December 21, 2001. Both OMG and Clayton had many similarities, including their involvement in the metals industry, the types of cobalt that they sold, and in large part the manner in which they accounted for their inventory. Indeed, in the year prior to OMG's acquisition, Clayton's financial statements for the year-ended December 31, 2000 represented that Clayton's "raw materials . . . and finished products are stated at the lower of cost and net realizable value."

97. On the very day of OMG's acquisition, the OM Defendants required Clayton to write-down the value of its cobalt inventory from $8.82 per pound to $6.66 per pound. This requirement was set forth in OMG's sale and purchase agreement for Clayton, which provided that Clayton's stock (inventory) was to be valued at the lower of cost and net realizable (market) value. Thus, OMG was directly and jointly involved in Clayton's write-down process, including both the decision to record the write-down and the valuation of cobalt for use in the write-down analysis.

98. Indeed, when Clayton recorded its write-down, OMG's Corporate Controller (Mr. Holtzhauser) directed Craig Belfield, a senior manager at Clayton, to write-down the value of Clayton's cobalt inventory so that it properly reflected its "market value." OMG knew that a lower of cost or market write-down was required in this situation, because, according to OMG's Treasurer (Mr. Durst), "the process [would be] conducted in accordance with . . . GAAP."

Accordingly, when Clayton took an LCM write-down, it was done so by the consensus of all parties, including OMG.

99. Despite the fact that OMG directed and participated in Clayton's write-down of its cobalt inventories to $6.66 per pound, OMG failed to use the prevailing $6.66 per pound market price in valuing its own inventory at December 31, 2001 year. Indeed, within weeks of completing the Clayton acquisition and write-down, OMG released its own financial results for the fourth quarter and year-ended 2001. Rather than relying on the established market value – ***$6.66 per pound*** – which it required Clayton to use, OMG's financials were based upon an ***$11.80 per pound*** carrying value for the identical grade of cobalt – an amount ***over $5.00 more*** than the agreed upon market value for Clayton's write-down. As discussed further below, OMG improperly waited until the third quarter of 2002 to take its won LCM write-down in which by then was badly over due.

ii. OMG's Own Entities Record Write-Downs Due to the Declining Cobalt Market

100. As early as October 2001, OMG's Johnstown plant (part of the Company's SCM facility) recorded a write-down because of low cobalt prices. According to OMG's SCM Facility Controller (Barbara Trapnell), Johnstown had recorded a write-down in "October [2001] and should have taken a $75,000 additional write-down in November [2001]" because of the declining "market price of cobalt." In fact, in an email dated December 28, 2001, Ms. Trapnell, while preparing her Facility's 2001 year-end financials, informed OMG Director of Operations (Mr. Venesky) that she "believe[d] Cobalt has gone down even further resulting in an additional write-down."

101. Then, at the end of June 2002, GTL – a smelter plant operated out of the DRC and in which OMG has a 55% interest – also recorded a write-down of its cobalt inventory. In an e-

mail dated July 23, 2002, OMG's Kokkola Facility Controller (Arto Peltoniemi) informed OMG's Director of Financial Reporting and Technical Accounting Rob Pierce that GTL's cobalt "[w]rite-down at the end of June was 1,9 MUSD [and that] [t]his was [an] ordinary lower of cost or market issue." Mr. Peltoniemi further explained that the "[c]obalt price assumption used was 8,50 USD/lb" which was both "higher than current market price" and higher than the Kokkola Facility's sales prices.

iii. OMG's Competitors Record Write-Downs Due to the Declining Cobalt Market

102. Not surprisingly, the declining prices of cobalt had a significant negative impact on the financial condition of OMG's competitors. As early as March 1999, Union Minière ("UM"), a Belgian metals company, announced that "[i]n view of the extremely low level of metals prices" the company was "obliged" to write-down the value of its inventories by over $37 million.

103. In August 2000, Normandy Mining Limited ("Normandy"), an Australian company that owned a controlling interest in the Kasese cobalt plant in Uganda, announced that it was writing down the value of its investment in the plant by $27.6 million. In a press release dated August 29, 2000, Normandy stated that the write-down was an "appropriate accounting adjustment" which "reflect[ed] the lower current cobalt price." The following year, Normandy wrote its Kasese investment down to zero, and took an $81 million charge to profits.

104. Similarly, in January 2002, Anglovaal Mining ("Avmin"), a South African company that owned a 90% stake in the Chambishi cobalt plant in Zambia, wrote down the value of its Chambishi assets by $172 million. In the January 29, 2002 press release announcing its write-down, Avmin cited the "effects of an unexpected decline of the cobalt price" and noted that the write-down was "in accordance with [Avmin's] commitment to prudent and conservative

accounting practices." In addition to the write-down, Avmin's cobalt assets also suffered an operating loss of $19 million during the same fiscal year. Avmin explained that the loss was due in part to the fact that the average cobalt price received for the year was only $7.56 per pound. As discussed further below, like OMG, Avmin's outside auditors were E&Y .

105. Unlike its competitors in the same industry, OMG – apart from its SCM and GTL operations – did not record any write-down to adjust for the sustained and substantial decline in the market price of cobalt – at least until the end of the Class Period, when it was well overdue.

G. OMG's Accounting for its Cobalt Inventory

i. GAAP Requires Inventories to Be Stated at Cost or Market, Whichever is Lower

106. One of the fundamental principles of GAAP is that companies are required to state their inventories at a value that is either the cost of the inventory or the then-current market value, ***whichever is lower***. This lower of cost or market (the "LCM") requirement for reporting inventories, applies every time a company publicly issues financial statements. It has been part of GAAP since 1947, when the American Institute of Accountants first addressed the proper reporting for the carrying value of inventory by issuing Accounting Research Bulletin No. 29, *Inventory Pricing* ("ARB 29"). This fundamental concept was reaffirmed six years later, in July 1953, when the American Institute of Accountants issued Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins* ("ARB 43"), which summarized and revised the preceding 42 research bulletins.

107. Chapter 4 of ARB 43, *Inventory Pricing*, states that the primary basis of accounting for inventories is the cost paid for that inventory plus the costs incurred, if any, to bring the inventory to its existing condition. ARB 43, Ch. 4, Stmt. 3. However, a reporting entity also must evaluate whether it will recover those costs in future periods. Hence, the cost of

inventory "is appropriately carried to future periods" ***only*** if that amount "does not exceed an amount properly chargeable against the revenues expected to be obtained from ultimate disposition of the goods carried forward." ARB. 43, Ch. 4 Stmt. 2 ¶ 4.

> A departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical deterioration, obsolescence, changes in price levels, or other causes, the difference should be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as *market*.

ARB 43, Ch. 4, Stmt. 5. Thus,

> In accounting for inventories, a loss should be recognized whenever the utility of goods is impaired by damage, deterioration, obsolescence, ***changes in price levels***, or other causes. The measurement of such losses is accomplished by applying the rule of pricing inventories *at cost or market, whichever is lower*. This provides a practical means of measuring utility and thereby determining the amount of the loss to be recognized and accounted for in the current period.

ARB 43, Ch. 4, Stmt. 5 ¶ 8 (first emphasis added).

108. ARB 43 established parameters for evaluating whether inventory is stated at the lower of cost or market:

> As used in the phrase *lower of cost or market*, the term *market* means current replacement cost (by purchase or by reproduction, as the case may be) except that:
>
> **Market should not exceed the net realizable value (i.e., estimated selling price in the ordinary course of business less reasonably predictable costs of completion and disposal); and**
>
> **Market should not be less than net realizable value reduced by an allowance for an approximately normal profit margin.**

ARB 43, Ch. 4, Stmt. 6. The American Institute explained the reasoning for setting this "ceiling" and "floor" for what is commonly referred to as the net realizable value test:

(Emphasis added.) Earlier in that Form 10-K, OMG disclosed that "[s]ubstantial, sustained reductions in the price of raw materials could also result in the Company's inventory carrying value being written down to a lower market value" (Emphasis added.) However, in connection with a company's fiscal year-end, GAAP permits no such "significant and sustained" prerequisite before inventory must be written down to the lower of cost or market.

113. Despite GAAP's clear requirements and the fact that the market price of cobalt was steadily dropping from an average market price of $17.57 per pound in 1998 to $6.63 per pound on December 31, 2001, OMG did not write down its cobalt inventories.

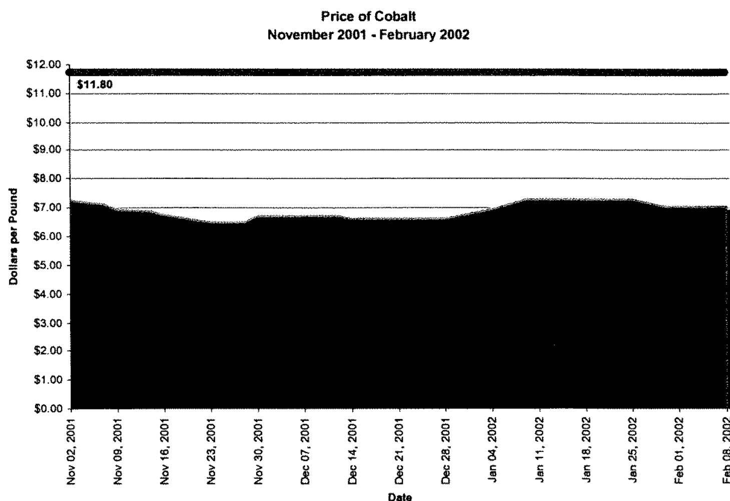
114. OMG's operating profit – net sales less cost of goods sold – is derived in two segments, the "refining margin," and the "marketing margin." The refining margin, also known as the "delta below the metal," results from OMG's ability to obtain ore that contains cobalt and refine it to market-grade cobalt at a total cost per pound below published cobalt market prices. The marketing margin, or the "delta above the metal," is the difference between the published market price of cobalt and the selling price OMG charges its customers. This marketing margin applies to so-called "value-added" cobalt products for which OMG claims to be able to charge its customers a constant dollar amount per pound – on average, for all value-added products, $4.00 per pound – over the published market price of cobalt.

115. The refining margin depends upon the published market price of cobalt, and on the total cost to OMG, known as the cash production cost, to obtain the ore, transport it to the Company's refinery in Finland, extract the cobalt, and refine it to a condition approximating the quality of cobalt sold in the marketplace. OMG stated during its October 29, 2002 quarterly earnings conference call that its production costs during the Class Period were between $6 - $7 per pound. Should the published market price decline so substantially that it approaches this

threshold, as it did throughout the Class Period and for the several months that preceded it, OMG's refining margin will be significantly reduced or completely eliminated. And should current replacement cost be lower than OMG's historical cost carrying value, as it was throughout the Class Period and for the several months that preceded it, a lower of cost or market write-down must be made to state such inventory at replacement cost, as adjusted by the "ceiling" and "floor" amounts that ARB 43 establishes for "market" based upon net realizable value.

116. In OMG's case, because the Company is able to sell value-added cobalt at a fixed dollar margin above the published cobalt market price – the $4.00 average marketing margin, which necessarily includes all costs to convert refined cobalt into value-added products plus a normal profit – the published market price always will approximate the ARB 43 market "floor" (i.e., OMG's sales price less the cost to complete the inventory for sale, and less a normal profit). Were OMG also to factor into "normal profit" the amount of the Company's refining profit (i.e., deduct this margin, as well as the marketing margin, from net realizable value to determine the ARB 43 "floor"), the "floor" would be reduced below the published market price, which would require OMG to use actual replacement cost as the ARB 43 market "floor."

117. OMG's replacement cost for its inventory as of December 31, 2001 ordinarily would be determined based upon the costs the Company normally would incur to purchase ore and refine it to market quality – historically between $6 - $7 per pound – which were below the published market prices, thus providing OMG with a refining profit. However, as the chart below depicts, the market price of cobalt at December 31, 2001 had fallen to $6.63 per pound, had been below $7.00 since at least November 9, 2001, and had averaged just over $7.00 during January and February 2002; as a result, OMG's refining profit at December 31, 2001 had been eliminated, and the market price on that date represented the current replacement cost of OMG's inventory.



That market price, as explained above, also approximated the ARB 43 market "floor." In spite of the fact that the market price of OMG's cobalt inventory at December 31, 2001 was significantly below the recorded cost under the LIFO method – approximately $11.80 per pound – the Company did ***not*** write its cobalt inventory down to market. Accordingly, OMG overstated its inventory for the year ended December 31, 2001, as well as for the first two quarters of 2002,

and did not recognize the loss the Company sustained in its inventory, choosing instead to hide that loss from the investing public.

iii. OMG's Accounting for Cobalt Inventory at Cost, Rather than at the Vastly Lower Market Value, Materially Violated Longstanding and Fundamental GAAP

118. As discussed above, inventory must be valued at cost or market, whichever is lower. This precept is among GAAP's most fundamental, longstanding and widely-used provisions. OMG violated this ironclad and simple rule by publicly releasing financial statements and financial information for the quarter and year ended December 31, 2001 and for the first two quarters of 2002 that reported the carrying value of the Company's cobalt inventory at a cost of roughly $11.80 per pound on average – even though the average market price of cobalt for December 2001 was approximately $6.67 per pound, or approximately 43% lower, and the average market price for the period beginning December 2001 through July 2002, when OMG's second quarter 2002 Form 10-Q was filed, was approximately $7.17 per pound, or approximately 39% lower, and had been below the $11.80 per pound average carrying value since April 11, 2001, and at least 25% lower than that average carrying value since September 26, 2001.

119. The average market price of cobalt for all of 2001 was approximately $9.54 per pound, including an average cobalt market price for the last six months of 2001 of approximately $8.22 per pound; the approximate average monthly prices per pound for the months of September through December 2001 declined steadily from $9.05 to $8.06, $6.80 and $6.67, respectively. Indeed, this reduced market price was maintained throughout the first nine months of 2002, with an average market price of cobalt of approximately $6.95 per pound for the first three months, approximately $7.30 per pound through June 2002, and approximately $7.08 per pound for the entire nine-month period. Under GAAP, any cobalt inventory held at December

31, 2001 valued at a higher cost per pound should have been written down with the resulting loss recognized in 2001.

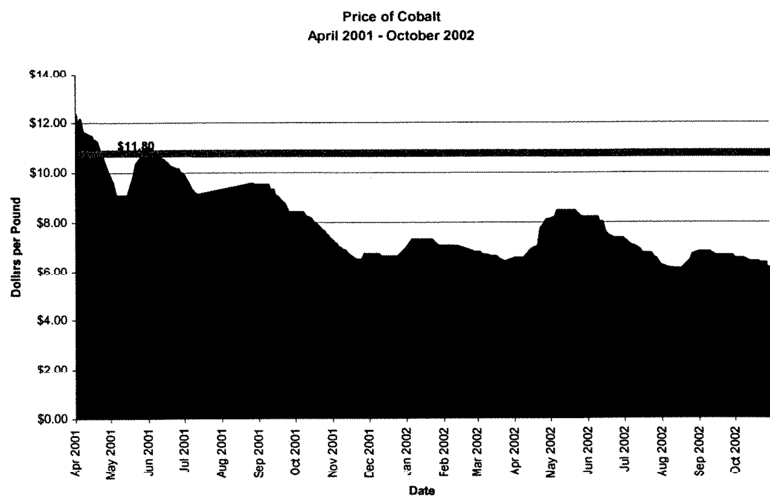
120. Defendants, despite the clear dictates of GAAP and the sustained low market price of cobalt, knowingly or with reckless disregard manipulated its lower of cost or market analyses by inflating its average selling price of cobalt and cobalt-based products. For instance, OMG's Director of Operations (Mr. Venesky) testified that Defendant Materna and/or OMG's Corporate Controller (Mr. Holtzhauser) would unilaterally increase the average selling price that was generated by OMG's BPCS system based on their own ***"estimated" future*** selling price of the Company's cobalt.

121. Indeed, OMG's Cost Inventory Manager (Mr. Beaver) testified that, based on his own experience with performing lower of cost or market analyses at OMG, OMG's Corporate Controller (Mr. Holtzhauser) would change the average selling prices that Mr. Beaver had calculated based on the objective data available on the Company's BPCS system based on a "forward looking" market valuation assessment. Mr. Venesky also confirmed that Defendant Materna and/or Mr. Holtzhauser asserted that they were relying on "market intelligence" to estimate the future sales price of cobalt for up to four months in the future. According to OMG's Director of Operations (Mr. Venesky), this estimate – which, based on his professional experience, was not persuasive – would then be used for OMG's lower of cost or market calculation.

122. As a result of this improper approach to the LCM determination, OMG violated the clear requirements of GAAP and avoided the necessary LCM write-down. The OM Defendants improperly delayed a write-down by attempting to ignore the grim realities of the cobalt market on the basis of their supposed "market intelligence." Indeed, these baseless

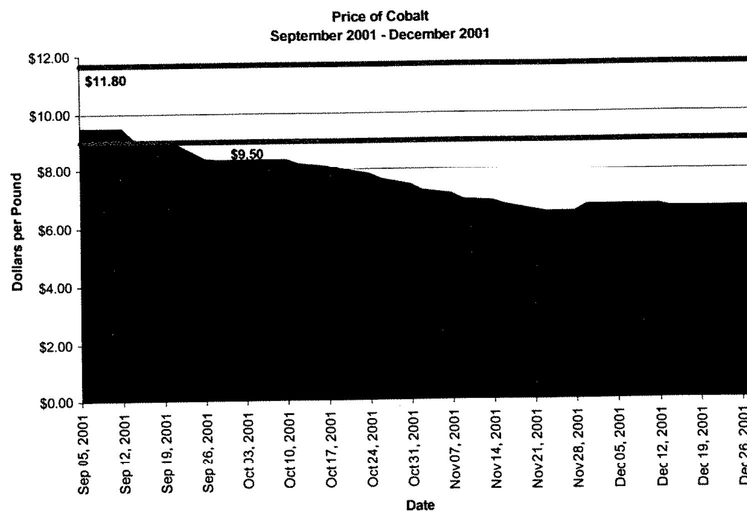
adjustments, carried out by OMG's most senior financial employees demonstrate- that the OM Defendants were aware that the Company's actual sales prices were well below the $11.80 per pound carrying value of the Company's cobalt inventories.

123. Without any explanation of its supposed "market intelligence" or its "prediction of future selling prices," the Company admitted, in its October 29, 2002 telephone conference to discuss its financial results for the quarter ended September 30, 2002, that its cobalt inventory had an average cost – ***before*** adding direct costs (e.g., warehousing, transportation and processing) – of $11.80 per pound. Because of OMG's use of LIFO – whereby ending inventory is assigned the oldest and, in this case, highest, costs – and because the last time the market price of cobalt was as high as $11.80 per pound was April 11, 2001, the average cost of the cobalt inventory on hand at December 31, 2001 or at any time thereafter through the date of OMG's conference call, could not have been lower than $11.80. The chart below illustrates the sustained drop below OMG's $11.80 average cost:



Even though these circumstances presented the textbook example for writing down inventory from its historical cost to its market value as of December 31, 2001, Defendants failed to take the necessary write-down.

124. OMG acknowledged during the Company's October 29, 2002 conference call that it had previously been performing the LCM determination using an assumed market price of $9.50 per pound that OMG claimed had represented the "long-term price of cobalt," and that this analysis had not yielded any lower of cost or market write-down. OMG explained that this resulted because it assumed that a substantial amount of the cobalt would be sold as value-added cobalt. OMG did not explain the specifics of the analysis it claimed to have performed. Even assuming that it was appropriate to have used a $9.50 per pound market price, which it was not, a $2.30 per pound write-down would have been necessary, as illustrated by the chart below, to write-down the $11.80 average cost to the arbitrarily selected $9.50 replacement cost.



GAAP does not provide any basis for the arbitrary selection and use – indeed, the pattern of lower actual market prices during the months both before and after December 31, 2001, as illustrated in the chart above, demonstrates the arbitrariness of OMG's choice – of an assumed,

higher, future price of inventory to determine market. Defendants' failure to write-down cobalt inventory at December 31, 2001 represented either a conscious decision to conceal OMG's over-priced inventory, or a severely reckless disregard for the Company's operations and finances.

125. While OMG did not provide sufficient detail to permit replication of its analysis using $9.50 per pound as the replacement cost, the most important fact in determining whether a write-down at December 31, 2001 was required under GAAP is that the market price of cobalt at that time was not $9.50 per pound. In fact, the cobalt market price had not been as high as $9.50 since September 13, 2001, and, instead, ranged from $6.50 to $9.10 per pound from that date to the end of year, and did not exceed $7.30 per pound from October 31, 2001 through February 5, 2002, the date Defendants released OMG's earnings for the quarter and year ended December 31, 2001. Accordingly, a replacement cost in the $6.50 - $8.40 per pound range – not $9.50 – should have been used by OMG to determine the amount of the lower of cost or market write-down from the $11.80 average cost as of December 31, 2001. Indeed, just using the mid-point of that range, $7.45 per pound, yields an adjustment of $4.35 per pound, or a reduction to the average cost of approximately 37%; using the average December 2001 price of $6.67 per pound would have resulted in a write-down of $5.13 per pound, or 43%.

126. GAAP's requirement that the Company write-down its cobalt inventory by no later than December 31, 2001 as a result of the severely reduced market prices of cobalt is further demonstrated by the Company's declining sales and operating profit for cobalt beginning no later than the third quarter of 2001. Indeed, Defendants did not even need to look at the economics of the cobalt market to realize the obvious problems with the Company's overpriced cobalt inventory. The most basic review of the Company's cobalt-related operating results would have

provided essential evidence of the downturn of the cobalt market and, alone, the basis for (and necessity of) a write-down to inventory.

127. In the Company's Form 10-Q for the quarter ended September 30, 2001, OMG stated that the decline in the operating profit of its Base Metals Chemistry Segment was "primarily the result" of "lower cobalt contained volumes across many industries and lower metal prices resulting in lower refining profits." OMG further stated that the decline in cobalt prices and volumes was partially offset by sales of other metals. Thus, the full impact of the declining cobalt prices was being masked by the operating results of the other metals within the segment. The following table, which shows the quarterly net sales and operating profit (in thousands of dollars) for OMG's Base Metals Chemistry Group from September 30, 2000 through September 30, 2002, demonstrates the severe negative impact that the declining market value of cobalt and reduced demand for cobalt products had on the Company's financial results beginning for the quarter ended September 30, 2000:

Quarter Ended	**Net Sales**	**Operating Profit**
September 30, 2000	$233,384	$42,176
December 31, 2000	$232,552	$43,011
March 31, 2001	$235,642	$43,615
June 30, 2001	$216,589	$42,573
September 30, 2001	$174,931	$34,838
December 31, 2001	$165,967	$34,980
March 31, 2002	$196,292	$33,221
June 30, 2002	$215,320	$36,651
September 30, 2002	$212,970	$30,400

These significant results – net sales of the Base Metals Segment for the quarter ended September 30, 2001 dropped by over $60 million, or over 25%, from that reported for the quarter ended March 31, 2001, and operating profit for the quarter ended September 30, 2001 dropped by

approximately $7.5 million, or over 17%, from that reported for the quarter ended March 31, 2001 – alerted Defendants to the fundamental problems affecting OMG's cobalt inventory valuation assumptions. While OMG disclosed the reasons for the declines in segment operating results, Defendants never disclosed that the carrying value of the Company's cobalt inventory was $11.80 per pound, a whopping 43% above market.

128. And these operating results, as severe as they were, were just the tip of the iceberg: Because these results present the operations for the entire Base Metals segment, not just for cobalt products, and because the Company acknowledged that the positive operations for certain of the other components of that segment offset the negative results suffered by cobalt products, the actual affect on OMG's operations of the declining prices in the cobalt market and the reduced demand for cobalt products was even more pronounced. Nevertheless, Defendants neither wrote down OMG's inventory to the lower of cost of market, as was required under GAAP, nor disclosed the magnitude of the losses already accumulated in OMG's inventory.

iv. The SEC's Comments Process Regarding OMG's Lower of Cost or Market Analysis

129. After this lawsuit had been initiated, on August 28, 2003, the SEC Division of Corporate Finance sent a comments letter to OMG regarding the Company's Form 10-K for the fiscal year ended December 31, 2002; the Company's Forms 10-Q for the quarters ended March 31, 2003 and June 30, 2003; and the Company's Forms 8-K filed March 29, 2003 and July 29, 2003. In the SEC's comments letter, among other issues, the SEC questioned the Company's accounting for inventory and timing of the Company's $108.2 million lower of cost or market write-down for the quarter ended September 30, 2002.

130. OMG responded to this comments letter on September 30, 2003. OMG offered the following three reasons for the timing of the write-down: the Company's revised outlook for

cobalt pricing due to the sustained low cobalt price levels; the Company's decision to reduce cobalt production in the fourth quarter of 2002; and the Company's decision to liquidate cobalt inventories to generate cash as part of a restructuring program implemented in the fourth quarter of 2002. With respect to OMG's revised outlook for cobalt pricing, the Company explained that "OMG's outlook for the reference price of cobalt changed from $9-$10 by the end of 2002 to $6-$7/lb for the remainder of 2002 and into 2003" based on, what the Company described as, the "downward trend from May and June, 2002" as well as "the events of September 11th and the aerospace industry's failure to recover."

131. On October 31, 2003, the SEC sent a second letter to OMG with additional comments and questions arising out of OMG's September 30, 2003 response letter. In this letter, in addition to raising several other accounting and inventory issues, the SEC noted that

> OMG's primary reason for the cobalt write-down at September 30, 2002 was the sustained low-level in cobalt prices and the change in the outlook for cobalt prices. Based on the cobalt market prices provided by [OMG], ***it appears to [the SEC] that there were sustained low levels in cobalt pricing potentially as early as the fourth quarter of December 31, 1998***. In addition, it appears that the most significant factor for not recording the write-down prior to September 30, 2002 was due to expected increases in future cobalt prices instead of evaluating current market prices. ***[The SEC does] not believe there is a basis under generally accepted accounting principles to assume that price movement is temporary at interim balance sheet dates pursuant to 14(c) of APB 28 or at year-end, in the absence of actual objective market evidence occurring prior to the issuance of the financial statements. In addition, [the SEC does] not believe that there is a basis under generally accepted accounting principles to assume that a write-down, which would otherwise be necessary based upon current market prices, could be avoided, even if OMG had the ability and intent to hold rather than liquidate inventory.*** Inventory is generally a current asset expected to be realized within the operating cycle or it should be classified as a non-current asset. ***The need to recognize a lower of cost or market adjustment is not discretionary.***

(Emphasis added.)

132. On December 19, 2003, OMG responded to the additional requests and questions raised in the SEC's October 31, 2002 letter. Despite providing numerous purported explanations and details regarding how the Company determined the market price for cobalt; how the Company performed its lower of cost or market analysis; and why the Company felt that the timing of the write-down was appropriate, the SEC still had concerns and again requested further information and explanations from OMG. On February 3, 2004, the SEC sent its third letter regarding this matter to OMG.

133. In its February 3, 2004 letter, the SEC again questioned OMG's basis for believing it was appropriate under GAAP to base its lower of cost or market determination and the consequent timing of its write-down on expected increases in future market prices instead of current market prices. Specifically, the SEC pointed out that the estimated selling price – $14 to $25 per pound – that OMG used for its Kokkola, Finland facility's lower of cost or market analysis at December 31, 2001 represented an estimated selling price of $9 per pound for cobalt. However, based on the cobalt prices cited in Platt's Metal Week, which OMG provided to the SEC, the market price of cobalt was $7.13 per pound and $7.37 per pound at December 2001 and January 2002, respectively. Therefore, ***"if the current market price ($7.13 &$7.37) was used instead of the estimated reference price ($9.00) at December 31, 2001, it appears that a write-down of [OMG's] inventory may have been required based on the results of [OMG's] LCM analysis.***" (Emphasis added.)

134. To date, Defendants have not provided or produced any further information regarding any additional communications between the SEC and OMG or the status of the SEC's comments process.

H. The Widespread Fraudulent Inventory Accounting that Existed at OMG

i. OMG's Culture of Fraud

135. Lead Plaintiff's discovery in this case has uncovered strong evidence indicating that, in addition to the LCM manipulations discussed above, the OM Defendants engaged in numerous other accounting manipulations the inventory figures and calculations, resulting in the overstatement of the reported inventory throughout the Class Period. Lead Plaintiff's review of documents obtained through discovery as well as the testimony of both former and current OMG employees demonstrates that fraudulent accounting permeated numerous aspects of the Company's accounting for inventory. In essence and as discussed more fully below, rather than report the Company's actual inventory balances and accounting results, the Company manipulated the Company's inventory numbers without any sound accounting reason or basis.

136. As acknowledged in Company documents produced in discovery and as corroborated by the deposition testimony of OMG's Director of Operations (Mr. Venesky), OMG referred to its practice of not using actual inventory numbers and inventory balances as its "macro-approach." Mr. Venesky described this "macro-approach" as an approach whereby the OMG Corporate accounting group – including, among others, Defendant Materna and OMG's Corporate Controller (Mr. Holtzhauser) – would record a series of adjustments based upon unsupported "estimates" rather than actual data. Mr. Venesky also referred to this "macro-approach" as the "estimation processes [or] the estimation approach." Thus, according to Mr. Venesky, OMG used unsupported "estimates" instead of actual supportable numbers in the Company's accounting for inventory.

137. Through the Company's "macro-approach" to accounting, OMG senior management implemented a culture of fraud. Internal communications between OMG personnel demonstrate the intentional or reckless disregard for basic accounting principles and Company

policies. For example, in an April 17, 2002 e-mail, OMG's Cost Inventory Manager (Mr. Beaver) informed OMG's Corporate Controller (Mr. Holtzhauser) how the Company could avoid booking a lower of cost or market adjustment for OMG's March 2002 inventory by simply changing the actual number calculated as the average selling price ("asp"). Mr. Beaver wrote to Mr. Holtzhauser, "[a]s you will see using the December asp the schedule is recommending that we book an adjustment. ***If we rethink the asp then that adjustment will go away***." (Emphasis added.) Thereafter, in a June 6, 2002 e-mail, OMG's Director of Operations (Mr. Venesky) provided OMG's Cost Inventory Manager (Mr. Beaver) with instructions on how to manipulate numbers to get desired results. In sum, Mr. Venesky told him to start at the number you want, work backwards from that number and "just lose the difference elsewhere." With respect to the Company's LIFO number, Mr. Venesky specifically explained,

> Get LIFO adjusted to what it should be; go thru the exercises I just mentioned if you find that you have EXCESS after applying the right LIFO and the right other components, then ***'take it back'*** from one of the areas. . . ***My point here is, there are enough 'soft' areas where the difference could be hiding, you're always better off nailing down the 'hard' numbers first then challenging yourself on the reasonableness of the softies.*** Metal contained report: hard. Lab inventory: hardish. Packaging: hard. LIFO: hard, albeit based on some hard and some soft numbers. Totes: hard, with perhaps some soft estimate. I could go on.
>
> ***Simply put, you have a mixed bag of hard and soft inventory numbers, comprising the $140 mill, it's your job to separate the 'fly crap from the pepper,'*** and if it's fly crap, keep it isolated and we'll eventually amortize it all away.

(Emphasis added.)

138. Due to Defendants' eagerness to use "estimates" (rather than verifiable figures) for their inventory figures and calculations to achieve their desired financial results, Defendants' had little or no actual support for their adjustments and final inventory numbers. In addition, these final, "estimated" numbers frequently did not reconcile with the actual inventory numbers

on the Company's general ledger or in the Company's various inventory computer databases, including their BPCS system. For example, OMG's Cost Inventory Manager (Mr. Beaver) adjustment to the beginning of year inventory number achieved the Company's desired LIFO reserve level, but was unsupportable and did not match the Company's records. In this regard, Mr. Beaver informed OMG's Corporate Controller (Mr. Holtzhauser), "I adjusted the LIFO schedule to reflect an almost zero increment. I did this by changing the [beginning of year] number. This changes the index number downward.... ***I will have support for the [end of year] number but the index number will not tie back to the BPCS index report.***"

139. Within the Company, OMG senior management discussed the existence and concealment of the lack of substantive support for OMG's inventory results as a result of their "macro-approach" to accounting. OMG senior management also discussed the lack of reconciliation between their "estimated" and "adjusted" numbers and their actual numbers. As early as January 17, 1999, OMG's Controller of OMG Americas (Mr. Venesky) highlighted the Company's unsupportable inventory numbers for OMG's Treasurer (Mr. Durst). He advised Mr. Durst that,

> Simply put, there are some items that are not included with the INVR01 (or other system inventory reports for that matter) but are part of the whole inventory valuation system...:
>
> > -KCO in transit inventory (billed by KCO before they close their sales, not recovered by us in time.[)]
> >
> > -work in process (***the other most subject[ive] item in the reconciliation, an estimate not substantively valued***)
> >
> > -warehouse resupply in transit (***again, an estimate which lacks substantive support)***
> >
> > -reconciling difference ***(a flat out difference between our compiled inventory and what we publish in the financials.)***

> These dollar amounts have been allocated among the various product lines and the results can be seen by looking at the line item details of the report I sent you this morning...look for WIP and Resupply and out of balance. Like it or not, these are reconciling inventory elements. I'd say, as I have said all along, that there is probably some excess in these estimates, but that is where we are with inventory.

(Emphasis added.)

140. Similarly, in a January 25, 2002 e-mail entitled "[A]uditors," OMG's Director of Operations (Mr. Venesky) warned OMG's Corporate Controller (Mr. Holtzhauser) about the possible repercussions that the Company might suffer as a result of its numerous, unsupported adjustments and their resulting impact on the Company's inventory valuation. Indeed, Mr. Venesky provided the following admonition:

> [A]s a matter of sharing observations with you...EY is clearly spending more time and energy on inventory testing this year. ***Frankly, if it spills over into our other inventory workpapers, the likes of which we just reviewed, you should know that we do have some holes.*** Recall that we had made some assumptions in the past which we have carried over (WIP, resupply and St. George)...the audit report is not strong. I believe the COGS [Cost of Goods Sold] P&L [Profit & Loss] number is solid, ***but we've talked about the BS valuation***. If I didn't mention this, I'd be negligent.

(Emphasis added.)

141. Significantly, Controllers of OMG's various facilities ***disagreed with*** OMG's "macro-approach" and the resulting unsupported corporate adjustments to the financial statements as they pertained to their particular facilities. For instance, OMG's Harjavalta Facility Controller (Jukka Savolainen) stated that he "'was very comfortable with the local inventory values that [Harjavalta] reported, but ***was not so comfortable with the corporate adjustments made to his books.***'" Similarly, OMG's SCM Facility Controller (Ms. Trapnell) testified that she had been asked to do things that she considered to amount to "***questionable***

accounting practices." Ms. Trapnell specifically testified having concerns regarding certain of the costs that OMG Corporate directed her to capitalize as manufacturing costs. For instance, Ms. Trapnell stated that she was directed to capitalize certain engineering costs at the facility which, in her opinion, should not have been capitalized. In addition, OMG's Kokkola Facility Controller (Mr. Peltoniemi) stated that he sometimes discussed OMG Corporate's proposed inventory adjustments and valuations with Defendant Materna and OMG's Corporate Controller (Mr. Holtzhauser). Mr. Peltoniemi explained that "even if he said 'no' to an adjustment, 'they will solve the problem at corporate.'"

142. The circumstances and details of the OM Defendants' willingness to improperly manipulate – or "estimate" – their inventory figures and calculations to achieve their desired financial results has been acknowledged and confirmed by the Company. As a result of this litigation, OMG's Audit Committee is conducting an investigation into inventory accounting issues at the Company. The documents produced in connection with Audit Committee's investigation thus far confirm that OMG made numerous adjustments to their inventory figures and related calculations without any adequate support or basis and, thereafter, reported these adjusted inventory numbers in the Company's financial statements. The Audit Committee's investigation has been conducted with the assistance of the Audit Committee's counsel Weil Gotshal & Manges LLP ("Weil Gotshal") and the Audit Committee's accounting consultants FTI-Ten Eyck Associates ("Ten Eyck"). As of the date of this Complaint, the Audit Committee's investigation is still on-going. However, on March 15, 2004, Weil Gotshal and Ten Eyck presented the Audit Committee with the conclusions reached to date. For this meeting, they created a Power Point Presentation summarizing all of their findings for the Audit

Committee, entitled "OMG, Inc., Presentation to Audit Committee, March 15, 2004" ("Power Point Presentation").

ii. The Details of Defendants' Improper and Unsupportable Inventory Adjustments

143. According to OMG's SCM Facility Controller (Ms. Trapnell), each OMG facility was in charge of its own plans and financials. The facility would compile and calculate its own financial information, after which it would report its results to OMG Corporate headquarters in Cleveland, Ohio. Once OMG Corporate – including the Defendants – received the facilities' financial packages, they would adjust them as they desired. Specifically, Defendants adjusted, "estimated" and included on the Company's consolidated balance sheet values for the following categories of inventory: in-transit inventory; WIP inventory; warehouse resupply inventory; and waste and by-product inventory. OMG Corporate – including the Defendants – also adjusted the submitted inventory results to include an excess of manufacturing overhead and costs.

144. As discussed in more detail below, certain of these estimated quantities and capitalized costs were non-existent, many lacked substantive support and some – if not all – were made in the face of dissent by the particular facilities' controllers.

OMG's St. George Facility

145. OMG acquired its St. George, Utah facility (referred to as both "Apex" and "St. George") in 1995. St. George – a tungsten reclamation/cobalt recycling and production facility – proved to be a losing acquisition for the Company. From the time of its acquisition in 1995 until its closure in late 2002, St. George was a constantly struggling and unprofitable facility for the Company. It generated high operating losses and was regularly "way behind budget."

146. St. George's inventory valuation and inventory count was also improper and unsupportable. Based on information contained in both the Power Point Presentation as well as

other Company documents, it is clear that the Company improperly "estimated" vast amounts of St. George's inventory. According to the Audit Committee's investigation, the Company's work papers and documentation supports only $5.8 million of the $28.2 million – ***only 21%*** – of the inventory balance that St. George reported at December 30, 2001. This $22.4 million difference represents "a corporate topside adjustment [which] is unsupported and appears to be unsupportable." Specifically, the Audit Committee determined that this $22.4 million difference was mainly attributable to "the alleged value of metal in sludge ponds and for additional full absorption of processing costs." In other words, the Company falsely claimed that it somehow had millions of dollars of cobalt in waste ponds. The so-called "inventory" in the sludge ponds was never recovered. In fact, it appears that St. George never even drained its sludge ponds or determined how much it would cost to do so.

147. The unsupportable nature of St. George's inventory is confirmed by OMG's Director of Operations (Mr. Venesky), who addressed this issue in an e-mail dated May 28, 2002. Mr. Venesky explained ***"[n]ow we're holding an inventory position that in all likelihood doesn't exist.*** " In a further explanation of this inventory discrepancy at the St. George facility, Mr. Venesky continued by saying "[t]his was an area where we took liberties." Such "liberties," according to Mr. Venesky, included the recycling of tungsten and tungsten scrap, ***"excessive cobalt waste to pond (to be recovered)"*** and generally taking advantage of the high market values in some of these areas to assert unjustifiably high carrying costs for these components. In short, the Company took numerous "liberties" in order to claim that it had tens of million of dollars of inventory that did not exist.

148. In sum, Defendants' estimations and adjustments to St. George's inventory resulted in an overstatement of the Company's annual profits by $7.9 million in 1999; $9.8 million in 2000; $4.7 million in 2001; and $1.6 million in 2002.

OMG's Midland Facility

149. After purchasing the Midland, Michigan facility (the "Midland" facility) in 1998, OMG allowed Dow Corporation ("Dow") to administer it. From 1998 to 2000, although OMG owned the Midland facility and included it as part of its financial statements, OMG did not take any physical inventory counts at the facility and instead, relied solely on monthly counts provided by Dow. In fact, the Company's accountants simply transferred – without ever checking – Dow's numbers into the Company's BPCS system. Finally, in 2000, two years after the acquisition, OMG actually began performing the Midland physical inventory counts.

150. During the years that OMG was not involved in Midland's physical inventory count, OMG corporate improperly accounted for the cost of having Dow perform the facility's physical inventory counts. According to OMG's Cost Inventory Manager (Mr. Beaver), in March 1999, he discovered that the Company had been double counting Midland's full absorption costs for the year-ended 1998. This double counting error totaled $2.75 million and substantially overstated the facility's inventory value.

151. According to Mr. Beaver, after he discovered this error, he informed the Controller of OMG Americas (Mr. Venesky) of this fact, but, based on a decision made by Defendant Materna and OMG's Corporate Controller (Mr. Holtzhauser), the Company decided not to correct this $2.75 million mistake – at least not until later (years later, as it turned out). This decision is confirmed by Mr. Venesky, who described the situation in an email as follows: "[T]he total Midland is simply a costing valuation error that we decided at the time to NOT pull back into the P&L [profit and loss statement] . . . Point is, we ***consciously*** opted to NOT correct

it, since it was already reflected in the system." (Emphasis added.) In this instance, later meant the Company's fourth quarter 2002 Restructuring Charge, which occurred three years after OMG's Cost Inventory Manager (Mr. Beaver) discovered the double counting.

152. By the time OMG wrote-off this error as part of its Restructuring Charge, the impact of this false accounting had increased by $500,000 to $3.25 million. This $500,000 increase was attributable to an adjustment that OMG's Cost Inventory Manager (Mr. Beaver) made to Midland's financial statements during the second quarter of 2002. In an e-mail to Mr. Pierce, Mr. Beaver underscored the questionable nature of this $500,000 adjustment. He wrote, "Attached is ***a shot at justifying*** the $500,000 Midland inventory reduction."

153. While Midland was in operation, Defendants' estimations and adjustments to its inventory resulted in an overstatement of the Company's annual profits by $1.4 million in 1999 and by $.5 million 2002.

154. On November 6, 2002, the Company announced the shut-down of Midland.

OMG's Tacow Facility

155. Tacow was a facility that OMG acquired in July 1998, which was originally located in Elmira, New York and then moved to Westlake, Ohio after the acquisition. In its SEC filings, the Company describes Tacow as a Base Metal Administration and Research and Development facility.

156. OMG's Cost Inventory Manager (Mr. Beaver) has testified that OMG never took any physical inventory counts at Tacow. Mr. Beaver stated that OMG determined the facility's inventory by valuing out the perpetual inventory that existed when OMG bought the facility. However, Mr. Beaver did not know whether OMG ever did anything to verify the inventory count at the date of its purchase. In addition, according to information provided in connection with the Audit Committee's investigation, "no 'pounds' of any material or product were

associated with the 'book' inventory" at Tacow as of late 2002. This is confirmed by Company documents which address the fact that Tacow lacked an accurate inventory accounting and valuation system.

157. However, despite never having performed a physical inventory count and not having an accurate inventory valuation system, OMG still recorded $1.9 million worth of inventory for Tacow. Ultimately, the facility took a $1.9 million write-down for this unsupportable inventory in the fourth quarter 2002.

OMG's Kokkola Facility

158. The Kokkola facility in Finland is part of the Company's Base Metals Unit and manufactures cobalt, copper and nickel. The Audit Committee, based on the preliminary results of its investigation, concluded that, at December 2002, the Kokkola facility had an unsupportable balance on its financial statements of more than $35 million. In fact, for the entire period within the Class Period, 100% of Kokkola's reported balances were unsupportable. Kokkola's yearly break-down of unsupportable balances is as follows:

Annual Analysis of Supportable vs. Currently Unsupported Adjustments
$(000)

	OMG's Balance at Dec-00	Supportable Balance at Dec-00	Unsupported Balance at Dec-00	OMG's Balance at Dec-01	Supportable Balance at Dec-01	Unsupported Balance at Dec-01	OMG's Balance at Dec-02	Supportable Balance at Dec-02	Unsupported Balance at Dec-02
Kokkola Additional DC & OH Estimates	10,200	-	10,200	17,255	-	17,255	20,755	-	20,755
Kokkola Precious Metal Contents of Cobalt	2,000	-	2,000	2,000	-	2,000	2,000	-	2,000
Kokkola Copper Overhead Year-to-Year	1,000	-	1,000						
Kokkola Co. CU, Ni Recovery Adjustment	2,300		2,300	4,900		4,900	6,400	-	6,400
Kokkola Capitalization of Inventory			-	2,229		2,229	2,229		2,229

	OMG's Balance at Dec-00	Supportable Balance at Dec-00	Unsupported Balance at Dec-00	OMG's Balance at Dec-01	Supportable Balance at Dec-01	Unsupported Balance at Dec-01	OMG's Balance at Dec-02	Supportable Balance at Dec-02	Unsupported Balance at Dec-02
Supplies Estimates									
Standardize FIFO Raw Material Margin			-				3,800		3,800
Total Kokkola	**15,500**	**-**	**15,500**	**26,384**	**-**	**26,384**	**35,184**	**-**	**35,184**

159. These unsupportable balances are the result of improper adjustments to Kokkola's financial figures made by the OM Defendants, or because of their reckless disregard for facts indicating such manipulation. For example, OMG recorded an upward adjustment of approximately $5 million for Kokkola's direct costs and of approximately $17 million for Kokkola's overhead – beyond the costs recorded by the facility itself. However, according to information provided by OMG's Kokkola Facility Controller (Mr. Peltoniemi), the Kokkola facility performed physical inventory counts on a monthly basis and accounted for all of its own manufacturing costs locally. Kokkola also maintained detailed records of its costs and cost accounting calculations. Despite the facility's comprehensive and itemized records, OMG nevertheless made improper upward adjustments – adjustments that were made even when Mr. Peltoniemi disagreed with them and voiced his concerns to Defendant Materna and OMG's Corporate Controller (Mr. Holtzhauser). When questioned about these adjustments in connection with the Audit Committee's investigation, Defendant Miklich was not able to provide any explanation for using this "macro" approach when the facility maintained such extensive cost accounting records.

160. In addition, these improper and unsupportable adjustments to Kokkola's inventory balances were also logically flawed. The formula used by Defendants in adding the additional direct costs and overhead adjustments to Kokkola's reported figures assumed that the facility's

WIP should be allocated the same amount of manufacturing costs as its finished goods. Defendants applied this logically flawed formula even though the combined Kokkola and Harjavalta's inventories consisted of approximately 80% WIP and 20% finished goods for 1999-2001. As discussed above, there was no supportable basis for the Company's upward adjustment for Kokkola's direct costs and overhead.

161. The unsupportable nature of OMG's adjustments to Kokkola's financials is confirmed by Company documents. In an e-mail dated March 22, 2001, Defendant Materna instructed OMG's Kokkola Facility Controller (Mr. Peltoniemi) and OMG's President of OMG Finland and Group Vice-President of Raw Materials and Refining (Antii Aaltonen), to make $3 million of inventory "recovery adjustments" to Kokkola's February 2001 financial statements, including increasing cobalt by $2.25 million; nickel by $500,000; and copper by $250,000 to cover losses that the facility had incurred. Although the Company issued this directive, Mr. Peltoniemi did not record the $3 million in inventory recovery adjustments. On April 13, 2001, after learning that his explicit instructions to add this adjustment had been disregarded, Defendant Materna again instructed Mr. Peltoniemi to make this "recovery adjustment." This time, however, Defendant Materna assigned OMG's Corporate Controller (Mr. Holtzhauser) to supervise the situation and "work with [Mr. Peltoniemi] on these issues."

162. In sum, OMG's improper estimations and adjustments to Kokkola's inventory resulted in an overstatement of the Company's annual profits by $2.75 million in 1999; $1.85 million in 2000; $10.88 million in 2001; and $8.8 million in 2002.

163. Ultimately, the Company wrote-off these adjustments of direct costs and overhead. In total, between its Kokkola and Harjavalta facilities, OMG wrote-off $8.26 million

in 2002, including, $6.31 million in its third quarter 2002 Lower of Cost or Market Charge and $1.95 million in its fourth quarter 2002 Restructuring Charge.

OMG's Harjavalta Facility

164. Harjavalta is the Company's production facility for nickel in Finland. The Company has acknowledged that at December 2002, the Harjavalta facility had an unsupportable balance on its financial statements of $6.2 million. In fact, for the time encompassed by the Class Period the Company has acknowledged that 100% of Harjavalta's reported balances were unsupportable. Harjavalta's yearly break-down of unsupportable balances is as follows:

Annual Analysis of Supportable vs. Currently Unsupported Adjustments
$(000)

$(000)	OMG's Balance at Dec-00	Supportable Balance at Dec-00	Unsupported Balance at Dec-00	OMG's Balance at Dec-01	Supportable Balance at Dec-01	Unsupported Balance at Dec-01	OMG's Balance at Dec-02	Supportable Balance at Dec-02	Unsupported Balance at Dec-02
Harjavalta Additional DC & OH Estimates	5,230	-	5,230	4,845	0	4,845	5,459	-	5,459
Harjavalta Capitalization of Inventory Supplies	-	-	-	-	-	-	750	-	750
Total Harjavalta	**5,230**	**-**	**5,230**	**4,845**	**-**	**4,845**	**6,209**	**-**	**6,209**

165. These unsupportable balances are the result of improper adjustments to Harjavalta's financial figures made by the OM Defendants, or because of their reckless disregard for facts indicating such manipulation. OMG made these adjustments despite the fact that Harjavalta (1) performed physical inventory counts on a monthly basis and (2) utilized full absorption costing in its inventory valuations. Full absorption costing is an inventory valuation method that accounts for all manufacturing costs and assigns these costs to the units of inventory produced. As listed above, examples of such manufacturing costs are electricity, steam, heat, water, packaging, insurance, rent and travel. Harjavalta maintained detailed records of its costs and cost accounting calculations. Even with the facility's extensive records, the OM Defendants

nevertheless made upward adjustments – adjustments that OMG's Harjavalta Facility Controller (Mr. Savolainen) stated he "was not so comfortable with."

166. In addition, the adjustments made to Harjavalta's inventory balances – like the adjustments they made to Kokkola's inventory balances – were "logically flawed." The formula used by Defendants in adding the additional direct costs and overhead adjustments to Harjavalta's reported figures assumed that the facilities WIP should be allocated the same amount of manufacturing costs as its finished goods. As summarized in the table above, the Company has acknowledged that there was no supportable basis for the Company's upward adjustment of Harjavalta's direct costs and overhead.

167. In sum, Defendants' improper estimations and adjustments to Harjavalta's inventory resulted in an overstatement of the Company's annual profits by $5.23 million in 2000 and $1.36 million in 2002.

168. Ultimately, the Company wrote-off these adjustments of direct costs and overhead. In total, between the Kokkola and Harjavalta facilities, OMG wrote-off $8.26 million in 2002, including, $6.31 million in its third quarter 2002 Lower of Cost or Market Charge and $1.95 million in its fourth quarter 2002 Restructuring Charge.

OMG's Franklin Facility

169. OMG's Franklin facility, located in Franklin, Pennsylvania ("Franklin") manufactured carboxylates, salts and barium products. However, despite Franklin's processing and manufacturing functions, OMG could not – and did not – accurately track inventory.

170. The Company used its BPCS system to track inventory and cost data at the Franklin facility. The BPCS system, however, did not accurately maintain data for WIP and in-transit inventory. Due to this system flaw, the OM Defendants "estimated," or recklessly disregarded facts indicating that estimations had been made to Franklin's WIP inventory

balances. These estimations – multi-million dollar estimations – were done without any factual basis or support. In fact, Franklin facility personnel explained that they conducted physical inventory counts annually on June 30. And, at June 30 of each year, the facility was closed down for routine maintenance and repairs. As result of this shut-down, "there was little or no WIP maintained at the facility during this time." Similarly, the plant was also closed annually for maintenance and vacation at the end of the year, during the holiday season. Despite this lack of WIP inventory, OMG improperly reported large WIP balances on their books for this period.

171. Similarly, Defendants estimated, or recklessly disregarded facts indicating that estimations had been made to Franklin's inventory that was in-transit to public warehouses and consignees ("in-transit"). Prior to 2000, OMG's BPCS system did not accurately track in-transit inventory. The OM Defendants used this system shortcoming as a basis for making large off-report "estimations" and valuations of Franklin's in-transit inventory. The OM Defendants did not have any documentary support for these estimations. In late 1999 or early 2000, the BPCS system was fixed and, thereafter, was able to accurately record and report Franklin's in-transit numbers inventory. Despite this repair, the OM Defendants continued to make unsupportable, upward adjustments, or recklessly disregarded facts indicating that unsupportable adjustments were still being made to Franklin's in-transit inventory.

172. In sum, as noted in the chart below, Franklin's unsupportable adjustments totaled $12.9 million for 2000; $14.3 million for 2001; and $12.7 million for 2002. The actual break-down of Franklin's unsupportable inventory balances are as follows:

Annual Analysis of Supportable vs. Currently Unsupported Adjustments
$(000)

	OMG's Balance at Dec-00	Supportable Balance at Dec-00	Unsupported Balance at Dec-00	OMG's Balance at Dec-01	Supportable Balance at Dec-01	Unsupported Balance at Dec-01	OMG's Balance at Dec-02	Supportable Balance at Dec-02	Unsupported Balance at Dec-0
Franklin Off-	6,010	100	5,910	5,899	100	5,799	5,899	100	5,799

	OMG's Balance at Dec-00	Supportable Balance at Dec-00	Unsupported Balance at Dec-00	OMG's Balance at Dec-01	Supportable Balance at Dec-01	Unsupported Balance at Dec-01	OMG's Balance at Dec-02	Supportable Balance at Dec-02	Unsupported Balance at Dec-0
Report WIP									
Franklin Off-Report Finished Goods in Transit	4,450	-	4,450	4,418	-	4,418	4,418	-	4,418
Franklin Full Absorption	4,210	1,685	2,525	5,959	1,843	4,116	4,652	2,132	2,520
Franklin Out of Balance	-	-	-	-	-	-		-	-
Franklin Total	14,670	1,785	12,885	16,276	1,943	14,333	14,969	2,232	12,737

173. Ultimately, OMG wrote-off these unsupportable estimations of WIP and in-transit inventory in its third quarter 2002 Lower of Cost or Market Charge and its fourth quarter 2002 Restructuring Charge.

VI. THE OM DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

A. OMG Announces Inflated 1999 Fourth Quarter and Year End Results

174. On January 27, 2000, the first day of the Class Period, OMG issued a press release announcing its financial results for the fourth quarter and year ended December 31, 1999. The press release, which was carried over PRNewswire, reported that net income for the fourth quarter increased to $14.5 million, or $0.60 per diluted share from $12.9 million, or $0.53 per diluted share, for the same period in 1998, and that net income for the year ended December 31, 1999 increased 15.4% to $55.8 million, or $2.30 per diluted share, from $48.4 million, or $2.05 per diluted share, reported in 1998. Income from operations also increased significantly from $86.9 million in 1998 to $98.7 million in 1999. In the press release, OMG reported as "Current Assets" inventories in the amount of approximately $335 million, an increase from the $283 million reported in 1998.

175. For the reasons set forth above, however, the Company's reported net income, net income per share, operating profit and inventories were materially overstated in violation of GAAP because the Company made unsupportable adjustments to its inventory numbers and capitalization calculations for its facilities, which resulted in the overstatement of the reported inventory on the Company's balance sheets throughout the Class Period.

176. Specifically, the financial and inventory statements reported in the January 27, 2000 press release were materially false and misleading because, as set forth above, Defendants Mooney and Materna, among other OMG senior executives, knew or recklessly disregarded that improper adjustments, estimates, and unsupportable values for in-transit inventory, WIP inventory, warehouse resupply inventory, and waste and by-product inventory served as part of the basis for the Company's stated financial results. Defendants Mooney and Materna, among other OMG senior and executive employees also knew, or recklessly disregarded facts indicating that the Company's stated financial results were based on an excess of manufacturing overhead and costs in the Company's reported inventory values. Thus, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known, that the reported values for OMG's inventory were unsubstantiated and unsupportable.

177. In particular, the OM Defendants knew, or, but for their reckless disregard, should have known, that the Company's reported values for its facilities' inventories had been estimated instead of physically counted and adjusted without any actual support such that the total value of the Company's inventories were overstated, and, thus, materially false and misleading when reported. Additionally, OMG's improper adjustments to and estimations of inventory affected the Company's overall profitability. On a facility basis, the earnings impact of these inventory manipulations were as follows:

- The Franklin Facility's Inventory: overstated by approximately $4.5 million
- The St. George Facility's Inventory: overstated by approximately $7.9 million
- The Midland Facility's Inventory: overstated by approximately $1.4 million
- The Tacow Facility's Inventory: understated by approximately $.42 million
- The Kokkola Facility's Inventory: overstated by approximately $2.75 million

178. Thus, the OM Defendants knew, or, but for their reckless disregard, should have known that by overstating the Company's inventories, the Company's reported earnings of $55.8 million were overstated by $16.2 million, or, by approximately 41%. On a per share basis, OMG's reported earnings of $2.30 per diluted share were overstated by approximately $.48 per share. Accordingly, OMG's net income, net income per share, operating profit and inventories were materially false and misleading as announced on January 27, 2000.

B. OMG Files Its 1999 Form 10-K with the SEC

179. On March 23, 2000, OMG filed with the SEC its Form 10-K for the year ended December 31, 1999 (the "1999 Form 10-K"). The 1999 Form 10-K was signed by Defendants Mooney, Materna and Miklich among other OMG executive employees. The 1999 Form 10-K confirmed and reiterated the results for the Company's net income, net income per diluted share, operating profit and inventories for the year ended December 31, 1999, as announced in the Company's January 27, 2000 press release.

180. For the reasons set forth above, the financial results and inventory values reported in the 1999 Form 10-K were materially false and misleading.

C. OMG Announces Inflated 2000 First Quarter Results

181. On April 25, 2000, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the first quarter ended March 31, 2000. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased to $15.2 million, or $.63 per

diluted share, from $13 million, or $.54 per diluted share, in the same period in the prior year, representing an increase of 16.9%. The Company also reported income from operations of $27.04 million, an increase of almost 19% from the prior year. Under the Company's "Current Assets," the press release represented inventories for the first quarter of 2000 to be $333,086 million.

182. For the reasons set forth above, the April 25, 2000 press release was materially false and misleading because it was based on unsupportable values for in-transit inventory; WIP inventory; warehouse resupply inventory; waste and by-product inventory; and an excess of manufacturing overhead and costs in the Company's reported inventory values.

183. The OM Defendants knew, or, but for their reckless disregard, should have known, their reported values for OMG's inventory were unsubstantiated and unsupportable. In particular, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known, that the Company's reported values for its facilities' inventories had been estimated instead of physically counted as well as adjusted without any actual support such that the total value of the Company's inventories were materially false and misleading when reported. Those facilities include:

- The Franklin Facility's Inventory
- The St. George Facility's Inventory
- The Midland Facility's Inventory
- The Tacow Facility's Inventory
- The Kokkola Facility's Inventory
- The Harjavalta Facility's Inventory

184. At the time of Company's April 25, 2000 announcement, the shares of OMG increased to $43.50 per share.

D. OMG Files Its 2000 First Quarter Form 10-Q with the SEC

185. On May 12, 2000, OMG filed its Form 10-Q for the first quarter ended March 31, 2000 (the "2000 First Quarter Form 10-Q"). The 2000 First Quarter Form 10-Q confirmed and reiterated the results for the Company's net income, income per diluted share, operating profit and inventories for the quarter ended March 31, 2000, as announced in the Company's April 25, 2000 press release. The 2000 First Quarter Form 10-Q was signed by Defendant Materna.

186. For the reasons set forth above, the financial results and inventory values reported in the 2000 First Quarter Form 10-Q were materially false and misleading.

E. OMG Announces Inflated 2000 Second Quarter Results

187. On July 25, 2000, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the second quarter ended June 30, 2000. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased 31% to $18.4 million, or $.76 per diluted share, from $14 million, or $.58 per diluted share for the same period in the prior year. The Company also reported income from operations of $36.9 million, an increase of almost 50% from the prior year. The press release stated as "Current Assets" inventories for the second quarter of 2000 of $367,677 million.

188. For the reasons set forth above, the financial results set forth in the July 25, 2000 press release were materially false and misleading.

189. On July 25, 2000, OMG shares closed at $45.94 per share. OMG continued to trade in the range of $46.00 to $47.68 for the month of August 2000.

F. OMG Files Its 2000 Second Quarter Form 10-Q with the SEC

190. On August 14, 2000, the Company filed its Form 10-Q for the quarter ended June 30, 2000 (the "2000 Second Quarter Form 10-Q"). The 2000 Second Quarter Form 10-Q

confirmed and reiterated the financial results for the Company's net income, earnings per share, operating profit and inventories, as announced in the Company's July 25, 2000 press release. The 2000 Second Quarter Form 10-Q was signed by Defendant Materna.

191. For the reasons set forth above, the financial results and inventory values reported in the 2000 Second Quarter Form 10-Q were materially false and misleading.

G. OMG Announces Inflated 2000 Third Quarter Results

192. On October 24, 2000, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the third quarter ended September 30, 2000. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased 30% to $18.6 million, or $.77 per diluted share, from $14.3 million, or $.59 per diluted share for the same period in the prior year. The Company also reported income from operations of $37.5 million, an increase of 45% from the prior year. The press release reported as "Current Assets" inventories for the third quarter of 2000 of $373,569 million.

193. For the reasons set forth above, the financial results set forth in the October 24, 2000 press release were materially false and misleading.

194. On October 24, 2000, OMG shares closed at $44.38 per share. OMG continued to trade in the range of $42.88 to $56.38 for the remainder of 2000.

H. OMG Files Its 2000 Third Quarter Form 10-Q with the SEC

195. On November 14, 2000, the Company filed its Form 10-Q for the quarter ended September 30, 2000 (the "2000 Third Quarter Form 10-Q"). The 2000 Third Quarter Form 10-Q confirmed and reiterated the financial results for the Company's net income, earnings per share, operating profit and inventories, as announced in the Company's October 24, 2000 press release. The 2000 Third Quarter Form 10-Q was signed by Defendant Materna.

196. For the reasons set forth above, the financial results and inventory values reported in the 2000 Third Quarter Form 10-Q were materially false and misleading.

I. OMG Announces Inflated 2000 Fourth Quarter and Year End Results

197. On January 30, 2001, OMG issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2000. The press release, which was carried over PRNewswire, reported that income for the fourth quarter increased 33% to $19.3 million, or $0.79 per diluted share from $14.5 million, or $0.60 per diluted share, for the same period in 1999, and that income for the year ended December 31, 2000 increased 28% to $71.5 million, or $2.95 per diluted share, from $55.8 million, or $2.30 per diluted share, reported in 1999. Income from operations also increased significantly from $98,737 million in 1999 to $138,493 million in 2000. In the press release, OMG reported as "Current Assets" inventories in the amount of approximately $393,098 million, an increase from the $332,810 million reported in 1999.

198. For the reasons set forth above, however, the Company's reported net income, net income per share, operating profit and inventories were materially overstated in violation of GAAP because the Company made unsupportable adjustments to its inventory numbers and capitalization calculations at its particular facilities, which resulted in the overstatement of the reported inventory on the Company's balance sheets throughout the class period. In particular, Defendants Mooney and Materna knew or, but for their reckless disregard, should have known, that the Company's reported values for the following facilities' inventories had been estimated instead of physically counted and adjusted without any actual support such that the total value of the Company's inventories were overstated, and, thus, materially false and misleading when reported. Additionally, OMG's adjustments to and estimations of inventory affected the Company's overall profitability. On a facility basis, the earnings impact of these inventory manipulations were as follows:

- The Franklin Facility's Inventory: understated by approximately $3.5 million
- The St. George Facility's Inventory: overstated by approximately $9.7 million
- The Midland Facility's Inventory: understated by approximately $.360 million
- The Tacow Facility's Inventory: overstated by approximately $2.1 million
- The Kokkola Facility's Inventory: overstated by approximately $1.8 million
- The Harjavalta Facility's Inventory: overstated by approximately $5.2 million

199. Thus, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known that by overstating the Company's inventories, the Company's reported earnings of $71.5 million were overstated by $14.9 million, or, by approximately 26%. On a per share basis, OMG's reported earnings of $2.95 per diluted share were overstated by approximately $.45 per share. Accordingly, OMG's net income, net income per share, operating profit and inventories were materially false and misleading as announced on January 30, 2001.

200. On January 30, 2001, OMG shares closed at $48.71 per share.

J. OMG Files Its 2000 Form 10-K with the SEC

201. On March 20, 2001, OMG filed with the SEC its Form 10-K for the year ended December 31, 2000 (the "2000 Form 10-K"). The 2000 Form 10-K was signed by Defendants Mooney, Materna and Miklich among other OMG executive employees. The 2000 Form 10-K confirmed and reiterated the results for the Company's net income, net income per diluted share, operating profit and inventories for the year ended December 31, 2000, as announced in the Company's January 30, 2001 press release.

202. For the reasons set forth above, the financial results and inventory values reported in the 2000 Form 10-K were materially false and misleading.

K. OMG Announces Inflated 2001 First Quarter Results

203. On April 24, 2001, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the quarter ended March 31, 2001. The Company reported "record net income and record earnings per diluted share." Specifically,

the Company reported that net income increased to $19.6 million, or $.81 per diluted share, from $15.2 million, or $.63 per diluted share, in the same period in the prior year, representing an increase of almost 30%. The Company also reported income from operations of $38.8 million, an increase of almost 43% from the prior year. The press release represented as "Current Assets" inventories for the first quarter of 2000 to be $393,389 million.

204. For the reasons set forth above, the April 24, 2001 press release was materially false and misleading.

205. In the day following the Company's April 24, 2001 announcement, the shares of OMG increased from $50.00 per share to $51.40 per share.

L. OMG Files Its 2001 First Quarter Form 10-Q with the SEC

206. On May 14, 2001, OMG filed its Form 10-Q for the first quarter ended March 31, 2001 (the "2001 First Quarter Form 10-Q"). The 2001 First Quarter Form 10-Q confirmed and reiterated the results for the Company's net income, income per diluted share, operating profit and inventories for the quarter ended March 31, 2001, as announced in the Company's April 24, 2001 press release. The 2001 First Quarter Form 10-Q was signed by Defendant Materna.

207. For the reasons set forth above, the financial results and inventory values reported in the 2001 First Quarter Form 10-Q were materially false and misleading.

M. OMG Announces Inflated 2001 Second Quarter Results

208. On July 24, 2001, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the second quarter ended June 30, 2001. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased 10% to $20.2 million, or $.83 per diluted share from $18.4 million, or $.76 per diluted share for the same period in the prior year. The Company also reported income from operations of $38.6 million, an increase from the $36.9

million reported in the prior year. The press release reported as "Current Assets" inventories for the second quarter of 2001 of $399,912 million.

209. For the reasons set forth above, the financial results set forth in the July 24, 2001 press release were materially false and misleading.

210. On July 24, 2001, OMG shares closed at $56.00 per share. OMG continued to trade in the range of $54.00 to $65.00 for the months of August and September 2001.

N. OMG Files Its 2001 Second Quarter Form 10-Q with the SEC

211. On August 8, 2001, the Company filed its Form 10-Q for the quarter ended June 30, 2001 (the "2001 Second Quarter Form 10-Q"). The 2001 Second Quarter Form 10-Q confirmed and reiterated the financial results for the Company's net income, earnings per share, operating profit and inventories, as announced in the Company's July 24, 2001 press release. The 2001 Second Quarter Form 10-Q was signed by Defendant Materna.

212. For the reasons set forth above, the financial results and inventory values reported in the 2001 Second Quarter Form 10-Q were materially false and misleading.

O. OMG Announces Inflated 2001 Third Quarter Results

213. On October 30, 2001, OMG issued a press release, which was carried over PRNewswire, announcing the Company's financial results for the third quarter ended September 30, 2001. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased from 18.6 million, or $.77 per diluted share to $20.5 million, or $.84 per diluted share. The Company also reported income from operations of $46.5 million, an increase of 24% from the prior year. The press release stated inventories for the third quarter of 2001 of $746,492 million, an increase of almost 90% from the prior year.

214. For the reasons set forth above, the financial results set forth in the October 30, 2001press release were materially false and misleading.

215. On October 30, 2001, OMG shares closed at $59.29 per share.

P. OMG Files Its 2001 Third Quarter Form 10-Q with the SEC

216. On November 14, 2001, the Company filed its Form 10-Q for the quarter ended September 30, 2001 (the "2001 Third Quarter Form 10-Q"). The 2001 Third Quarter Form 10-Q confirmed and reiterated the financial results for the Company's net income, earnings per share, operating profit and inventories, as announced in the Company's October 30, 2001 press release. The 2001 Third Quarter Form 10-Q was signed by Defendant Materna.

217. For the reasons set forth above, the financial results and inventory values reported in the 2001 Third Quarter Form 10-Q were materially false and misleading.

Q. OMG Announces Inflated 2001 Fourth Quarter and Year End Results

218. On February 5, 2002, OMG issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2001. The press release, which was carried over *PRNewswire*, reported that income for the fourth quarter increased to $20 million, or $0.81 per diluted share from $19.3 million, or $0.79 per diluted share, for the same period in 2000, and that income for the year ended December 31, 2001 increased 12.2% to $80.2 million, or $3.29 per diluted share, from $71.5 million, or $2.95 per diluted share, reported in 2000. Income from operations also increased significantly from $138 million in 2000 to $173 million in 2001. In the press release, OMG reported as "Current Assets" inventories in the amount of approximately $815 million, an increase of more than 100%, from the $393,849 million of inventories the Company reported for this period in 2000.

219. The February 5, 2002 press release also included financial information for the Company's Base Metals Chemistry segment, which includes the Company's cobalt operations.

For this segment, the Company reported operating profit for the fourth quarter of $35 million, a decrease of 18.7% compared to the same period in 2000. For the year ended December 31, 2001, the Company reported an operating profit of $157 million in the Base Metals Chemistry segment, which represented a decline from the $158.4 million in operating profits in 2000. The Company attributed the decline primarily to "global economic weakness resulting in lower cobalt refining profits." OMG also reported a decline in net sales of 28%, and represented that the decline was primarily the result of "lower selling prices, as cobalt, nickel and copper raw material market prices decreased compared to the same period in 2000."

220. For the reasons set forth above, however, the Company's reported net income, net income per share, operating profit and inventories were materially overstated in violation of GAAP because the Company made unsupportable adjustments to its inventory numbers and capitalization calculations at its particular facilities, which resulted in the overstatement of the reported inventory on the Company's balance sheets throughout the class period. In particular, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known, that the Company's reported values for the following facilities' inventories had been estimated instead of physically counted and adjusted without any actual support such that the total value of the Company's inventories were overstated, and, thus, materially false and misleading when reported. Additionally, OMG's adjustments to and estimations of inventory affected the Company's overall profitability. On a facility basis, the earnings impact of these inventory manipulations were as follows:

- The Franklin Facility's Inventory: overstated by approximately $1.4 million
- The St. George Facility's Inventory: overstated by approximately $4.7 million
- The Tacow Facility's Inventory: understated by approximately $.68 million
- The Kokkola Facility's Inventory: overstated by approximately $10.9 million
- The Harjavalta Facility's Inventory: understated by approximately $.39 million

221. Thus, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known that by overstating the Company's inventories, the Company's reported earnings of $80.2 million were overstated by $16.0 million or, by approximately 25%. On a per share basis, OMG's reported earnings of $3.28 per diluted share were overstated by approximately $.47 per share.

222. In addition, for the reasons set forth above, the Company's reported net income, net income per share, operating profit and inventories were also materially overstated in violation of GAAP because the Company failed to write-down its cobalt inventory to the lower of cost or market, which, at December 31, 2001 and February 5, 2002, was (and had been for some time) substantially below the actual average cost – $11.80 per pound – of OMG's cobalt inventory.

223. Specifically, the financial and other statements reported in the February 5, 2002 press release were materially false and misleading because, as set forth above, Defendants Mooney and Materna, among other OMG senior and executive employees, regularly received information relating to the price of cobalt, and at least monthly information contained in the Monthly Summaries that reflected the Company's worldwide cobalt sales and inventories. Thus, Defendants Mooney and Materna knew, or, but for their reckless disregard, should have known, that market prices for cobalt as of December 31, 2001 through the date of the press release were approximately 40% lower than the $11.80 average price of OMG's cobalt inventory, and had been at levels below $11.80 for at least 10 months. Defendants Mooney and Materna also knew or recklessly disregarded that worldwide demand for cobalt was contracting, and that there was an oversupply of cobalt in the marketplace. Indeed, the horrid state of the cobalt market and its dismal future was no secret. Cobalt analysts at Metal Bulletin stated as early as May 2001 that "[c]obalt prices [had] collapse[d] as the weakening economic landscape chokes demand." Given

the sustained fall in cobalt prices throughout the last ten months of 2001 and continuing through the date of the press release, and the bleak outlook for the future of the cobalt market, GAAP required Defendants to write-down the value of OMG's cobalt inventory. However, Defendants made a conscious decision not to take such action, or recklessly disregarded this information, because, as Defendants knew, the write-down required by GAAP would have an extremely negative impact on OMG's net income, net income per share and operating profit, and would have caused OMG to violate at least one of its debt covenants. In summary, the failure to disclose the true impact that "lower cobalt refining profits" and depressed prices of cobalt already had on the Company's balance sheet and income statement rendered the February 5, 2002 press release materially false and misleading.

224. On February 5, 2002, OMG shares closed at $62.90 per share.

R. OMG Files Its 2001 Form 10-K with the SEC

225. On March 29, 2002, OMG filed with the SEC its Form 10-K for the year ended December 31, 2001 (the "2001 Form 10-K"). The 2001 Form 10-K was signed by Defendants Mooney, Materna and Miklich. The 2001 Form 10-K confirmed and reiterated the results for the Company's net income, net income per diluted share, operating profit and inventories for the year ended December 31, 2001, as announced in the Company's February 5, 2002 press release. For the reasons set forth above, the financial results reported in the 2001 Form 10-K were materially false and misleading.

226. The 2001 Form 10-K contained additional materially misleading statements. Under the heading "Critical Accounting Policies," the 2001 Form 10-K disclosed how the Company accounts for its inventories:

> Inventories – ***The Company's inventories are principally stated at the lower of cost or market and valued using the last-in, first-out (LIFO) method except for precious metals trading inventory***

> ***which is carried at the current monetary value.*** The Company uses the LIFO method to better match the price it currently pays for its raw material metal with the selling prices it currently charges for its products. The balance sheet amounts of inventory will reflect the quantities of metal in inventory valued at metal prices paid for in the year LIFO was adopted and any subsequent year in which there was an incremental increase in quantities. ***In periods of sustained and significant raw material metal price declines, the calculated LIFO amount may exceed the amount the Company could realize on sale. In this case, the Company would record a lower of cost or market adjustment.***

(Emphasis added.) However, the 2001 Form 10-K Critical Accounting Policies disclosure pertaining to inventories was materially false and misleading at the time it was published. As set forth above, the Company did ***not*** state its year end inventories at the lower of cost or market. Further, the representation that the Company ***would*** record a lower of cost or market adjustment should there exist a sustained and significant decline in the price of raw materials was materially false in that, at the time the 2001 Form 10-K was issued, the price of cobalt had been substantially below $11.80 for at least ten months and, contrary to the Company's accounting policy, the Company did ***not*** record a lower of cost or market adjustment.

227. The 2001 Form 10-K made additional materially false and misleading representations concerning the effect that changes in prices of raw materials could have on the Company's Base Metals operations and finances. Instead of disclosing to investors the true impact that the decline in cobalt prices had already had on the Company's finances, Defendants warned investors of certain hypothetical risks relating to the prices of raw materials that could affect profitability. Specifically, the 2001 Form 10-K represented that:

> The Company is generally able to pass through to its customer's increases and decreases in raw material prices by increasing or decreasing, respectively, the prices of its products. The degree of profitability of the Company depends, in part, on the Company's ability to maintain the differential between its product prices and raw material prices. The timing and amount of such adjustments in its product prices depends upon the type of product sold and the

> inventories and market share positions of the Company and its competitors. . . .
>
> * * *
>
> The Company also attempts to mitigate changes in prices and availability by maintaining adequate inventories and long-term supply relationships with a variety of producers. The cost of raw materials fluctuates due to both actual and perceived changes in supply and demand. Generally, the Company is able to pass through to its customers increases and decreases in raw material prices by increasing or decreasing, respectively, the prices of its products. The degree of profitability of the Company principally depends on the Company's ability to maintain the differential between its product prices and product costs. Substantial, sustained reductions in the price of raw materials also could result in the Company's inventory being written down to a lower market value.

However, these statements were materially false and misleading when made, because, at the time the 2001 Form 10-K was filed with the SEC, Defendants knew that the risk that the Company's profitability would be affected by decreases in the price of cobalt was not merely a risk. Rather, Defendants knew that it was a ***reality*** that had already significantly impacted the Company for several months. Indeed, because the price of cobalt had declined to levels at or about at the breakeven point for OMG – which was between $6 and $7 per pound – OMG was unable to "pass through to its customers" the substantial decrease in the price of cobalt. Further, OMG's profitability was directly impacted by the overvalued cobalt inventory it already had on its books, which it could not sell for a profit as a result of its inflated value. The disclosure also was materially false and misleading because the Company could not mitigate the drastic change in cobalt prices by its maintenance of inventories. Rather, given the deflationary nature of the cobalt market, OMG's abundance of overpriced inventory had no such effect on cobalt prices.

228. On April 1, 2002, the date following OMG's filing of its 2001 Form 10-K, OMG common stock closed at $72.10 per share. The Company's share reached an all time high on April 2, 2002, closing at $73.00 per share.

229. On April 11, 2002, the Company announced the appointment of Defendant Miklich, a Director of the Company since 1993, as Chief Financial Officer of the Company. Defendant Miklich was tapped to replace Defendant Materna, the Company's then Chief Financial Officer, in June 2002.

S. OMG Announces Inflated 2002 First Quarter Results

230. On April 25, 2002, OMG issued a press release, which was carried over *PRNewswire*, announcing the Company's financial results for the quarter ended March 31, 2002. The Company reported "record sales and net income, and increases in earnings per diluted share." Specifically, the Company reported that net income increased to $23.4 million, or $.85 per diluted share, from $19.6 million, or $.81 per diluted share, in the same period in the prior year, representing an increase of 29.5%. The Company also reported income from operations of $51.9 million, an increase of almost 34% from the prior year. The press release represented inventories for the first quarter of 2002 to be $802.89 million.

231. The press release also reported that operating profit for the Base Metals segment had decreased from the same period in the prior year to $33.2 million, and attributed such decline to "lower metal prices resulting in lower refining profits." However, in an attempt to reassure the market of the strength of OMG's Base Metals business, Defendant Mooney falsely represented that "[c]urrently we see improving conditions in most of our businesses with nickel and cobalt metal prices higher than in the first quarter. . . . We are optimistic that base metal chemistry . . . will continue to improve and we will expand our value-added products to enhance shareowner value back to double-digit earnings per share growth in 2002."

232. For the reasons set forth above, the April 25, 2002 press release was materially false and misleading as the Company's reported net income, net income per share, operating profit and inventories were materially overstated in violation of GAAP. Specifically, the Company violated GAAP by making unsupportable adjustments to its inventory numbers and cost capitalization calculations, which resulted in the overstatement of the reported inventory on the Company's balance sheets. The Company's reported net income, net income per share, operating profit and inventories were based on inventory counts that were adjusted and estimated without substantive support. Defendants also included an excess of manufacturing overhead and costs in the Company's reported inventory values. The Individual Defendants knew or recklessly disregarded these several facts.

233. In addition, for the reasons set forth above, GAAP required the Company to write-down the value of its cobalt inventory by over $100 million as a result of the depressed price of cobalt, which had been priced for several months at a level 40% below the average price of cobalt in OMG's inventory. In addition, these statements were false and misleading because, through their access to internal OMG reports such as the Monthly Summary and their weekly reviews of prices provided by Metal Bulletin, and their reviews of Metal Bulletin Research, Defendants Mooney and Materna knew that cobalt prices had continued dropping through the end of the March 2002 quarter to a price of $6.53, which rendered the Company's cobalt inventory seriously overpriced. In addition, Defendant Mooney's reference to improvements in OMG's cobalt business was materially misleading because it omitted that OMG was purchasing, refining and selling new cobalt in order to avoid selling – and recognizing the loss on – the older more expensive cobalt it was carrying on its books. By continuing to purchase, refine and sell new cobalt, Defendants were able to create the illusion that the cobalt business was continuing to

grow, while at the same time masking the huge inventory losses OMG had accumulated on its balance sheet.

234. In the day following the Company's April 25, 2002 announcement, the shares of OMG increased from $64.63 per share to $67.50 per share.

T. OMG Files Its 2002 First Quarter Form 10-Q with the SEC

235. On May 10, 2002, OMG filed its Form 10-Q for the first quarter ended March 31, 2002 (the "2002 First Quarter Form 10-Q"). The 2002 First Quarter Form 10-Q confirmed and reiterated the results for the Company's net income, income per diluted share, operating profit and inventories for the quarter ended March 31, 2002, as announced in the Company's April 25, 2002 press release. The 2002 First Quarter Form 10-Q was signed by Defendant Materna.

236. For the reasons set forth above, the financial results reported in the 2002 First Quarter Form 10-Q were materially false and misleading.

U. OMG Announces Inflated 2002 Second Quarter Results

237. On July 30, 2002, OMG issued a press release, which was carried over *PRNewswire*, announcing the Company's financial results for the second quarter ended June 30, 2002. The Company reported "record net income and record earnings per diluted share." Specifically, the Company reported that net income increased 26% to $25.5 million, or $.89 per diluted share, from $20.2 million, or $.83 per diluted share for the same period in the prior year. The Company also reported income from operations of $54.90 million, an increase of almost 42% from the prior year. The press release stated inventories for the second quarter of 2002 of $795.43 million. The press release also reported that operating profit for the Base Metals segment had decreased by 14% from the same period in the prior year to $36.70 million, and attributed such decline to lower cobalt metal prices. In announcing the results, Defendant Mooney stated:

> We are pleased with the financial performance for the quarter and first half of the year as the Company increased base metal volumes and met consensus estimates despite severely depressed cobalt prices.

238. Despite reporting excellent results that were in line with consensus estimates by Wall Street securities analysts, Defendant Mooney warned investors that the outlook for the Company for the remainder of fiscal 2002 would be worse than the Company had previously anticipated. Specifically, Defendant Mooney stated that OMG anticipated that earnings per diluted share for the upcoming third quarter would be in the range of $.89 to $.94, and $3.60 to $3.68 for the full year ended December 31, 2002. Defendant Mooney, in direct contrast to his statements in April and May 2002, attributed the downward adjustment to the Company's outlook to the "low cobalt price levels experienced in July, coupled with the current outlook for a slower improvement during the last half of the year."

239. On that same day, the Company held a conference call with securities analysts to report on the Company's financial results for the second quarter ended June 30, 2002, and to answer questions from the investing community. Defendants Mooney and Miklich were the primary speakers on the conference call; each answered questions from analysts on the call. While recognizing that the low price of cobalt had negatively impacted OMG's Base Metals finances, Defendant Mooney made statements on the conference call relating to cobalt that were intended to assure the market that the Company's cobalt business was still strong, and that improvements in the cobalt market were imminent.

240. For example, Defendant Mooney stated that "[w]e feel confident that both the cobalt and the nickel business will continue to improve." With respect to the Company's cobalt business, he also stated:

> So I think we're in a good position. We're taking a very conservative position and we want to make sure that we don't

> disappoint any of our investors. Like I said the demand side [for cobalt] continues to be strong for all the applications that we're into.

241. Elaborating on the effect cobalt prices had on the Company's downward earnings guidance, Defendant Mooney stated:

> We have been conservative and performed and always delivered. We don't want to disappoint shareholders. That is what we told everybody. ***We are taking a conservative picture on cobalt.***
>
> ***We will still have record earnings and growth.*** We still have good demand in our precious metals basis on a volume basis and a market acceptance basis.
>
> * * *
>
> ***And the cobalt volumes in the segments that we're active have been very strong and there's no reason to think they're going to slow down***. Because we got no, you know, the demand is still strong at Kokkola for volume.
>
> We think we can hold on to our margin expansion. We're doing that and finding every application to make sure that we do. The revised guidance is strictly a prudent thing to do in times like today.
>
> * * *
>
> But we're very positive on the year end. We're very positive on this year. And we're very positive looking into next year.

(Emphasis added.)

242. For the reasons set forth above, the financial results set forth in the July 30, 2002 press release were materially false and misleading. In addition, the July 30, 2002 press release and the statements by Defendant Mooney on the conference call were materially false and misleading because they omitted to state that the so-called strong demand OMG had claimed to experience was temporary, sporadic and short-lived, and involved the sale of ***new*** cobalt purchased at depressed prices and refined by OMG without any real profit margin. Defendants

still failed to disclose that the Company was carrying inventory with an average price of $11.80 per pound from at least a year and a half earlier ***and*** that the Company refused to sell such inventory for a loss and, instead, decided to assume the increased cost of carrying such overpriced inventory while at the same time purchasing new cobalt. Indeed, the market price for cobalt on July 30, 2002 was $6.75. The purchasing, refining and sale of new, less expensive cobalt also allowed the Company to create the appearance that there continued to be strong demand for cobalt products. However, Defendants Mooney and Miklich lacked any reasonable basis to believe that demand for OMG's cobalt products would improve to a level such that OMG could deliver record earnings and have record growth. Indeed, it was well-known within the cobalt industry that demand for cobalt had been and likely would remain at depressed levels as the world economy, in general, and the high tech industry and aerospace industry, specifically, continued to remain in a slump. In fact, in its June 2002 issue of *Metal Bulletin Research*, Metal Bulletin noted that "unsurprisingly cobalt prices have softened during June, as consumers have effectively removed themselves from the market at the start of the summer slowdown." And in the July 2002 issue of *Metal Bulletin Research*, "MBR forecast[ed] that with no real indication of a fundamental pick-up in demand expected in the next month then prices will continue to drift sideways to lower."

243. Finally, Defendant Mooney's view of the cobalt market and OMG's own cobalt inventories can hardly be viewed as conservative. Rather, the long sustained depression in the price of cobalt (cobalt had been priced below $11 per pound since May 2001) and the weakness in demand for cobalt products experienced since at least July 2001 for aerospace and January 2001 for batteries, rendered OMG's accounting for cobalt inventories and its unusually positive view of the cobalt market anything but conservative.

244. Furthermore, for the reasons set forth above, the Company's reported net income, net income per share, operating profit and inventories were materially overstated in violation of GAAP. The Company made unsupportable adjustments to its inventory numbers and capitalization calculations. As a result, the Company overstated the reported inventory on its balance sheets throughout the Class Period. In particular, Defendants Mooney and Miklich knew, or, but for their reckless disregard, should have known, that the Company's reported values for inventories had been estimated, instead of physically counted, and adjusted without any actual support. Additionally, OMG further adjusted its reported inventory values to include excess manufacturing overhead and labor costs. The estimates and adjustments caused the total value of OMG's inventories to be overstated and thus materially false and misleading when reported.

245. Through their false statements in the July 30, 2002 press release and on the conference call that same day, Defendants were able to prevent the decline of OMG shares following the Company's announcement of its downward adjustment to future earnings. As a result of these materially false and misleading statements, shares of OMG continued to trade in the range of $43.70 to $53.34 for the month of August 2002.

V. OMG Files Its 2002 Second Quarter Form 10-Q with the SEC

246. On August 12, 2002, the Company filed its Form 10-Q for the quarter ended June 30, 2002 (the "2002 Second Quarter Form 10-Q"). The 2002 Second Quarter Form 10-Q confirmed and reiterated the financial results for the Company's net income, earnings per share, operating profit and inventories, as announced in the Company's July 30, 2002 press release.

247. The 2002 Second Quarter Form 10-Q also contained as exhibits sworn certifications by Defendants Mooney and Miklich (individually, the "Mooney Certification" and the "Miklich Certification"), as required by the Sarbanes-Oxley Act. The Sarbanes-Oxley Act,

which was passed by Congress in 2002 in the wake of several massive financial scandals involving such public companies as Enron and WorldCom, requires corporate executives to certify the accuracy of their company's financial statements. Defendants Mooney and Miklich complied with this requirement. In the Mooney Certification and Miklich Certification, which each officer signed and OMG filed with the SEC, both Defendants Mooney and Miklich certified that the "information contained in the [2002 Third Quarter Form 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company."

248. For the reasons set forth above, the 2002 Second Quarter Form 10-Q, the Mooney Certification and the Miklich Certification were materially false and misleading.

W. OMG Revises Its Earnings Estimates Downward for the 2002 Third Quarter and Assures the Market of Its Financial Health

249. On September 19, 2002, the Company announced in a press release carried over *PRNewswire* that its financial results for the quarter ended September 30, 2002 would not meet the previous earnings per share guidance of $.89 to $.94, which was provided to investors by the Company on July 30, 2002. Instead, the Company provided new guidance for the 2002 third quarter of $.82 to $.86 per diluted share. Defendant Mooney attributed the potential earnings shortfall to, among other things, lower cobalt prices and weak economic conditions. However, Defendant Mooney, in an attempt to sound positive with respect to the Company's prospects and the cobalt market generally, stated: "If the current trends continue through the end of the quarter, cobalt volumes will be up 8 to 10 percent; nickel will continue to contribute as expected; auto catalysts will show double-digit growth; and metals management will be in line."

250. The September 19, 2002 press release was materially false and misleading. While the press release acknowledged that the prices of cobalt had dropped by 29% from the third quarter of the prior year ($6.61 per pound versus $9.25 per pound), the press release omitted to

would be announcing a massive write-down of its inventories in the immediate future and that this would have a material negative affect on OMG shares.

VII. ERNST & YOUNG'S FRAUDULENT AUDITS OF OMG'S FINANCIAL STATEMENTS RESULTS IN ADDITIONAL FALSE AND MISLEADING STATEMENTS TO THE INVESTING PUBLIC

253. Lead Plaintiff incorporates the allegations above in connection with its allegations against E&Y. Lead Plaintiff Detroit P&F brings this claim against E&Y on its own behalf and as a class action, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of a class of all persons who purchased the common stock of OMG from March 23, 2000 through and including October 30, 2002 and who suffered damages as a result of the violations of the federal securities laws alleged herein. On March 23, 2000, OMG issued its Form 10-K for the year ended December 31, 1999 and published E&Y's unqualified Audit Opinion for the Company's 1999 financial statements.

254. E&Y, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mail to engage and participate in a continuous course of conduct to conceal adverse material information about OMG, including its true financial results.

255. E&Y made untrue and misleading statements of material fact and omitted to state material facts necessary to make its statements not misleading. Specifically, E&Y knew or but for its reckless disregard should have known that OMG had fundamentally misrepresented the state of its inventory, including the actual value and balance of its inventory, and that its financial statements for the fiscal years ended December 31, 1999; December 31, 2000; and December 31, 2001 were materially misstated and were not presented in conformity with GAAP. In addition, E&Y's audits of these financial statements were not performed in accordance with GAAS.

256. E&Y knew or should have known that OMG's use of unsupported estimates for sales prices to calculate the lower of cost market violated GAAP which requires evidence such as firm sales contract to support the use of selling prices which differ from actual prices.

257. The specific false and misleading statements for which E&Y is charged with liability under Section 10(b) are statements contained in the Forms 10-K, including, but not limited to OMG's financial statements and the notes thereto, as well as E&Y's unqualified audit reports on the Company's financial statements for the fiscal years ended December 31, 1999; December 31, 2000; and December 31, 2001. Specifically, E&Y stated in each of the respective audit reports that "[it] conducted [its] audits in accordance with auditing standards generally accepted in the United States" and, that in its opinion:

> the financial statements . . . present fairly, in all material respects, the consolidated financial position of OM Group, Inc. at December 31, 1999 [December 31, 2000, and December 31, 2001] and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 1999 [December 31, 2000, and December 31, 2001], in conformity with accounting principles generally accepted in the United States.

258. These statements were materially false and misleading because, in fact, E&Y's audits represented an extreme departure from GAAS and, therefore, it had no reasonable bases to support its opinions that OMG's financial statements fairly presented the Company's financial position and results of operations in conformity with GAAP.

259. With respect to GAAP, "The [audit] report shall state whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP)." Standard of Reporting No. 1, AU § 150.02. As discussed above, OMG's financial statements violated GAAP in numerous respects, including:

(a) ARB 43, which states that inventory must be valued at the lower of cost or market;

(b) Statement of Position ("SOP") 94-6, which required OMG to disclose in its financial statements, or the notes thereto, the circumstances related to the use of estimates in the preparation of its financial statements and certain significant estimates, including "off-report" estimations and valuations of physical inventory counts, WIP inventory, raw material inventory and inventory in-transit to public warehouses and consignees;

(c) The principle of conservatism, is one of the "characteristics and limitations"of financial accounting. In further detail, this principle provides:

(1) "The uncertainties that surround the preparation of financial statements are reflected in a general tendency toward early recognition of unfavorable event and minimization of the amount of net assets and net income." AICPA APB Statement No. 4, ¶ 35, affirmed in SFAS No. 5, ¶82;

(2) "Frequently, assets and liabilities are measured in a context of significant uncertainties. Historically, managers, investors, and accountants have generally preferred that possible errors in measurement be in the direction of the understatement rather than overstatement of net income and net assets. This has led to the convention of conservatism. . ." APB Statement No. 4, ¶171, affirmed in SFAS No. 5, ¶83;

(3) The principle that conservatism be used as a prudent reaction to uncertainty to ensure that uncertainties and risks inherent in business situations are adequately considered. FASB Statement of Financial Accounting Concepts ("SFAC") No. 2, ¶¶95, 97.

(d) The principle that financial reporting should provide information that is useful to present and potential investors in making rational investment decisions and that information should be comprehensible to those who have a reasonable understanding of business and economic activities. FASB SFAC No. 1, ¶34;

(e) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users of financial statements in making rational investment, credit and similar decisions. FASB SFAC No. 1, ¶40;

(f) The principle that financial reporting should provide information about an enterprise's financial performance during a period,

recognizing that investors often use information about the past to help in assessing the enterprise's prospects. FASB SFAC No. 1, ¶42;

(g) The principle that financial reporting should be reliable in that it represents what it purports to represent. FASB SFAC No. 2, ¶¶58-59;

(h) The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions. FASB SFAC No. 2, ¶79; and

(i) The principle of materiality, which provides that the omission or misstatement of an item in a financial report is material if, in light of the surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying on the report would have been changed or influenced by the inclusion or correction of the item. FASB SFAC No. 2, ¶132.

260. With respect to GAAS, GAAS are the auditing standards that an auditor must follow in planning, conducting and reporting the results of an audit. "Auditing standards provide a measure of audit quality and the objectives to be achieved in an audit." SAS No. 95, AU § 150.01. GAAS includes standards that have been approved and adopted by the AICPA, many of which were knowingly or recklessly violated by E&Y, including:

(a) "Due professional care is to be exercised in the performance of the audit and the preparation of the [audit] report." General Standard No. 3, AU § 150.02.

(b) "A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed." Standard of Field Work No. 2, AU § 150.02.

(c) "Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit." Standard of Field Work No. 3, AU § 150.02.

(d) "The auditor is responsible for evaluating the reasonableness of accounting estimates made by management in the context of the financial statements taken as a whole. As estimates are based on

subjective as well as objective factors, it may be difficult for management to establish controls over them. Even when management's estimation process involves competent personnel using relevant and reliable data, there is potential for bias in the subjective factors. Accordingly, when planning and performing procedures to evaluate accounting estimates, the auditor should consider, with an attitude of professional skepticism, both the subjective and objective factors." Statement of Auditing Standards, Auditing Accounting Estimates No. 57, AU § 342.04, including all standards and principles encompassed in AU § 342.

(e) "During an audit, management makes many representations to the auditor, both oral and written, in response to specific inquiries or through the financial statements. Such representations from management are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for his opinion on the financial statements." Statement of Auditing Standards, Reliance on Management Representations No. 02, AU § 333.02, including all standards and principles encompassed in AU § 333.

(f) "The auditor obtains written representations from management to complement his other auditing procedures. In many cases, the auditor applies auditing procedures specifically designed to obtain corroborating information concerning matters that are the subject of written representations." Statement of Auditing Standards, Reliance on Management Representations No. 85, AU § 333.02, including all standards and principles encompassed in AU § 333.

(g) "The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." Statement of Auditing Standards, Consideration of Fraud in a Financial Statements No. 82, AU § 316.01, including all standards and principles encompassed in AU § 316.

(h) "In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors." General Standard No. 2, AU § 150.02.

(i) "The [audit] report shall state whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP)." Standard of Reporting No. 1, AU § 150.02. (As discussed above).

(j) "Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report." Standard of Reporting No. 3, AU § 150.02.

261. E&Y acted with scienter in violating these most fundamental principles of GAAS and in expressing its materially false and misleading unqualified audit opinions regarding OMG's financial statements in that E&Y either had actual knowledge or recklessly disregarded the fact that OMG's financial statements were materially false and misleading, and in violation of GAAP. Indeed, as discussed below, E&Y's audits were so deficient that they amounted to no audit at all, and, as a result, E&Y had no reasonable bases to issue its unqualified audit opinions upon which it knew investors would rely.

262. In conducting its audits for the fiscal years ended December 31, 1999; December 31, 2000; and December 31, 2001, E&Y had access to all of OMG's inventory support (or lack thereof) and LCM work papers. Specifically, according to OMG's Director of Operations (Mr. Venesky), E&Y was given access to "all the information they requested when they conducted [its] audits of OMG." In addition, according to OMG's Cost Inventory Manager (Mr. Beaver), E&Y "saw all of [OMG's] calculations" and had conversations with management regarding "accounting practices or procedures at OMG." For example, according to both OMG's Cost Inventory Manager (Mr. Beaver) and OMG's Director of Operations (Mr. Venesky), E&Y had discussions regarding OMG's accounting practices and procedures with Defendant Materna, Defendant Miklich, OMG's Corporate Controller (Mr. Holtzhauser) as well as themselves.

263. Also, with respect to OMG's LCM calculation, OMG's Director of Operations (Mr. Venesky) testified that E&Y had access to and reviewed all of OMG's LCM work papers. OMG's Cost Inventory Manager (Mr. Beaver) testified that E&Y had discussions with him regarding OMG's LCM calculation, including the cobalt market price per metal pound numbers that OMG used in its calculations. To provide E&Y with an explanation regarding the

Company's cobalt pricing, OMG's Cost Inventory Manager (Mr. Beaver) stated that he referred E&Y to OMG's Corporate Controller (Mr. Holtzhauser). Similarly, OMG's Director of Operations (Mr. Venesky) testified that E&Y "had access to detailed work papers" regarding the "work in process, in transit inventory, St. George valuation [and] Midland full absorption issues." In fact, OMG's Director of Operations (Mr. Venesky) explained that E&Y was given full access to Company "work papers that tied back to the financial statements."

264. In performing its audit of OMG's financial statements, E&Y was required to assess the adequacy of OMG's internal controls and to identify all "red flags" or warning signals that might exist indicating that OMG had misstated its financial statements. Specifically and as more particularly set forth below, in conducting its audits, E&Y knew numerous facts and knew or recklessly ignored numerous "red flags" when it signed off on OMG's lower of cost or market analyses, including:

(a) That, in performing its LCM calculations, OMG was not using current market prices for cobalt.

(b) That, in performing its LCM calculations, OMG was using an unsupported, future market price for cobalt that was significantly higher than the current market prices for cobalt that E&Y employee Karen Ploscik distributed via e-mail to E&Y's OMG Audit Team, including to Gretchen A. Shields, E&Y Audit Manager and the preparer of E&Y's Memoranda of Significant Matters; Jennifer L. Palagyi, Senior Manager and the reviewer of E&Y's Memoranda of Significant Matters; and James A. Young, E&Y Partner and the approver of E&Y's Memoranda of Significant Matters;

(c) That, in performing its review of OMG's LCM calculation, E&Y, demonstrated that it was aware of the current market price for cobalt. At the March 7, 2002 Audit Committee meeting, Steven Todd, Jay Young and Rob Pierce[5] all attended from E&Y. Jay

[5] Throughout the Class Period, Rob Pierce was employed first by Defendant E&Y and then by Defendant OMG. Mr. Pierce served as Senior Audit Manager at E&Y from January, 2000 until June 2002. While at E&Y, Mr. Pierce was the Senior Manager on the OMG Audit Team. Then, in June 2002, Mr. Pierce left E&Y to work at OMG. From June 2002 through October 2002, Mr. Pierce served as OMG's Director of Financial Reporting and Technical

Young and Rob Pierce reviewed E&Y's report on the 2001 audit of OMG's financial statements with the Audit Committee. As part of that report, they advised the OMG Audit Committee of the following with respect to the spot prices per pound of cobalt:

- March 31, 2000 16.00
- December 31, 2000 11.60
- December 31, 2001 6.60
- February 28, 2002 6.60

Despite knowing that the price at the end of the year 2001 was $6.60 per pound, E&Y accepted OMG's carrying value of $11.80 per pound in signing off on the Company's LCM calculation and valuation of its cobalt inventory on the financial statements for 2001.

(d) That, in performing its interim reviews of the Company's financial position in accordance with SAS No. 71 "Interim Financial Information," E&Y, demonstrated that it was aware of the current market price for cobalt. E&Y's work papers note that the quarterly review procedures are done "to provide a basis for determining whether material modifications should be made to the interim financial information for such information to conform to GAAP." As part of its quarterly review procedures, E&Y prepared a Memorandum of Significant Matters. In each Memorandum of Significant Matters that E&Y prepared, there was a discussion of inventory. In that discussion, E&Y reported on the current market price for cobalt. Thus, in its Memorandum of Significant Matters, E&Y reported the current market prices for cobalt per pound for the following dates:

- June 30, 2001 10.00
- September 30, 2001 8.40
- December 31, 2001 6.30
- March 31, 2002 6.25
- June 30, 2002 6.80

Again, despite the fact that E&Y knew that OMG was not following GAAP by recording inventory at the lower of cost or market, E&Y accepted OMG's inventory valuation of cobalt at a price substantially in excess of market value.

Accounting.

(e) That, in performing its LCM calculations, OMG was using an unsupported, future market price for cobalt, even though the Company had never conducted any studies to determine whether or when, if ever, the cobalt market would increase;

(f) That, in performing its LCM calculations, OMG was using an unsupported, assumed future market price for cobalt, even though the Company had only an empty hope – and certainly no concrete or factual basis – that the price of cobalt would increase, as testified to by OMG's Vice-President of Cobalt Sales (Mr. Torbic);

(g) That, in evaluating the inventories held at OMG Americas as of December 31, 2001, OMG had arbitrarily inflated actual sales prices by approximately 40% - 45%. In fact, as demonstrated by the 2001 OMG selling price and LCM schedules that were attached to E&Y's 2001 audit work papers, E&Y knew that this was how the Company was evaluating its inventories;

(h) That the average carrying value of the cobalt inventory in OMG's inventory – $11.80 per pound – was $5.17, or 44%, above the $6.63 December 31, 2001 market price, the reporting date of OMG's 2001 Form 10-K;

(i) That the last time that the market price of cobalt was as high as $11.80 per pound was on April 10, 2001, more than 8 months prior to December 31, 2001;

(j) That, in performing its LCM calculations, OMG changed its beginning inventory balance numbers such that the yearly inventory numbers did not match the Company's computerized data records, which should have been readily apparent in an audit. Such changes are confirmed in an e-mail dated July 11, 2002 from OMG's Cost Inventory Manager (Mr. Beaver) to OMG's Corporate Controller (Mr. Holtzhauser), "[we] adjusted the LIFO schedule to reflect an almost zero increment . . . by changing the [beginning of year inventory] number. This changes the index number downward . . . [We] will have support for the [end of year inventory] number but the index number will not tie back to the BPCS index report;"

(k) That, in its December 21, 2001 acquisition of Rhodia's Clayton facility, which is reported in OMG's 2001 Form 10-K for which E&Y issued its Opinion on March 27, 2002, OMG required that Clayton's inventories be written-down to $6.66 per pound to reflect the market value for cobalt, which was $5.00 below the cobalt value that OMG was carrying on its own books for the same grade of cobalt at this December 21, 2001 date;

(l) That, according to OMG's SCM Facility Controller (Ms. Trapnell), the Company's Johnstown plant (part of the Company's SCM facility) had recorded a lower of cost or market write-down in October 2001 due to low cobalt market prices; should have recorded a write-down in November 2001 due to low cobalt market prices; and needed to record a write-down due to low cobalt prices in December 2001 because, as Ms. Trapnell stated in an e-mail dated December 28, 2001, "Cobalt has gone down even further resulting in an additional write-down;" and

(m) That at least three of OMG's competitors wrote-down their cobalt inventories during the relevant time period due to the declining price of cobalt and the significant negative impact this price decline was having on their respective businesses, and that E&Y knew about and approved the write down of at least one of these competitors. Specifically, as discussed more above, as early as March 1999, one of OMG's competitors, UM, was "obliged" to write-down the value of its inventories by over $37 million due to the extremely low price of cobalt at the year end. Then, in August 2000, another of OMG's competitors, Normandy, recorded a $27.6 million write-down, which "reflect[ed] the lower current cobalt price," for its interest in the Kasese cobalt plant. Similarly, in January 2002, yet another OMG competitor, Avmin, wrote-down the value of its interest in Chambishi cobalt plant in Zambia by $172 million. In its January 29, 2002 press release announcing the write-down, Avmin cited the "effects of an unexpected decline of the cobalt price" and noted that the write-down was "in accordance with [Avmin's] commitment to prudent and conservative accounting practices." ***Avmin also explained that the assumptions and calculations behind the write-down had been verified by Avmin's independent auditors, Ernst & Young.***

265. During its 2001 Audit, despite all these facts, E&Y somehow concluded that OMG's inventory values were properly stated at the lower of cost or market at December 31, 2001. Furthermore, E&Y reached this conclusion even though its audit workpapers as of December 31, 2001 contained a listing entitled, "***Open Items / Support Needed***—as of March 11, 2002" which included the following items: "***Can we get support for the Market Values/Pound on the LCM calculation, particularly for Nickel ($6) and Cobalt ($25 [per pound], 17 [per pound], 14 [per pound])?***"

266. Also, in conducting its Audits, E&Y knew or recklessly ignored numerous facts and "red flags" when it signed off on OMG's reported inventory balances and capitalization of costs, including:

(a) That OMG made unsupported top-side adjustments to its facilities' financial statements despite the fact that at least three of the controllers for these facilities' – OMG's SCM Facility Controller (Ms. Trapnell), OMG's Harjavalta Facility Controller (Mr. Savolainen) OMG's Kokkola Facility Controller (Mr. Peltoniemi) – questioned the appropriateness of these adjustments and did not feel comfortable with these adjustments;

(b) That, even though E&Y attended and observed the physical inventory counts that were conducted at OMG's Franklin Facility each year at June 30, it signed off on unsupportable multi-million dollar WIP inventory balances. E&Y did so despite the fact that the physical inventory counts for the Franklin Facility were conducted when the facility was closed down for maintenance work and, according to Company personnel, the Facility had little, if any, WIP inventory then. In particular, E&Y signed off on the following balances:

- December 1999: $6.8 million reported and approved by E&Y, but at most ***only $100,000 or 1.5% of this $6.8 million*** can be supported;
- December 2000: $6.0 million reported and approved by E&Y, but at most ***only $100,000 or 1.7% of this $6.0 million*** can be supported; and
- December 2001: $5.9 million reported and approved by E&Y, but at most ***only $100,000 or 1.7% of this $5.9 million*** can be supported.

(c) That OMG recorded several millions of dollars of "in-transit" inventory for its facilities in 1999, 2000 and 2001 when, in fact, according to OMG's Director of Operations (Mr. Venesky), E&Y had access to all OMG work papers relating to in-transit inventory and the actual amount of in-transit then was "de minimus." Also, for at least the fiscal year ended December 31, 1999, the Company's BPCS system did not accurately record in-transit inventory. In particular, for fiscal year 1999, E&Y signed off on $3.8 million of unsupportable in-transit inventory amounts.

(d) That, according to OMG's Cost Inventory Manager (Mr. Beaver), as early as March 1999, E&Y knew that OMG had double counted

full absorption costs at the Company's Midland Facility and knew that the Company "consciously opted to NOT correct it" for almost three years. Accordingly, even though E&Y knew that full absorption costs had been double counted, it signed off on improperly calculated full absorption costs for fiscal years ended December 1999, December 2000, and December 2001 in the amounts of $3.1 million, $2.75 million, and $2.75 million respectively.

(e) That E&Y signed off on OMG's reporting of millions of dollars of raw material, waste and by-product inventory in sludge ponds at its St. George Facility that could not be and were not physically counted and tested and for which, according to OMG's Director of Operations (Mr. Venesky), E&Y had full access to OMG's St. George valuation records. In fact, without ever observing or testing a physical inventory count of OMG's raw materials, E&Y signed off on the following balances:

- December 1999: $5.5 million reported and approved by E&Y, but at most ***only $1.8 million or 33% of this $5.5 million*** can be supported;
- December 2000: $6.2 million reported and approved by E&Y, but at most ***only $2.6 million or 42% of this $6.2 million*** can be supported; and
- December 2001: $7.2 million reported and approved by E&Y, but at most ***only $2.98 million or 41% of this $7.2 million*** can be supported.

(f) That E&Y signed off on OMG's reporting of millions of dollars of inventory at its Tacow Facility without OMG ever having conducted a physical inventory count at this facility. Thus, E&Y – without ever observing or testing a physical inventory count at this facility – signed off on the following balances:

- December 1999: $1.2 million reported and approved by E&Y, but ***none of it can be supported***;
- December 2000: $3.3 million reported and approved by E&Y, but ***none of it can be supported***; and
- December 2001: $2.6 million reported and approved by E&Y, but ***none of it can be supported***.

(g) That E&Y signed off on OMG's unsupportable "macro" approach of recording "estimated" overhead and direct costs, including approving OMG's sizable adjustments to the Kokkola and Harjavalta facilities' overhead and direct costs calculations even

though E&Y knew – and had access to the supporting records showing – that each facility conducted monthly physical inventory counts; accounted for all of its own manufacturing costs locally; and maintained detailed records of its costs and cost accounting calculations. For these facilities, despite knowing about and having access to the facilities' inventory and itemized capitalization costs records, E&Y signed off on the following unsupportable adjustments:

For OMG's Kokkola Facility:

- December 1999: $9.2 million reported and approved by E&Y, but ***none of it can be supported***;
- December 2000: $10.2 million reported and approved by E&Y, but ***none of it can be supported***; and
- December 2001: $17.3 million reported and approved by E&Y, but ***none of it can be supported***.

For OMG's Harjavalta Facility:

- December 2000: $5.2 million reported and approved by E&Y, but ***none of it can be supported***; and
- December 2001: $4.8 million reported and approved by E&Y, but ***none of it can be supported***.

267. During its 1999, 2000 and 2001 audits, despite identifying OMG's inventories (including its valuation and related reserves) as one of the areas with the highest audit risk, and despite the presence of the glaring "red flags" outlined above, E&Y concluded that OMG's financial statements, including its current assets and inventory balances were presented fairly in all material respects.

268. In conducting its audits and before concluding that OMG's inventory balances were presented accurately and fairly, E&Y was required under GAAS to independently determine whether the Company's inventory balances and related inventory calculations were properly stated. E&Y – again, despite all of the red flags outlined above and the heightened level of scrutiny it acknowledged that the OMG's inventory required – failed to make such

determinations and improperly relied on OMG's unsupportable assumptions in determining the value of OMG's inventory that was reported to the public.

269. E&Y's failure to independently determine and examine the support for the Company's assertions violated GAAS. For instance, SAS 31, Evidential Matter (as amended by SAS 48 and SAS 80), explains that "[m]ost of the independent auditor's work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements." AU § 326.02. SAS 31 further indicates: "***The independent auditor's direct personal knowledge, obtained through physical examination, observation, computation, and inspection, is more persuasive than information obtained indirectly***." AU § 326.21(c) (Emphasis added.) Additionally, SAS 19, Client Representations, explains that representations from management "are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." AU § 333.02. ***In the absence of sufficient competent evidential matter, "an opinion on financial statements would not be warranted***." AU § 333.02. (Emphasis added.)

270. Further, AU § 326 provides illustrations as to the obligations of an auditor in testing a Company's inventory. Included among the steps that an auditor ought to take in this regard are the following: (a) "***observing physical inventory counts***;" (b) "comparing inventories with a current sales catalogue and subsequent sales and delivery reports;" (c) "obtaining ***current market value quotations***;" (d) "examining sales after year-end and open purchase order commitments;" (e) "using the work of specialists to corroborate the nature of specialized products;" (f) ***"analytically comparing*** the ***relationship of inventory balances to recent purchasing, production, and sales activity***;" (g) "examining an analysis of inventory turnover;"

(h) "analytically comparing the relationship of inventory balances to anticipated sales volume;" (i) ***"touring the plant;"*** and (j) ***"inquiring of production and sales personnel concerning possible excess or obsolete inventory items."*** (Emphasis added.)

271. E&Y clearly failed to obtain sufficient competent evidential matter with respect to OMG's reported inventory balances, including, but not limited to the following facilities and categories:

- Franklin Facility's WIP Inventory
- Franklin Facility's In-Transit Inventory
- St. George Facility's Raw Material Inventory
- St. George Facility's WIP Inventory
- St. George Finished Goods
- St. George Facility's Full Absorption
- Midland Facility's Full Absorption
- Tacow Facility's Inventory Balance
- Kokkola Additional Direct Costs & Overhead Estimates

If E&Y had properly employed some, if not all, of the prescribed inventory testing techniques and not just relied on the Company's assertions, E&Y would have readily discovered, among other things, that OMG had "de minimus" amounts – not millions of dollars worth – of WIP inventory at OMG's Franklin Facility; that OMG had no basis to report millions of dollars worth of inventory as raw material supposedly contained in the sludge ponds at OMG's St. George Facility; and that OMG had never conducted a physical inventory count at its Tacow Facility, among other critical facts.

272. In sum, had E&Y conducted its audits in accordance with GAAS, it would have acted upon the numerous facts it knew and the obvious "red flags" outlined above and, in so doing, would have discovered the truth about OMG's financial condition. Instead, E&Y both turned a blind to eye to the facts it knew and either knowingly or recklessly failed to employ

even the most basic procedures designed to test inventories, detect fraud or to ensure that the financial statements were free from material misstatement. Thus, in effect, E&Y abandoned its role as "independent auditor" and, in the process, knowingly or recklessly issued an unqualified audit opinion on OMG's materially false and misleading financial statements, which had the effect of artificially inflating OMG's stock price. From all of these facts, it is clear that E&Y acted with scienter.

VIII. THE TRUTH EMERGES

A. OMG Announces Devastating Results for Its 2002 Third Quarter

273. On October 29, 2002, the Company issued a press release, which was carried over *PRNewswire* and disseminated prior to the opening of the stock market, announcing the results for the quarter-ended September 30, 2002 (the "2002 Third Quarter"). The press release shocked the market, as the Company principally disclosed that: (1) OMG had taken a charge of $108 million ($3.31 per diluted share) in the 2002 Third Quarter "to write-down inventories to the lower of cost or market;" (2) OMG would launch an "aggressive restructuring program to improve profitability and strengthen the balance sheet," which would include a "realignment of the management team"; (3) OMG would implement certain modifications to its method of financial reporting to begin in the First Quarter of 2003; (4) OMG would record a restructuring charge, for a yet undisclosed sum, in the fourth quarter of 2002; and (5) declining profits in the Company's Base Metals segment.

274. First, the October 29, 2002 press release disclosed that OMG had taken a charge of $108 million ($3.31 per diluted share) in the 2002 Third Quarter "to write-down inventories to the lower of cost or market." In stark contrast to the earnings guidance provided on July 30,

2002 and September 19, 2002, OMG announced that it would report a ***loss*** of $71.2 million, or $2.52 per diluted share, for the 2002 Third Quarter. Specifically, the Company stated that:

> The facts and circumstances that led to the Charge include the Company's revised outlook for the price of cobalt and the decisions to start liquidating cobalt to generate cash and to reduce cobalt production in the fourth quarter.
>
> The Company now believes that the price of cobalt will stay between $6.00 and $7.00 per pound through 2003. The outlook for a continued weak economy, in general, as well as no foreseeable improvement in the demand for super alloys, are the key factors leading to this conclusion. While there are a number of promising potential new markets and applications for cobalt that would increase demand, the Company needs to make changes based on the current market conditions to improve operating performance.

275. Second, the Company revealed that it was "committed to modifying [its] financial reporting to improve the understanding of [its] business." As part of such modification, the Company stated that it was considering reporting "[b]ase metals refining as a separate reportable segment giving insight into the delta under the metal profit" and "[r]eporting sales of value added base metal products separately and include only the delta over the metal." However, the Company reported that it would not be able to implement these modifications until the first quarter of 2003.

276. Third, OMG revealed that it was developing an "aggressive restructuring program to improve profitability and strengthen the balance sheet." According to the October 29 press release, that restructuring program would include (1) "realignment of the management team"; (2) the "closing or sale of unprofitable operations"; (3) the "sale of non-core assets to raise cash and improve focus"; and (4) the "complete review and renegotiation of raw material sourcing contracts to reduce costs." Additionally, the October 29 press release stated that:

> We fully expect to successfully design and implement a plan that will allow the Company to operate from a position of strength even if the current difficult conditions persist for an extended period.

> There are external factors that could lend an upside to our expectations, such as an increase in the price of cobalt, renewed economic growth or the commercialization of new uses or applications for the metals we sell. However, we are not counting on these developments for success.

277. Fourth, OMG disclosed that, in order to implement its upcoming restructuring program, "a restructuring charge will need to be taken" in the fourth quarter of 2002. However, the Company failed to provide any guidance as to the expected magnitude of such a charge. Indeed, the press release failed to quantify either a sum or a range for the restructuring charge, stating only that it would be "discussed in more detail during the week of December 9, 2002 with a press release and a conference call."

278. Lastly, the October 29 press release announced that, excluding certain one time items, operating profit ***before*** the write-down in the Base Metals segment had declined in the third quarter of 2002 to $18.4 million from the $36.2 million recorded in last year's third quarter. However, including the charge that OMG recorded for the inventory write-down, its Base Metals segment had in fact sustained a third quarter ***loss*** of $77 million. The press release attributed OMG's decline in operating profit to the following:

> - A 28% drop in the average third quarter price of cobalt – from $9.26 last year to $6.62 this year;
> - The decision to continue to produce and sell commodity cobalt metal products that resulted in operating losses at the current metal prices. Additionally, the strong commodity sales volume negatively impacted product mix, resulting in deterioration of overall cobalt margins; and
> - Higher than anticipated raw material costs.

279. Defendants Mooney and Miklich also commented in the press release. Defendant Mooney, in stark contrast to his prior statements concerning the cobalt market, stated:

> The current difficult environment, including the low price of cobalt, will continue for the foreseeable future, resulting in further deterioration of operating results in the fourth quarter. This

> requires that we take bold steps to refocus the Company's strategy, discontinue unprofitable operations and implement aggressive cost reductions. From a liquidity standpoint, capital expenditures will be reduced, working capital will be managed aggressively and non-core assets will be sold.

280. Moreover, Defendant Miklich stated that the "Company continues to operate in a very difficult market environment. . . . The Company's operating performance and cash flow were below expectations due to a number of factors, both external and internal . . . . Based on the classification of the inventory write-down as a non-cash, non-recurring charge, the Company is in compliance with its debt covenants."

281. Not more than two hours after the October 29, 2002 press release was issued, the Company held a conference call with securities analysts to elaborate on the Company's financial results for the 2002 Third Quarter, and to answer questions from the investing community. Defendants Mooney and Miklich were the primary speakers on the conference call; each answered questions from analysts on the call, and Defendant Mooney tried to maintain the analysts' confidence in the Company by stating that 90% of his net worth was "on the line today and the future."

282. In response to an analyst's question about the actual cobalt inventories on OMG's books, Defendant Miklich stated that using the LCM calculations, the amount of cobalt was 15 million pounds. After taking out the direct overhead costs out of inventory, the resulting average price of cobalt sitting in inventory was about $11.80. Further, Defendant Miklich blamed his "rose-colored glasses" for not reacting to the low cobalt prices sooner. However, Defendants Mooney and Miklich received information relating to the price of cobalt at least once a month in the Monthly Summaries. Thus, Defendants Mooney and Miklich previously knew or, but for their reckless disregard, should have known, that market prices for cobalt as of December 31,

2001 through the Charge announcement were noticeably lower than the $11.80 average price of OMG's cobalt inventory.

283. Moreover, Defendant Miklich revealed on the call for the first time the value of the price of the cobalt that had been sitting in OMG's inventory:

> if you look in the calculation that we did for the lower of cost or market the amount of cobalt is 15 million pounds and what that would translate into because you have to take the direct labor and overhead costs out of inventory to get a proxy for the metal price in there ***that would mean the average price of cobalt that was sitting in inventory was about $11.80.***

(Emphasis added.) Defendant Miklich also noted that the Company, due to its current finances, was in jeopardy of violating its debt covenants and, as a result, had to renegotiate its credit facilities with its lenders.

284. The market understood the meaning and implications of this press release. It's reaction to the October 29, 2002 press release and conference call was swift and severe. OMG shares fell by more than 71%, dropping from a price of $30.90 per share on October 28 to close at $8.95 per share on October 29, 2002. The October 29 trading volume in OMG shares was massive, with almost 23 million shares trading hands.

285. As demonstrated by the tremendous stock drop, this press release shocked the market as the Company essentially disclosed that the investing public could no longer rely upon the Company's management team and its financial statements. The market understood that the integrity and accuracy of the Company's financial reports, including its audited financial statements, had been brought into question by this announcement. As reflected by the devastating stock drop, the market effectively anticipated OMG's need to restate its prior financial statements.

286. The Company's announcement on October 29, 2002 had additional negative consequences for the Company. Specifically, on October 31, 2002, Standard & Poor's Ratings Services announced that it had lowered its corporate credit rating on OMG to Double B minus from Double B "based upon liquidity concerns and changing market conditions." Similarly, on November 4, 2002, Moody's Investors Service announced that it was lowering its ratings on OMG as a result of the Company's "announcement of actual and expected operating losses from cobalt products, a major component of OMG's business portfolio."

B. The Mooney Loan Is Revealed

287. Additional negative information concerning OMG was revealed to the market on October 31, 2002. In a press release, which was carried over *PRNewswire*, the Company announced that approximately 710,000 shares of OMG stock owned by Defendant Mooney had been sold on October 29, 2002, for proceeds of $6.77 million. The press release also disclosed for the first time that Defendant Mooney had pledged his shares as collateral for a loan he had taken with Merrill Lynch & Co. and that, when the price of OMG shares fell on October 29, 2002, the shares were sold by Merrill Lynch pursuant to a margin call. According to the press release, as a result of these sales, Defendant Mooney's entire position in OMG securities had been liquidated.

288. Based upon this announcement, OMG shares fell further from $7.49 per share to $6.49 on volume of 15 million shares. The $6.49 per share price of OMG shares was more than 91% lower than the stock's Class Period high of $73 per share on April 2, 2002.

C. Further Confirming Facts Emerge

289. Since the October 29, 2002 announcement by the Company, further facts have confirmed that the Company's break with its past improper accounting practices has required a thorough review of several reporting periods. For instance, on March 16, 2004, OMG issued a

press release, which was carried over *PRNewswire*, announcing that the Company would delay its 2003 10-K Filing and that, as the market anticipated in response to the October 29, 2002 press release the Company "would be "restating its financial statements for 1999 through 2003 as the result of an independent investigation being completed by the [A]udit [C]ommittee of the [C]ompany's [B]oard of [D]irectors regarding inventory issues."

290. In this March 16, 2004 press release, the Company also stated that issues raised by the SEC in its Comments Process "regarding [OMG's] application of accounting standards related to the valuation of inventory" such as OMG's lower of cost or market analysis and the timing of its $108 million inventory write-down – would be included in or impacted by the Company's restatement. Finally, this press release advised investors to no longer rely upon OMG's publicly filed financial statements for 1999 through 2003; the related independent auditors' reports; and the independent auditors' completed interim review.

IX. CLAIMS FOR RELIEF

COUNT I

Against OMG and the Individual Defendants for Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder

291. Lead Plaintiff repeats and realleges each of the allegations above. This Count is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of the Class against Defendants OMG, Mooney, Materna and Miklich.

292. Defendants OMG, Mooney and Miklich are liable for the following specific statements:

(a) The false and misleading statements in OMG's January 27, 2000 press release;

(b) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 1999;

(c) The false and misleading statements in OMG's April 25, 2000 press release;

(d) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2000;

(e) The false and misleading statements in OMG's July 25, 2000 press release;

(f) The false and misleading statements in OMG's Form 10-Q for the quarter ended June 30, 2000;

(g) The false and misleading statements in OMG's October 24, 2000 press release;

(h) The false and misleading statements in OMG's Form 10-Q for the quarter ended September 30, 2000;

(i) The false and misleading statements in OMG's January 30, 2001 press release;

(j) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 2000;

(k) The false and misleading statements in OMG's April 24, 2001 press release;

(l) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2001;

(m) The false and misleading statements in OMG's July 24, 2001 press release;

(n) The false and misleading statements in OMG's Form 10-Q for the quarter ended June 30, 2001;

(o) The false and misleading statements in OMG's October 30, 2001 press release;

(p) The false and misleading statements in OMG's Form 10-Q for the quarter ended September 30, 2001;

(q) The false and misleading statements in OMG's February 5, 2002 press release;

(r) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 2001;

(s) The false and misleading statements in OMG's April 25, 2002 press release;

(t) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2002;

(u) The false and misleading statements in OMG's July 30, 2002 press release;

(v) The false and misleading statements in OMG's Form 10-Q for the quarter ended June 30, 2002;

(w) The false and misleading statements in OMG's September 19, 2002 press release; and

(x) The false and misleading statements in OMG's October 18, 2002 press release.

293. Defendant Materna is liable for the following specific statements:

(a) The false and misleading statements in OMG's January 27, 2000 press release;

(b) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 1999;

(c) The false and misleading statements in OMG's April 25, 2000 press release;

(d) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2000;

(e) The false and misleading statements in OMG's July 25, 2000 press release;

(f) The false and misleading statements in OMG's Form 10-Q for the quarter ended June 30, 2000;

(g) The false and misleading statements in OMG's October 24, 2000 press release;

(h) The false and misleading statements in OMG's Form 10-Q for the quarter ended September 30, 2000;

(i) The false and misleading statements in OMG's January 30, 2001 press release;

(j) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 2000;

(k) The false and misleading statements in OMG's April 24, 2001 press release;

(l) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2001;

(m) The false and misleading statements in OMG's July 24, 2001 press release;

(n) The false and misleading statements in OMG's Form 10-Q for the quarter ended June 30, 2001;

(o) The false and misleading statements in OMG's October 30, 2001 press release;

(p) The false and misleading statements in OMG's Form 10-Q for the quarter ended September 30, 2001;

(q) The false and misleading statements in OMG's February 5, 2002 press release;

(r) The false and misleading statements in OMG's Form 10-K for the year ended December 31, 2001;

(s) The false and misleading statements in OMG's April 25, 2002 press release;

(t) The false and misleading statements in OMG's Form 10-Q for the quarter ended March 31, 2002;

294. Throughout the Class Period, Defendants OMG, Mooney, Materna and Miklich, individually and in concert, directly and indirectly, by the use and means of instrumentalities of interstate commerce and of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about OMG, including its true financial results, as specified herein. Defendants employed devices, schemes, and artifices to defraud while in possession of material, adverse non-public information and engaged in acts, practices, and a course of conduct that included the making of, or participation in the making of, untrue and misleading statements of material facts and omitting to state material facts necessary in order to

make the statements made about OMG not misleading. Specifically, each of these Defendants knew or were reckless in not knowing that OMG's financial results, including its net income, earnings per share, operating profit and inventory values reported throughout the Class Period, and filed with the SEC and disseminated to the investing public, as well as in press releases, were materially overstated and were not presented in accordance with GAAP. Each Individual Defendant reviewed or was aware of the false and misleading SEC filings, press releases and other statements complained of herein at or about the time they were issued or circulated; knew or recklessly disregarded their false and misleading nature; and was in a position to control or influence their contents or otherwise cause corrective or accurate disclosures to have been made. By virtue of his Board and committee memberships or executive and managerial positions with OMG, each Individual Defendant had access to adverse non-public information about the Company's inventory levels, inventory calculations and capitalization for costs through reports and communications concerning the Company's performance and non-performance of its physical inventory counts; inventory levels reflected in the Company's BPCS system and General Ledger; communications and reports regarding the inventory reconciliation; communications and reports regarding the value of the Company's inventory; correspondence, e-mails and conversations regarding corporate adjustments to the Company's inventory numbers and calculations, including communications from other OMG employees who questioned the mechanics, propriety or appropriateness of making these adjustments; and through reports and other information provided to him. In addition, by virtue of his Board and committee memberships or executive and managerial positions with OMG, each Individual Defendant had access to adverse non-public information about the Company's cobalt inventory, finances and customer demand through access to internal corporate documents such as the Asset Management

Sheet and the Monthly Summary, which were prepared from information from the Company's BPCS system; conversations and connections with other corporate officers and employees; attendance and minutes from meetings, including management meetings, Operating Committee meetings; Monday morning cobalt meetings and Board meetings; and through reports and other information provided to him. Further, each of the Individual Defendants is responsible for the materially false and misleading statements regarding OMG's inventory, accounting policies and adherence to GAAP, as complained of herein, because at least certain of such statements were included in documents, such as SEC filings and press releases, which were "group published" documents.

295. OMG and the Individual Defendants, as either directors or among the top executive officers of OMG, are liable as direct participants in the wrongs complained of herein. Through their positions of control and authority as officers and/or directors of OMG, the Individual Defendants were able to and did control the content of the public statements disseminated by OMG. With knowledge of the falsity and misleading nature of the statements contained therein and in reckless disregard of the true financial results of OMG, the Individual Defendants caused the heretofore complained of public statements to contain misstatements and omissions of material facts as alleged herein.

Defendants' Scienter

296. Each OM Defendant acted with scienter with respect to each of the false statements for which he is charged with liability. The following facts demonstrate that each defendant acted with scienter, the state of mind required for liability under §10(b) and Rule 10b-5.

Knowledge or Reckless Disregard for the Truth

297. Several facts, when considered together in context, establish that, by no later than December 31, 2001, Defendants Mooney, Materna and Miklich either possessed or recklessly disregarded knowledge that ultimately compelled them to cause OMG to substantially write down the value of its cobalt inventory to the lower market value as required by GAAP. In the face of those facts, Defendants Mooney, Materna and Miklich knowingly or recklessly prevented OMG from stating its cobalt inventory in compliance with GAAP in the Company's December 31, 2001 annual financial statements, and in OMG's March 31, 2002 and June 30, 2002 quarterly financial statements, allowing material losses to accumulate in OMG's inventory account rather than realize those actual losses. As a result, operating income, net income and earnings per share, in addition to inventory, were materially overstated throughout the Class Period, thereby substantially distorting OMG's financial condition.

298. The facts establishing Defendants Mooney's, Materna's and Miklich's knowledge or reckless disregard include, among others set forth above, the following:

(a) Defendants Mooney, Materna and Miklich were experienced and knowledgeable senior executives in the metal-based specialty chemicals industry. Defendant Mooney grew up in the industry, and has been a senior executive of the Company, founded in 1946 by his father, since 1971 when he became Mooney Chemicals' President and Chief Executive. In 1991, Defendant Mooney was named the Chairman of OMG's Board of Directors, and the Company's Chief Executive Officer. Defendant Materna served as OMG's CFO for almost ten years. Miklich was OMG's Chief Financial Officer from April 2002 to April 2004, and was a Director from 1993 until 2002.

(b) Inventory is OMG's lifeblood. OMG exists as a Company because of its inventory; its business is the mining, processing, refining and selling of inventory. Through its inventory, the Company serves more than 30 major industries, supplying more than 1,700 customers in 50 countries with more than 625 different product offerings. Accordingly, Defendants Mooney, Materna and Miklich:

(1) Received the Company's Major Metals Report, which was an extensive compilation of the published market prices for various metals, including cobalt and nickel, at their Terminal Tower office location;

(2) Received, on a daily basis via e-mail, the Daily Market Report, which was a report generated in Finland and distributed to numerous OMG employees, including the Defendants, that covered all of the key metal indices and prices, including the prices of cobalt and nickel;

(3) Had access to up-to-date inventory and sales information (including the Company's cobalt inventory and sales) through OMG's BPCS software system, which tracked the Company's metals sales, the price of such sales, metals inventory that was being purchased or acquired by OMG as well the Company's inventory balances and inventory maintained in the Company's own warehouses and those of its customers;

(4) Received, on a daily basis via e-mail, a report of the Company's sales activities, including, its daily, monthly, quarterly and yearly sales information by product line and by region, which, for a portion of the class period, was compiled and distributed by OMG's Treasury Manager (Ms. Lee), who downloaded this information from the Company's Analyzer system.

(c) Cobalt is OMG's most significant product. It is the Company's core business and, as such, it was discussed regularly. In fact, from the end of 2001 through 2002, the price of cobalt was "the major concern for the [C]ompany." The Company regularly described itself as the "global cobalt leader for more than 50 years;" indeed, during the Class Period, OMG controlled 23% of global cobalt capacity. Cobalt comprised 32% of OMG's sales in 2000 and 30% in 2001. Accordingly, Defendants Mooney, Materna and Miklich:

(1) Received cobalt market prices twice per week, as published by Metal Bulletin, and also received monthly Metal Bulletin's Metal Bulletin Research, which was widely considered the authority on trends in the cobalt industry;

(2) Received internal Company pricing reports, which were (1) created by Alice Ramsey; (2) based on the published Metal Bulletin prices; and (3) distributed to them on a bi-weekly, weekly and monthly basis;

(3) Received minutes from the Company's monthly Operating Committee Meetings, which, among other issues, addressed the various metals in the Company's inventory and tracked the different metals prices, including the market price of cobalt. For instance, the following cobalt issues were discussed at Operating Committee Meetings:

i. October 15, 2001 Meeting: "***This is the worst cobalt quarter going back to 1999***;"

ii. November 19, 2001 Meeting: "Cobalt market in October continued to be very depressed;"

iii. December 17, 2001 Meeting: "***General news continues to be bad...cobalt metal has begun to decline***...Business in December is not expected to be strong. Customers want to keep no inventory;"

iv. April 22, 2002 Meeting: "[C]obalt . . . sales below both plan and 2001 levels; basically at 2000 levels."

(4) Received, via e-mail on a weekly basis, OMG's Global Cobalt Business Manager's (Mr. Anttila) reports that were (1) generated in connection with the Company's Monday morning cobalt meetings, where the primary and regular topic of discussion was the cobalt market and cobalt prices; and (2) discussed, among other relevant cobalt issues and statistics, the prices as published by the Metal Bulletin, the conditions affecting the cobalt market, the tons of cobalt metal sold by OMG, and OMG's average selling price for the cobalt sold;

(5) Attended meetings of the Company's Board of Directors where the price of cobalt and the state of the cobalt market were discussed at the meetings as well as presented in the materials that were prepared in conjunction with the meetings. For instance, the following cobalt issues were discussed at these Board of Directors Meetings:

i. November 5, 2001 Meeting: OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board that "***cobalt metal prices [are] in the tank***" and that "***cobalt prices tumbled to $7-8/lb virtually wiping out refining profits***;"

ii. April 12, 2002 Meeting: OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board that the Company's "***Achilles Heel continues***

to be cobalt metal price*"** and that the "weakest segments of OMG portfolio are cobalt metal prices*** and Electronic Chemicals."

(6) Received OMG's internal inventory report referred to as the Asset Management Sheet or Inventory Report, which provided them with the Company's cobalt inventories broken down by the type of cobalt and the location of the cobalt – either OMG warehouse or consignment customer – and showed how fast the Company's inventories were actually turning over; and

(7) Received OMG's Monthly Summary, which depicted sales of cobalt, the price at which it was sold, and the type of market or customer to which the cobalt was being sold.

(d) OMG's December 21, 2001 acquisition of Rhodia's Clayton facility, which, as a condition precedent to acquiring the Clayton business, OMG required that Clayton's inventories be written-down to $6.66 per pound to reflect the market value for cobalt, which, OMG instructed was in accordance with GAAP and which was $5.00 below the inventory that OMG was carrying on its own books for the same grade of cobalt at this December 21, 2001 date;

(e) OMG's Report for a Bank Meeting entitled "Recent Cobalt Market Pricing" which, as can be seen for the excerpted June 2001 through October 2002 time frame detailed below, listed the average cobalt market price and the Company's 2002 price plan:

Year	Avg. Cobalt Price	2002 Plan
June 2001	$10.54	
July 2001	$ 9.21	
August 2001	$ 9.51	
September 2001	$ 9.05	
October 2001	$ 8.06	
November 2001	$ 6.80	
December 2001	$ 6.67	
January 2002	$ 7.23	$11.00
February 2002	$ 6.99	$11.00
March 2002	$ 6.64	$11.00
April 2002	$ 6.85	$11.00
May 2002	$ 8.31	$11.00

Year	Avg. Cobalt Price	2002 Plan
June 2002	$ 7.76	$11.00
July 2002	$ 6.92	$11.00
August 2002	$ 6.27	$11.00
September 2002	$ 6.73	$11.00
October 2002	$ 6.47	$11.00

(f) Even though there were a few minor, short-lived increases in price over the course of the 70-month period from June 1999 through October 30, 2002, the end of the Class Period, the market price for raw cobalt declined steadily and substantially, plummeting 68% from $20.00 in June 1999 to $6.35 on October 30, 2002. Metal Bulletin, the recognized expert on the cobalt market and the Company's standard for cobalt pricing, consistently articulated throughout the Class Period its position – as supported by the actual steadily decreasing market prices – that cobalt market prices were down, were going down further, and were staying down for the foreseeable future. Among other statements,

- Metal Bulletin reported that the downward trend in the market price of cobalt was continuing into 2001, with the price dropping below the $10.00 mark on May 2, 2001.
- The April 2001 issue of Metal Bulletin Research stated that "[c]obalt prices collapse as the weakening economic landscape chokes demand."
- In its August 2001 issue of Metal Bulletin Research, just before the market price of cobalt dropped below the $9.00 per pound mark, Metal Bulletin observed how "[p]rices for all grades of cobalt continued to slide this month as the summer gloom deepened and concerns remain over recovery in the second half of the year."
- As OMG approached its year-end, Metal Bulletin stated in its November 2001 issue of Metal Bulletin Research that "MBR believes that cobalt prices have more pain to suffer over the next twelve months as demand continues to weaken and production has the potential to increase rapidly." In this same issue, Metal Bulletin stated that, "[w]ith weakness in the demand side of the market looking set to continue until the end of the year, MBR remains bearish about the ability of prices to stabilize at even their current low levels."

- In the January 2002 issue of Metal Bulletin Research, Metal Bulletin reported that, "[t]aken as a whole, 2001 was the worst year for cobalt prices since the Metal Bulletin began publishing a free market quote in the early 1990s"; on January 23, 2002, just before OMG's February 5, 2002 earnings release for the Company's fourth quarter and year ended December 31, 2001, the price of cobalt dropped to $7.30.

(g) At the May 14 and 15, 2002 Annual General Meeting of the Cobalt Development Institute in Paris, France, cobalt experts expressed views that the current and near term prospects for the cobalt market were negative. In particular, one presenter summed up the state of cobalt demand in the first quarter of 2002 as "[w]eak, poor depressed, subdued, fragile, brittle, frail, flimsy, shaky, debilitated, poorly, unwell, sick, etc., etc." Indeed, this same presenter stated at the conference that the "state of demand during much of 2001 and the first quarter of 2002 can be described as weak at best."

(h) OMG, in its Form 10-Q for the quarter ended September 30, 2001, acknowledged that the decline in the operating profit of the Company's Base Metals Chemistry Segment was "primarily the result" of "lower cobalt contained volumes across many industries and lower metal prices resulting in lower refining profits." The deterioration in Base Metals sales and operating profit was significant: Net sales for the quarter ended September 30, 2001 dropped by over $60 million, or over 25%, from that reported for the quarter ended March 31, 2001, and operating profit for the quarter ended September 30, 2001 dropped by approximately $7.5 million, or over 17%, from that reported for the quarter ended March 31, 2001. These operating results, as severe as they were, actually understated the deleterious effect that declining cobalt prices were having on OMG's operations, because they were presented after the offsetting effect provided by the positive operations achieved by certain of the other components of the Base Metals segment.

299. OMG was carrying its cobalt inventory at an average price of $11.80 per pound. The Individual Defendants refused to write-down that inventory to the lower of cost or market, instead concealing the accumulated losses from the public. In order to avoid the diminished market value of OMG's cobalt inventory, as well as the disastrous affect that revealing it to

investors would have on the Company's stock price, Defendants Mooney, Materna and Miklich either knowingly ignored or recklessly disregarded that:

(a) The average carrying value of the cobalt inventory in OMG's inventory – $11.80 per pound – was substantially higher that the actual market prices at December 31, 2001, March 31, 2002 and June 30, 2002, the reporting dates of the financial statements issued during the Class Period:

(1) $5.17, or 44%, above the $6.63 December 31, 2001 market price;

(2) $5.40, or 45.8%, above the $6.40 March 31, 2002 market price; and

(3) $4.45, or 37.7%, above the $7.35 June 30, 2002 market price;

(b) The substantial length of time that cobalt market prices had been depressed at December 31, 2001, March 31, 2002 and June 30, 2002: The last time that the market price of cobalt was as high as $11.80 per pound was on April 10, 2001, more than 8 months prior to December 31, 2001, more than 11 months prior to March 31, 2002, and more than 14 months prior to June 30, 2002; and

(c) The well-held expert view that those prices were likely to remain depressed.

300. Instead of acknowledging the predominant view that cobalt prices had been, were and would remain severely depressed, and that the sustained and anticipated decline had caused at least three of OMG's competitors to write-down their cobalt inventories (see ¶ 54), Defendant Mooney attempted – without any basis whatsoever – to foster an expectation that cobalt prices were on the rise and that OMG's Base Metals profitability would soon be improving. For example:

(a) On February 5, 2002, in connection with OMG's release of financial information and results for the quarter and year ended December 31, 2001, Defendant Mooney stated that "OMG is set for both cobalt and nickel prices to expand and increase to further enhance operating profits." Defendant Mooney also stated that "[t]here are signs of price recovery in cobalt. We'll follow this

closely. But we do believe that there is an opportunity there for refining profit as time goes on in the year 2002."

(b) On April 25, 2002, in connection with OMG's release of its financial results for the quarter ended March 31, 2002, Defendant Mooney, with cobalt prices averaging $6.93 per pound thus far for 2002, and just $6.85 for the month of April 2002, represented that "[c]urrently we see improving conditions in most of our businesses with nickel and cobalt metal prices higher than in the first quarter. . . . We are optimistic that base metal chemistry . . . will continue to improve and we will expand our value-added products to enhance shareowner value back to double-digit earnings per share growth in 2002."

Indeed, Defendant Mooney went to great lengths to pump up the price of cobalt, not only by making baseless statements about the demand, but by attempting to clandestinely manipulate supply as well – something that OMG, as the cobalt market leader, could potentially accomplish. In fact, an analyst at Banc of America Securities, which followed OMG, stated in his March 11, 2002 report that the 8-week closure by OMG, the largest refiner of cobalt in the world, of the Company's Big Hill smelter in January 2002, purportedly for maintenance, was actually designed to reduce cobalt supply and, as a result, boost market prices:

> We believe that OMG is doing a good job of managing supply in cobalt chemicals during a period of cyclical demand and price weakness.
>
> ***OMG has taken down the Big Hill smelter in DRC for what the company describes as scheduled maintenance. While the smelting process is indeed inherently corrosive, requiring frequent maintenance, and Zambian competitors have genuine maintenance issues, we think the real driver for OMG is temporarily constraining supply.***

(Emphasis added.)

301. Several facts, when considered together in context, establish that Defendants Mooney, Materna and Miklich possessed or recklessly disregarded that the inventory balances reported on OMG's balance sheets as early as December 31, 1999 were materially overstated and unreliable. These balances were not based on supportable and actual physical units of inventory,

but were based on estimations and adjustments. Specifically, Defendants knew or recklessly disregarded that OMG's inventory balances included estimates for WIP inventory, in-transit inventory, resupply inventory, and waste and by-product inventory. In addition, Defendants knew or recklessly disregarded that OMG's inventory balances included unsupportable capitalization costs. For instance, the Company adjusted its inventory balances to include excess overhead and manufacturing costs.

302. The facts establishing Defendants Mooney's, Materna's and Miklich's knowledge or reckless disregard of OMG's materially false and overstated reported inventory balances include, among others set forth above, the following:

(a) OMG's recording of unsupported amounts of WIP inventory. For example at OMG's Franklin Facility, the Company reported multi-million dollar WIP inventory balances each year at June 30 and December 30. However, at these times, the facility had been closed down for maintenance work and for the holiday season, and, therefore, had little, if any, WIP inventory at the facility. In fact, at Franklin,

- In 1999: approximately $6.7 million of the facility's $6.8 million – or 98% – reported WIP inventory balance was unsupportable;
- In 2000: approximately $5.9 million of the facility's $6.0 million – or 98% – reported WIP inventory balance was unsupportable;
- In 2001: approximately $5.8 million of the facility's $5.9 million – or 98% – reported WIP inventory balance was unsupportable; and
- In 2002: approximately $5.8 million of the facility's $5.9 million – or 98% – reported WIP inventory balance was unsupportable.

(b) OMG's recording of unsupported amounts of raw material, waste and by-product inventory. For example, at OMG's St. George Facility, the Company made estimates for inventory that Defendants could not – and did not even attempt – to physically count. Specifically, OMG reported false amounts of inventory

based on the disingenuous and unsupportable assertion that the residue and other discharge held in sludge ponds somehow constituted valuable inventory. In fact, at St. George,

- In 1999, approximately $3.7 million of the Facility's $5.5 million – or 67% – reported raw materials inventory was unsupportable;
- In 2000, approximately $3.6 million of the Facility's $6.2 million – or 58% – reported raw materials inventory was unsupportable;
- In 2001, approximately $4.2 million of the Facility's $7.2 million – or 58% – reported raw materials inventory was unsupportable; and
- In 2002, approximately $4.1 million of the Facility's $5.3 million – or 77% – reported raw materials inventory was unsupportable.

(c) OMG's recording of unsupported amounts of in-transit inventory. OMG recorded several millions of dollars of "in transit" inventory when, in fact, the amount of inventory actually in transit then was "de minimus." For example, at OMG's Franklin facility, Defendants made estimates for in-transit inventory because, prior to 2000, the BPCS computer system did not accurately track in-transit inventory. However, even after this system shortcoming was corrected, Defendants continued to make large off-report estimations for this inventory. Defendants do not have any documents that support this in-transit inventory balance. In fact, at Franklin,

- In 1999, approximately $3.8 million of the Facility's $3.8 million – or 100% – reported in-transit inventory was unsupportable;
- In 2000, $4.5 million of the Facility's $4.5 million – or 100% – reported in-transit inventory was unsupportable;
- In 2001, approximately $4.4 million of the Facility's $4.4 million – or 100% – reported in-transit inventory was unsupportable; and
- In 2001, approximately $4.4 million of the Facility's $4.4 million – or 100% – reported in-transit inventory was unsupportable.

(d) OMG's recording of double counted full absorption costs. Defendants knowingly maintained or recklessly disregarded known errors that improperly increased inventory balances by millions of dollars. For example, at OMG's Midland facility, the Company knowingly kept a double counting of full absorption costs on its financial statements. Despite knowing the existence of this $2.75 million double counting error, Defendants "consciously opted to NOT correct it, since it was already reflected in the system." Further, not only did Defendants intentionally not correct this error, but they also increased the size of it by an additional, unsupported $500,000 adjustment. In fact, at Midland,

- In 1999, approximately $3.1 million of the Facility's $3.1 million – or 100% – reported full absorption inventory costs were unsupportable;
- In 2000, approximately $2.75 million of the Facility's $2.75 million – or 100% – reported full absorption inventory costs were unsupportable;
- In 2001, approximately $2.75 million of the Facility's $2.75 million – or 100% – reported full absorption inventory costs were unsupportable; and
- In 2002, approximately $3.25 million of the Facility's $3.25 million – or 100% – reported full absorption inventory costs were unsupportable.

(e) OMG's recording of estimated overhead and direct costs despite having comprehensive itemized records of such manufacturing costs. For example, OMG made unsupportable adjustments to the Kokkola and Harjavalta facilities' overhead and direct costs calculations under the Company's "macro" approach to accounting. OMG applied its "macro" approach even though each facility performed physical inventory counts on a monthly basis; accounted for all of its own manufacturing costs locally; and maintained detailed records of its costs and cost accounting calculations. Furthermore, OMG Corporate made these adjustments over the voiced concerns of the facilities' Controllers. In fact,

- In 1999, approximately $9.2 million of Kokkola's $9.2 million – or 100% – reported overhead and direct costs were unsupportable;

- In 2000, approximately $10.2 million of Kokkola's $10.2 million – or 100% – reported overhead and direct costs were unsupportable;
- In 2001, approximately $17.3 million of Kokkola's $17.3 million – or 100% – reported overhead and direct costs were unsupportable; and
- In 2002, approximately $20.8 million of Kokkola's $20.8 million – or 100% – reported overhead and direct costs were unsupportable;
- In 2000, approximately $5.2 million of Harjavalta's $5.2 million – or 100% – reported overhead and direct costs were unsupportable;
- In 2001, approximately $4.8 million of Harjavalta's $4.8 million – or 100% – reported overhead and direct costs were unsupportable; and
- In 2002, approximately $5.5 million of Harjavalta's $5.5 million – or 100% – reported overhead and direct costs were unsupportable.

(f) OMG's recording of inventory without ever conducting physical inventory counts. Specifically, at OMG's Tacow facility, the Company reported millions of dollars of inventory without ever performing a physical inventory count. In fact, at Tacow,

- In 1999, approximately $1.2 million of the Facility's $1.2 million – or 100% –reported inventory was unsupportable;
- In 2000, approximately $3.3 million of the Facility's $3.3 million – or 100% –reported inventory was unsupportable;
- In 2001, approximately $2.6 million of the Facility's $2.6 million – or 100% –reported inventory was unsupportable; and
- In 2002, approximately $1.9 million of the Facility's $1.9 million – or 100% –reported inventory was unsupportable.

303. The Individual Defendants knew about the fraudulent accounting practices implemented under their watch. As CEO and CFOs, Defendants Mooney, Miklich and Materna each knew and had access to – through direct knowledge or knowledge learned through the

supervisory nature of their positions – the accounting and operational information and decisions made at the Company. For example, the Individual Defendants had knowledge of the following facts and information, in addition to their knowledge as detailed above:

(a) Defendant Mooney: As OMG's Chief Executive Officer and the Chairman of OMG's Board of Directors, Defendant Mooney was involved in every important decision affecting the Company and received regular reports from OMG's President and Chief Operating Officer (Mr. Kissel), OMG's Chief Financial Officer (Defendants Miklich and Materna during their respective tenures), and OMG's Treasurer (Mr. Durst).

(1) With respect to the Company's operations, OMG's President and Chief Operating Officer (Mr. Kissel) and OMG's Treasurer (Mr. Durst) provided Defendant Mooney with detailed information regarding the Company's debt compliance and the state of the cobalt market. For example, such reports included, but are not limited to the following:

a. On November 11, 2001, OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board of Directors – including Defendant Mooney – that "cobalt prices [are] in the tank";

b. On March 14, 2002, OMG's Treasurer (Mr. Durst) informed Defendant. Mooney that "[i]t is critical that [OMG] reduce debt levels to avoid violating debt covenants" and that covenant violations could be expected "as early as June 30, 2002";

c. On April 12, 2002, OMG's Treasurer (Mr. Durst) informed the Board of Directors – including Defendant Mooney – that debt is a "critical concern," and OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board that cobalt is the "Achilles Heel" of OMG's business.

(2) With respect to the Company's accounting and, more specifically, its inventory accounting, Defendant Mooney received detailed information and reports from the Company's Chief Financial Officers, Defendants Materna

and Miklich. As demonstrated below, Defendants Materna and Mikilch had extensive knowledge regarding essentially every aspect of the Company's inventory accounting.

(b) Defendant Materna: As Chief Financial Officer, a position he held for over 10 years, Defendant Materna knew virtually every fact regarding the Company's financials. Additionally, Defendant Materna was the direct supervisor and received direct reports from OMG's Treasurer (Mr. Durst) and OMG's Corporate Controller (Mr. Holtzhauser). Defendant Materna also supervised and received second level reports from OMG's Treasury Manager (Ms. Lee) and OMG's Controller of Americas (Mr. Venesky). Accordingly, due to his position, Defendant Materna had knowledge of the following aspects, among others, of the Company's business and accounting practices:

(1) Defendant Materna either had knowledge, or recklessly disregarded, that the Officer's Compliance Certificate for the year-end 2001, which he certified on March 29, 2002, had been changed in a prior draft from 70.3% – thus violating OMG's total debt to capital ratio by 0.3% – to 70%, representing bare compliance;

(2) Defendant Materna was informed on February 14, 2002 by OMG's Treasurer that the Company's "actual" debt to capital ratio year-end 2001 was 70.35%;

(3) Defendant Materna knew that the Company's inventory balances lacked support and had been manipulated. In a January 25, 2002 e-mail from OMG's Controller of OMG Americas (Mr. Venesky), Defendant Materna was told that "you should know that we do have some holes. Recall that we had made some assumptions in the past which we have carried over (WIP, resupply and St. George)…the audit report is not strong...we've talked about the BS valuation."

(4) Defendant Materna knew that the Company manipulated its average selling prices to achieve its desired LCM results. In a January 20, 2001 e-mail, OMG's Controller of OMG Americas (Mr. Venesky) consulted Defendant Materna as follows: "We're still under the hurdle [for LCM], which of course, is bad. Maybe you can recall what we do to these calculated ASPs to get us over the hurdle with profit to spare."

(5) Defendant Materna knew that unsupported adjustments were being booked by the Company. On July 18, 2001,

Defendant Materna received an e-mail from OMG's Controller of OMG Americas (Mr. Venesky) stating that "in the first quarter, we were looking at about $3.5 million difference . . .which we did NOT book but rather stashed it elsewhere in the inventory. Now YTD thru June 30, we're looking at closer to $6.0 million. Again supported with LIFO calc, but I'm not sure how you'll want it booked. In addition, we have a corporate level adjustment of roughly $1.0 million which we booked in June"

(6) Defendant Materna knew about the capitalization of direct costs and overhead at OMG's Kokkola Facility. OMG's Kokkola Facility Controller (Mr. Peltoniemi) stated that he had conversations with Defendant Materna "concerning the local inventory values and adjustments that were proposed to be made to increase values for a particular inventory." Mr. Peltoniemi further stated that "even if he said 'no' to an adjustment, 'they will solve the problem at corporate.'"

(7) Defendant Materna knew as early as 1999, based on the testimony of both OMG's Director of Operations (Mr. Venesky) and OMG's Cost Inventory Manager (Mr. Beaver) that full absorption costs had been double counted resulting in a $2.75 million overstatement at OMG's Midland Facility.

(8) Defendant Materna knew of – and according to the testimony of OMG's Director of Operations (Mr. Venesky), was one of those who implemented – the improper "macro-approach" used by OMG for its inventory accounting.

(c) Defendant Miklich: By virtue of his positions as Chief Financial Officer and Director on the OMG Board, Defendant Miklich had extensive knowledge of the Company's financial reporting throughout the Class Period. As Chief Financial Officer, Defendant Miklich was the direct supervisor and received direct reports from OMG's Treasurer (Mr. Durst) and OMG's Corporate Controller (Mr. Holtzhauser). In addition, Defendant Miklich also supervised and received second level reports from OMG's Treasury Manager (Ms. Lee) and OMG's Controller of Americas (Mr. Venesky). Accordingly, Defendant Miklich had knowledge of the following aspects, among others, of the Company's business and accounting practices:

(1) Defendant Miklich knew, according to the testimony of OMG's Director of Operations (Mr. Venesky), that OMG

applied a "macro-approach" to its inventory accounting. Mr. Venesky testified that "Tom Miklich understood the macro -- approach, understood the estimation, understood the judgments that were used."

(2) Defendant Miklich knew that the Company manipulated its inventory numbers to achieve its desired LCM results. For instance, in a July 17, 2002 e-mail from OMG's Corporate Controller (Mr. Holtzhauser), Defendant Miklich was informed that "[the Company has] already more than overstated the LCM calculation and if we want to increase the LIFO level we have to raise the LCM level and that can not be defended. We are over even if the cobalt price is $12."

(3) Defendant Miklich knew that the cobalt market was declining and negatively affecting the Company's profits. On November 11, 2001, OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board of Directors – including Defendant Miklich – that "cobalt prices [are] in the tank";

(4) On April 12, 2002, OMG's Treasurer (Mr. Durst) informed the Board of Directors – including Defendant Miklich – that debt is a "critical concern," and OMG's President and Chief Operating Officer (Mr. Kissel) informed the Board that cobalt is one of the "weakest segments of OMG's business."

(5) Defendant Miklich knew, according to admissions in the Power Point Presentation, that the OMG Corporate applied its "macro-approach" to the inventory cost accounting of OMG's Kokkola and Harjavalta Facilities. Specifically, Defendant Miklich knew that improper upward adjustments were made to these facilities' direct costs and overhead costs even though the facilities maintained comprehensive and itemized records of their inventory balances and manufacturing costs.

304. Additional facts establishing Defendants Mooney's, Materna's and Miklich's knowledge or reckless disregard of OMG's materially false and overstated reported inventory balances include the Company's fostering, encouraging and maintaining a culture of fraud. Specifically, Defendants knew or recklessly disregarded blatant indications which demonstrated

that OMG had a corporate culture where manipulating inventory values and balances was accepted, recommended and customary. In fact, there was an on-going dialogue at the Company among OMG senior management – which the Defendants either knew about or recklessly disregarded – about handling and concealing the lack of substantive support for OMG's inventory results as well as the lack of reconciliation between their "adjusted" numbers and their actual numbers. Accordingly, Defendants Mooney, Miklich and Materna either knowingly ignored or recklessly disregarded these pervasive practices and communications as described in the following examples:

(a) January 17, 1999 e-mail from OMG's Controller of OMG Americas (Mr. Venesky) to OMG's Treasurer (Mr.Durst): Simply put, there are some items that are not included with the INVR01 (or other system inventory reports for that matter) but are part of the whole inventory valuation system.....:

KCO in transit inventory (billed by KCO before they close their sales, not recovered by us in time.

work in process ***(the other most subject item in the reconciliation, an estimate not substantively valued)***

warehouse resupply in transit ***(again, an estimate which lacks substantive support)***

reconciling difference ***(a flat out difference between our compiled inventory and what we publish in the financials.)***

These dollar amounts have been allocated among the various product lines and the results can be seen by looking at the line item details of the report I sent you this morning...look for WIP and Resupply and out of balance. Like it or not, these are reconciling inventory elements. ***I'd say, as I have said all along, that there is probably some excess in these estimates, but that is where we are with inventory***.

(b) January 20, 2001 e-mail from OMG's Controller of OMG Americas (Mr. Venesky) to ***Defendant Materna***: "I don't recall exactly why, but we have never just used these ASPs for our LCM analysis. Whatever the case is, I have adjusted the LCM analysis to reflect these ASPs. In addition, I changed the 'W-powder' and

the 'All others' to $8 and $2, respectively. ***We're still under the hurdle, which of course, is bad. Maybe you can recall what we do to these calculated ASPs to get us over the cost hurdle with profit to spare.***"

(c) July 18, 2001 e-mail from OMG's Controller of OMG Americas (Mr. Venesky) to OMG's Corporate Controller (Mr. Holtzhauser) and courtesy copied to ***Defendant Materna***: "Note that we again have a large debit adjustment to LIFO. I know that Jim and you don't like that, but the prices continue to drop in the 'index valuation,' which has a direct effect on the LIFO calc. The LIFO calc supports this adjustment, after considering roughly 8% to 9% deflation. Recall in the first quarter, we were looking at about $3.5 million difference (that was also supported with a LIFO calc) ***which we did NOT book to LIFO but rather stashed it elsewhere in the inventory***. Now YTD thru June 30, we're looking at closer to $6.0 million. Again supported with LIFO calc, but ***I'm not sure how you'll want it booked***. In addition, ***we have a corporate level adjustment of roughly $1.0 million which we booked in June***. . .that number has been included in these workpapers with June WIP – for the most part."

(d) September 28, 2001 e-mail from OMG's Cost Inventory (Mr. Beaver) to OMG's Director Operations (Mr. Venesky) : "I realize that I have not taken into account the change in LIFO ***but I am getting very nervous about the reduction in inventory.*** The top section of the sheet is balances in the general ledger, the middle section is the GL in summary and the bottom section comes from the inventory worksheets and the GL. ***I have added $11,000,000 to the inventory spreadsheets ($6,000,000 to Franklin and $5,000,000 to St. George). Even with these additions I am still off by $10,000,000.*** I know that the LIFO change will make up for some of this but probably not all of it. Any help at any time you can give me would be greatly appreciated."

(e) December 21, 2001 e-mail from OMG's Director of Operations to OMG's Apex Plant Controller of Operations (Rob Peterson): "Unless I'm gravely mistaken, I believe your current 2002 plan calls for St. George to break even? As I see it, you've got about $36.911 million in sales and about the same ($36.836 million) in cost of sales. ***Simply put, I need you to do what you can to make St. George closer to $1.5 million operating profit. Once you're there, I'll get off your back.***"

(f) January 25, 2002 e-mail from OMG's Controller of OMG Americas (Mr. Venesky) to ***Defendant Materna*** and OMG's Corporate Controller (Mr. Holtzhauser): "[A]s a matter of sharing

observations with you, and not that I am concerned about the outcome, EY is clearly spending more time and energy on inventory testing this year. ***Frankly, if it spills over into our other inventory work papers,*** the likes of which we just reviewed, ***you should know that we do have some holes. Recall that we had made some assumptions in the past which we have carried over (WIP, resupply and St. George)...the audit support is not strong.*** I believe the COGS [Cost of Goods Sold] P&L [Proft & Loss] number is solid, but ***we've talked about the BS valuation.*** If I didn't mention this, I'd be negligent."

(g) February 21, 2002 e-mail from OMG's Cost Inventory Manager (Mr. Beaver) to OMG's Kokkola Facility Controller (Mr. Peltoniemi): "***Fiddling around with lower or cost or market calculations. Can we increase the valuation of GTL/STL inventory, if we assume that the market price of cobalt is $9.00? Can we capitalize more manufacturing costs, using this assumption?*** If you agree, please provide a calculation to support the increased inventory valuation."

(h) April 17, 2002 e-mail from OMG's Cost Inventory Manager (Mr. Beaver) to OMG's Corporate Controller (Mr. Holtzhauser) and courtesy copied to OMG's Controller of OMG Americas (Mr. Savolainen) and OMG's Director of Operations (Mr. Venesky): "As you will see using the December asp the schedule is recommending that we book an adjustment. ***If we rethink the asp then the adjustment will go away.***"

(i) May 28, 2002 e-mail from OMG's Director of Operations (Mr. Venesky) to OMG's Corporate Controller (Mr. Holtzhauser): "In some cases, [we were] just adding to the balances because the trend was still reasonable. ***Now we're holding an inventory position that in all likelihood doesn't exist.***"

(j) June 6, 2002 e-mail from OMG's Director of Operations (Mr. Venesky) to OMG's Cost Inventory Manager (Mr. Beaver): "***My point here is, there are enough 'soft' areas where the difference could be hiding***, you're always better off nailing down the 'hard' numbers first then challenging yourself on the reasonableness of the softies. . . .***Simply put, you have a mixed bag of hard and soft inventory numbers, comprising the $140 mill, it's your job to separate the 'fly crap from the pepper,***' and if it's fly crap, keep it isolated and we'll eventually amortize it all away.

(k) July 11, 2002 e-mail from OMG's Cost Inventory Manager (Mr. Beaver) to OMG's Corporate Controller (Mr. Holtzhauser) and courtesy copied to OMG's Harjavalta Facility Controller (Mr.

Savolainen): "***I adjusted the LIFO schedule to reflect an almost zero increment. I did this by changing the BOY number. This changes the index number downward. Is this what you had in mind***? The end result is a $4.2 mil increase in the LIFO reserve compared to the current general ledger. ***I will have support for the EOY number but the index number will not tie back to the BPCS index report***....I have attached an adjusted LCM schedule. I have increased the other category to $2.70 per pound to cover the proposed additional LIFO reserve. This is an increase of $.70 per pound compared to 12/31/01. ***This adjustment is on top of the Cobalt and Nickel adjustments that have been made in 2002. I believe that the LCM calculation is going to be very difficult to support***."

(l) July 23, 2002 e-mail from OMG's Cost Inventory Manager (Mr. Beaver) to OMG's Director of Operations (Mr. Venesky): ***"$500,000 is the final adjustment. These are legitimate adjustments. There are no inventory adjustments. Good news."***

Motive and Opportunity

305. The Individual Defendants had motive and opportunity to avoid compelling OMG to properly report the value of the Company's supportable inventory as well to avoid compelling OMG to write-down the carrying value of its cobalt inventory to the lower of cost or market. Each of the Individual Defendants, as a result of his position as an officer and director of the Company, possessed the ability to control OMG's financial disclosures. In addition, each had the motive to do so because:

- OMG was motivated by a desire to maintain compliance with its debt covenants as it was precariously close to violating its debt to capitalization coverage ratio;

- OMG was motivated by a desire to meet or exceed Wall Street's earnings projections;

- Defendant Mooney had a strong financial incentive to keep the market price of OMG stock propped up and avoid the precipitous decline he knew would occur if the Company recorded the required write-down because Mooney had pledged his entire holdings of OMG stock to secure a margin loan he had with Merrill Lynch; and

- Defendant E&Y was strongly motivated to cooperate with the other Defendants in artificially inflating the public financial results of OMG, because OMG retained E&Y to perform a multitude of services for which OMG paid E&Y over four million dollars in fees each year.

Satisfy Debt Covenants

306. As of December 31, 1999 OMG had long term credit facilities that contained several restrictive covenants, including several financial ratios, which the Company had to satisfy to avoid default. Such a default, were it not waived or cured, would have significantly constrained OMG's liquidity. Indeed, by December 31, 1999, the Company's liquidity was already declining due to its significant cash expenditures on maintenance, expansions and acquisitions. A default would have caused a drop in the Company's credit rating, making it more expensive to borrow money. Any such default, therefore, likely would have also caused the market price of OMG common stock to drop significantly.

307. At December 31, 2001, OMG was in violation of certain of those covenants. According to Section 9.8 of the $1,310,000,000 Amended and Restated Credit Agreement dated as of August 10, 2001, OMG was required to maintain a Total Debt to Consolidated Total Capitalization Ratio whereby, on December 31, 2001, Total Debt, as defined therein, was not more than 70% of Consolidated Total Capitalization. Using the amounts reported in OMG's Form 10-K for the year ended December 31, 2001, this ratio, expressed as a percentage, was 69.9%, just .1% below the maximum allowable percentage. However, had OMG written down its cobalt inventory, as it was required to do under GAAP, by $108 million, Consolidated Total Equity would have been reduced by that amount less the income tax benefit, or by $93.7 million, resulting in a percentage of 73.5%, 3.5% over the maximum allowed under the Credit Agreement, and OMG would have been in default.

308. Had OMG defaulted at December 31, 2001, the Company would not have been able to complete its $225.9 million Secondary Offering of common stock in January 2002 because the default would likely have caused the market price of OMG's common stock to drop below a level that permitted the offering to be completed. In addition, a default would have made it more difficult for the Company to refinance its credit facilities, as it did in June 2002.

309. The Company used 100% of the proceeds of the Secondary Offering to pay down the debt. This, too, would not have occurred had OMG's default prevented the offering from going forward. Only as a result of using the proceeds of the Secondary Offering to pay down the debt, was OMG able to satisfy the Total Debt to Consolidated Total Capitalization Ratio in the first and second quarters of 2002.

310. As a result of those deceptive practices and false and misleading statements and omissions, the market price of OMG's common stock was artificially inflated throughout the Class Period. In ignorance of the false and misleading nature of the representations and omissions described above and the deceptive and manipulative devices employed by Defendants, Lead Plaintiff and the other members of the Class, in reliance on either the integrity of the market or directly on the statements and reports of those Defendants, purchased OMG common stock at artificially inflated prices and were damaged thereby.

311. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by Defendants, or been aware of the truth behind those Defendants' material misstatements, they would not have purchased OMG common stock, at artificially inflated prices, if at all.

312. By virtue of the foregoing, each of the Defendants named in this Count has violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

Meet or Exceed Wall Street Estimates

313. Meeting Wall Street's expectations was a priority for Defendants. In fact, the documentary evidence demonstrates that the OM Defendants were obsessed with how they were viewed by Wall Street. For instance, in the Company's CSFB Road Show Presentation for its January 17, 2002 Secondary Offering, for which CSFB was the lead underwriter, Defendants continually boasted of its "proven ability to meet expectations" and how OMG had a record of five years and twenty-three consecutive fiscal quarters of meeting or exceeding Wall Street analysts' expectations. Their preoccupation with satisfying the Street caused the Defendants to carefully filter the information they provided to Wall Street despite the fact that they knew, through their comprehensive and sophisticated monitoring systems, the precise amount and cost of the cobalt in the Company's inventory and how it compared to the price of cobalt in the market. For example, in an October 8, 2002 email from Defendant Miklich to Defendant Mooney, Miklich stated, "[w]e also need to decide whether or not we want to be more transparent in our reporting, as this also a complaint from the Street." This intentional filtering is further demonstrated in an October 10, 2002 e-mail from Defendant Miklich to OMG's Director of Investor Relations (Greg Griffith) regarding how to respond to inquiries from Banc of America analyst Mark Gulley. Defendant Miklich stated "[Analyst Gulley] has figured out that we are using generalities rather than facts....Just goes to the point that we need a dramatic action, straight talk and cash generation soon."

314. In addition, Defendants preoccupation with satisfying the "Street" caused them to adjust and estimate the Company's inventory balances without any sound basis or support. As discussed previously, these adjustment and estimations resulted in the overstatement of the OMG's inventory balances; net income; and earnings per share. Accordingly, had Defendants properly reported the value of the Company's supportable inventory, the Company would have

missed the Street's estimates. Specifically, for the year-ended 2000, OMG reported annual earnings per diluted share of $2.95. Wall Street's guidance for OMG's 2000 earnings per share was also $2.95. OMG just met the Street's guidance. However, OMG, supposedly met the Street because its 2000 earnings included $14.9 million, or $.45 per share, of overstated inventory adjustments. Thus, had OMG reported its inventory for year-ended December 31, 2000 in accordance with GAAP, its earnings per share would have been $2.50 –$.40 below the Street's expectations.

315. Similarly, had OMG reported its inventory for year-ended December 31, 2001 in accordance with GAAP, it would have substantially missed Wall Street's estimates. For 2001, Wall Street estimates for OMG were $3.28 per share. With its overstated and unsupported inventory balances, OMG just barely exceed Wall Street's estimates with $3.29 earnings per diluted share. However, due to the Company's adjustments and estimations, OMG's earnings were overstated by $16.0 million, or $.47 per share for 2001. Thus, had OMG reported its inventory for year-ended December 31, 2001 in accordance with GAAP, its earnings per share would have only been $2.82, which is $.46 below the Street's expectations.

Maintain Mooney's OMG Stock Ownership

316. Defendant Mooney, pursuant to an agreement that he and the Company kept secret, had pledged all of his OMG holdings to secure a margin loan provided by Merrill Lynch. As in most margin loan agreements, if the market price of OMG common stock dropped below a specified price, Merrill Lynch could compel Defendant Mooney to liquidate the pledged OMG shares. Accordingly, Defendant Mooney had an essential reason to prevent the market from learning that OMG's cobalt inventory was significantly overvalued. Considering just how important cobalt operations were to the Company, it was a virtual certainty that any lower of cost or market write-down of cobalt inventory would lead to a severe drop in the market price of

OMG common stock, which, in turn, would cause Defendant Mooney to liquidate his entire ownership position in OMG. Although Defendant Mooney tried to prevent it from happening, this is precisely what occurred on October 29, 2002: OMG announced on October 29, 2002 that it was writing down its cobalt inventory to the lower of cost or market, as required by GAAP; the market price of OMG common stock immediately dropped to $8.95 per share; and Defendant Mooney involuntarily sold all of his pledged OMG common stock the same day.

COUNT II

Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

317. Lead Plaintiff repeats and realleges each of the allegations above. This Count is brought pursuant to Section 20(a) of the Exchange Act on behalf of the Class against Defendants Mooney, Materna (while he was CFO) and Miklich (while he was CFO).

318. Each of the Individual Defendants was, during the Class Period, a controlling person of the Company within the meaning of Section 20(a) of the Exchange Act. Throughout the Class Period, each of the Individual Defendants had the power and authority to cause the Company to engage in the wrongful conduct complained of herein by reason of the following:

(a) Defendant Mooney had the power and authority to cause OMG to engage in the wrongful conduct complained of herein by virtue of his position in the Company. Defendant Mooney was the Chairman and CEO of the Company, and owned over 4% of the Company's outstanding shares. Further, Defendant Mooney has managed the affairs of OMG and its predecessor, Mooney Chemicals, for the last 28 years.

(b) Materna had the power and authority to cause OMG to engage in the wrongful conduct complained of herein by virtue of his position as Chief Financial Officer and Director.

(c) Miklich had the power and authority to cause OMG to engage in the wrongful conduct complained of herein by virtue of his

> position as Director and Chief Financial Officer. Miklich was also a member of the Audit and Finance Committee of the Board.

319. None of the Individual Defendants possessed reasonable grounds for the belief that the statements contained in the SEC filings, press releases and statements complained of herein were true and devoid of any misstatements or omissions of material fact. Therefore, by reason of his position of control over the Company, as alleged herein, each of the Individual Defendants is liable pursuant to Section 20(a) of the Exchange Act to the same extent as the controlled entity, OMG. As a direct and proximate result of their wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of OMG common stock during the Class Period.

COUNT III

Against E&Y for Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder

320. Lead Plaintiff repeats and realleges each of the allegations above. This Count is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of all Class members who purchased or acquired OMG common stock from March 23, 2000 to the end of the Class Period.

321. E&Y is liable for the following specific statements:

(a) For the year ended December 31, 1999:

> We conducted our audits in accordance with auditing standards generally accepted in the United States...[T]he financial statements . . . present fairly, in all material respects, the consolidated financial position of OM Group, Inc. at December 31, 1999 . . ., and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States.

(b) For the year ended December 31, 2000:

> We conducted our audits in accordance with auditing standards generally accepted in the United States...[T]he financial statements . . . present fairly, in all material respects, the consolidated financial position of OM Group, Inc. at December 31, 2000 and 1999, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

(c) For the Fiscal Year ended December 31, 2001:

> We conducted our audits in accordance with auditing standards generally accepted in the United States...[T]he financial statements . . . present fairly, in all material respects, the consolidated financial position of OM Group, Inc. at December 31, 2001 and 2000, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

322. Throughout the Class Period, E&Y, by the use and means of instrumentalities of interstate commerce and of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about OMG, including its true financial results, as discussed in this Complaint. E&Y knew or was reckless in not knowing that OMG's financial results, including its net income, earnings per share, operating profit and inventories reported throughout the Class Period, and filed with the SEC and disseminated to the investing public, were materially overstated and were not presented in accordance with GAAP, and also that E&Y had not performed its audits of OMG in accordance with GAAS.

323. With knowledge or reckless disregard for the falsity and misleading nature of the statements contained therein and in reckless disregard of the true financial results of OMG, E&Y caused the complained of public statements to contain misstatements and omissions of material facts as alleged herein.

324. E&Y, through its conversations with management regarding "accounting practices or procedures at OMG" as testified to by OMG's Cost Inventory Manager (Mr.

Beaver); its being provided with Company documents regarding inventory support and LCM calculations; its own tracking of cobalt market prices as demonstrated by e-mails from E&Y employee Karen Ploscik and its Memoranda of Significant Matters; its attendance at and observations of OMG's physical inventory counts as discussed in the Power Point Presentation and OMG's emails; and information provided in and attached to E&Y's audit work papers, knew numerous facts regarding the Company's fraudulent accounting practices, including:

(a) That the current spot market prices for cobalt were $6.60 per pound at December 31, 2001 and at February 28, 2002;

(b) That OMG had arbitrarily inflated its sales prices by approximately 40% - 45% in evaluating the inventories held at OMG Americas as of December 31, 2001;

(c) That the average carrying value of OMG's cobalt inventory was $11.80 per pound, which was $5.17, or 44%, above the $6.63 December 31, 2001 market price, the reporting date of OMG's 2001 Form 10-K;

(d) That the last time that the market price of cobalt was as high as $11.80 per pound was on April 10, 2001, more than 8 months prior to December 31, 2001;

(e) That OMG competitor and E&Y audit client Avmin wrote-down the value of its interest in Chambishi cobalt plant in Zambia by $172 million in January 2002 because of the declining price of cobalt;

(f) That OMG reported unsupportable multi-million dollar WIP inventory balances at OMG's Franklin Facility each year at June 30, a time when the facility was closed down for maintenance work and, according to Company personnel, the Facility had little, if any, WIP inventory;

(g) That OMG had double counted full absorption costs at the Company's Midland Facility and that OMG "consciously opted to NOT correct it" for almost three years;

(h) That OMG reported millions of dollars of raw material, waste and by-product inventory in sludge ponds at OMG St. George Facility that could not be and were not physically counted and tested;

(i) That OMG reported millions of dollars of inventory at its Tacow Facility without ever having conducted a physical inventory count at this facility; and

(j) That OMG made sizable unsupportable adjustments under its "macro" approach to the Kokkola and Harjavalta facilities' overhead and direct costs calculations even though each facility conducted monthly physical inventory counts, accounted for all of its own manufacturing costs locally, and maintained detailed records of its costs and cost accounting calculations.

325. Had E&Y conducted its audits in accordance with GAAS, it would have observed the numerous facts and obvious "red flags" outlined above and, in so doing, would have discovered the truth about OMG's financial condition. Instead, E&Y ignored those facts and knowingly or recklessly failed to employ even the most basic procedures designed to test inventories, detect fraud or to ensure that the financial statements were free from material misstatement. Thus, in effect, E&Y abandoned its role as "independent auditor" and, in the process, knowingly or recklessly issued an unqualified audit opinion on OMG's materially false and misleading financial statements, which had the effect of artificially inflating OMG's stock price. From all of these facts, there is a strong inference that E&Y acted with scienter.

326. By virtue of the foregoing, E&Y has violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and is liable to Lead Plaintiff and the members of the Class, each of whom has been damaged as a result of such violation.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

1. Declaring this action to be a proper class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

2. Awarding Lead Plaintiff and the members of the Class compensatory damages;

3. Awarding Lead Plaintiff and the members of the Class pre-judgment and post-

judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs;

4. Awarding such other relief as this Court may deem just and proper.

FILED UNDER SEAL

JURY DEMAND

Lead Plaintiff demands a trial by jury.

Dated: June 3, 2004

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: ______________________

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Co-lead Counsel for Lead Plaintiff and the Class

EXHIBIT 1

CERTIFICATION

Ronald Zajac, General Counsel of the Policemen and Firemen Retirement System of the City of Detroit ("Detroit P&F") declares, as to the claims asserted under the federal securities laws, that:

1. He has reviewed a complaint filed in this matter.

2. Detroit P&F did not purchase the securities that are the subject of this action at the direction of its counsel, Bernstein Litowitz Berger & Grossmann LLP, or to participate in this action.

3. Detroit P&F is willing to serve as a Lead Plaintiff and class representative on behalf of the Class, including providing testimony at deposition and trial, if necessary. Detroit P&F fully understands the duties and responsibilities of the Lead Plaintiff under the Private Securities Litigation Reform Act regarding its options as to selection and retention of counsel and overseeing the prosecution of the action for the Class.

4. Detroit P&F's transactions in OM Group, Inc. securities that are the subject of this action are set forth in the chart attached hereto.

5. During the three years prior to the date of this Certification, Detroit P&F has served as a representative party for a class in the following actions filed under the federal securities law.

In re OM Group, Inc. Securities Litigation
In re King Pharmaceuticals Securities Litigation
In re Levi Strauss & Co. Securities Litigation
In re Advanced Marketing Securities Litigation
In re Calpine Corporation Securities Litigation

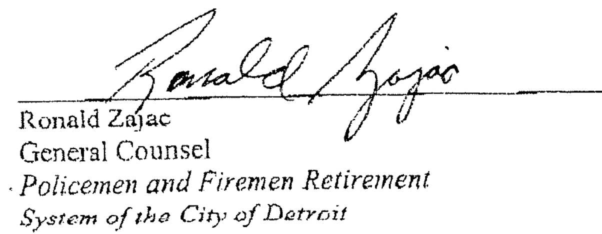
6. Detroit P&F has sought to serve as lead plaintiff in the following actions filed under the federal securities law during the three years preceding the date of this Certification. Detroit P&F was not appointed lead plaintiff in these cases in favor of other investors with larger losses and no longer has any involvement in them.

In re Providian Financial Corp. Securities Litigation
In re Homestore.com Inc. Securities Litigation
In re Dynergy Inc. Securities Litigation
In re AOL Time Warner Securities Litigation
In re Peregrine Systems Securities Litigation
In re Royal Dutch/Shell Securities Litigation

Detroit P&F has also filed a complaint *In re El Paso Corp. Securities Litigation* and is ready to serve as a representative party, but not as lead plaintiff.

7. Detroit P&F will not accept any payment for serving as a Lead Plaintiff on behalf of the class beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of May 2004.



Ronald Zajac
General Counsel
Policemen and Firemen Retirement System of the City of Detroit

80739.1

Policemen & Firemen Retirement System of the City of Detroit
Trades in OM Group, Inc. (OMG)
Class Period: 1/27/00-10/30/02

Transaction	Date	Amount	Price per share
	Opening Balance:	*13,000*	
SELL	4/18/2000	5,700	$45.0000
SELL	4/19/2000	200	$44.0000
SELL	4/20/2000	5,300	$43.6400
SELL	4/24/2000	1,800	$43.3831
BUY	2/7/2001	10,000	$50.9281
BUY	2/8/2001	10,000	$50.9875
BUY	2/9/2001	10,000	$51.1647
SELL	4/25/2001	30,000	$50.0000
BUY	6/29/2001	500	$56.2370
BUY	5/29/2002	3,200	$65.3463
BUY	5/30/2002	600	$65.4100
BUY	6/3/2002	1,500	$64.7953
BUY	6/4/2002	1,600	$63.4698
BUY	6/17/2002	1,600	$62.9255
BUY	6/21/2002	1,600	$63.9506
BUY	6/26/2002	1,200	$62.9000
BUY	8/21/2002	100	$49.8000
BUY	8/21/2002	400	$49.8300
BUY	9/3/2002	400	$49.9600
BUY	9/4/2002	700	$50.8850
BUY	9/18/2002	300	$50.5800
BUY	9/19/2002	300	$50.8100
BUY	9/20/2002	500	$43.9900
BUY	9/24/2002	600	$43.0033
BUY	10/14/2002	1,900	$39.4900
SELL	10/30/2002	-16,500	$7.4020

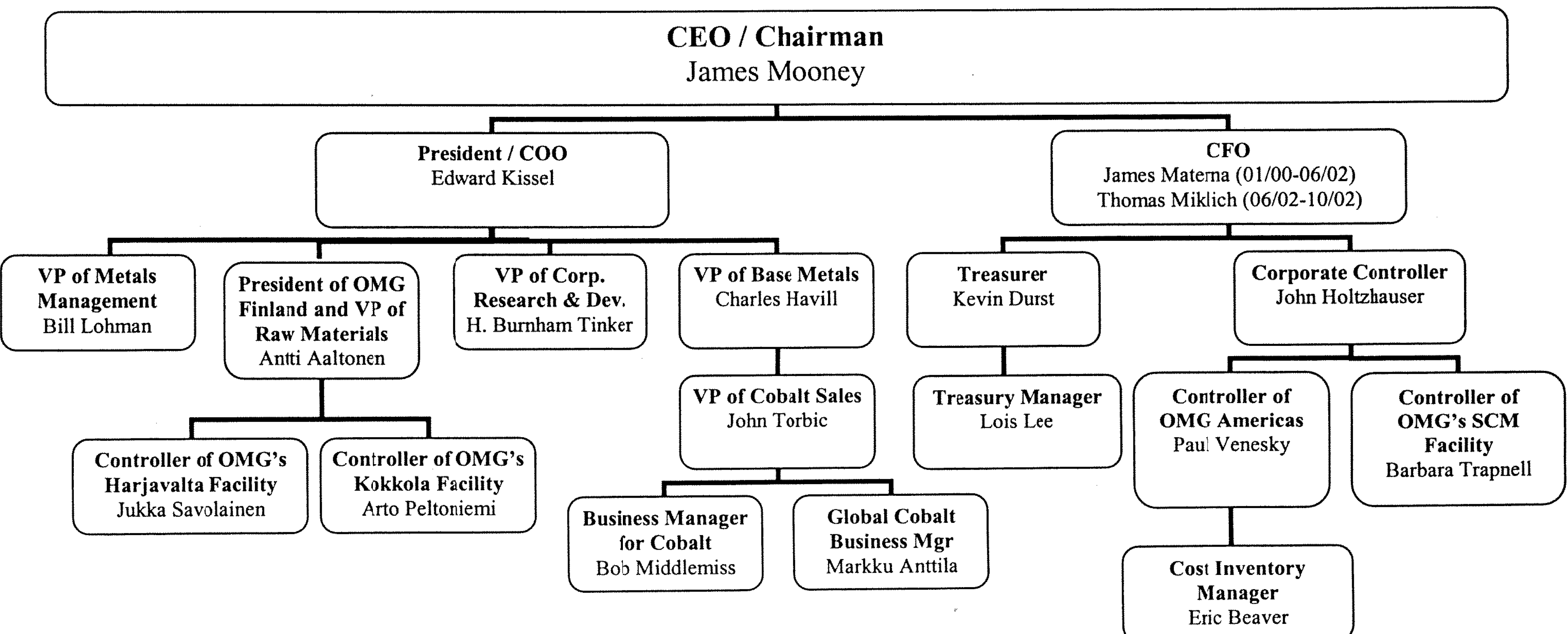
EXHIBIT 2

LIST OF KEY INDIVIDUALS

NAME	KEY POSITIONS DURING THE CLASS PERIOD
Antti Aaltonen	President of OMG Finland and Group Vice-President of Raw Materials and Refining
Markku Anttila	Global Cobalt Business Manager
Eric Beaver	Cost Inventory Manager
Kevin Durst	Treasurer
Charles Havill	Group Vice-President of Base Metals (05/02 – 10/02) Note: Mr. Havill's position was newly created in of May 2002
John Holtzhauser	Corporate Controller
Edward Kissel	President and Chief Operating Officer
Lois Lee	Treasury Manager
Bill Lohman	Group Vice-President of Metals Management
Robert Middlemiss	Business Manager for Cobalt Salts and Powders
Arto Peltoniemi	Controller of Kokkola Facility
Robert Pierce	Senior Audit Manager (at Ernst & Young LLP) (01/00 – 06/02) Director of Financial Reporting and Technical Accounting (06/02 – 10/02)
Alice Ramsey	Administrative Assistant
Jukka Savolainen	Controller of OMG Americas (09/01 – 06/02) Controller of OMG's Harjavalta Facility (06/02 – 10/02)
H. Burnham Tinker	Vice-President of Corporate Research & Development
John Torbic	Global Vice-President of Sales and Marketing for Cobalt Products, Salts and Powders
Barbara Trapnell	Controller of OMG's SCM Facility
Paul Venesky	Controller, OMG Americas (08/93 – 09/01) Director of Operations (09/01 – 10/02) Cobalt Group Controller (beginning 10/02)

EXHIBIT 3

ORGANIZATIONAL CHART AND CHAIN OF COMMAND AT OM GROUP, INC. DURING THE CLASS PERIOD



NOTES:

- This organizational chart represents a mere fraction of OMG's total management, as the Company has over 1,400 employees worldwide; the individuals listed above are those who were principally involved with OMG's business affairs during the Class Period.
- Although the Controllers of OMG Finland (Mr. Savolainen and Mr. Peltoniemi) reported directly to the President of OMG Finland (Mr. Aaltonen), they also reported to OMG's Corporate Controller (Mr. Holtzhauser).
- Mr. Savolainen was the Controller of OMG Americas from September 2001 through June 2002 (held above by Mr. Venesky)
- Mr. Venesky was the Director of Operations from September 2001 through October 2002, during which time he reported to OMG's President (Mr. Kissel). In October 2002, he was the Cobalt Group Controller and reported to OMG's VP of Base Metals (Mr. Havill)