UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Bristol-Myers Squibb Securities Litigation	Master File No. 02-CV-2251 (LAP)
This Matter Pertains to All Cases	JURY TRIAL DEMANDED

CONSOLIDATED CLASS ACTION COMPLAINT

Daniel L. Berger (DB-7748)
J. Erik Sandstedt (JS-9148)
John A. Kehoe (JK-4589)
Joseph A. Fonti (JF-3201)
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1285 Avenue of the Americas, 33rd Floor
New York, New York 10019
Telephone: 212-554-1400
Facsimile: 212-554-1444

Co-Lead Counsel for Lead Plaintiffs Teachers' Retirement System of Louisiana and General Retirement System of the City of Detroit and the Class

Jeffrey C. Block (JB-0387)
Wendy Zoberman
Leslie Stern
Julie Richmond
BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO, LLP
One Liberty Square
Boston, Massachusetts 02109
Telephone: 617-542-8300
Facsimile: 617-542-1194

Co-Lead Counsel for Lead Plaintiffs Louisiana State Employees' Retirement System and Fresno County Employees' Retirement Association and the Class

TABLE OF CONTENTS

CONSOLIDATED CLASS ACTION COMPLAINT

Lead Plaintiffs, Teachers' Retirement System of Louisiana ("Louisiana Teachers"), Louisiana State Employees' Retirement System ("LASERS"), General Retirement System of the City of Detroit ("Detroit General") and Fresno County Employees' Retirement Association ("FCERA") (collectively, "Lead Plaintiffs"), bring this action as a class action individually and on behalf of all other persons and entities who purchased the common stock of Bristol-Myers Squibb Company ("Bristol-Myers" or the "Company") during the period October 19, 1999 through and including March 10, 2003 (the "Class Period").

I. NATURE OF THE ACTION

1. During the Class Period, the defendants named in this Action engaged in a fraudulent scheme of massive proportions – involving over $2 billion of improperly recorded sales. The scheme entailed misleading investors into believing that Bristol-Myers was legitimately meeting or exceeding Wall Street's published estimates for the Company's quarterly and yearly earnings and growth when, in reality, the Company "made its numbers" only because it recognized revenue in violation of the most basic principles of GAAP. Now, Bristol-Myers has finally admitted that it improperly booked billions of dollars of revenues from inventory that it stuffed into the Company's distribution channels, thereby making it appear as if the Company's sales of its most profitable drugs were booming when, in fact, they were falling well behind investor expectations. Bristol-Myers also has admitted that "senior management" was engaged in a concerted effort to artificially inflate the Company's earnings through a host of accounting improprieties carried out at the end of quarters for the purpose of manufacturing enough revenue to meet sales and profits targets.

2. Owning up to the defendants' misconduct, on March 10, 2003, Bristol-Myers announced the restatement of its financial results for 1999, 2000, 2001 and the first two quarters of 2002 (the "Restatement"). In so doing, the defendants admitted that they stuffed the Company's distribution channels through the improper use of incentives, which they offered to the Company's wholesalers "towards the end of a quarter in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's quarterly sales projections established by the Company's senior management." (2001 Form 10-K/A (Amendment No. 1) filed by Bristol-Myers with the SEC on March 18, 2003 ("Form 10-K/A") at 2, 15, 21, 48). Thus, the Company has admitted that it had no legitimate business purpose for engaging in this "channel-stuffing," but rather committed this misconduct for the sole purpose of defrauding investors.

3. The Company also admitted that the defendants used a panoply of accounting tricks to manage its earnings. For example, the defendants established "cookie jar" reserves in connection with asset divestitures and acquisitions, and for so-called "restructuring activities." They then improperly reversed these reserves into earnings or charged expenses against them in order to manipulate the Company's financial results for the purpose of meeting Wall Street estimates. Indeed, the Company admitted that reserves "were established inappropriately, as there does not appear to have been any related quantifiable or specific category of liability supporting the establishment of [the reserves] and that [the reserves] were ultimately inappropriately reversed." (Form 10-K/A at 53).

4. Similarly, Bristol-Myers admitted that it improperly accounted for, among other things, sales returns, rebates, research and development payments, product co-development

agreements, litigation expenses, tax liabilities and deferred tax benefits, transaction costs, employee medical benefits and dividends. The effect of each of these improprieties was to manipulate the Company's earnings throughout the Class Period and, thereby, artificially inflate the Company's stock price.

5. The scope of the defendants' accounting fraud is staggering. For 2001, 2000 and 1999, the defendants overstated the Company's net sales by $1.284 billion, $521 million and $376 million, respectively, and overstated net earnings from continuing operations by $484 million (or 19%), $266 million (or 6.5%) and $366 million (or 9.7%), respectively. Thus, in total, the defendants overstated sales by over ***$2 billion***, erasing more than $1.0 billion off of the Company's bottom line and making this one of the largest frauds in history. Indeed, by year-end 2001, approximately $3 of every $10 of the Company's pre-tax earnings was attributable to the Company's fraudulent accounting.

6. While the scope of the defendants' fraud is extraordinary, the story behind it is not. By at least July 1, 1999, the defendants knew that the Company's future earnings and growth were in jeopardy. Sales of its existing drugs were flattening and its four billion-dollar "blockbuster" drugs – Pravachol, Glucophage, BuSpar and Taxol – faced an onslaught of generic and other brand-name competition. Furthermore, the defendants knew that Bristol-Myers' pipeline of potential new "blockbuster" drugs – the future revenue-generating medicines necessary to ensure continued growth and earnings – was anything but promising. In fact, by mid-2000, the Company knew that it did not have sufficient new products on the horizon to offset the inevitable decline in sales of its principle products.

7. As a result, the defendants knew that the only way they could meet their earnings estimates was to artificially inflate their earnings with improper accounting practices, such as the channel-stuffing scheme and other accounting improprieties described in detail below.

8. In addition, in an effort to make it appear that the future of the Company was more promising than the defendants knew it to be, Bristol-Myers entered into a partnership with ImClone, Inc. ("ImClone") for the development and commercialization of Erbitux, a potential new "blockbuster" cancer drug. However, as was revealed during the U.S. House of Representatives Committee investigation, announced on January 28, 2002 (the "Congressional Investigation"), into the Bristol-Myers-ImClone partnership, Bristol-Myers learned during the due diligence investigation it conducted before partnering with ImClone that the study submitted to the U.S. Food and Drug Administration (the "FDA") in support of ImClone's New Drug Application for Erbitux could not withstand FDA scrutiny and, consequently, Erbitux would not gain approval in the foreseeable future. Rather than disclose this fact to investors, the defendants repeatedly issued false and misleading statements touting the efficacy of Erbitux and the future revenues that Erbitux would generate as one of Bristol-Myers' new "blockbuster" drugs. Further, as explicitly acknowledged in an internal Company e-mail, Bristol-Myers remained silent even after it knew that ImClone had issued false and misleading statements regarding the FDA's treatment of the Erbitux application.

9. The Erbitux scandal came to a head on December 28, 2001, when ImClone officially announced that the FDA had rejected its New Drug Application. The first hints of the channel-stuffing scheme were revealed on April 1, 2002, when Bristol-Myers disclosed that its wholesalers were holding close to four weeks of excess inventory. The remainder of the

accounting fraud was not fully disclosed until March 10, 2003, when the Company finally revealed that it had been engaged in a concerted effort to manipulate earnings and, thereby, deceive investors since at least July 1, 1999.

10. The Company was ultimately forced to restate its past financial information for 1999, 2000, 2001 and the first two quarters of 2002. In connection with the Restatement, the Company admitted that the defendants had utilized a panoply of fraudulent accounting practices to make it appear as if the Company was having great success when, in fact, its business was foundering and, as a result, it was simply unable to keep pace with Wall Street estimates.

11. During the Class Period, the price of Bristol-Myers' stock traded as high as $77.94 per share. After the Company partially disclosed its channel-stuffing activities on April 1, 2002, and downgraded its earnings projections on April 3, 2002, the stock dropped 20% on enormous volume. By the end of the Class Period, when Bristol-Myers finally disclosed the full magnitude of its accounting fraud, the stock was trading at $22.51 per share.

II. JURISDICTION AND VENUE

12. The claims alleged herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

13. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. §§ 1331 and 1337.

14. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the dissemination to the investing

public of the misleading statements and omissions specified below, occurred in this District. In addition, Bristol-Myers maintains its principal executive offices in this District.

15. In connection with the acts, transactions and conduct alleged herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of national securities exchanges and markets.

III. PARTIES

A. Plaintiffs

16. **Lead Plaintiffs**. By Order entered October 4, 2002, the Court appointed Louisiana Teachers, LASERS, Detroit General and FCERA as Lead Plaintiffs in this Action pursuant to 15 U.S.C. § 78u-4.

(a) **Teachers' Retirement System of Louisiana ("Louisiana Teachers")**. Lead Plaintiff Louisiana Teachers is a public pension fund organized for the benefit of the current and retired teachers of the State of Louisiana. The fund is located in Baton Rouge, Louisiana, and has total assets of approximately $10.0 billion. Louisiana Teachers purchased shares of Bristol-Myers common stock during the Class Period in the amounts set forth in the Schedule attached hereto as Exhibit A. Louisiana Teachers suffered damages as a result of the violations of the federal securities laws alleged herein.

(b) **Louisiana State Employees' Retirement System ("LASERS")**. Lead Plaintiff LASERS is a public pension fund organized for the benefit of current and retired employees of the State of Louisiana. LASERS is also located in Baton Rouge, Louisiana, and has total assets of approximately $5.6 billion. LASERS purchased shares of Bristol-Myers

common stock during the Class Period in the amounts set forth in the Schedule attached hereto as Exhibit A. LASERS suffered damages as a result of the violations of the federal securities laws alleged herein.

(c) **General Retirement System of the City of Detroit ("Detroit General")**. Lead Plaintiff Detroit General is a public pension fund organized for the benefit of current and retired employees of the City of Detroit, Michigan. Detroit General has total assets of approximately $2.9 billion. Detroit General purchased shares of Bristol-Myers common stock during the Class Period in the amounts set forth in the Schedule attached hereto as Exhibit A. Detroit General suffered damages as a result of the violations of the federal securities laws alleged herein.

(d) **Fresno County Employees' Retirement Association ("FCERA")**. Lead Plaintiff FCERA is a public pension fund organized for the benefit of current and retired employees of the City of Fresno, California. FCERA has total assets of approximately $1.7 billion. FCERA purchased shares of Bristol-Myers common stock during the Class Period in the amounts set forth in the Schedule attached hereto as Exhibit A. FCERA suffered damages as a result of the violations of the federal securities laws alleged herein.

17. The persons and entities listed on Exhibit B hereto are additional non-lead plaintiffs who filed related actions that were consolidated with this action pursuant to the Court's order of October 4, 2002.

B. Defendants

18. **Bristol-Myers**. Defendant Bristol-Myers is a Delaware corporation with its principal executive offices located at 345 Park Avenue, New York, New York. The Company

files annual, quarterly and other reports with the SEC, and its common stock is listed and traded on the New York Stock Exchange ("NYSE") under the symbol BMY. The Company is a manufacturer and distributor of pharmaceutical prescription drugs, consumer medicines, nutritional products and beauty care products. The Company's products that generate the greatest amount of revenue are pharmaceutical prescription drugs.

19. **Charles C. Heimbold ("Heimbold")**. Defendant Heimbold served as Bristol-Myers' Chief Executive Officer ("CEO") from 1994 through May 1, 2001, and as Chairman of the Board of Directors from 1995 through September 12, 2001, when he retired from the Company. Previously, Heimbold served as the Company's Executive Vice President from 1989 until 1992 and as President from 1992 until 1996. During the Class Period, Heimbold also served as Director of the Pharmaceutical Research and Manufacturers Association of America, a widely known and sophisticated pharmaceutical industry trade association. Heimbold signed the Company's annual reports filed with the SEC on Form 10-K for fiscal years 1999 and 2000 ("Forms 10-K"), and the Company's 1999 and 2000 Annual Reports to Shareholders. As CEO, he was also responsible for reviewing each of the Company's quarterly reports filed with the SEC on Form 10-Q ("Forms 10-Q"). In addition, until his resignation in September 2001, Heimbold made statements in conference calls, meetings, press releases and the Annual Reports to Shareholders, as more particularly set forth below.

20. **Peter R. Dolan ("Dolan")**. Defendant Dolan replaced defendant Heimbold as Bristol-Myers CEO in May 2001 and as Chairman of the Board of Directors in September 2001. Prior to assuming that role, Dolan had been the President of the Company from 2000 through May 2001. He was Senior Vice President for Strategy and Organizational Effectiveness from

1998 until he was elected as President. Dolan signed the Company's Forms 10-K for fiscal 1999, 2000 and 2001, as well as the Company's Form 10-K/A filed on March 18, 2003. In addition, he was responsible for reviewing the Company's Form 10-Q's throughout the Class Period. Dolan made statements on conference calls, meetings, press releases, interviews and the Annual Reports to Shareholders, as more particularly set forth below.

21. **Michael F. Mee ("Mee")**. Mee was the Company's Senior Vice President and Chief Financial Officer from 1994 to 2000, and Executive Vice President and Chief Financial Officer from 2000 until April 2001. From January 2000 through April 2001, Mee served on the management committee of the Office of the Chairman, responsible for addressing "strategic, organizational, scientific, and policy issues" affecting the entire Company. As set forth below, Mee signed the Company's Forms 10-K for fiscal years 1999 and 2000, and he participated in numerous conference calls and meetings with Wall Street analysts, as more particularly set forth below.

22. **Frederick F. Schiff ("Schiff")**. Defendant Schiff was the Company's Senior Vice President and Chief Financial Officer ("CFO") and a member of the Executive Committee from April 2001 until he resigned on April 16, 2002. Before that, Schiff served as Senior Vice President of Financial Operations and Controller from 2000 through 2001, and Vice President of Financial Operations and Controller from 1997 to 2000. As the Company's Controller and then CFO, Schiff was primarily responsible for the accuracy of the Company's financial statements. As set forth below, Schiff signed nearly all of the Company's Forms 10-Q during the Class Period until he left, and also signed the Forms 10-K for 1999, 2000 and 2001. Schiff also participated in numerous conference calls and meetings as more particularly set forth below.

23. **Harrison M. Bains, Jr. ("Bains")**. Bains was the Vice President and Treasurer of the Company from 1988 to 2002 and the Vice President, Tax & Treasury from 2002 through the end of the Class Period. Bains signed all of the Company's Forms 10-Q issued during the Class Period.

24. **Curtis L. Tomlin ("Tomlin")**. From 2001 through the end of the Class Period, defendant Tomlin served as the Company's Vice President and Controller. As Controller, he was the Principal Accounting Officer of the Company. Prior to joining Bristol-Myers, from 2000 to 2001, he was the Vice President and Controller of Pharmacia Corporation, Monsanto Division. From 1999 to 2000, Tomlin served as Vice President of Auditing Services for Pharmacia & Upjohn. Tomlin signed the Company's Form 10-Q for the third quarter of 2001 and the Company's 2001 Form 10-K.

25. **Richard J. Lane ("Lane")**. Defendant Lane was the Company's Executive Vice President, President of the Worldwide Medicines Group, and a member of the Executive Committee from January 20, 2000 through April 3, 2002, when the Company announced that he would be replaced in a "management reorganization." Before that, from 1998 to 2000, Lane was the President of the U.S. Medicines and Global Pharmaceutical Group at Bristol-Myers, and from 1997 to 1998 he was the President of U.S. Pharmaceuticals. During the Class Period, Lane made statements in conference calls and meetings, as more particularly set forth below.

26. **Peter Ringrose ("Ringrose")**. Defendant Ringrose was the Company's Chief Scientific Officer, President of Bristol-Myers' Pharmaceutical Research Institute and a member of Bristol-Myers' Executive Committee from January 2000 until he resigned in December 2002. During the Class Period, Ringrose also served on the Board of Directors of ImClone. Ringrose

participated in conference calls and meetings, as more particularly set forth below.

27. Defendants Heimbold, Dolan, Mee, Schiff, Lane, Bains, Tomlin and Ringrose are sometimes collectively referred to below as the "Individual Defendants."

IV. CLASS ACTION ALLEGATIONS

28. Lead Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons or entities who purchased Bristol-Myers common stock during the period October 19, 1999 through and including March 10, 2003 (the "Class Period"), and who suffered damages thereby (the "Class"). Excluded from the Class are: (i) the defendants; (ii) members of the immediate family of each of the Individual Defendants; (iii) any entity in which any defendant has a controlling interest; (iv) any parent, subsidiary or affiliate of Bristol-Myers; (v) any person who was an officer or director of Bristol-Myers or any of its subsidiaries or affiliates during the Class Period; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the excluded persons or entities specified in this paragraph.

29. The members of the Class are so numerous that joinder of all members is impracticable. As of the date of this Complaint, there were approximately 1.937 billion shares of Bristol-Myers common stock outstanding. While Lead Plaintiffs do not know the exact number of Class members, Lead Plaintiffs believe that there are, at a minimum, thousands of members of the Class who purchased Bristol-Myers common stock during the Class Period.

30. Common questions of law and fact exist as to all members of the Class and predominate over any individual questions affecting members of the Class. Among the 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 Bristol-Myers issued false and misleading statements during the Class Period;

(c) whether defendants acted with scienter in issuing false and misleading statements during the Class Period;

(d) whether the Individual Defendants are liable as control persons under the federal securities laws;

(e) whether the market price of Bristol-Myers common stock during the Class Period was artificially inflated because of the defendants' conduct complained of herein; and

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

31. Lead Plaintiffs' claims are typical of the claims of the other members of the Class as Lead Plaintiffs and all members of the Class sustained damages arising out of defendants' wrongful conduct in violation of Sections 10(b) and 20(a) of the Exchange Act.

32. Lead Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class actions and securities litigation. Lead Plaintiffs have no interests antagonistic to or in conflict with the Class.

33. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members

individually to redress the defendants' wrongful conduct. There will be no difficulty in the management of this action as a class action.

V. SUBSTANTIVE ALLEGATIONS

A. Bristol-Myers' Preoccupation with Meeting Wall Street Estimates

34. Throughout the Class Period, Bristol-Myers was a company that was driven in large part by a preoccupation with meeting the estimates that Wall Street analysts published for its quarterly and year-end growth and earnings. This obsession began well before the start of the Class Period. Ultimately, it drove the defendants to commit the misconduct complained of herein. Only as a result of the channel-stuffing scheme and the numerous accounting machinations that have now been admitted by the Company were the defendants able to satisfy Wall Street expectations and make it appear as if they were successfully managing Bristol-Myers' business and operations. In reality, the Company's prosperity was nothing but a sham, and, as a result, billions of dollars of shareholder value was eviscerated during the Class Period.

35. That the defendants – Bristol-Myers' most senior management – were driven to "make their numbers" at all costs was no secret at Bristol-Myers. As was reported by *The Wall Street Journal* on December 12, 2002, the defendants were "so intent on closing a gap between its forecasts and reality that [they] delved repeatedly into inappropriate financial engineering." In fact, the "fourteen former and current executives [interviewed by the *Journal*] pinpoint[ed] a moment when Bristol-Myers managers realized what was expected of them. Mr. Heimbold met in late 1999 with Donald Hayden, Jr., head of the medicines group. Mr. Hayden was a man known for speaking candidly about sales prospects, which were clearly weakening. Soon after the meeting the chief executive reassigned Mr. Hayden. In his place, the CEO appointed Richard

Lane. The medicines group began offering wholesalers incentives to buy more drugs than dictated by prescription demand." According to one former executive cited in the article, this switch sent a "huge message across the organization that you make your numbers at all costs."

36. The defendants' focus on meeting Wall Street estimates is further demonstrated by the defendants' admission that they utilized a "top-down" approach with respect to their budgeting process and that "senior management had set aggressive targets for each of the Company's businesses." (Form 10-K/A at 3, 18, 48). The Company also admitted that the accounting improprieties disclosed in the Restatement "arose, at least in part, from a period of unrealistic expectations for, and consequent over-estimation of the anticipated performance of, certain of the Company's products and programs." (Form 10-K/A at 2, 17, 49).

(i) Quarterly Wall Street Estimates

37. Throughout the Class Period, the Company was fixated on meeting or exceeding quarterly consensus Wall Street estimates at any cost. Each quarter, the Company reported on its performance and provided guidance to Wall Street with respect to its projected earnings per share for the year. Wall Street, in turn, arrived at consensus quarterly estimates – figures that analysts believed the Company should be able to achieve in view of the information that they were provided by the Company. Not surprisingly, these figures predicted continued growth generally consistent with Bristol-Myers' guidance provided in part through its "Double/Double" and "Mega-Double" plans. *See* ¶¶ 46-51, below.

38. During the Class Period, Bristol-Myers was covered by over two dozen securities analysts who reported on the Company's financial results and major events. Each of these analysts formulated an assessment of the Company's financial position and future potential based

on its reported results and information provided to Wall Street by senior management. These assessments were reflected in the analysts' projected earnings for future fiscal quarters and years and published in their analysts' reports. Entities such as First Call, a financial information services company, then collected analysts' estimates and published "consensus Wall Street estimates" reflecting the average of the analysts' projections for each relevant time period.

39. On October 19, 1999 (the start of the Class Period), defendant Heimbold announced in a Bristol-Myers' press release that the Company had met consensus Wall Street estimates for the third quarter of 1999. In particular, he stressed that Bristol-Myers' "businesses, particularly U.S. Medicines, achieved significant growth for most of our leading products, with 15 of our largest product lines attaining double-digit growth rates." Based on the Company's announcement, analysts issued reports praising Bristol-Myers' performance. Barbara Ryan of Deutsche Banc, noted in her report dated October 25, 1999, that Bristol-Myers "is only one of a few companies slated to grow EPS over [sic] a faster rate over the next three years versus the last three."

40. Similarly, for the fourth quarter of 1999, the Company announced in a press release issued January 24, 2000 that it had beat consensus estimates by $0.01 per share. Heimbold stated that the "record sales, earnings and earnings per share we reached during 1999 clearly illustrate [Bristol-Myers'] achievements and [its] potential for the future." The next day, Salomon Smith Barney published a report noting that Bristol-Myers' sales of Taxol, Glucophage and Plavix "continued to sizzle" and praised the Company's accomplishment of beating the consensus estimate. Similarly, in a February 18, 2000 report, entitled Bristol-Myers Squibb: Geared for Continued Strong Rx Momentum, Jami Rubin of Morgan Stanley Dean Witter stated

that it is "worth noting that BMY is one of a few drug stocks where the consensus expectations moved up throughout last year as sales of its drug business continued to exceed expectations."

41. Moreover, on April 25, 2001, Bristol-Myers announced record-breaking results for the first quarter of 2001. In the press release, Heimbold proclaimed that "as reflected by the first quarter results, Bristol-Myers Squibb is off to a solid start in fulfilling our commitment to meet or exceed earnings per share growth expectations for 2001." He continued to state that the Company "remain[ed] comfortable with current consensus estimates of $2.41 for diluted earnings per share for the year . . . Our growth strategy remains focused on our core Medicines business where we saw very good double-digit pharmaceutical sales growth of 10% worldwide . . . " Again, the "notable drivers of that growth" included Glucophage, Plavix, Avapro and Pravachol.

42. The same day, Steven Tighe of Merrill Lynch, in an article entitled *Glucophage Family is the Leading Indicator*, wrote that due to the extra $0.01 of earnings reported, he would raise his 2001 earnings estimate to $2.41 – matching the Company's guidance.

43. In every single quarter between the fourth quarter of 1999 and the fourth quarter of 2001, the Company announced that it had met or exactly exceeded by one penny, the consensus Wall Street estimates and that its quarter-over-quarter results had improved:

Quarter	Consensus Wall Street Estimated EPS	Reported EPS
Fiscal 1999	2.04	2.06
1Q 2000	0.60	0.61
2Q 2000	0.54	0.54
3Q 2000	0.61	0.62
4Q 2000	0.58	0.59
1Q 2001	0.62	0.63
2Q 2001	0.56	0.56
3Q 2001	0.63	0.63
4Q 2001	0.59	0.59

44. However, as has now been admitted in the Restatement, Bristol-Myers was only able to meet these earnings targets by using the channel-stuffing scheme and accounting gimmickry specified below. Indeed, but for these improprieties, the Company would not have been able to report continued growth and would have fallen far short of Wall Street estimates.

45. Bristol-Myers now admits that, throughout the Class Period, sales incentives were offered to wholesalers "generally ***towards the end of the quarter*** in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's quarterly sales projections established by the Company's senior management." (Form 10-K/A at 2, 17, 21, 48 (emphasis added)). One former Bristol-Myers regional sales manager lamented that the focus of the Company had once been "to extend and enhance human life," but that during the Class Period, "the focus became to extend and enhance the bottom line. . . . A lot of us at Bristol-Myers thought the Company was asking us to do unethical things."

(ii) The Double/Double and Mega-Double Promises

46. In addition to being obsessed with meeting Wall Street's quarterly estimates, the defendants were also consumed with fulfilling their promises with respect to growth of the Company's earnings and earnings per share. In 1994, defendant Heimbold announced the Company's "Double/Double" plan. As recited in Bristol-Myers' 1995 Annual Report to Shareholders issued on February 13, 1996, the Double/Double plan was a commitment by Bristol-Myers management made in January 1994 that the Company would "double sales, earnings and earnings per share of the year just ended [1993] by the close of the year 2000. That would result in a compound annual growth rate of a little more than 10% for that seven-year period."

47. Following this announcement, in every Annual Report issued prior to the Class Period, Heimbold and Bristol-Myers reaffirmed the commitment and emphasized that the Company was on track to satisfy the Double/Double promise:

(a) In the 1996 Annual Report to Shareholders, issued on February 11, 1997, Heimbold stated: "in 1994 . . . we set a goal of doubling sales, earnings and earnings per share by the year 2000. We are well on our way toward achieving that [objective]."

(b) In the 1997 Annual Report to Shareholders, issued on February 10, 1998, Heimbold stated: ". . . we set our Double/Double objective, committing ourselves to doubling sales, earnings and earnings per share by the end of the year 2000. In 1996, we raised the bar, aiming for 12% annual growth rate in earnings per share through the year 2000."

(c) In the 1998 Annual Report to Shareholders, Heimbold wrote: "[w]e set a business goal that, at the time, seemed extremely ambitious and that some said was

unattainable – to double sales, earnings and earnings per share from year-end 1993 by the end of the year 2000. I can report to you today that we are well on our way to reaching, if not exceeding that goal."

48. During the Class Period, defendant Heimbold continued to emphasize the Company's success and again affirmed the Double/Double plan. In the Company's 1999 Annual Report to Shareholders, which was issued on February 8, 2000, Heimbold stated: "[B]ack in 1994, when I first became your CEO, we established an ambitious objective, to double year-end 1993 sales, earnings and earnings per share by the end of the year 2000. Today, that target is in sight and we may even exceed it."

49. Then, in the Company's 2000 Annual Report to Shareholders, which was issued on February 6, 2001, Heimbold – who was then just months away from retirement – declared victory. He announced, "[b]ack in the beginning of 1994, we set what was then seen as an extremely ambitious goal: to double our 1993 sales, earnings and earnings per-share by the end of 2000. We have attained that goal, exceeding both earnings and earnings-per-share growth targets and almost making it in sales."

50. However, the Company has now admitted that the only way it was able to achieve its "ambitious" goal of the Double/Double plan was by engaging in the channel-stuffing scheme and through the accounting irregularities more fully described below. Accordingly, Heimbold's statement in the 2000 Annual Report was false: in reality, the Company did ***not*** double its 1993 earnings and earnings per share by year-end 2000. Absent these improprieties, the Company would have fallen short of the Double/Double plan.

51. Toward the end of 2000, with the time frame for the Double/Double plan about to end, Bristol-Myers announced a new plan, called the "Strategy for Growth." At a conference with Wall Street analysts and fund managers on September 28, 2000, Heimbold, Dolan and Lane announced a key part of this Strategy, the "Mega-Double Plan" Here, Heimbold promised that the Company would double the amounts it would report for sales, earnings and earnings per share for year-end 2000 by the end of fiscal 2005. In particular, Heimbold represented that the Company would have 11% growth in earnings per share by the end of 2001. As reported in *The Wall Street Journal* on September 29, 2000, "[e]xecutives also forecast that the Company's earnings would grow by at least 14% this year, 11% in 2001, above 11% in 2002 and the 'mid-to-upper teens' from 2003 through 2005." At the end of 2001, the Company announced that it had achieved the earnings growth target, reporting a 12% increase over 2000. In fact, Bristol-Myers was only able to meet its projections because of the fraudulent accounting practices.

B. <u>The Decline of Bristol-Myers' Business</u>

52. The impetus for the defendants' channel-stuffing scheme and fraudulent accounting was the failure of Bristol-Myers' products to generate sufficient revenues to meet the Company's growth projections, combined with the knowledge that they would soon lose sales due to impending patent expirations and inevitable generic competition. The overwhelming majority of Bristol-Myers' reported revenue during the Class Period was generated by the Company's Medicines Group, which manufactured and sold pharmaceutical prescription drugs.

53. In past years, the Company purportedly relied on sales of these prescription drugs – particularly its so-called "blockbuster" drugs – to generate earnings. In 1999, the Medicines Group accounted for over 70% of the Company's total revenue and over 80% of the Company's

earnings before taxes. Just four drugs, Taxol, Glucophage, BuSpar and Pravachol generated over 35% of the Medicines Group's reported revenue in 1999. By the beginning of the Class Period, however, three of these four drugs were facing the threat of generic competition and a concomitant decrease in sales, and Pravachol, the Company's top-selling drug, was losing market share to other brand-name drugs produced by the Company's competitors.

54. Compounding this threat to the Medicines Group's business, the Company had few promising drugs in its research and development pipeline that would offset the inevitable loss of sales of Taxol, Glucophage, BuSpar and Pravachol. As noted by *Med Ad News* in June of 2000, "The potential blockbuster product [Vanlev], months away from approval, was expected to help Bristol-Myers Squibb absorb the more than $1 billion in lost sales that the company will begin to endure this year due to generic competition for three of its major products – Taxol, Glucophage and BuSpar." But the possibility of Vanlev as Company savior was seriously compromised in April 2000 when several patients treated with the drug in clinical tests experienced serious side-effects and Bristol-Myers was forced to voluntarily withdraw its New Drug Application ("NDA") with the FDA.

55. As a result, the defendants needed to find ways to manufacture revenues and earnings, or else they would be forced to disclose the declining prospects for their business. What they came up with was a multi-faceted fraudulent scheme to make it appear as if the Company was meeting Wall Street expectations and that the future of the Company was promising.

56. First, the defendants violated the most basic principles of generally accepted accounting principles ("GAAP") in order to boost sales and manage the Company's earnings. As

discussed in the Restatement, the Company employed the following specific accounting practices:

(a) improper recording of revenues from consignment sales to Cardinal Health, Inc. ("Cardinal") and McKesson Corporation ("McKesson"), two of the Company's largest wholesalers;

(b) improper recording of sales from shipments to McKesson pursuant to the Company's Oncology Therapeutics Network Distribution Agreement;

(c) improper accounting for sales returns;

(d) improper accounting for Medicaid, prime vendor and managed care rebates;

(e) improper creation of restructuring reserves and then using those reserves to inflate earnings;

(f) improper creation of reserves in connection with divestitures and then using those reserves to inflate earnings;

(g) improper creation of reserves in connection with acquisitions and then using those reserves to inflate earnings;

(h) improper accounting for research and development payments associated with patent-right acquisitions and licensing;

(i) improper accounting for a product co-development agreement;

(j) improper accounting for the spin off of Zimmer, a former subsidiary of Bristol-Myers;

(k) improper accounting for certain litigation related expenses;

(l) improper accounting for tax expenses and deferred taxes related to inter-company sales of inventory;

(m) improper accounting for deferred tax benefits related to acquired in-process research and development associated with the tender offer of ImClone stock;

(n) improper accounting for ImClone "milestone payments;"

(o) improper accounting for like-kind exchange agreements; and

(p) improper accounting for declared dividends.

57. Second, the defendants misrepresented the prospects for FDA approval of Erbitux and its sales potential.

C. Accounting Improprieties Defendants Used to Manage Earnings

(i) Channel-Stuffing and Improper Recognition of Consignment Sales

58. Throughout the Class Period, the defendants knowingly or recklessly made materially false and misleading statements or omissions relating to Bristol-Myers' financial results and its compliance with GAAP. By restating, Bristol-Myers has admitted that the Company's financial statements were materially false and misleading at the time they were publicly issued. *See* SFAS 16 and APB Opinion No. 20 (restatements are only permitted, and are required, for material accounting errors or irregularities that existed at the time the financial statements were prepared.) Even more to the point, in the March 10, 2003 press release announcing the Restatement, and again in the Form 10-K/A, Bristol-Myers admitted that the falsification of the Company's financial statements was deliberately done for the purpose of inflating revenue and earnings to meet Company targets set by senior management. The most egregious of these violations occurred in connection with "channel-stuffing."

59. "Channel-stuffing" refers to a practice whereby a company intentionally ships more of its products to distributors than what they require by retail demand. Channel-stuffing potentially deceives investors because in so doing, a company books sales in the near term at the expense of future quarters, thereby distorting the true state of the company's current financial results. Furthermore, if, for example, the shipments in question are subject to contingencies, such as a right of return, or the manufacturer is obligated to cover the carrying costs of the "stuffed" products, then the shipments do not qualify as sales at all.

60. Under GAAP, revenue may only be recognized when substantially all the risks and rewards of ownership have been transferred. Specifically, Staff Accounting Bulletin ("SAB") 101 and Statement of Financial Account Concepts ("SFAC") No. 5 provide that revenue can be recognized only when it is ***realized*** (or realizable) and ***earned***. Revenue generally is realized or realizable and earned when (a) persuasive evidence of an arrangement exists; (b) delivery has occurred or services have been rendered; (c) seller's price to the buyer is fixed or determinable; ***and*** (d) collectibility is reasonably assured.

61. As the Company recognized in its Restatement (at pages 21, 36, 45, 50), in the case of shipments to distributors or wholesalers (1) as a result of incentives, (2) in excess of the wholesaler's ordinary course of business inventory level, (3) at a time when there was an understanding, agreement, course of dealing or consistent business practice that the Company would extend incentives based on levels of excess inventory in connection with future purchases and (4) at a time when such incentives would cover substantially all, and vary directly with, the wholesaler's cost of carrying inventory in excess of the wholesaler's ordinary course of business inventory level, substantially all the risks and rewards of ownership do not transfer upon

shipment. Under these circumstances, the shipments to distributors must be treated as "consignments."

62. Pursuant to SAB 101, "[p]roducts delivered to a consignee pursuant to a consignment arrangement are not sales and do not qualify for revenue recognition." Rather, a consignor, *e.g.* Bristol-Myers, must account for a consignment sale by recording deferred revenue (a liability) at the gross sales price and reclassifying the inventory shipped to a category separate from its other inventory. The shipper/consignor may ***not*** recognize revenue or profit at the time of shipment, but only when the distributor/consignee has made a sale of the goods to a third party. *Id.*

63. Here, Bristol Myers has admitted (Form 10-K/A at 17) that throughout the Class Period, it improperly recorded a large portion of its shipments to two of its largest wholesalers, Cardinal and McKesson, as "sales" rather than "consignments." The defendants admitted that these consignments were the result of incentives that they offered to wholesalers "towards the end of a quarter in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's quarterly sales projections established by the Company's senior management." (Form 10-K/A at 17). Bristol-Myers maintained substantially all of the risks of ownership – even after shipment. Therefore, it was a violation of GAAP for the defendants to recognize revenue from these shipments in the current period.

64. In 2001, 2000 and 1999, the "sales" that the Company purportedly made to Cardinal and McKesson represented approximately 56%, 52% and 41%, respectively, of the Company's U.S. pharmaceutical sales. The Company has now admitted that these shipments were not sales at all. In each of its Form 10-K's for 1999, 2000 and 2001, Bristol-Myers listed

the dollar amounts of sales of particular drugs. As a result of the improper channel-stuffing, its sales figures for the following drugs were inflated during the Class Period by the following amounts:

	Restated 2001	Reported 2001	Restated 2000	Reported 2000	Restated 1999	Reported 1999
			(dollars in millions)			
PRAVACHOL	$ 2,108	$ 2,173	$ 1,768	$ 1,817	$ 1,637	$ 1,704
GLUCOPHAGE	1,838	2,049	1,718	1,732	1,218	1,317
PLAVIX	1,171	1,350	889	903	525	547
TAXOL	1,115	1,197	1,563	1,592	1,453	1,481
PARAPLATIN	592	702	654	690	589	600
ZERIT	515	546	578	618	580	605
AVAPRO	487	510	361	381	249	255
MONOPRIL	413	458	404	442	422	424
SERZONE	334	409	318	360	323	332
CEFZIL	304	363	330	391	379	402
BUSPAR	298	338	672	709	575	605
CAPOTEN/CAPOZIDE	285	285	355	356	484	484
GLUCOVANCE	269	330	—	110	—	—
TEQUIN	250	320	131	131	—	30
VIDEX	240	259	207	202	185	205
GLUCOPHAGE XR	233	303	33	50	—	—

65. In total, the defendants artificially inflated the Company's net sales in 2001, 2000 and 1999 in connection with consignment sales to Cardinal and McKesson by approximately $1.096 billion, $475 million and $409 million, respectively, and inflated pre-tax earnings by approximately $866 million, $399 million and $322 million, respectively.

66. The consignment shipments to Cardinal and McKesson do ***not*** comprise all of the Company's channel-stuffing. According to the Company, during the Class Period, sales

incentives were offered to additional wholesalers and there was an improper buildup of inventories at these other wholesalers. As reported in the Form 10-K/A (at page 22), these excesses "were in the range of $550 to $750 million at December 31, 2001." As a result of these excess shipments, the Company knew that it would not be able to make additional sales to these wholesalers in future periods, as they were stuffed full. In fact, the Company now admits that the work-down of this inventory buildup will adversely impact sales through the end of 2003.

(ii) Oncology Therapeutics Network

67. Another part of the defendants' scheme involved the distribution agreement between Bristol-Myers and McKesson for the provision of warehousing and order fulfillment services for the Company's Oncology Therapeutics Network ("OTN"). OTN is a wholly owned subsidiary of Bristol-Myers that distributes anti-cancer medicines and related oncology products to hospitals for the treatment of cancer patients.

68. Under the terms of this agreement, McKesson "purchased" oncology products from Bristol-Myers to service OTN's fulfillment needs and Bristol-Myers recorded those purchases as sales upon shipment of the product. However, after shipment, Bristol-Myers continued to have significant involvement in the transactions, including marketing the products to end-users, invoicing customers and collecting receivables from customers on behalf of McKesson. In addition, OTN maintained all of the credit risk associated with these products and was responsible for the costs of shipping these products to customers. Despite the fact that these shipments had absolutely no indicia of sales, Bristol-Myers recognized revenues of over $81 million from March 2001 through December 2001. In essence, Bristol-Myers simply parked $81

million of its products with McKesson and, consequently, improperly recorded these shipments as sales in violation of SAB 101 and SFAC No. 5.

(iii) Rebates and Returns

69. Throughout the Class Period, Bristol-Myers offered substantial rebates to Medicaid, prime vendors (*i.e.*, entities that purchased large quantities of the Company's drugs) and participants in the managed healthcare industry, such as pharmacy benefits managers. These rebates were paid in exchange for these customers purchasing large volumes of Bristol-Myers' drugs. Given the amount of the rebates involved, at the time the Company recorded revenue from such large-volume sales it was required under GAAP to estimate the amount of any rebates and accrue for them, *i.e.* take a charge or reduce the sales to accrue for the anticipated rebates.

70. The Company has admitted that, during the Class Period, it misstated accruals associated with its Medicaid and prime vendor rebate liabilities for its U.S. pharmaceuticals business. (Form 10-K/A at 52). According to the Company, an important component of determining the required accrual is an estimate of the amount of inventory at the wholesalers which has not sold through and upon which the Company expects to pay a rebate. As the Company engaged in channel-stuffing during the Class Period, its accrual did not fully reflect the inventory build-up.

71. Similarly, the Company has admitted that, prior to the Restatement, it employed an erroneous methodology for establishing managed healthcare sales rebate accruals to accrue an estimate for rebates at the time of sale, rather than accruing ratably over the period during which the managed health care entities perform their obligations under the agreements providing for rebates, as required by GAAP. As with the Medicaid and prime vendor rebates, discussed above,

the amount of the accrual was affected by the channel-stuffing scheme. Prior to the Restatement, the impact of the excess inventory held by wholesalers was improperly ignored in the determination of the accrual. The Company has now restated those accruals to correct its methodology and account for the channel-stuffing scheme in accordance with GAAP.

72. In addition, prior to the Restatement, the Company recorded returns based on the actual amounts of products returned during a fiscal period, rather than estimating the amounts of future returns and accruing such estimates in the period the products are sold. By improperly accounting for product returns, the Company overstated its net sales and pre-tax earnings by $28 million, $47 million and $5 million in 2001, 2000 and 1999, respectively.

(iv) "Cookie Jar" Reserves

73. Throughout the Class Period, Bristol-Myers created inappropriate "cookie jar" reserves and then utilized these reserves to inflate earnings in subsequent periods by either reversing them back into income or by charging expenses against them that would have otherwise negatively impacted earnings. These actions, which violated the most basic principles of GAAP, allowed the defendants to systematically manage the Company's earnings and, thereby, mislead the investing public.

74. The term "cookie jar" reserves refers to inappropriate reserves that are created solely for the purpose of providing a cushion that can be used later to offset earnings shortfalls. Under GAAP, reserves may only be created when there is an identifiable basis for the occurrence of an event that is "probable" and the effects on a company's financial statements are "reasonably estimable." SFAS No. 5.

75. The defendants utilized inappropriate divestiture, restructuring and acquisition reserves to manage the Company's earnings throughout the Class Period. Specifically, with respect to numerous asset sales, the defendants did two things. First, they inappropriately reduced the gain realized on the sale by creating an improper "divestiture reserve." Hypothetically, if they sold an asset for a profit of $250 million, they set up a divestiture reserve of $25 million and reduced the realized gain to $225 million. Second, they offset the entirety of the remaining gain by creating an improper "restructuring reserve." That is, in the hypothetical, rather than permitting the gain on sale to increase earnings in the period in which it occurred, they created an entirely unrelated restructuring reserve in the amount of $225 million, erasing from income the entire gain on the sale. While this reduced the Company's profits in the quarter of the sale, it set up a "slush fund" through which the defendants could manage earnings in future periods.

76. Similarly, in connection with numerous acquisitions throughout the Class Period, the defendants created unnecessary acquisition reserves, which then were also available to artificially inflate the Company's earnings.

77. The defendants have now admitted that they utilized these accounting machinations for the purpose of managing earnings. The amounts of divestiture and acquisition reserves were not disclosed to shareholders and, therefore, were not questioned by analysts. Further, gains on asset sales or divestitures are generally considered to be non-recurring events that would not impact a company's continued operations or future earnings. Thus, as the defendants knew, offsetting those gains by creating an improper reserve would not impact the Company's stock price in the near term. Rather, it served only to create a "slush fund" against which the defendants could later charge operating expenses and boost income in subsequent

periods.

(a) Inappropriate Divestiture Reserves

78. The Company has admitted in its Restatement that senior management inappropriately reduced the amounts of gains realized through asset sales and divestitures through the creation of inappropriate divestiture reserves.

79. GAAP, specifically APB 30, provides that divestiture reserves should include only adjustments, costs, and expenses which are a direct result of a divestiture, and not those associated with operating business activities. Costs and expenses that are a direct result of a divestiture include items such as severance pay, additional pension costs, employee relocation expenses and future rentals on long-term leases to the extent they are not offset by sub-lease rentals. GAAP further provides under SFAS 121 that if a contractual agreement for the sale of an asset obligates an entity to incur costs in the future to effect the ultimate sale, those costs shall be included as adjustments to the gain on the sale.

80. Here, in selling approximately a dozen assets since 1997, the defendants created inappropriate reserves for "contingencies identified at the date of divestiture." In the Restatement, Bristol-Myers admitted that, "certain portions of these liabilities were established inappropriately," because, in creating these reserves, there were no "related quantifiable or specific category of liability supporting the establishment of [the reserves]." (Form 10-K/A at 53). Rather, Bristol-Myers created these reserves solely for the purpose of having them available to use as a "cookie jar" or "slush fund" to increase income in "subsequent periods."

81. The defendants then utilized these unnecessary divestiture reserves either to offset operating expenses, or they simply "reversed" the reserve and thereby manufactured hundreds of millions of dollars of phony income. These actions constitute intentional fraud; they were

undertaken for no other purpose than to increase profits. The Company improperly created divestiture reserves and fraudulently reversed these reserves into income during the Class Period in the following amounts:

Year	Amount of Divestiture Reserve Inappropriately Established	Divestiture Reserve Inappropriately Reversed Into Income	
		Amount	Per Share Inflation of Earnings
1999	$50 million	$40 million	$0.01
2000	$104 million	$66 million	$0.02
2001	$269 million	$157 million	$0.07

(b) Inappropriate Restructuring Reserves

82. The defendants have also admitted that they created and used inappropriate restructuring reserves.

83. Restructuring reserves are supposed to be reserves for future events associated with legitimate restructuring activities, such as plant closings or when a company ceases to engage in a particular product. Under SAB 100, Restructuring and Impairment Charges, which expanded upon the guidance in the 1994 Emerging Issues Task Force of the Financial Accounting Standard Board's EITF 94-3, Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring), restructuring charges may only be incurred if such "action is part of a comprehensive plan that has been rigorously developed and thoroughly supported" by

management. Specifically, SAB 100 requires that before a company can establish a restructuring reserve, it must create an "exit plan" that provides that "[a]ll significant actions are documented in the plan in sufficient detail." Furthermore, "as a prerequisite to accruing" a restructuring charge, management must "estimate reliably" each step of the plan, and the plan must reflect the "most likely expected outcome." *See* SAB 100; EITF 94-3.

84. Necessarily, the amount allocated to any restructuring reserve can only be used in furtherance of the exit plan; it can never be used to offset normal operating expenses. Indeed, under GAAP, any costs a company seeks to charge against a restructuring reserve must satisfy three specific criteria: first, the cost must not be associated with or benefit continued activities; second, the cost must not be associated with or be incurred to generate revenues after the management commits to the plan; and third, the cost must either be (i) "incurred as a direct result of the exit plan" or (ii) incurred under a contractual obligation (*e.g.* a property lease) that existed before management committed to the plan and will either have no economic benefit once the plan is completed or would have a penalty to cancel the contractual obligations. Thus, costs may be charged against a restructuring reserve only to the extent those costs were specifically included in the original estimation of the reserve. GAAP does not permit a restructuring reserve to be used for any purpose other than that for which the reserve was specifically established. *See* SAB 100; *see also* EITF 94-3.

85. Once the restructuring reserve is established, GAAP requires detailed disclosure relating to the establishment of the reserve and charges against the reserve in "all periods, including interim periods, until the exit plan is completed." SAB 100 (emphasis in original). Furthermore, management must disclose within the Management Discussion and Analysis

("MD&A") section of its periodic reports the effect of these charges on "known trends, demands, commitments, events or uncertainties," and any future implications on a company's financial position or operating results. Any changes to the plan must also be disclosed and explained. *See* SAB 100; EITF 94-3; SAB 67, Interpretation Regarding Restructuring Charges.

86. Here, the defendants created "restructuring reserves" in the exact amounts of the reported gains on sales of businesses or product lines throughout the Class Period, even though these reserves should have had nothing to do with the sales. In total, since 1997, the defendants offset nearly $1.18 billion of realized gains from the sales of a dozen assets with these reserves, some of which they then used to manage earnings in subsequent periods. For example:

(a) In the fourth-quarter of 1997, Bristol-Myers recorded a gain of $225 million on the sale of Linvatec and, at the same time, created a $225 million restructuring reserve;

(b) In the first quarter of 1998, Bristol-Myers recorded a gain of $125 million on the sale of Ban Antiperspirant and, at the same time, created a $125 million restructuring reserve;

(c) In the second quarter of 1998, Bristol-Myers recorded a gain of $76 million on the sale of A/S GEA, a Denmark-based generic drug manufacturer, and Hexachimie, a French-based specialty chemical manufacturer and, at the same time, created a $76 million restructuring reserve;

(d) In the first quarter of 2000, Bristol-Myers recorded a gain of $120 million on the sale of Estrace Cream, a hormone replacement therapy, and the Ovcon 35 and Ovcon 50 product lines and, at the same time, created a $120 million restructuring reserve;

(e) In the third quarter of 2000, the Company recorded a gain of $402 million on the sale of Matrix Essentials and, at the same time, established reserves of $402 million of which $386 million was allocated to a restructuring reserve and $16 million was allocated to discontinued operations; and

(f) In the third quarter of 2001, Bristol-Myers recorded a gain of $240 million from the sale of the Corzide, Delestorgen and Florinef product lines and licensing of its Corgard product line to King Pharmaceuticals. It then took a commensurate charge against earnings of $240 million, $42 million of which was used to settle litigation involving Mead Johnson, and the remainder was allocated to a $198 million restructuring reserve.

87. In its Restatement, the Company admitted that certain portions of these restructuring reserves "were established in error." (Form 10-K/A at 55). In 2001, of the $198 million the Company used to set up restructuring reserves, the defendants have admitted that nearly half, or $93 million, was improper.

88. The Company further admitted that it improperly classified certain operating charges of $194 million in 2000 and 2001 as restructuring expenses. In so doing, the defendants were able to obscure the Company's operations, making it appear as though operating expenses – a key component for judging performance – had improved.

89. Moreover, throughout the Class Period, the Company failed to comply with the explicit disclosure requirements of SAB 100 or EITF 94-3, such as the exit plan details, changes to the plan, effects on trends, significant actions, expected outcomes or the specific purpose of the restructuring activity. Instead, the defendants chose to disclose these reserves in footnotes bearing inadequate detail.

90. In addition, the manner in which the defendants chose to disclose many of the reserves was also misleading. Specifically, the defendants made it appear as if the reserves were directly related to gains on sales, when, in fact, they bore no legitimate relation to those gains. For example: In footnote 2 of Bristol-Myers' Form 10-Q for the third quarter 2000 it disclosed that it had completed the sale of Matrix Essentials, Inc. "resulting in a pre-tax gain of $402 million. This gain is included in gain on disposal of discontinued operations. At the same time, the Company recorded a pre-tax charge of $402 million."

91. The creation of excessive reserves time and again to offset gains on sales, the inadequate disclosure relating to those reserves and the improper use of the reserves to manipulate earnings cannot occur by accident or without knowledge; rather, it was intentional and deliberate conduct by Bristol-Myers' most senior management to manage the Company's earnings.

(c) Inappropriate Acquisition Reserves

92. In addition to these improper divestiture and restructuring reserves, the Company has also admitted that, throughout the Class Period, the defendants created improper reserves in connection with acquisitions and then inappropriately utilized these reserves to boost earnings.

93. Under SFAS 38, Accounting for Preacquisition Contingencies of Purchased Enterprises, reserves for acquisition contingencies may be included in the purchase price allocation under only two circumstances. First, a reserve may be established if the fair value of the contingencies could be determined during the "allocation period," which is usually not in excess of one year from the consummation of the acquisition. Alternatively, if the fair value of the acquisition contingency cannot be determined during the allocation period, but it can be

reasonably estimated based on information available prior to the end of the allocation period, then a reserve can be established if a contingency is "probable."

94. During the Class Period, Bristol-Myers acquired other businesses in transactions that it accounted for as purchases or pooling of interests. The defendants have admitted that, in connection with these transactions, they improperly created acquisition reserves. Specifically, the Company has admitted that "certain portions of these liabilities were established inappropriately as there does not appear to have been any related quantifiable or specific category of liability supporting the establishment of such portions of these liabilities," and that in "subsequent periods," these arbitrarily created reserves were "ultimately inappropriately reversed" because defendants deemed these acquisition-related reserves to be "excessive." (Form 10-K/A at 53).

95. After these reserves were set-up, Bristol-Myers used the reserves to manage its earnings and create phony profits by "reversing" portions of the reserve back into income. Again, this did not occur accidently but could only result from a deliberate scheme to inflate profits. Bristol-Myers inflated earnings in 1999 by $37 million and in 2001 by $7 million by improperly reversing inappropriate acquisition reserves.

96. In addition, the Company admitted to improperly recording $67 million, or over $0.02 of EPS, of acquisition costs as paid-in capital in connection with its pooling of interests with Redmond Products, Inc. Of this $67 million, $42 million, or nearly $0.02 of EPS, should have been charged to income in 1998 as opposed to paid-in capital. Under GAAP, costs incurred to effect a business combination accounted for as a pooling of interests are expenses of the combined corporation rather than direct reductions of stockholder equity. APB 16. As to the

remaining $25 million, or nearly $0.01 of EPS, the Company has admitted that it placed that money into a reserve for which there "does not appear to have been any related quantifiable or specific category of liability" to support its establishment.

(v) Additional Intentional Violations of GAAP

97. In addition to the channel-stuffing scheme and the inappropriate use of reserves to manage earnings, the Company has admitted that the defendants violated GAAP in a variety of other ways. These violations also had the effect of materially overstating Bristol-Myers' earnings throughout the Class Period, and allowed the Company to meet Wall Street estimates.

98. The Company admitted that it improperly accounted for the settlement of a litigation relating to BuSpar by improperly accruing a charge of $35 million in the first quarter of 2002, rather than in the fourth quarter of 2001. (Form 10-K/A at 56). In so doing, the defendants artificially boosted EPS by nearly $0.02 for the year-end 2001.

99. Also in the fourth quarter of 2001, Bristol-Myers modified its co-development arrangements for Irbesartan (Avapro) with Sanofi-Synthelabo. In its Restatement, the Company admitted that it improperly accounted for this transaction by amortizing the proceeds of $350 million from the sale of its interest in Irbesartan into income through just 2003, rather than over the eleven-year expected useful life of the license in accordance with GAAP. (Form 10-K/A at 53). This treatment allowed Bristol-Myers to artificially inflate its earnings by $30 million, or nearly $0.01 EPS, in the fourth quarter of 2001 and by $62 million, or nearly $0.03 EPS, in the first half of 2002.

100. In connection with the fourth quarter 2001 ImClone transaction and subsequent modification in March 2002, Bristol-Myers admitted that it improperly failed to accrue in March

2002 for a certain "milestone" payment it was obligated to make and, thereby, caused the Company to understate acquired in-process research and development expenses and overstate earnings by $48 million, or $0.02 of EPS, in the first quarter 2002. (Form 10-K/A at 20). In addition, Bristol-Myers admitted that it "erroneously reduced the deferred tax benefit related to acquired in-process research and development" with respect to the ImClone transaction. *Id.* The Company claimed that this "error" was due to an "inappropriate conclusion regarding the realization of the related deferred tax assets."

101. Furthermore, the Company admitted that during the Class Period it erroneously calculated deferred tax liabilities and, thereby, artificially inflated its net earnings in 1999 by $53 million.

102. Since before 1999, Bristol-Myers improperly accounted for its acquisition or licensing of patent rights, which caused its earnings to be inflated in 1999 by $139 million, or nearly $0.05 of EPS, and by a total of $46 million in 1998 and 1997. Bristol-Myers admitted that it violated GAAP by improperly capitalizing costs related to the acquisition or licensing of products that had not yet received necessary regulatory approval to be marketed, and that had no alternative future use. GAAP requires that such costs be immediately charged against earnings. Bristol-Myers failed to take this charge so as to artificially inflate earnings.

103. Bristol-Myers admitted that during the Class Period it failed to properly account for dividends declared. Specifically, it recognized a liability for declared dividends on the record date, which is approximately two weeks after the declaration date, rather than on the declaration date, as required by GAAP. In so doing, the defendants overstated shareholder equity by approximately $429 million as of December 31, 1998, and by an additional $5 million, $51

million, and $57 million as of December 31, 2001, 2000, and 1999, respectively.

(vi) Other Undisclosed Transactions

104. Bristol-Myers made additional misstatements and omissions in order to meet Wall Street estimates. Specifically, on at least two occasions, the Company violated GAAP by failing to disclose transactions on the basis that they were "immaterial." However, each of these transactions, which were one time, non-recurring events, enabled the Company to meet consensus Wall Street estimates. Therefore, each of those transactions was a material component of the defendants' earnings management scheme. Similarly, the Company failed to disclose the existence of "unusual gains" that were utilized to reduce expenses, and then went further to falsely claim the reductions were the result of good management.

105. In 1999, at the beginning of the Class Period, the SEC in SAB No. 99, Materiality, reiterated the fact that assessing materiality on a strictly quantitative basis did not have any foundation in GAAP. The SEC clarified that materiality must be assessed both on the basis of quantitative and qualitative factors. In analyzing the qualitative component of materiality "all the relevant circumstances" must be reviewed. SAB 99 (emphasis in original). Moreover, the aggregation of otherwise immaterial amounts may "render the financial statements taken as a whole to be materially misleading."

106. Among the factors that give rise to materiality is "whether the misstatement hides a failure to meet analysts' consensus expectations" for a given period. In other words, if a transaction increases a company's earnings by only one penny per share, and that penny allows the company to meet Wall Street estimates, then the transaction is material. Further, if a misstatement "masks a change in earnings or other trends" of the company; "has the effect of

increasing management's compensation – for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation;" or "involves concealment of an unlawful transaction," then those misstatements are material. SAB 99.

107. Indeed, SAB 99 specifically provides that "where management has intentionally misstated items in the financial statements to 'manage' reported earnings . . . . [management] presumably has done so believing that the resulting amounts and trends would be" material.

108. In the third-quarter of 2001, Bristol-Myers sold Viactiv, a calcium supplement, to Johnson & Johnson. However, as reported in *The Wall Street Journal* on December 12, 2002, Bristol-Myers determined that its sale of Viactiv was too small to warrant disclosure. The proceeds from this sale were $28 million, or over $0.01 of EPS. But for this transaction, the Company would have failed to meet the consensus estimate of $0.63 for the quarter by reporting earnings of $0.62 per share, so it should have been disclosed as an extraordinary item. Thus, this transaction was material to investors.

109. Similarly, in its 1999 Form 10-K, Bristol-Myers disclosed that it had sold Laboratori Guieu, a gynecological, pediatric and dermatological products business, in the fourth quarter. The Company failed to disclose the gain on this sale because it "was not material." In its restated 2001 Form 10-K/A, Bristol-Myers reported that the gain on this sale was $50 million, or nearly $0.02 of EPS. But for this amount, the Company could not have reported quarterly EPS of $0.52, which beat the consensus Wall Street estimate by one penny. Thus, the transaction was material.

110. During the Class Period, the defendants also masked material trends of vital expense categories. The Company reported certain gains on sales as credits to operating

expenses in the category of "Marketing, Selling, Administrative and Other" ("MSA&O"), thereby making it appear as if they were reducing expenses.

111. In connection with the sale of the following assets, Bristol-Myers allocated a total of $237 million – or nearly $0.10 of EPS – as credits to operating expenses: the sale of (1) Estrace Cream, (2) Ovcon 35 and (3) Ovcon 50 (all in the first quarter 2000 for a total of $120 million, or over $0.04 of EPS); the sale of the (4) SeaBreeze product line (in the second quarter 2000 for $40 million, or nearly $0.02 of EPS); the sale of (5) Apothecon Commodity Business (in the first quarter 2001 for $32 million, or over $0.01 of EPS); and the sale of (6) Estrace tablets (in the second quarter 2001 for $45 million, or over $0.02 of EPS).

112. When specifically asked at an earnings conference call on April 25, 2001 whether "any unusual gains" had contributed to the "Marketing, Selling, Administrative, and Other decline [of] 12% to $834 million," defendant Schiff intentionally failed to disclose that this expense was reduced, at least in part, by the allocation of the gains on sales. Indeed, he falsely stated, "[t]here is [sic] really no unusual items in the [MSA&O] . . . as I said, foreign exchange and cost efficiencies, cost effectiveness [contributed], but there are no unusual items in that item." But for the $0.01 EPS gain on the sale of the Apothecon Commodity Business sale, which was credited to MSA&O, Bristol-Myers would have failed to beat Wall Street's quarterly expectations for the first quarter 2001.

D. Revelation of the Accounting Improprieties

113. In its 2001 Form 10-K, filed with the SEC on April 1, 2001, Bristol-Myers reported that wholesalers and distributors were holding an excessive amount of the Company's inventory. Specifically, the Company said:

> average wholesaler inventories of products in the U.S. increased ***during 2001*** by approximately four weeks of its average sales to these wholesalers primarily due to sales incentives offered by the Company to them. As a result, the Company estimates the Company's 2001 domestic pharmaceutical sales included approximately four weeks of additional sales. The Company believes current inventories of its products held by wholesalers in the U.S. significantly exceed levels the Company considers desirable on a going-forward basis. (Emphasis added).

114. The April 1st announcement, however, continued to mask the extent to which the Company had improperly recorded "consignments" as "sales," as well as the fact that this practice had begun as early as July 1999. Moreover, the announcement made no mention of the many other accounting improprieties that were utilized by the defendants to mask the true condition of Bristol-Myers' business and operations.

115. On April 2, 2002, Wall Street research analysts reported on the impact of the Company's April 1st announcement. For example, Carl Seiden, an analyst with J.P. Morgan, said that "[Bristol-Myers'] 10-K filing . . . indicated that excess stocking by US wholesalers was much higher than we had feared – excess inventory is now at $850 million (4 weeks excess - 2 weeks is normal) and could represent a $0.15-$0.20 risk to EPS in 2002." Similarly, an analyst with Morgan Stanley reported that "[a]lthough the excessive inventory levels at [Bristol-Myers] is not "new news," we believe the original 2002 EPS guidance was based on an inflated sales expectation." And on April 3, 2002, C. Anthony Butler, an analyst with Lehman Brothers, reported that:

> [Bristol-Myers'] just released 10K said "average wholesaler inventories of products in the U.S. increased during '01 by approximately four weeks." A literal interpretation of the 4 wk. Figure (7-8% sales) applied to '02 company EPS guidance would result in a $0.15 or $0.20 hit. However, we suspect that some factors (tax effects, shifting demand curves, product/profit mix, etc.) may mitigate the bottom line effects. We are not changing estimates for '03 or beyond.

> Currently, we are NOT formally changing our '02 est. given too many unknowns & the expectation that the co. addresses this issue on OR before the 1Q02 [first quarter 2002] results." (Emphasis in original).

116. However, it was not until April 3, 2002, that the market began to get a sense of the gravity of the situation. On that date, defendant Dolan announced a sudden "management change," which included the replacement of defendants Schiff and Lane. He also announced that the Company was lowering its first quarter 2002 EPS estimate to between $0.44 and $0.47 per share, or down 25% to 30%, compared to the same period in 2001. Dolan reported that:

> Given the performance of several key products versus sales expectations, as well as actions taken to reduce inventory levels, the company now estimates that sales for the first quarter of 2002 will decline approximately 7 percent from the first quarter of 2001.
>
> * * *
>
> We fully expected 2002 to be a transition year. The challenges we had anticipated have been compounded by business and organizational issues that we have identified and which are now being addressed in a fundamental and comprehensive fashion. I am confident that the successful implementation of the initiatives we have outlined today will result in a much stronger, healthier Bristol-Myers Squibb for the long term and for all concerned.

117. On a conference call with Wall Street analysts later that day, Carl Seiden, an analyst with J.P. Morgan, asked Dolan to clarify the information revealed in the April 3rd press release. Specifically, Seiden asked:

> Peter [Dolan], it's -- I mean given the limitations of some of the information you are giving today, in terms of not a lot of detail, it is very difficult really to connect the dots with the guidance that you guys gave just 2.5 months ago and where you are today . . . as I look at it, the thing I'm struggling with the most is even with the weakness in the product sales that you're talking about.
>
> In January, to have an expectation for revenue growth in the high single digits and now net of the inventory work out to be looking for the low single digits, that's at least $1.4 billion change in annual revenues. And is there any more detail you could give us on that? And I guess the other issue here is can you quantify what

you think is out there in the way of excess stock? Because without that, we will never know whether your underlying performance is actually meeting your new target of low single digit declines or you know, what's coming out of the inventory fix.

118. In response to this question, Dolan stated:

Well, we had a plan in December that we believed in. As we saw the business trends in the early months of 2002, ***we did an in-depth and exhaustive review and re-looked at every business in the company.*** One of our business plans, primary care in the U.S., which is the entire delta in terms of our expectations, was found to be dramatically off track. And as we learned more, we dug deeper and that's why we made these changes in response.

119. James Torrelli, an analyst with Capital Research, then asked the following question:

I guess I can get to the 25 to 30 – I'm sorry – the 35 to 40 cents inventory hit by looking at the IMS data. What I'm having the bigger trouble with . . . is the 75 cents of decline incremental to the inventory, which suggests to me that there is a huge product mix shift that is going to negatively affect gross margins in a substantial way. Can you at least help identify what the largest components are of that 70 plus cent hit in '02? Thanks.

120. In response, defendant Schiff stated:

Yes, just going back to Peter's comments. I think if I understood the question correctly, you are really talking about the 25 to 30 percent decline from where we were when we last spoke about it in January and December. And that decline is specifically tied into revenue reduction. So it's really revenue driven. And if you go back to Peter's comments, it's a couple of key products that were in the plan, and today when we're looking at estimates of those products, they are significantly lower. Glucophage family in particularly is much lower. Avandia, Serzone, Tequin are the key products that are lower that really make up that revenue reduction. That revenue reduction that we're seeing is causing the results to get to the 25 to 30 percent lower. And I think that equates to your 75 cents per share, if I got it right.

121. Despite these announcements, the defendants continued to conceal the true scope of the fraud. Defendant Dolan failed to disclose the full extent of the inventory buildup, and he made no mention of the fact that the Company had improperly recorded as sales shipments that

should have been recorded as consignments. He also failed to disclose that this improper revenue recognition practice began as early as 1999, and that in addition to the improper recognition of consignment sales, the defendants utilized a panoply of accounting improprieties to manage the Company's earnings.

122. Nevertheless, in response to the disclosures on April 1st and April 3rd, shares of Bristol-Myers fell $8.34 from $40.49 (where the stock closed on March 28, 2002) to $32.15 (the close on April 3, 2002), a decline of 20%.

123. On April 25, 2002, Bristol-Myers issued a press release that announced its financial results for the first quarter of 2002. The press release stated that U.S. pharmaceutical sales had decreased 20% to $2.2 billion in the first quarter of 2002, from $2.8 billion in the first quarter of 2001. The Company noted that a portion of the decline was attributable to the overstocking of the Company's wholesalers with inventory. The Company also revealed that its historical sales were overstated by as much as $262 million due to its failure to account for Medicaid rebates:

> During the first quarter of 2002, the company recorded certain non-recurring items that affected continuing operations, including a reduction in sales in the amount of $262 million as a result of an adjustment to the company's accrual for Medicaid and other rebates resulting from a revised estimate of such accrual primarily related to increases in domestic wholesaler inventories in 2000 and 2001. . . . Including these items, sales decreased 13% to $4.1 billion and fully diluted earnings per share for the first quarter were $0.30.

124. The April 25th press release still made no disclosure of the full extent of the channel-stuffing scheme or the additional accounting improprieties.

125. On June 20, 2002, the Company announced that it had been:

> [C]ontinuing to work cooperatively with domestic wholesalers and product partners to aggressively reduce excess inventory levels. The company indicated that if it is able to achieve the inventory work down goal set for the second

quarter, the impact on its results in the quarter may be in the range of $0.14 to $0.17 per share on a diluted basis.

126. This announcement that the inventory buildup had been reduced through June 2002, stands in stark contrast to a UBS Warburg analyst report, dated October 8, 2002, which indicated that the Company's inventory buildup actually increased from $822 million March 31, 2002, to over $1.18 billion by June 30, 2002. In other words, at the exact same time that the defendants were trying to convince investors that the Company was working down its inventory excesses, the truth of the matter was that the magnitude of the inventory buildup was getting worse.

127. On July 11, 2002, Bristol-Myers disclosed that the SEC had been investigating Bristol-Myers' channel-stuffing activities since April 2002. The Company, however, defended its accounting, stating that it "continues to believe that its accounting treatment of the domestic wholesaler inventory buildup has been completely appropriate."

128. On July 23, 2002, the Company announced its second quarter and six-months results for 2002. In this press release, the Company reported:

> [S]ubstantial progress in reducing U.S. wholesaler inventory to desirable levels, working cooperatively with domestic wholesalers and product partners . . . the company estimates that nearly 90% of the total work down impact will be achieved by year-end 2002, with average inventory for the company's exclusive products by year end at or near desirable levels.

Contrary to this announcement, the Company now admits in the Restatement that it will take at least until the end of 2003 to work down the inventory buildup.

129. On August 15, 2002, in its Form 10-Q for the second quarter of 2002, Bristol-Myers reported that it might be forced to restate its sales and earnings for 2000 and 2001 based on its excessive channel-stuffing. The Company also disclosed that the SEC probe into its

wholesaler overstocking "may become a more formal investigation."

130. On August 29, 2002, the Company reported that the SEC investigation into the Company's channel-stuffing activities had become a "formal investigation." The Company, however still continued to defend its accounting practices, stating that it "continues to believe that its accounting treatment for the wholesaler inventory buildup was appropriate."

131. In a press release issued on September 17, 2002, the Company confirmed its previous estimates that the wholesaler inventory work down would reduce diluted EPS by a total of approximately $0.61, approximately $0.11 per diluted share in the first quarter of 2002, approximately $0.18 per diluted share in the second quarter, approximately $0.24 per diluted share in the last two quarters of 2002 and approximately $0.08 per diluted share over 2003. The Company also reiterated that nearly 90 percent of the total work down impact would be achieved by year-end 2002, with year end average inventory for the company's exclusive products at or "near desirable levels."

132. In an October 9, 2002 press release, the Company reported that the U.S. Attorney's Office for the District of New Jersey had begun a criminal investigation into the Company's channel-stuffing activities and the resulting accounting irregularities. In the press release, the Company announced that it "intends to cooperate with all reviews of this matter. . . "

133. In response to this press release, on October 25, 2002, Christopher Christie, the United States Attorney for the District of New Jersey, stated that Bristol-Myers was not "completely accurate" in saying it was cooperating with his investigation. He added that:

> I made it clear yesterday to that corporation and its legal representatives that when they say to the general public that they are fully cooperating with the government that I expect that statement to be true.

134. On October 24, 2002, after insisting for months that its accounting for excessive sales to pharmaceutical wholesalers had been proper, the Company announced in a press release that it expected to restate approximately $2.0 billion in sales revenue recorded in fiscal 2000 and 2001. The Company claimed that the decision to restate was based on further review and consideration of the Company's wholesaler inventory buildup and on recent advice from the Company's auditors, PricewaterhouseCoopers LLP. The Company announced that the expected restatement would reflect primarily adjustments in the timing of revenue recognition of the Company's pharmaceutical sales to certain of its wholesalers. The Company also announced that pharmaceutical sales, prior to giving effect to the restatement, decreased 32% in the third quarter of 2002 to $1.9 billion from $2.8 billion in 2001 due, in part, to the wholesaler inventory work down. The October 24th announcement of the expected restatement did not disclose the improper practice of recognizing consignments as sales; it did not disclose the improper use of reserves to bolster earnings, a practice that had begun as early as 1997; and it did not disclose the numerous other accounting violations that have now been admitted in the 2001 Form 10-K/A.

135. It was not until December 12, 2002, that more, but not all, of the Company's accounting gimmicks came to light in an article by *The Wall Street Journal* entitled *Booster Shots: At Bristol-Myers, Ex-Executives Tell Of Numbers Games*. This article reported that current and former Bristol-Myers executives had disclosed to the *Journal* that the defendants had engaged in an earnings management scheme to meet Wall Street's expectations using the inappropriate creation and usage of "restructuring reserves," the use of undisclosed "immaterial" transactions to meet earnings expectations, and the offsetting of operating expenses with gains on asset sales. In response to these allegations, Bristol-Myers, through a spokesman, again lied to defend its practices, stating: "It's simply untrue that the company used earnings management to

obscure the true state of the Company."

136. Bristol-Myers' stock dropped $1.80, or nearly 7%, upon publication of the December 12th *Journal* article.

137. On December 24, 2002, *The Wall Street Journal* reported that in the spring of 2002 – well before the SEC or U.S. Attorney disclosed their investigation – Dolan had hired Mary Jo White, a partner with the law firm of Debevoise & Plimpton and the former U.S. Attorney for the Southern District of New York, to perform an internal review of the Company's wholesaler inventory buildup. The *Journal* also reported that Bristol-Myers' Board of Directors had hired its own legal counsel to review Ms. White's report.

E. The Restatement

138. On March 10, 2003, Bristol-Myers finally issued a press release announcing the Restatement of its previously issued financial statements. By restating, the Company admitted that its financial statements for each of the restated periods were not prepared in conformity with GAAP and that they materially misrepresented the Company's financial condition and results of operations. Under GAAP, restatement of previously issued financial statements is the most severe step, reserved only for circumstances where no lesser remedy is available. Indeed, APB 20, Accounting Changes, provides that restatements are only permitted to correct material accounting errors or irregularities that existed at the time the financial statements were prepared.

139. In its press release, the Company stated:

> In the aggregate, the restatement reduced net sales by $1,436 million, $678 million and $376 million for the years ended December 31, 2001, 2000 and 1999, respectively, and increased net sales for the six months ended June 30, 2002 by $653 million. The restatement also reduced net earnings from continuing operations by $376 million, $206 million and $331 million in the years ended December 31, 2001, 2000 and 1999, while net earnings from continuing operations were increased by $201 million in the six months ended June 30, 2002.

* * *

The effect of the restatement on the Company's previously reported diluted earnings per share from continuing operations was a decrease of approximately $0.20, $0.10 and $0.16 for 2001, 2000 and 1999, respectively, and an increase of $0.10 in earnings per share for the six months ended June 30, 2002 and $0.26 in earnings per share for the full year 2002.

* * *

In addition, certain of the restatement adjustments affected periods prior to 1999, and as a result, opening retained earnings for 1999 were reduced by approximately $578 million. Of that amount, approximately $429 million is due to a correction in the Company's accounting policy for dividends to conform to the GAAP requirement that the liability for declared dividends be recorded as of the declaration date rather than the record date, and has no impact on reported earnings per share.

140. In addition, the Company announced further revisions to its past financial statements on March 18, 2003, when it filed its Amended Form 10-K for fiscal 2001 (the "Form 10-K/A") with the SEC. Here, the Company stated:

The restatement of previously issued financial statements reduced the Company's net earnings and diluted earnings per share in the years ended December 31, 2001, 2000 and 1999 by approximately $411 million or $0.21, $240 million or $0.12 and $366 million or $0.18, respectively, and increased the Company's net earnings and diluted earnings per share in the six months ended June 30, 2002 by approximately $310 million or $0.16.

141. In sum, the effect of the Restatement on net sales was as follows:

	Year Ended December 31,		
	2001	2000	1999
	(dollars in millions)		
Net Sales, as previously reported	$ 19,423	$ 18,216	$ 16,878
Adjustments:			
Consignment sales	(1,096)	(475)	(409)
Sales returns	(28)	(47)	(5)
Sales rebate accruals	(86)	1	38
Restructuring and other items	(74)	–	–
Decrease in net sales	(1,284)	(521)	(376)

	Year Ended December 31,		
	2001	2000	1999
	(dollars in millions)		
Net Sales, as restated	$ 18,139	$ 17,695	$ 16,502

142. The effect of the Restatement on earnings from continuing operations before minority interest and income taxes and net earnings was as follows:

	Year Ended December 31,		
	2001	2000	1999
	(dollars in millions)		
Earnings from Continuing Operations Before Minority Interest and Income Taxes, as previously reported[1]	$3,217	$5,636	$5,246
Revenue recognition restatement adjustments:			
Consignment sales	(866)	(399)	(322)
Sales returns	(28)	(47)	(5)
Sales rebate accruals	(86)	—	37
Subtotal	$ (980)	$ (446)	$ (290)
Other restatement adjustments:			
Capitalized research and development payments	25	24	(139)
Irbesartan transaction	(30)	—	—
Acquisition liabilities	(7)	—	(37)
Divestiture liabilities	(56)	(4)	10
Restructuring and other items	81	25	—
Litigation accrual adjustment	(35)	—	—
Other restatement items	3	12	—
Subtotal	(19)	57	(166)
Total restatement adjustments	(999)	(389)	(456)

[1] As stated in the Restatement "[m]inority interest was included in other expense on a pre-tax basis as originally reported. Minority interest is now being shown together with income from unconsolidated affiliates net of taxes, after earnings from continuing operations before income taxes on the consolidated statement of earnings. Therefore, the amounts previously reported have been reclassified to be on a comparable basis."

	Year Ended December 31,		
	2001	2000	1999
	(dollars in millions)		
Earnings from Continuing Operations Before Minority Interest and Income Taxes, as restated	$2,218	$5,247	$4,790
Provision for income taxes, previously reported	545	1,440	1,402
Tax related restatement adjustments	(200)	(32)	53
Tax for all other restatement adjustments	(272)	(88)	(137)
Minority interest, net of taxes	102	97	49
Earnings from Continuing Operations, as restated	$2,043	$3,830	$3,423
Net earnings from and gain on disposal of discontinued operations, as previously reported	$2,718	$ 615	$ 378
Adjustment to divestiture liabilities	73	26	—
Net earnings from and gain on disposal on sale of discontinued operations, as restated	$2,791	$ 641	$ 378

143. In addition, Bristol-Myers provided restated quarterly information for each quarter of 2000 and 2001. The effect of the restatement on those periods was as follows:

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	As Previously Reported	As Restated	As Previously Reported	As Restated	As Previously Reported	As Restated	As Previously Reported	As Restated
	(dollars in millions, except per share data)							
2001:								
Net Sales	$ 4,689	$ 4,631	$ 4,709	$ 4,319	$ 4,743	$ 4,530	$ 5,282	$ 4,659
Gross Margin	3,406	3,368	3,362	3,054	3,412	3,213	3,668	3,050
Net Earnings from Continuing Operations	1,243	1,217	1,102	954	1,231	1,173	(1,049)	(1,301)
Discontinued Operations, net	93	93	99	99	14	14	2,512	2,585
Net Earnings	$1,336	$1,310	$1,201	$1,053	$1,245	$1,187	$1,463	$1,284
Earnings per Common Share Basic Earnings from Continuing Operations	.64	.62	.57	.49	.64	.60	(.54)	(.67)

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	As Previously Reported	As Restated	As Previously Reported	As Restated	As Previously Reported	As Restated	As Previously Reported	As Restated
	(dollars in millions, except per share data)							
Discontinued Operations, net	.05	.05	.05	.05	–	.01	1.29	1.34
Net Earnings	$ .69	$ .67	$ .62	$ .54	$ .64	$ .61	$ .75	$ .66
Diluted								
Earnings from Continuing Operations	.63	.61	.56	.49	.63	.60	(.54)	(.66)
Discontinued Operations, net	.05	.05	.05	.05	–	.01	1.29	1.34
Net Earnings	$ .68	$ .66	$ .61	$ .54	$ .63	$ .61	$ .75	$ .67
2000:								
Net Sales	$4,451	$4,432	$4,418	$4,411	$4,563	$4,183	$4,784	$4,669
Gross Margin	3,310	3,282	3,288	3,285	3,363	3,006	3,496	3,393
Net Earnings from Continuing Operations	1,129	1,106	1,005	982	893	717	1,069	1,025
Discontinued Operations, net	92	92	86	86	343	369	94	94
Net Earnings	$1,221	$1,198	$1,091	$1,068	$1,236	$1,086	$1,163	$1,119
Earnings per Common Share								
Basic								
Earnings from Continuing Operations	.57	.56	.51	.50	.45	.36	.55	.52
Discontinued Operations, net	.05	.05	.04	.04	.18	.19	.05	.05
Net Earnings	$ .62	$ .61	$ .55	$ .54	$ .63	$ .55	$ .60	$ .57
Diluted								
Earnings from Continuing Operations	.56	.55	.50	.49	.45	.36	.54	.52
Discontinued Operations, net	.05	.05	.04	.04	.17	.19	.05	.04
Net Earnings	$ .61	$ .60	$ .54	$ .53	$ .62	$ .55	$ .59	$ .56

144. The Company also provided certain restated information for 1999. The effect of those restatement adjustments was as follows:

Year Ended December 31, 1999	As Previously Reported	As Restated
Statement of Operations:		
Net Sales	$16,878	$16,502
Total costs and expenses	13,089	13,079
Earnings from Continuing Operations	3,789	3,423
Discontinued Operations:		
Net earnings	378	378
Net gain on disposal	–	–
Net Earnings	$ 4,167	$ 3,801
Basic earnings per common share:		
Continuing Operations	1.91	1.73
Discontinued Operations:		
Net earnings	.19	.19
Net gain on disposal	–	–
Net Earnings	$ 2.10	$ 1.92
Diluted earnings per common share		
Continuing Operations	1.87	1.69
Discontinued Operations:		
Net earnings	.19	.19
Net gain on disposal	–	–
Net Earnings	$ 2.06	$ 1.88

145. In addition to the above, the Company also announced in connection with the Restatement that its auditors, PricewaterhouseCoopers LLP "ha[d] identified and communicated to the Company and the Audit Committee two 'material weaknesses' (as defined under standards established by the American Institute of Certified Public Accountants) relating to the Company's accounting and public financial reporting of significant matters and to its initial recording and

management review and oversight of certain accounting matters." The Company had not elaborated on these "material weaknesses" by the time of the filing of this Complaint.

F. Erbitux and the ImClone Partnership

146. In 2001, as channel-stuffing and accounting gimmicks were maximized to manage earnings, defendants engaged in a fraud to mislead investors about the future prosperity of the Company's drug pipeline. Together with the knowledge that Bristol-Myers' next best hope, Vanlev, was doomed to fail, and the imminent expiration of several valuable patents, defendants sought to maintain a facade of future potential.

147. As was the motivation for the accounting and inventory schemes, and as explained in detail in paragraphs 52 to 55, the decline of Bristol-Myers' business caused by the patent expiration of numerous "blockbuster" drugs and the inevitable Vanlev debacle left the Company and the defendants exposed to imminent failure. Together with the September 2000 announcement of the "Strategy for Growth," which set out the "Mega-Double Plan", the dry pipeline put defendants in a desperate position of substantiating the Company's future prospects and financial performance. By early 2001, Bristol-Myers knew that it needed drugs in late stages of development, ones with the potential, or at least the appearance of potential, to generate revenues in the short-term. Bristol-Myers also needed to slow its rapid decline from its once preeminent position in the cancer drug market; by 2001, Bristol-Myers' share of the cancer drug market had plummeted to 21% from 37% in 1996. As Sushant Kumar, an analyst with Metha Partners, told Reuters News Service in late September 2001: "Big drug companies will continue to hunger for new products, and Bristol-Myers is the hungriest of the hungry because it doesn't have many products left in its pipeline."

148. After a number of failed attempts at partnering with other drug companies, in the spring of 2001, Bristol-Myers turned its attention to acquiring rights to Erbitux, or C225, a potential new colorectal cancer drug developed by ImClone. Erbitux was touted by ImClone as a highly specific antibody that aids in the treatment of certain types of cancers by inhibiting tumor growth.

149. Bristol-Myers, however, was not ImClone's first suitor. Prior to the spring of 2001, ImClone had approached ***seven*** other pharmaceutical companies to invest in Erbitux – Pharmacia Corp., Merck & Co., Eli Lilly & Co., Johnson & Johnson, Chiron Corp., Amgen, Inc, and Abbott Laboratories. Tellingly ***all*** of these companies rejected a partnership with ImClone.

150. Erbitux was extremely attractive to Bristol-Myers because it had received "fast track" approval by the FDA. Pursuant to the FDA Modernization Act of 1997, designation as a "fast-track" product means that the FDA will facilitate the development and expedite the review of a drug if it is intended for the treatment of a serious life-threatening condition, and it demonstrates the potential to address unmet medical needs for such a condition. Fast track designation, however, does not require a particular threshold of efficacy, nor does it provide any evaluation of safety or manufacturing. Because of its fast-track status, the FDA had to make a decision on Erbitux within 60 days of receiving its new drug application. For Bristol-Myers, this meant that if it partnered with ImClone, it could tout Erbitux immediately as one of the new drugs in its pipeline, instead of having to wait several years while the drug completed initial clinical trials.

151. Despite Erbitux's attractiveness, defendants knew that its promise was illusive and any representations that the drug would soon come to market were false. Beginning as early as June 2001, as a result of Bristol-Myers' due diligence, defendants began to learn facts

indicating that Erbitux would not receive FDA approval. For instance, Bristol-Myers executives in a memorandum dated June 12, 2001, entitled "Summary of Key Findings," identified a key flaw in the drug's trial protocol because the trial called for the use of Erbitux along with another drug known as Irinotecan. That memorandum reported that despite the FDA's repeated request for data for Erbitux's effectiveness "as a single agent," ImClone had failed to provide any such clinical data. As the memorandum explains, this data was viewed as essential because "No accelerated approval has ever been granted for an oncology drug for use in a combination therapy." (Emphasis added).

152. On June 14, 2001, Bristol-Myers Senior Vice President Laurie Smaldone sent an e-mail to her colleagues, defendant Ringrose and Beth Seidenberg, Bristol-Myers' top cancer executive, which outlined additional deficiencies in the Erbitux study and concluded: "[o]n the whole this remains a very high risk opportunity." (Emphasis added). Among the critical outstanding issues she cited were: (1) with regard to Erbitux's ability to act as a single agent, there was "no agreement that [the Company] could find that is reassuring regarding activity level needed for approval;" (2) the drug's dosage was "questionable" and "safety margin for early stage patients has not been determined" and the dosage was already "seen as a problem by the FDA and by us;" and (3) in connection to the dosage issues, Ms. Smaldone emphasized that the "safety of the product, specifically related to skin toxicity, bleeding, allergy has not been well characterized. This reemphasizes the weakness of the dose selection argument." (Emphasis added). Ms. Smaldone also recognized in her e-mail, undoubtedly in light of the foregoing flaws, that the Company would need to take an active role in the approval process: "The trial which is ongoing will need to be shared with us. We should attend the FDA meeting with ICE [ImClone] when the data is final."

153. Bristol-Myers' own independent radiology review of Erbitux also alerted the defendants to the fact that the Erbitux study was fatally flawed and could not support FDA approval. That review significantly lowered both the response rate and decreased the size of the patient pool compared to what ImClone had previously reported due to a determination that certain participants did not meet the study criteria. In an August 30, 2001 e-mail, the Bristol-Myers independent radiologist reported:

> [T]hat in 4 of these confirmed partial responses our radiologists have judged the disease to be only stable at the time of patient's enrollment into the study. If these 4 cases were thrown out, then the highest possible response rate would 11 + 4/120 = 12.5%. However, we have not conducted a strict review of all of the 120 cases, and it is likely that if we carefully reviewed all of the cases we would throw many out on the same basis. Indeed, it is my understanding that the study sponsor [*i.e.* ImClone] has conducted such an analysis on the basis of its own radiologists' review, and has thereby reduced the denominator [patient pool size] of the patient population with radiographically confirmed progressive disease.
>
> I will review the study sponsor's data and see if I can get at the same denominator [patient pool size] as it did (? N = 89), and calculate the response rate accordingly. More cases and analysis to follow tomorrow.

154. As the U.S. House of Representatives Committee investigation, announced on January 18, 2002 (the "Congressional Investigation"), would later note, however, if the participant pool were below 100 people, particularly if it were as low as 89, the study could not support the fast track application. As ImClone's own consultant, Dr. Roger Cohen, later confirmed in an e-mail to Dr. Harlan Waksal on January 4, 2002, "9923 [Erbitux] is a small study to begin with. ***It cannot get much smaller and have any hope of serving as a registration study.*** I think it is clear that it has to have at least 100 fully eligible and evaluable subjects (closer to 100)." (Emphasis added).

155. Despite attempts at due diligence, on September 4, 2001, just two weeks before signing their multi-billion dollar deal with ImClone, a Bristol-Myers Vice President sent an

e-mail to other senior Bristol-Myers executives, including Beth Seidenberg, alerting them that Bristol-Myers ***still*** did not have all the data concerning the single-agent Erbitux study on which, presumably, Bristol-Myers was to make its decision concerning its partnership with ImClone. According to the Congressional Investigation, Bristol-Myers did not receive any data on the single agent study prior to September 17, 2001, when Bristol-Myers' board formally approved the ImClone deal.

156. Indeed, according to a former Bristol-Myers employee responsible for identifying sites to perform clinical research, prior to Bristol-Myers' investment in ImClone, Dr. Susan Arbuck had told "senior management," then consisting of defendants Dolan, Schiff, Ringrose, Lane and Bains, that the Erbitux protocol and clinical trial results were flawed.

157. Despite the obvious flaws in the drug trial, the Company's independent assessment confirming that the trial was flawed, and ImClone's repeated failure to provide the FDA with the repeatedly requested single agent data, defendants forged ahead with the ImClone deal because of the need to maintain a facade of future promise. Accordingly, on September 19, 2001, Bristol-Myers issued a press release announcing its $2 billion deal to acquire an equity stake in ImClone to co-promote and develop the drug Erbitux.

158. In the Company's press release that day, Dolan stated that as "the worldwide leader in cancer drug development, Bristol-Myers Squibb is constantly searching for breakthrough medicines . . . and ImClone Systems' [Erbitux] represents one of the most important advances in cancer medicine since the introduction of Taxol. . . . The partnership with ImClone Systems demonstrates our continued commitment to achieve our strategies for growth; focuses our efforts on medicines with blockbuster potential; broadens our growth opportunities

through aggressive external development; and is a significant step towards becoming a leader in biologics." (Emphasis added).

159. That same day, Bristol-Myers held a conference call to announce its partnership with ImClone. During that call Lane, Schiff and Ringrose repeatedly touted Erbitux as one of Bristol-Myers' new "blockbuster drugs" with potential sales in excess of $1.5 billion.

160. Defendant Lane stated during the conference call:

> ***C225 is a first-in-class oncology product that we believe has blockbuster potential, the potential to exceed sales of $1.5 billion or more and represents a rare but exciting opportunity for us*** . . . It's a very late stage opportunity with proof of principal in hand and in fact the filing of the BLA has already started and the drug could be marketed as early as next year. Upon approval it will be immediately synergistic with several of our existing products and, perhaps more importantly, it will sustain our industry-leading oncology franchise and capabilities, bridging to the first of several new BMS oncology compounds in the coming years." (Emphasis added).
>
> * * *
>
> Well I'll summarize by reiterating that ***we think that this is a tremendous strategic opportunity. We think that C225 is real blockbuster potential, has the potential to be one of the most exciting, if not the most exciting, oncology compound introduced over the next several years*** . . . And it's a compound with an 18-year patent life, ready to go to market hopefully next year. So, we're delighted to be in this position. Great opportunity and we intend to make the most of it. (Emphasis added).

161. Defendant Schiff stated during the conference call:

> As to the highlights - C225 is a late stage product with potential to drive the growth of our oncology franchise in the near and medium term and extending into 2018. ***It is a first-in-class novel blockbuster drug for treating cancer.*** (Emphasis added).
>
> * * *
>
> As to the economics and finances - ***C225 is a blockbuster potential with sales of $1 billion or more*** estimated by 2005-2006 and continued growth through the patent life." (Emphasis added).

* * *

So let me just summarize, C225 is a late stage product with ***potential to drive the growth of our oncology franchise*** in the near and medium term and in the years through 2018." (Emphasis added).

* * *

On the revenue assumptions what we're providing you in terms of revenue is to say that we think ***this is a blockbuster type product with the potential for sales to be $1 billion or more*** estimated by 2005 or 2006 and continued growth thereafter. That's the guidance we're giving so that's the answer to the revenue question. (Emphasis added).

162. Defendant Ringrose stated during the conference call: "C225 represents a totally new treatment paradigm for many forms of cancer. It potentially represents ***one of the most important advances in cancer medicine*** since the introduction of Taxol ten years ago." (Emphasis added).

163. In response to analyst questions, Defendants Lane and Ringrose emphasized that FDA approval of Erbitux was all but guaranteed. When asked by Richard Belson, Capital Research Company, about the possibility that the FDA might reject the Erbitux application, Lane responded unconditionally that he was "very positive about the approval prospects for this drug." (Emphasis added). Lane also explained that Bristol-Myers does not "think it's very probable. The fact is I don't think it's likely at all that this drug won't get approved." (Emphasis added).

164. When specifically asked about the trial's weaknesses, lack of comparitor arm and small size by James Torrelli of Capital Research Company, Ringrose explained that "[n]eedless to say, the discussions between ImClone and the FDA have been ongoing for some months now. **So we would be surprised, based on those ongoing discussions, if the FDA took a different position on [the trial]**." (Emphasis added).

165. Analyst Mark Striker, Salomon Smith Barney, revisited the trial's weaknesses by asking that, in light of recent precedent and the lack of survival benefit data, "what makes . . . you think that this one can get through without survival data, because I think this is just response data." Ringrose pointed to the Company's purported due diligence by explaining that "needless to say, we carried out extensive, both internal and external, due diligence and involved a number of experts in oncology on the outside and based on all of that input, we feel pretty confident that this is going to be reviewed favorably by the FDA."

166. Defendant Ringrose also commented on the response rates achieved in ImClone's clinical studies for Erbitux by making reference to the "[m]ost impressive" response rate of 23% of 120 participants, when in reality many of those participants had been disqualified from the trial.

167. These statements were false and misleading because, at the time Bristol-Myers entered into its partnership with ImClone in September 2001, the defendants knew, or recklessly disregarded, that there was virtually no chance of Erbitux receiving FDA approval. Specifically, the defendants knew, or recklessly disregarded, that (a) the Company lacked any data from Erbitux's single agent study and the FDA would not approve Erbitux in the absence of such data; (b) Bristol-Myers' outside radiology review indicated a response rate below the clinically meaningful standard of 15% to only 12.5% or possibly lower; and (c) Bristol-Myers' outside radiology review showed that the patient pool size was not large enough to serve as a basis for accelerated approval.

168. Bristol-Myers' investment in ImClone's Erbitux sent a strong message to investors and Wall Street that Bristol-Myers believed that Erbitux was likely to receive FDA approval. *The Wall Street Journal*, in an article dated February 7, 2002, commenting on the

collaboration, stated that "Bristol-Myers gave ImClone and Erbitux a big vote of confidence when it announced the $2 billion investment. Some skeptical investors became believers, assuming that Bristol-Myers had thoroughly vetted the ImClone trial and its communication with the FDA."

169. Similarly, Morgan Stanley reported on September 24, 2001 that "BMY's decision to partner with IMCL is an endorsement of C225's strong commercial potential. . . . [T]here is no doubt that BMY researchers conducted a thorough due diligence on C225, especially in light of the hefty $1 bn price tag. . . . The decision to endorse the product in light of BMY's past experience and understanding of the potential pitfalls provides us with greater reassurance of C225's approvability and strong commercial potential." (Emphasis added).

170. Additionally, Bristol-Myers' purported participation by taking an active role in the approval process for Erbitux inspired investor confidence. The September 19, 2001 agreement between Bristol-Myers and ImClone, which was filed with the SEC on September 28, 2001, specifically provided that the parties would "collaborate on the development and commercialization of [Erbitux]."

171. Further, upon information and belief, Bristol-Myers repeatedly emphasized on its website that it utilized all of its resources to ensure the success of the drugs in which it had an interest. In marketing to potential pharmaceutical partners, Bristol-Myers' website stated that: "We use all of our scientific, clinical, regulatory, and commercial expertise to maximize every product, at every stage of development and throughout the entire life cycle" and that "***We make sure that such information is shared within our regulatory area and with our partners***." (Emphasis added). Furthermore, Bristol-Myers specifically stressed its expertise at gaining regulatory approval for its drugs, touting "a regulatory group with a breadth of experience across

therapeutical areas and a track record of global successes." (This information and belief is based upon the fact that these statements were included on the Company's website as of the date of this Complaint.)

172. Wall Street analysts reacted favorably to the ImClone-Bristol-Myers deal. For example, Morgan Stanley reported on September 24, 2001 that this was "an important deal for BMY in its efforts to maintain its leadership position in oncology. With the expiration of Taxol's patent last year, BMY's market share has slipped significantly." Morgan Stanley rated Bristol-Myers as a "Strong Buy." Similarly, on October 3, 2001, Deutsche Banc Alex. Brown reiterated its "Strong Buy" rating for Bristol-Myers, stating that the potential launch of Erbitux in late 2002 "with $1+ billion potential[], could substantially improve BMY's multiple approaching that period, and EPS growth thereafter."

173. Following the announcement of the Erbitux deal, the Company continued to deceive the market. On September 20, 2001 *The Wall Street Journal* quoted Bristol-Myers as stating that it expects to get approval to sell C225 "as early as next year."

174. On November 1, 2001, Bristol-Myers issued a press release announcing the completion of the BLA application for Erbitux. In the press release, Defendant Lane was quoted as stating: "As the global leader in oncology therapy, Bristol-Myers Squibb is committed to developing a variety of new approaches for treating cancer. We believe in the potential for Erbitux, an exciting new possibility in the treatment of cancer which represents the finest tradition of Bristol-Myers Squibb Oncology." As a result of this announcement the Company's stock increased from $53.45 on October 31, 2001 to close at $54.26 on November 1, 2001.

175. On November 7, 2001, Bristol-Myers issued a press release announcing its new roll out of drugs. In the press release the Company touted Erbitux as a "potential best-in-class or

first-in-class product." Additionally, Defendant Dolan was quoted as stating:

> During the past year, the company has been quite visible in the area of acquisitions and divestitures. The organization has also been aggressively focused on efforts to accelerate and enrich our future pipeline. As a result of these efforts, we believe we have the products that will allow us to achieve our goal of launching three potential blockbuster products a year for several years starting in 2003 and we are hopeful that the first of these products may launch in 2002.

This statement was materially false and misleading because the defendants had no basis to believe that Erbitux would be launched that year.

176. By November 30, 2001, key FDA reviewers had reached the conclusion that problems with the Erbitux clinical trial were so severe that there was no option but to issue a refuse-to-file letter ("RTF Letter"). A RTF Letter is a rare event and is issued only when the FDA concludes that the application is so obviously deficient that the FDA cannot even evaluate whether approval is warranted. According to the FDA's 2001 Annual Report, the FDA will issue a RTF Letter "only when we determine there is a significant omission of needed information." In connection with biologic license application ("BLA") submissions, the FDA only issued one RTF Letter in 2001 (the one issued for Erbitux) out of 18 total BLA filings; two RTF Letters in 1999 (out 63 BLA filings); and one RTF Letter in 2000 (out of 84 BLA filings).

177. According to the Congressional Investigation, as early as December 4, 2001, Bristol-Myers was on notice that the FDA was going to reject the Erbitux application. Brian Markison, Vice President, Division of Oncology, testified that there was an "inkling" at Bristol-Myers that the Erbitux application would be rejected based on Dr. Lilly Lee's recounting of her conversation with the FDA on that date. Dr. Lee was ImClone's Vice President for Regulatory Affairs and the Company's liaison with the FDA. Dr. Lee attended a meeting with the FDA on December 4, 2001, where she was alerted to all the deficiencies in the ImClone application and

the likelihood that a RTF Letter would be issued.

178. According to the Congressional Investigation, on December 5, 2001, the FDA conclusively determined that ImClone would receive a RTF Letter. On December 7, 2001, a Bristol-Myers Regulatory Affairs executive expressed concern that ImClone did not fully understand the implications of the FDA's comments regarding the Erbitux application. An e-mail from this same Bristol-Myers executive remarked, "a refusal to file decision doesn't appear altogether unlikely at this point."

179. According to a February 19, 2002 article in *The Wall Street Journal*, on December 12, 2001, representatives of Bristol-Myers and ImClone spoke with representatives of the FDA. During these discussions, the FDA outlined some of the concerns that were later detailed in its RTF Letter. In connection with the Congressional Investigation, Dr. Richard Pazdur, the FDA's Director of the Division on Oncology Drug Products, confirmed that these discussions took place and that Bristol-Myers was "also on the line at that time." Dr. Pazdur also stated that "[a]t that time they were quite aware that these were significant issues, and there were numerous issues and that they were going to require a significant amount of time to repair."

180. Notwithstanding these facts, Bristol-Myers issued a materially false and misleading press release one day later, on December 13, 2001, describing Erbitux as one of the Company's "new products with a blockbuster potential."

181. On December 28, 2001, the FDA faxed a RTF Letter to ImClone declining to review the Erbitux application. That fact was announced in an ImClone press release that same day after close of trading. As a result of this announcement, Bristol-Myers stock dropped from $51.80 on December 28, 2001 to $51.00 on December 31, 2001.

182. That the defendants acted with scienter with respect to the false and misleading statements above is also evidenced by the fact that even when the Company knew and internally acknowledged that ImClone was deceiving investors, defendants remained silent.

183. On December 29, 2001, a Reuters news article reported on ImClone's description of the RTF Letter: "Sam Waksal, ImClone's chief executive officer, told Reuters that the agency first wants more 'annotation' information, about how the company verified that patients enrolled in its trials had indeed failed previous drug regimens and that subsequent tumor reductions attributed to Erbitux were indeed real. Concerns raised by the FDA mainly involve how the data were presented and do not raise outright concerns about safety or efficacy of the drug, the CEO added."

184. An internal Bristol-Myers e-mail dated December 30, 2001 from Adriann Sax, a Bristol-Myers executive who was part of the Erbitux team, to Nancy Goldfarb, the Company's key spokesperson, responding to earlier Bristol-Myers e-mails on the Reuters article, explicitly recognized that statements made by ImClone concerning the refusal to file letter were false and misleading, but counseled Bristol-Myers to stay silent: "***I agree that some a lot [sic] of Sam's comments are misleading and at this point we should continue to be silent.***" (Emphasis added). In the same e-mail, Goldfarb acknowledged that the Company had a duty to correct its prior comments concerning the Erbitux study: "At this point, it's clear we'll need to go beyond our original comment, and decide what we want to say about the issues raised by the FDA in its letter and timing matter."

185. On that same day, another Bristol-Myers official commented on the draft documents being prepared for the ImClone investor relations' conference call concerning the rejection of Erbitux:

> ***These draft documents leave me most uncomfortable. They gloss over the seriousness of the RTF letter and make it appear that the integrity of the study results is not in question, when in fact it is***. . . . We will also need to rewrite major portions of the clinical and pharmacology part of the BLA including a new 9923 study report, new 141 (monotherapy) study report, new ISS and ISE based on these revised reports. I know that this is not what ImClone wants to tell their investors, but I think it represents the reality of this situation. (Emphasis added).

186. In its December 31, 2001 investors' conference call, ImClone executives again downplayed the severity of the RTF Letter and stated that the FDA sent the RTF Letter because the Erbitux application was missing certain "train of documentation" information needed by regulators to accept the filing. Again the defendants remained silent despite knowing that the FDA rejection was not based simply on the absence of documentation, but based on significant flaws in the Erbitux study.

187. On January 4, 2002, *The Cancer Letter*, a Washington, D.C. research newsletter, published excerpts of the RTF Letter, which detailed the long list of FDA concerns about ImClone's Erbitux application that went far beyond record keeping. The RTF Letter stated that ImClone's trial was "not adequate and well controlled." Other problems that the FDA found with the Erbitux trial included: (1) that the application did not contain any single-agent data that isolated and established the individual contribution of Irinotecan and Erbitux to the results; (2) that new clinical trials would be needed to provide more robust data documenting the response of patients; and (3) that the pivotal trial contains protocol violations.

188. According to the RTF Letter, the FDA notified ImClone during meetings and correspondence on August 11, 2000, January 19, 2001 and January 26, 2001, of various problems with the clinical trial including that the Erbitux application must provide single-agent data for Erbitux. Despite these repeated warnings, ImClone's trial only involved Erbitux in combination with Irinotecan, and failed to show the individual contribution of each of the drugs to the trial

results. Prior to investing in ImClone's Erbitux, Bristol Myers had access to, and in fact reviewed, all correspondence between ImClone and the FDA and was thus fully aware of the FDA's demand for single-agent data.

189. Indeed, a February 18, 2002 *Business Week* article revealed that "sources close to the [Erbitux] study" confirmed that Bristol Myers reviewed all communications between ImClone and the FDA, "so [Bristol Myers] should have been aware of any problems." The article also notes that FDA procedure would have required documentation of "every conversation" between the FDA, ImClone and Bristol Myers executives.

190. Thus, despite knowing the truth about the RTF Letter and admitting internally that ImClone's comments were "misleading," Bristol-Myers failed to make any statements to the investing public, allowing investors to believe that Erbitux was still a viable drug that was capable of FDA approval.

191. On January 18, 2002, the Congressional Investigations was initiated by the U.S. House of Representatives Committee announced an inquiry into Erbitux, which would include a review of Bristol-Myers' due diligence and role in the Erbitux debacle. During questioning by the Committee, Dr. Laurie Smaldone, Bristol-Myers' Senior Vice President for Global Regulatory Sciences, admitted that she told Congressional staffers that she would never have permitted Bristol-Myers to submit an application to the FDA of the quality of the ImClone submission.

192. On January 24, 2002, after ***27 days*** of silence, Bristol-Myers finally commented on the Erbitux debacle during an investor conference call. Defendant Dolan stated that he "couldn't be more disappointed" and proceeded to lay the blame for the Erbitux rejection fully in ImClone's lap.

193. The Congressional Investigation, however, revealed that Bristol-Myers knew of the problems with Erbitux ***prior to*** entering into the ImClone agreement. The key findings from the Committee Staff's investigation included:

> The 9923 study was afflicted with many problems. The Bristol-Myers independent radiologist review showed that strict scrutiny of the study data resulted in a response rate of only 12.5% (as opposed to the claimed 22.5% response rate) and that the number of evaluable patients was only approximately 89 (as opposed to the original 120). If these data were in fact correct, the 9923 study failed to meet the 15 percent clinical endpoint set by ImClone and the study would be too small to support an accelerated approval by itself.
>
> Bristol-Myers scientists ***were aware*** of the issues involving the response rate and the size of the patient pool, and Bristol-Myers apparently did not have the single-agent data prior to entering into its agreement with ImClone in September 2001. Nevertheless, Bristol-Myers went ahead with the ImClone agreement. (Emphasis added).

194. Indeed, as discussed above, Bristol-Myers knew of or recklessly disregarded problems with the Erbitux application and misled investors with respect to Erbitux's "blockbuster" potential and the likelihood of FDA approval.

VI. THE DEFENDANTS' SCIENTER

A. The Individual Defendants Had Direct Knowledge of and/or Recklessly Disregarded the Fraud

195. Throughout the Class Period, each of the Individual Defendants acted intentionally or recklessly in orchestrating the fraudulent schemes and fostering a culture of aggressive accounting in order to overstate the Company's revenues and net income. The Individual Defendants knew of or recklessly disregarded a cascade of improper accounting practices, including: (i) channel-stuffing; (ii) booking revenue on consignment sales to two of its largest customers; (iii) improperly recording sales relating to the Company's Oncology Therapeutics Network; (iv) improperly accounting for sales returns; (v) improperly accounting

for Medicaid, prime vendor and managed care rebates; (vi) improperly creating "cookie jar" reserves; (vii) improperly accounting for research and development payments associated with patent-right acquisitions and licensing; (viii) improperly accounting for certain litigation related expenses; (ix) improperly accounting for tax expenses and deferred taxes; and (x) improperly accounting for declared dividends.

196. As detailed herein, the Individual Defendants knew of or recklessly disregarded the accounting manipulations and knew of or recklessly disregarded that they were undertaken to enable the Company to meet Wall Street's estimates. Specifically, in the Restatement, the defendants admitted that they utilized a "top-down" approach with respect to the Company's budgeting process. Furthermore, defendants admitted that "Senior Management had set aggressive targets for each of the Company's businesses," and that "[t]he errors and inappropriate accounting which are corrected by the restatement arose, at least in part, from a period of unrealistic expectations for, and consequent over-estimation of, certain of the Company's products and programs."

197. Bristol-Myers also admitted that "senior management" engaged in improper accounting actions to "***meet the Company's quarterly sales projections established by the Company's senior management***." (Emphasis added).

198. During the Class Period, Bristol-Myers' senior management included defendants Heimbold (CEO), Dolan (CEO after Heimbold), Mee (CFO), Schiff (CFO after Mee), Lane (President of Worldwide Medicines Group), Ringrose (CSO) and Bains (VP and Treasurer).

199. Moreover, the Company has admitted that, throughout the Class Period, it knowingly issued financial statements in violation of GAAP. As announced in the Restatement, the Company decided to "correct certain of the Company's historical accounting policies to

conform the accounting to GAAP and to correct certain ***known errors made in the application of GAAP that were previously not recorded because in each such case the Company believed the amount of any such error was not material to the Company's consolidated financial statements***." (Emphasis added). As alleged herein, however, defendants knew or recklessly disregarded the fact that the cumulative effect of these "***known errors***," was material to the Company's financial statements.

200. Further supporting a strong inference of scienter is the fact that defendants knowingly managed their earnings through the creation of "cookie jar" reserves in connection with asset divestitures and acquisitions, as well as for unspecified "restructuring activities." Defendants then improperly reversed these reserves into earnings and/or charged expenses against them in order to manipulate the Company's publicly reported numbers. Specifically, defendants have admitted that reserves "were established inappropriately, as there does not appear to have been any related quantifiable or specific category of liability supporting the establishment of [the reserves] and that [the reserves] were ultimately inappropriately reversed." Thus, defendants have admitted that ***no*** justification existed for the establishment of these reserves.

B. The Nature, Magnitude and Pervasiveness of the Accounting Machinations Support A Strong Inference of Scienter

201. The fact that the Company has restated its financial results for 1999, 2000 and 2001 year end results as well as each interim quarter in 2000 and 2001 constitutes an admission that Bristol-Myers reported falsified financial statements throughout the Class Period. Not only does the restatement confirm that the Company's reported financial results were materially false and misleading, but based on the magnitude, duration and pervasiveness of the fraudulent

accounting practices detailed above, all of which violated GAAP, the Company's restatement constitutes strong circumstantial evidence that each of the Individual Defendants knew or, at a minimum, recklessly disregarded the overwhelming prevalence of improper accounting practices and falsification of the Company's financial results throughout the Class Period.

202. Moreover, the fact that many of the defendants' accounting irregularities involved simple and unambiguous accounting principles also gives rise to the inference that defendants knew or recklessly disregarded their existence. Among others, the fact that the Company recorded revenue on shipments to McKesson pursuant to the OTN distribution agreement despite the fact that the transaction was entirely devoid of ***any indicia*** of a sale provides a strong inference of the defendants' knowledge or recklessness. Similarly, the inappropriate reserves also demonstrates the defendants' scienter. The defendants effectively divided gains on asset sales in an effort to conceal their improper activity, allocating a portion to a divestiture reserve and offsetting the remainder with an unrelated restructuring reserve. In fact, there is no legitimate relationship between asset sales and the charges that offset the entirety of gains on the sale of approximately a dozen assets in six separate quarters. Indeed, these exact and repeated offsets of the gains on sales obviously did not happen by chance. It demonstrates that the defendants committed this misconduct intentionally.

C. Defendants Knowingly and/or Recklessly Engaged in Channel-Stuffing to Meet Quarterly Earnings Expectations

203. With respect to channel-stuffing, the Company has admitted that the incentives that prompted the inventory build-ups "were generally offered towards the end of a quarter ***in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's quarterly sales projections established by the Company's senior management.***"

(Emphasis added). Thus, the Company has admitted that senior management acted intentionally – "incentivizing" is deliberate, planned conduct. Channel-stuffing to meet quarterly estimates had no legitimate business purpose, and the defendants knew that the inflated sales and earnings would defraud the market.

204. As reported by *The Wall Street Journal* on December 12, 2002, former and current executives of the Company have admitted that senior management, including defendants Heimbold, Dolan and Schiff, "were ***keenly aware*** of wholesaler stocking trends." (Emphasis added). In fact, two former executives have stated that "strategic planning [at Bristol-Myers] became a somewhat-empty exercise because whatever plans they presented, top management would essentially tell them what their targets were going to be." This fact was admitted in the Restatement, when the Company announced that it had "revised its budgeting process to emphasize a bottom-up approach in contrast to a top-down approach." According to one Company executive who spoke to The *Journal*, the last two weeks of a quarter "were berserk – we had senior people who did nothing but track end-of-quarter shipments . . . almost by the minute. What ship it was on, when does it hit Newark . . . ?"

205. In an April 25, 2001 conference call with analysts, defendant Schiff admitted that senior management paid close attention to wholesaler inventories. According to defendant Schiff, "We look ***very closely*** at the wholesaler stocking inventories and ***we have looked at it very closely this quarter as well as previously***. There are no unusual items that we see at this quarter compared to at year-end, everything we see is right on target, right consistent with our plans." (Emphasis added).

206. Defendants repeatedly and falsely assured analysts covering Bristol-Myers that, with respect to the issue of inflated inventories, the Company had the situation under control. On September 17, 2001, UBS Warburg issued a report describing the Company's wholesaler inventory levels as of June 30, 2001. According to the report – which relied on the same research data that Bristol-Myers utilized throughout the Class Period (*see* discussion *infra*) – the Company's wholesalers had excess inventory of approximately $550 million. According to the report, "Bristol-Myers Squibb's inventory levels are very high compared to our sample's average 1.0 months supply ratio . . . representing excess inventory of more than $550 million as we enter third quarter 2001. If all products were adjusted to 1.0 [months supply] in third quarter 2001, this could negatively affect EPS by $0.18, or 7% of our 2001 EPS of $2.42."

207. Following this report, defendants reassured the investing public that the Company was aware of the inventory buildup and was taking appropriate action to reduce these inventory levels. For example, during an October 23, 2001 conference call, defendant Schiff stated: "We look at the inventory levels in total. We don't look at it really by specific product. We've always looked at it overall. Basis of looking at it overall, as I mentioned, is up a couple of weeks. We do expect it to be lower in the fourth quarter. As you know ***we monitor these fairly closely***." (Emphasis added). Similarly, during a December 13, 2001 conference call, defendant Dolan stated ". . . we said in the third quarter, the inventory levels were slightly higher [and] ***they would be reduced by the end of the year and that is the guidance we [are] really giving on the inventory levels***." (Emphasis added).

208. Despite these assurances, the defendants continued to falsely portray the inventory levels at the Company and the nature of the transactions with the wholesalers. Defendants not only misrepresented to investors that the "sales" to wholesalers were legitimate sales when in fact

they constituted consignment sales, but also concealed the fact that in the second half of 2001, they continued to dump large quantities of inventory on the wholesalers in amounts that far exceeded retail demand. In fact, at the same time defendant Dolan was assuring investors that the Company was in the process of reducing inventory levels, the problem was becoming dramatically worse. On January 3, 2002, UBS Warburg issued another research report analyzing inventory levels through September 30, 2001. This report noted that, in spite of the high inventory levels in June 2001, Bristol-Myers raised prices by 5.3% for most key products in August 2001. Since wholesalers typically purchase larger quantities in advance of a price increase, this exacerbated (rather than solved) the Company's inventory problems. The January 3rd report indicated that as of September 30, 2001, Bristol-Myers had over $840 million in excess wholesaler inventory. According to the report, "Bristol-Myers had been carrying very high inventory levels at the end of June, an excess of over $555 million. Inventories increased by over $280 million during the third quarter as Bristol increased prices by 5.3% across most key brands. Bristol-Myers' overall inventory represents an excess of more than $840 million entering fourth quarter 2001. If all products were adjusted to 1.0 [months supply] in fourth quarter 2001, this could negatively affect EPS by $0.27, or 11% of our 2001 EPS estimate of $2.41."

209. Following this report, the defendants continued to reassure investors that the growing wholesaler inventories would not impact 2002 estimated earnings. In a January 24, 2002 conference call, UBS asked defendant Schiff: "Fred, just to be clear, the guidance of $2.25 to $2.35 [2002 EPS], does that assume these inventory levels go back down to normal or is that an additional swing factor relative to the number?" To this, defendant Schiff responded: "Over the course of 2002 we plan on reducing our inventory levels. That is in the plan, that is part of it and obviously part of what we're seeing in the products losing exclusivity. ***That was already***

incorporated in the numbers I gave you as well as our discussion on December 13th."

(Emphasis added).

210. By April 1, 2002, defendants' channel-stuffing scheme started to unravel. As discussed above, in its 2001 Form 10-K the Company finally disclosed that the inventory build-up had been the result of its own misconduct – *i.e.*, that as of December 31, 2001, wholesalers had ***4 weeks*** worth of excess Company inventory on their shelves. Thereafter, on April 5, 2002, UBS Warburg reported that rather than decreasing the inventory build-up as Dolan had promised in December, Bristol-Myers had ***increased*** its wholesaler inventory levels from $840 million in excess inventory (as of September 31, 2001) to $929 million in excess inventory (as of December 31, 2001). Again, however, defendants continued to misrepresent to investors that the "sales" to wholesalers were legitimate sales when in reality the sales were nothing more than consignment transactions.

211. In addition to this evidence that the defendants had actual knowledge of the channel-stuffing scheme, there are numerous additional facts that provide a strong inference that the defendants acted with scienter.

212. Throughout the Class Period, the defendants had up-to-date knowledge of the full extent of the volume of the Company's unsold inventory sitting dormant on the wholesalers' shelves. As reported by *The Wall Street Journal* on December 12, 2002, Bristol-Myers had "sophisticated systems" for tracking inventory that were developed after a complaint was filed in 1992 alleging that Heimbold and other Company executives engaged in channel-stuffing. In fact, according to the *Journal*, in 1999 defendant Schiff bragged that "Bristol-Myers was unique in the drug industry in how closely it monitored inventory."

213. According to Robert Squires, the Company's former Director of Supply Chain Innovation ("Squires"), Bristol-Myers utilized software from i2 Technologies, Inc. ("i2"), a provider of solutions for supply chain management. According to Squires, this software provided Bristol-Myers with "current and accurate" data with respect to wholesaler inventories. Similarly, Bristol-Myers was a member (along with McKesson and Cardinal) of the Healthcare Distribution Management Association ("HDMA"). Based upon this membership, the defendants had access to extensive information on pharmaceutical supply chain management and were well aware that analyzing product demand was the key criteria that drove the supply chain analysis. Indeed, senior management have admitted the importance of "transparency into demand." As Jack Cooper, the former Chief Information Officer of Bristol-Myers, indicated at a conference on December 4, 2001, "anything that gives you transparency into demand, you will get an excellent economic return on."

214. In addition to its own internal systems, Bristol-Myers utilized Pipeline Research data to track its prescription drugs. Pipeline Research is a product of IMS Health, Inc. ("IMS"), a company that gathers and analyzes data regarding prescription drug wholesaler inventory levels. Throughout the Class Period, IMS gathered and analyzed data with respect to all of Bristol-Myers' top-selling drugs, including all of the drugs that accounted for the improper build-up. Furthermore, according to a sales representative of IMS, ***every*** major pharmaceutical company purchased Pipeline Research data.

215. Similarly, Bristol-Myers subscribed to Xponent, a prescription drug tracking service used by pharmaceutical companies to facilitate product marketing at the prescriber level. Xponent monitors prescription activity from retail pharmacies, long-term care and mail service pharmacies on a monthly basis. Thus, the defendants not only had access to specific data on

excessive wholesaler inventory levels, but it also had supporting information regarding the volume of sales at the retail level.

216. Furthermore, this was not the defendants' first experience with channel-stuffing. Bristol-Myers had been forced to deal with channel-stuffing in connection with its acquisition of DuPont's pharmaceutical business in 2001. Specifically, prior to the acquisition, DuPont officials had admitted that they had stuffed their channels and that DuPont had to spend 2001 working down its wholesalers' inflated inventories. On a June 8, 2001 conference call, defendant Schiff responded to a question about this channel-stuffing as follows:

> The DuPont Pharmaceutical people are very up front about the wholesaler inventory issues and we, during our due diligence, spent a lot of time in that area. We believe that it will be behind us, and DuPont Pharmaceutical believes that it will be behind us, by year end. Also, in terms of the sales number you're looking at, 2000-2001, you are basically looking at the same number. So you're correct on that basis, and that is due to kind of straightening out the wholesaler inventory. But they have indicated to us, and our due diligence shows, that this should be behind us by year end.

217. In another conference call on January 24, 2002, defendant Schiff reiterated: "You may recall that . . . in the prior year DuPont had made public the fact that they had a significant amount of high levels of inventory stock in the wholesalers, and they were going to spend the year 2001 adjusting those revenue levels at the wholesaler. They did that through the year."

218. As reported in the June 7, 2001 Purchase Agreement between DuPont and Bristol-Myers, attached to the Company's Second Quarterly Report for 2001, which was filed with the SEC on August 14, 2001, the Company relied upon IMS data to verify that pharmaceutical wholesalers had reduced their inventory of DuPont's pharmaceuticals. According to this report,

"[t]he aggregate amount of finished goods held in the trade by such wholesale and warehousing customers shall be determined as of any date by reference to the most recent IMS report provided by IMS on or prior to such date."

D. Defendants Created A Corporate Culture Focused on Revenues and Meeting Analysts' Expectations Through Deceptive Accounting

219. The defendants' knowledge of Bristol-Myers' improper accounting practices is also established by the fact that defendants were intensely focused on meeting Wall Street expectations at ***any*** cost. Defendants used the accounting function, rather than its operations, as a revenue source and profit opportunity. In fact, the defendants closely managed the Company's earnings to meet or slightly exceed analysts' expectations in every quarter of 2000 and 2001.

220. As noted above, the fact that the defendants were driven to meet Wall Street estimates was common knowledge at Bristol-Myers. The Company has admitted that senior management set "aggressive" targets, and then did everything in their power to meet those targets, including recognizing revenue in connection with inventory that they stuffed into their distribution channels and utilizing accounting gimmicks to manage the Company's earnings. The precision with which the defendants met these targets also supports a strong inference of scienter.

E. Defendants' Attempts to Conceal the True Extent of the Accounting Irregularities Supports a Strong Inference of Scienter

221. Defendants' repeated efforts to hide the extent of the accounting tricks they used to misstate Bristol-Myers' financial results raises a strong inference of scienter.

222. With respect to its improper channel-stuffing activities, in the Company's 2001 Form 10-K, the defendants revealed merely that wholesalers and distributors were holding four weeks of excess inventory as a result of channel-stuffing activities limited to ***2001*** only, not that

these shenanigans stretched back to 1999. Defendants did not disclose that the Company was improperly recognizing revenue on consignment transactions in order to meet earnings targets.

223. Thereafter, defendants falsely and repeatedly assured investors that during the first six months of 2002, the Company had successfully begun to work down the inventory buildup. On June 20, 2002, the Company said that it had been "continuing to work cooperatively with domestic wholesalers and product partners to ***aggressively reduce*** excess inventory levels." (Emphasis added). On July 23, 2002, the Company announced in its second quarter that the Company had made "***substantial progress*** in reducing U.S. wholesaler inventory to desirable levels, working cooperatively with domestic wholesalers and product partners . . ." (Emphasis added).

224. The June 20th and July 23rd announcements that the inventory buildup was being worked down during the second quarter and first six months of 2002 stand in stark contrast to a UBS Warburg analyst report, dated October 8, 2002, which indicated that the Company's inventory buildup actually ***increased*** from $822 million on March 31, 2002, to over $1.18 billion by June 30, 2002. This report also stated: "We note that the dollar value of excess diabetes drugs increased by more than $22 million in the second quarter, mainly because of an unusually large shipment of Glucovance in June despite declining demand." In other words, while defendants were trying to convince investors that the Company was working down the excessive wholesaler inventory, the truth was that the inventory buildup was growing even worse.

225. Defendants again concealed the fact that in April 2002, the SEC had begun investigating Bristol-Myers' channel-stuffing activities. In fact, the Company did not disclose the existence of the investigation until July 11, 2002.

226. Similarly, when faced with a criminal investigation by the U.S. Attorney's Office for the District of New Jersey, defendants falsely assured investors that it "intended to cooperate" with the investigation. In fact, as stated in paragraph 133 above, the U.S. Attorney for the District of New Jersey said the Company's statement of cooperation was not fully accurate.

227. Defendant Dolan and the rest of "senior management" had to know about the SEC and criminal investigations. Indeed, their scienter is further demonstrated by the facts that at the same time they were making scant disclosures about the scope of the fraud, they were (a) hiring criminal defense counsel, Mary Jo White; (b) firing two of the most senior executives at the Company; and (c) they did everything possible to delay disclosing the full scope and impact of the fraud.

F. Defendants' Compensation Tied to Bristol-Myers' Stock Price

228. The Individual Defendants also had a related motive to commit the instant fraud: their compensation was ***directly*** tied to Bristol-Myers' stock price.

229. As set forth in Bristol-Myers' public filings, throughout the Class Period, each of the defendants had compensation packages that consisted of both annual salary and long-term compensation. The annual salary component consisted of (a) salary, which was determined by the Company's Compensation and Management Development Committee based on factors such as the impact of the individual's performance on the business results of the Company, and (b) executive bonuses, termed "Annual Incentives," which were tied to the Company's performance in meeting earnings, growth and cash flow targets.

230. In terms of long term compensation, the defendants received awards of restricted stock and options. The value of these awards was directly related to the Company's performance, a circumstance that is not uncommon in publicly-traded companies. However, the

extent to which the defendants' options were tied to the Company's stock price was far beyond that which is typical. Under a typical compensation plan, an executives' options vest once that individual has been with the company for a stated period of time. By contrast, under the defendants' compensation plans, significant percentages of their options only vested if the Company's stock price reached certain thresholds and maintained these levels for a fixed period of time. This plan was highly unusual and provided extraordinary incentive for the defendants to tailor the Company's performance so as to ensure that its stock price would continue to rise. Indeed, the Company has admitted that "[t]his type of performance criterion is not prevalent among [Bristol-Myers'] peer group companies." In fact, none of Bristol-Myers' peers linked the exercisability of options directly to the company's stock price. The Company has also admitted that the threshold stock prices that triggered the defendants' options were "aggressive," thereby encouraging the defendants to take whatever steps were necessary to satisfy Wall Street estimates.

231. **Defendant Heimbold**. By way of example, in 2001, defendant Heimbold earned total compensation from Bristol-Myers of $20,418,270. Included in this figure was his salary of $1,111,367 and a bonus of $2,593,683. Also included were a long term compensation portion consisting of 736,154 options, which were valued by the Company at $15,667,208, and a long term incentive payout of $907,000. (The remaining $139,012 consisted of use of the Company's private jet and matching pension contributions.) According to the Company, "[t]he largest portion of [his compensation], 81% of the total, was comprised of the value of his stock option award and long-term performance award, both awards that strongly aligned Mr. Heimbold's compensation package with the creation of stockholder value." The vast majority of this 81% was made up of Heimbold's $15.6 million worth of stock options. Because of the "aggressive"

threshold price requirement that tied exercisability of one half of his options to a stock price increase of 30%, Heimbold needed to see the stock reach $89.23 and remain at that level for 15 consecutive trading days before he could receive approximately 37% of his total compensation. This effectively transformed the threshold price requirement into a $7.5 million dollar carrot for Heimbold to chase. If one were to include defendant Heimbold's annual bonus in the sum total of incentive-based compensation – which bonus was predicated on the achievement of earnings and growth targets – the total amount of Heimbold's compensation in 2001 that was based on various performance and stock price targets was an incredible ***94%***.

232. It should also be noted that pursuant to Heimbold's March 12, 1999 compensation agreement, 400,000 shares of restricted stock vested on the day he retired, September 12, 2001. This provided additional incentive for defendant Heimbold to stave off any drop in the share price of Bristol-Myers – for every dollar that Bristol-Myers' share price decreased prior to September 12, 2001, defendant Heimbold lost $400,000. On the day he retired, defendant Heimbold's shares were worth approximately $23.2 million. Thus, in total, it was worth nearly $40 million for defendant Heimbold to mislead investors.

233. **Defendant Dolan**. Similarly, defendant Dolan's 2001 compensation totaled $12,326,826, which included salary of $1,033,333 and a bonus of $1,341,922. The long term compensation portion of his package consisted of 446,951 options, which were valued by the Company at $8,128,601, restricted stock awards worth $1,550,000 and a long term incentive payout of $226,750. (He also received $46,220 in matching pension contributions.) According to the Company, "[t]he largest portion of his compensation, 82% of the total, was comprised of long-term incentives that strongly aligned Mr. Dolan's compensation package with the creation of stockholder value." The vast majority of this 82% was made up of Dolan's stock options.

Like Heimbold, his grants were also predicated on "aggressive" threshold price requirements. But Dolan's deal was more complex, for he received two separate option grants – one in recognition of his new roles and responsibilities, and one "as part of the company's normal grant cycle."

234. The first grant provided that one half of the options granted to Dolan were exercisable if the Company's stock price increased ***30%***. In other words, in order for Dolan to be able to exercise the options worth $1,894,691, the stock needed to reach $89.23 and remain at that level for 15 consecutive trading days.

235. As for Dolan's second grant, one third of the options were exercisable if the Company's stock price appreciated 50% and one third were exercisable if the stock price increased by 30%. Based on the grant price of $53.07, if Dolan succeeded in raising the Bristol-Myers stock price ***30%*** – to a level greater than $68.98 for 15 consecutive trading days – he was entitled to exercise his option and capture the value of one third of the grant, which was worth $1,394,309. If the stock gained ***50%*** – to more than $79.60 for 15 consecutive trading days – Dolan stood poised to gain an additional $2,325,018. Thus, in sum, $5,614,018 of Dolan's potential 2001 compensation was directly tied to "aggressive" stock price targets.

236. **Defendant Lane**. In 2001, defendant Lane received total compensation from Bristol-Myers of $6,255,544. Included in this figure was his salary of $671,000 and a bonus of $582,975. The long term compensation portion of his package comprised a restricted stock award worth $2,145,000, a grant of 126,198 options valued by the Company at $2,685,811, and a long term incentive payout of $140,585. (The remaining $30,173 consisted of matching pension contributions.) Like his executive compatriots, the vast majority - a total of 79% - of Lane's compensation was composed of long term performance-dependent incentives that directly tied

his financial reward to the creation and maintenance of shareholder value. Notably, if Lane's annual incentive compensation in the form of his bonus is added to the long-term amount, the percentage of his target-based compensation climbs to a staggering 89%. In addition, because of the "aggressive" threshold price requirement tying exercisability of one half of his options to a stock price increase of 30%, Lane needed to see the stock price reach $89.23 and remain at that level for 15 consecutive trading days before he could receive approximately 21% of his total compensation - an amount equal to $1,342,905.50.

237. **Defendant Ringrose**. Defendant Ringrose's 2001 compensation totaled $3,617,802, which included a salary of $670,000 and a bonus of $452,749. His long term compensation package consisted of 105,165 options valued by the Company at $2,238,176, and a long term incentive payout of $226,750. (He also received $30,127 in matching pension contributions.) This pay structure resulted in a full 68% of Ringrose's compensation being tied to performance incentives. The exercisability of one half of the option grant was also tied to a stock price increase of 30%. As a result, in order for Ringrose to be able to exercise options worth $1,119,088, the stock needed to reach $89.23 and remain at that level for 15 consecutive trading days.

G. Defendants' Insider Trading Supports a Strong Inference of Scienter

238. During the Class Period, the Individual Defendants were also motivated to engage in the fraudulent practices detailed herein in order to, among other things, reap illicit insider trading proceeds by selling their holdings of Bristol-Myers stock at artificially inflated prices.

239. As detailed above, the Individual Defendants were privy to confidential, proprietary information concerning the Company's business, services, markets, financial conditions and future business prospects. Further, the Individual Defendants were intimately

involved in directing the fraudulent sales and accounting practices discussed herein. As such, each Individual Defendant had access to material, nonpublic information concerning the Company's true financial condition.

240. Notwithstanding their duty to refrain from trading Bristol-Myers common stock under these circumstances, or to disclose the insider information prior to selling such stock, several of the Defendants sold shares of Bristol-Myers common stock at prices that were artificially inflated by Defendants' materially false representations as detailed in herein.

241. The sheer volume of the Defendants' Class Period sales supports a strong inference of scienter. During the Class Period, defendant Heimbold sold 48.09% of his stock for proceeds of $82,953,217; defendant Dolan sold 21.16% of his stock for proceeds of $2,805,672; defendant Schiff sold 27% of his stock for proceeds of $6,110,979; defendant Mee sold 33.95% of his stock for proceeds of $12,902,707; defendant Bains sold 54.36% of his stock for proceeds of $4,355,248; defendant Lane sold 41.66% of his stock for proceeds of $3,221,599; and defendant Ringrose sold 20.76% of his stock for proceeds of $2,681,509.

242. These transactions are detailed in the following tables:

DEFENDANT HEIMBOLD

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
10/21/99	57,119	$74.625	$4,262,505.38
10/21/99	102,967	$74.625	$7,683,912.38
10/28/99	1,000	$76.438	$76,437.50
10/28/99	25,000	$76.188	$1,904,687.50
10/28/99	4,000	$76.375	$305,500.00
1/26/01	39,652	$64.50	$2,557,554.00
1/26/01	58,894	$64.50	$3,798,663.00
1/26/01	337,913	$64.50	$21,795,388.50

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
1/26/01	452,022	$64.50	$29,155,419.00
2/09/01	5,000	$64.13	$320,650.00
2/09/01	20,000	$64.00	$1,280,000.00
2/09/01	17,000	$64.02	$1,088,340.00
2/09/01	5,500	$64.14	$352,770.00
3/27/01	20,000	$57.77	$1,155,400.00
3/27/01	27,500	$58.50	$1,608,750.00
3/28/01	10,000	$58.45	$584,500.00
3/28/01	7,000	$58.65	$410,550.00
3/28/01	20,000	$57,62	$1,152,400.00
3/28/01	10,500	$58.56	$614,880.00
3/29/01	10,000	$61.15	$611,500.00
3/29/01	15,000	$60.25	$903,750.00
3/29/01	10,500	$59.00	$619,500.00
3/29/01	12,000	$59.18	$710,160.00
Heimbold Total:	**1,268,567**		**$82,953,217.25**

DEFENDANT LANE

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
11/08/99	11,694	$76.906	$899,342.27
11/09/99	11,230	$78.688	$883,660.63
11/08/00	11,694	$63.00	$736,722.00
11/09/00	11,230	$62.50	$701,875.00
Lane Totals:	**45,848**		**$3,221,599.90**

DEFENDANT RINGROSE

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
1/02/00	22,426	$64.813	$1,453,485.13
1/02/01	17,011	$72.190	$1,228,024.09
Ringrose Totals:	**39,437**		**$2,681,509.22**

DEFENDANT SCHIFF

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
8/23/99	3,804	$72.125	$274,363.50
8/23/99	8,896	$72.125	$641,624.00
11/29/00	10,357	$71.905	$744,720.09
11/29/00	14,817	$71.905	$1,065,416.39
11/29/00	16,955	$71.905	$1,219,416.39
11/29/00	17,896	$71.905	$1,286,811.88
11/29/00	12,223	$71.905	$878,894.82
Schiff Totals:	**84,948**		**$6,110,979.94**

DEFENDANT BAINS

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
11/01/99	5,363	$77.50	$415,632.50
11/01/99	12,815	$77.50	$993,162.50
11/02/99	9,168	$76.063	$697,341.00
11/29/00	5,780	$71.905	$415,610.90
11/29/00	12,656	$71.905	$910,029.68
12/01/00	13,764	$67.093	$923,472.18
Bains Total:	**59,546**		**$4,355,248.76**

DEFENDANT DOLAN

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
11/04/99	17,081	$76.031	$1,298,690.64
11/04/99	13,499	$76.031	$1,026,346.52

11/05/99	10,815	$76.50	$827,347.50
12/21/00	3,194	$69.595	$222,286.43
11/29/02	9,7496	$26.50	$258,348.50
Dolan Total:	**54,338**		**$3,633,019.58**

DEFENDANT MEE

Transaction Date	Shares Sold	Sale Price	Gross Sales Proceeds
11/09/00	10,445	$62.655	$654,431.48
11/09/00	9,368	$62.655	$586,952.04
11/29/00	24,082	$71.905	$1,731,616.21
11/29/00	17,026	$71.905	$1,224,254.53
1/02/01	47,973	$72.190	$3,463,170.87
1/02/01	34,544	$72.190	$2,493,731.36
2/07/01	26,957	$64.235	$1,731,582.00
2/07/01	15,832	$64.235	$1,016,968.52
Mee Total:	**186,227**		**$12,902,707.90**

243. The timing of these insider sales is unusual and suspicious and supports a strong inference of scienter. The vast majority of these sales occurred in close proximity to the Company's positive earnings announcements during the Class Period. Specifically, Defendant Heimbold sold 190,086 shares, reaping gross proceeds of approximately $14,233,042, within days of the Company's third quarter earnings announcement on October 19, 1999, reporting "record" sales and earnings. On the heels of the Company's fourth quarter and full-year earnings announcement on January 24 2001, Defendant Heimbold engaged in sales of 935,981 shares, receiving gross proceeds of approximately $60,348,784. Additionally, all of Defendant Lane's insider sales during the Class Period occurred within proximity of the Company's October 19, 1999 and October 19, 2000 third quarter earnings releases. Similarly, all of Defendant Schiff's

insider sales occurred following the Company's earnings announcement and SEC filings for both the second quarter of 1999 and the third quarter of 2000. Defendant Ringrose's insider trading standing alone is unusual and suspicious. Ringrose did not engage in any sales during 1996, 1997 or 1998, but handsomely profited during the Class Period by selling 39,437 shares for gross proceeds of $2,681,509.

244. The amount of these sales is also suspicious and supports an inference of scienter. Prior to the Class Period, during 1998, Defendant Heimbold sold 337,338 shares for gross proceeds of $36,528,993.25. During the Class Period, Heimbold accelerated his insider selling by selling more than 1.2 million shares, constituting 48% of his holdings in Bristol-Myers, for gross proceeds of $82,953,217. Comparing Heimbold's 1998 and Class Period trading, 72% of Heimbold's proceeds from insider sales were derived from sales during the Class Period.

245. Similarly, prior to the Class Period in 1998, Defendant Lane sold 20,899 shares for gross proceeds of $2,166,918. During the Class Period, Lane nearly doubled his trading, selling 41.66% of his holdings in Bristol-Myers, or 45,848 shares for proceeds of $3,221,599.90. Comparing Lane's 1998 and Class Period trading, 60% of Lane's proceeds from insider sales were derived from sales during the Class Period.

246. As stated above, Defendants Ringrose did not engage in any insider sales in either 1996, 1997 or 1998. By contrast, Ringrose sold 39,437 shares during the Class Period, constituting 20% of his holdings, for gross proceeds of $2,681,509.

247. Defendant Schiff also greatly increased his insider sales during the Class Period. During 1998, Schiff sold 11,294 shares, constituting 27% of his holdings, for gross proceeds of

$1,291,352.78. Schiff substantially increased his trading during the Class Period, selling 84,948 shares for gross proceeds of $6,110,979.94. Comparing Schiff's 1998 and Class Period trading, 82.5% of Schiff's proceeds from insider sales were derived from sales during the Class Period.

H. Scienter with Respect to the Erbitux Allegations

248. Scienter allegations with respect to the Erbitux allegations are set forth above at paragraphs 146 to 194 above.

VII. ADDITIONAL FALSE AND MISLEADING STATEMENTS

249. Throughout the Class Period, the defendants knowingly or recklessly made additional materially false and misleading statements concerning the Company's business and financial results. The defendants' misrepresentations and material omissions caused the Company's stock price to become and remain artificially inflated throughout the Class Period, causing harm and damages to Lead Plaintiffs and the other Class members.

250. As an initial matter, at all relevant times during the Class Period, the defendants falsely represented that Bristol-Myers' financial statements when issued were prepared in conformity with GAAP, the uniform rules, conventions and procedures that define accepted accounting practice at a particular time. As set forth in Statement of Financial Accounting Concepts ("SFAC") No. 1, Objectives of Financial Reporting by Business Enterprises, one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity's financial performance during the period being presented. Paragraph 42 of SFAC No. 1 states:

> Financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although

> investment and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance.

251. The SEC ***requires*** that public companies file quarterly and annual financial statements that are prepared in conformity with GAAP. SEC Rule 4-01(a) of Regulation S-X states that "[f]inancial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate." 17 C.F.R. § 210.4-01(a)(1).

252. Management is responsible for preparing financial statements that conform with GAAP. The AICPA Professional Standards provide:

> The financial statements are management's responsibility . . . Management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, record, process, summarize, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements. ***The entity's transactions and the related assets, liabilities, and equity are within the direct knowledge and control of management. . . . Thus, the fair presentation of financial statements in conformity with generally accepted accounting principles is an implicit and integral part of management's responsibility.*** AU § 110.02 (1998) (emphasis added).

253. As has now been admitted by the Company in the Restatement and as more particularly set forth above, the Company's financial statements throughout the Class Period did not comply with GAAP and were, therefore, materially false and misleading.

254. In addition, the Company's quarterly and year-end statements regarding its finances and results of operations were materially false and misleading because they were manipulated by the defendants through the channel-stuffing scheme and accounting irregularities described above.

255. On October 19, 1999, the Company issued a press release announcing "record" third quarter sales and earnings. The press release announced that sales for the third quarter increased 11% to $5.0 billion, earnings before income taxes increased 13% to $1,518 million, net earnings increased 14% to $1,097 million, basic earnings per share increased 12% to $0.55 and diluted earnings per share increased 15% to $0.54.

256. Defendant Heimbold was quoted in the press release as stating:

> "We are very pleased with our third quarter performance, as we experienced excellent growth in both sales and earnings. . . . ***Our businesses, particularly U.S. Medicines, achieved significant growth for most of our leading products, with 15 of our largest product lines attaining double-digit growth rates***." (Emphasis added).

257. On November 12, 1999, the Company filed its third quarter report with the SEC for the period ending September 30, 1999, which was signed by Bains and Schiff. The Third Quarter 1999 Form 10-Q reported substantially the same financial results described in the October 19th press release and stated "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of Bristol-Myers Squibb Company (the "Company") at September 30, 1999 and December 31, 1998, the results of operations for the three and nine months ended September 30, 1999 and 1998, and cash flows for the nine months ended September 30, 1999 and 1998." It also reported that marketing, selling, administrative and other expenses, as a percentage of sales, decreased to 21.7% in the third quarter of 1999 from 22.9% in the third quarter of 1998, "primarily due to sales force effectiveness and reductions in general administrative expenses as a percentage of sales."

258. The statements identified in paragraphs 255 to 257 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities

more particularly set forth above, the defendants knowingly or recklessly overstated net sales and earnings. Moreover, the Company's statements about its finances and results of operations were materially false and misleading because, as the Company has admitted in its Restatement, as of July 1, 1999, shipments of its product to Cardinal "met the consignment criteria" and were, therefore, improperly booked as sales. In addition, the Company has admitted that decreases in its MSA&O were not the result of sales force effectiveness and reductions in general administrative expenses, but rather the use of inappropriate reserves to manage earnings.

259. On January 24, 2000, the Company issued a press release announcing "record" fourth quarter and year-end sales for fiscal 1999. According to the Company, for the year, sales had increased 11% to $20.2 billion from $18.3 billion in 1998, and that worldwide medicines sales increased 14% for the year to $14.3 billion. In addition, the Company announced that earnings before income taxes (excluding a special charge) had increased 14% to $5,767 million from $5,068 million in 1998, net earnings had increased 15% to $4,167 million compared with $3,636 million in 1998, basic earnings per share had increased 15% to $2.10 from $1.83 in the prior year and diluted earnings per share increased 15% to $2.06 from $1.79.

260. Defendant Heimbold was quoted in the press release as stating:

> The record sales, earnings and earnings per share we reached during 1999 clearly illustrate our achievements and our potential for the future . . . The significant investments we have made for years are now paying off richly – for shareholders and for patients. In 1999 we surpassed $20 billion in annual sales – a significant milestone – while investing more than $1.8 billion in research and development that will power an even more expansive future.

261. In a letter to Bristol-Myers shareholders dated February 8, 2000, defendant Heimbold wrote that he set an "ambitious objective" in 1994 to "double year-end 1993 sales, earnings and earnings per share by the end of the year 2000." Heimbold stated that "that target is

in sight, and we may even exceed it." Heimbold also stated that 1999 had been a "banner year, setting new records for sales, earnings and earnings per share," and that the Company's overall sales had grown to $20.2 billion, up 11% from 1998, and that 1999 U.S. pharmaceutical sales had risen by 23%.

262. On March 30, 2000, the Company filed its 1999 Form 10-K, which was signed by defendants Heimbold, Dolan, Mee and Schiff and reported substantially the same financial results described in the January 24th press release and the February 8th letter to shareholders. The 1999 Form 10-K also reported that the Company had recorded restructuring charges of $201 million in 1998 and $225 million in 1997, which "consisted primarily of asset write-downs and employee-related costs related to the consolidation and closure of plants and facilities." The 1999 Form 10-K also announced that in December 1999 the Company had sold Laboratori Guieu and claimed that the gain on the sale was "not material."

263. The 1999 Form 10-K also reported sales of the Company's pharmaceuticals as follows:

1999 Reported Pharmaceutical Sales
(dollars in millions)

PRAVACHOL	$1,704
TAXOL	1,481
GLUCOPHAGE	1,317
BUSPAR	605
ZERIT	605
PARAPLATIN	600
PLAVIX	547
CAPOTEN/CAPOZIDE	484
MONOPRIL	424

CEFZIL	402
SERZONE	332
AVAPRO	255
VIDEX	205

264. The statements identified in paragraphs 259 to 263 were materially false and misleading because:

(a) The defendants' statements regarding record earnings growth, sales and earnings per share lacked any reasonable basis in fact because, as the defendants knew or recklessly disregarded, they were based on the continuation of improper accounting practices described above;

(b) Similarly, the defendants' statements regarding the Company's future growth lacked any reasonable basis in fact because, as the defendant knew or recklessly disregarded, were based on the continuation of improper accounting practices described above;

(c) The Company's financial statements overstated net sales by $409 million and pre-tax earnings by $322 million as a result of the improper booking of consignment sales to Cardinal;

(d) Pre-tax earnings included $77 million that was improperly reversed into income as a result of the improper "cookie jar" reserves for asset divestitures, acquisitions and restructuring activities, which were used to manage the Company's earnings;

(e) The Company's financial statements overstated pre-tax earnings by $139 million as a result of the improper accounting for payments related to the acquisition or licensing of patent rights;

(f) The Company's financial statements overstated net earnings by

$53 million as a result of the defendants' failure to properly account for deferred tax liabilities of its foreign subsidiaries;

(g) The Company's financial statements overstated net sales and pre-tax earnings by $5 million as a result of the improper booking of sales returns;

(h) The Company's financial statements overstated shareholder equity by $429 million as of January 1, 1999 as a result of the defendants failure to properly accrue for its declared dividend; and

(i) The Company's reported sales of its pharmaceutical drugs were materially overstated as set forth above at paragraphs 64 and 141.

265. On April 20, 2000, the Company issued a press release announcing "record" first quarter sales and earnings. According to the press release, sales for the first quarter increased 8% to $5.3 billion from $4.9 billion in 1999, and that worldwide pharmaceutical sales increased 12% for the quarter to $3.5 billion. The company also reported that earnings before income taxes increased 14% to $1,678 million from $1,476 million a year ago, net earnings increased 15% to $1,221 million compared with $1,066 million in 1999, basic earnings per share increased 15% to $0.62 from $0.54 in the prior year and diluted earnings per share increased 15% to $0.61 from $0.53.

266. Defendant Heimbold was quoted in the press release as stating:

> I am pleased to report continued strong growth in the first quarter – with double-digit increases both in earnings and earnings per share as well as a double-digit increase in sales excluding foreign exchange. . . . ***Driving our businesses are critical medicines bringing important benefits to patients including GLUCOPHAGE® for diabetes, up 51 percent to $426 million, the anti-cancer drug TAXOL®, which grew 17 percent to $385 million, and the cardiovascular drug PLAVIX®, up 128 percent to $201 million***. (Emphasis added).

267. On May 15, 2000, the Company filed its quarterly report for the period ended March 31, 2000. The First Quarter 2000 10-Q, which was signed by Bains and Schiff, reported substantially the same financial results described in the April 20th press release and stated that "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of Bristol-Myers Squibb Company (the "Company") at March 31, 2000 and December 31, 1999, the results of operations for the three months ended March 31, 2000 and 1999, and cash flows for the three months ended March 31, 2000 and 1999." The First Quarter 2000 10-Q also reported that marketing, selling, administrative and other expenses, as a percentage of sales, decreased to 22.1% in the first quarter of 2000 from 23.1% in 1999. The Company also reported a pre-tax charge of $120 million in Marketing, Selling, Administration and Other related to restructuring, *i.e.*, work-force reductions, downsizing and streamlining operations.

268. The statements identified in paragraphs 265 to 267 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the first quarter of 2000 by $19 million, earnings from continuing operations by $23 million and net earnings by $23 million. Further, all adjustments necessary for a fair statement of Bristol-Myers financial results for the first quarter 2000 had not been made.

269. On July 20, 2000, the Company issued a press release announcing "record second quarter and six month sales and earnings." According to the press release, sales for the second quarter grew 7% (9% excluding foreign exchange) to $5.3 billion from $4.9 billion in 1999, and

worldwide pharmaceutical sales increased 11% for the quarter to $3.5 billion. Further, the Company announced that earnings before income taxes increased 14% to $1,499 million from $1,318 million in 1999, net earnings increased 15% to $1,091 million compared to $952 million, basic earnings per share increased 15% to $0.55 from $0.48, and diluted earnings per share increased 15% to $0.54 from $0.47.

270. Defendant Heimbold was quoted in the press release as stating:

> Our second quarter results demonstrated continued double digit earnings growth, propelled by significant volume increases for many of our major products . . . Among our top performers were 13 major product lines that had impressive double digit sales increases, including GLUCOPHAGE®, for diabetes, up 39%; TAXOL®, (paclitaxel), for cancer, up 14%; PLAVIX®, for stroke, up 73%; BUSPAR®, for anxiety, up 47%; and AVAPRO®, for hypertension, up 42%.

271. On August 15, 2000, the Company filed its Quarterly Report on Form 10-Q for the period ended June 30, 2000. The Second Quarter 2000 10-Q, which was signed by Bains and Schiff, reported substantially the same financial results described in the July 20th press release and stated that "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of Bristol-Myers Squibb Company (the "Company") at June 30, 2000 and December 31, 1999, the results of operations for the three and six months ended June 30, 2000 and 1999, and cash flows for the six months ended June 30, 2000 and 1999."

272. The Second Quarter 2000 10-Q also reported that marketing, selling, administrative and other expenses, as a percentage of sales, decreased to 22.4% in the second quarter of 2000 from 22.8% in 1999 and disclosed that the Company took a restructuring charge during the second quarter, pretax, of $20 million in Marketing, Selling, Administrative and Other

Expenses for restructuring activities related to work-force reductions, downsizing and streamlining operations.

273. The statements identified in paragraphs 269 to 272 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the second quarter of 2000 by $7 million, earnings from continuing operations by $23 million and net earnings by $23 million. The defendants also knew by July 1, 2000, that shipments of product to McKesson constituted consignment transactions and, therefore, could not be recorded as sales. Furthermore, all adjustments necessary for a fair statement of Bristol-Myers' financial results for the second quarter 2000 had not been made.

274. On September 20, 2000, the Company issued a press release that announced an increase in the Company's stock repurchase program. In this press release, defendant Heimbold said the stock repurchase program "underlines the strong confidence we have in our company's continued growth." This statement was materially false and misleading because defendants Heimbold knew or recklessly disregarded that, in fact, the Company's growth was based on its inappropriate channel-stuffing and the accounting irregularities described in detail above.

275. On September 28, 2000, the Company issued a press release entitled "Bristol-Myers Squibb Announces a 'Strategy for Growth' - Company Sharpens Its Focus On Medicines Business." This press release quoted statements that defendants Heimbold, Dolan and Lane made during a meeting with several hundred securities analysts and fund managers. Specifically, Heimbold stated that: "In January 1994, I set the goal of doubling our sales, earnings and earnings per share by the end of the year 2000. . . . I am proud to tell you that by December 31st

of this year, we expect to have doubled earnings and earnings per share and to have virtually achieved the sales target." This statement was materially false and misleading because the only way that the Company was able to satisfy these goals was through the use of the fraudulent tactics set forth above.

276. On October 19, 2000 the Company issued a press release announcing its results for the third quarter. For the first time, the Company included a Continuing Operations section in its quarterly earnings release, which excluded the results of the Company's Beauty Care and Zimmer businesses. According to the press release, sales for the quarter increased 9% to $4.6 billion, earnings before income taxes (excluding a restructuring charge) increased 14% to $1,527 million, basic earnings per share increased 16% to $0.58 and diluted earnings per share increased 16% to $0.49, all on a continuing operations basis.

277. Defendant Heimbold was quoted in the press release as stating:

> Our third quarter results demonstrated continued double digit earnings growth, driven by significant volume increases for many of our major products. Among our top performers were 14 major product lines with double digit sales increases. . . . Our U.S. Pharmaceuticals business also continued to perform extremely well, up 18% for the quarter.

278. During a conference on October 19, 2000, defendants Mee and Lane reported on the Company's third quarter results for 2000, and provided substantially the same financial results described in the October 19th press release. Mee added that:

> [T]he company recorded this quarter a pre-tax gain of $402 million from the sale of Matrix . . . this gain [was] offset by a restructuring charge which was taken during this past quarter to reposition the cost base of our business, and our continuing business particularly, to an even more cost-effective mode of operation for the future.

279. Mee also said that:

> Sales were again a highlight for the company this past quarter with a robust performance from a number of products and with our three largest brands all crossing the $1 billion year-to-date sales mark during the quarter. U.S. pharmaceutical business performance was especially noteworthy, up 18% in the quarter, helping drive the worldwide pharmaceutical business performance ahead of a year ago by 12%.

280. During this same conference call, Jim Baker, an analyst with Neuberger Berman, asked Mee about the Company's accounting for the sale of Clairol and Zimmer. Specifically, Jim Baker, asked:

> I wanted to ask Mike Mee a question. Specifically about clarifying some of the guidance for next year because as I look at the continuing operations it looks to me like 2000's gonna come in something like $2.15 to $2.17 range. And--but that is only the operations if you don't take into account any proceeds from the actual sale of Zimmer and of Clairol which I estimate could produce something like 10 cents a share in after-tax interest income if you sort of back-dated that all the way to January 1st. So, what I'm really trying to ask you is, should we use that $2.15 to $2.17 range as the base for the 11% minimum gain for next year or should we use a number about 10 cents higher than that, $2.25 to $2.27, so that you would be projecting something like $2.50 as a minimum instead of $2.40.

281. Mee responded as follows:

> There are a number of moving parts here and for that reason it's not possible at this point in time . . . to be able to give anyone real precise guidance on how this is all likely to play out. And let me just give you a couple of reasons. Number one, this is in many respects a time-sensitive transaction and quite honestly, as I said a while ago, we are only just beginning. Secondly, these are very good properties and we've had them for a long time and our tax basis in them is quite low. So one of the things that we are exposed to here is, in the case of an outright sale, if indeed that were to be the form of transaction, there would be a fair amount of tax leakage here . . . we can all form our own judgments as to what the breakout will be from the $2.34-$2.35 consensus this year for continuing versus discontinued operations.

282. During this call Steven Tighe, an analyst with Merrill Lynch, asked defendant Lane about wholesaler inventories. Specifically, Tighe asked: "I was wondering if you could just

review any wholesaler inventory actions in the quarter on various products." In response, Lane said: "Steve, I don't think there was really any significant wholesaler inventory activity in the quarter."

283. On November 14, 2000, the Company filed its Form 10-Q for the period ended September 30, 2000, which was signed by Bains and Schiff. The Third Quarter 2000 10-Q reported substantially the same financial results described in the October 19th press release and in the conference call. It also stated that "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of [Bristol-Myers] at September 30, 2000 and December 31, 1999, the results of operations for the three and nine months ended September 30, 2000 and 1999, and cash flows for the nine months ended September 30, 2000 and 1999." Further, the Third Quarter 2000 10-Q reported a pre-tax charge of $402 million of which $386 million included was primarily for restructuring activities related to work-force reductions and downsizing international businesses of continuing operations.

284. The statements identified in paragraphs 276 to 283 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the third quarter of 2000 by $380 million, earnings from continuing operations by $176 million and net earnings by $150 million. The defendants also knew or recklessly disregarded that the so-called "restructuring charge" in the amount of the gain on the sale of Matrix had no proper basis; that the "robust" performance of the Company's pharmaceutical business was solely a result of their fraudulent activities; and that the Company's

earnings and wholesaler inventories were being manipulated through the improper use of reserves and the channel-stuffing scheme. Furthermore, all adjustments necessary for a fair statement of Bristol-Myers' financial results for the third quarter 2000 had not been made.

285. On January 24, 2001, the Company issued a press release announcing the Company's fourth quarter 2000 and full-year 2000 results. According to the press release, sales for the fourth quarter on a reported basis grew 4% (8% excluding foreign exchange) to $4.8 billion from $4.6 billion in 1999. It also announced that earnings before income taxes for the fourth quarter increased 11% to $1,446 million from $1,308 million, net earnings increased 11% to $1,069 million from $961 million, basic earnings per share increased 15% to $0.55 from $0.48 and diluted earnings per share increased 15% to $0.54 from $0.47.

286. With respect to the Company's year-end results, the press release announced that sales for the year on a reported basis grew 8% (11% excluding foreign exchange) to $18.2 billion from $16.9 billion in 1999, including an increase of worldwide pharmaceutical sales of 11% to $14.4 billion. Further, it stated that for the year, excluding the restructuring charge and the pretax gain on the sale of the three pharmaceutical products, earnings before income taxes increased 13% to $5,826 million from $5,158 million a year ago, net earnings increased 14% to $4,309 million from $3,789 million, basic earnings per share increased 15% to $2.19 from $1.91 and diluted earnings per share increased 16% to $2.16 from $1.87.

287. The press release quoted defendant Heimbold as stating:

> 2000 was a solid year for Bristol-Myers Squibb, both in our financial performance and in our investments in the future. . . . Our strong focus on growth paid off with an array of achievements that brought critical medical advances to patients around the world while delivering excellent value to our shareholders. In the past year, we achieved notable successes in the areas of new product introductions, growth of existing products, increased productivity and drug discovery and development.

> ***We have moved from single-digit growth rates seven years ago to an accelerated rate of 15%, helping us meet the goal we set back then of doubling earnings and earnings per share by the end of 2000, essentially doubling the size of the company over that period.*** And in 2001, we plan to focus more sharply than ever on our thriving medicines business. (Emphasis added).

288. During a conference call on January 24, 2001, defendants Mee and Lane reported on the Company's fourth quarter and year-end 2000 results, and provided substantially the same financial results described in the January 24th press release. In addition, Mee stated:

> [C]onsolidated fourth quarter sales of $5.5 billion increased 8% from the prior year, excluding the businesses we sold in 2000 . . . overall the medicines business enjoyed another quarter of solid individual product performances and a financial performance overall for the year which was very much to our satisfaction.

289. Mee also added:

> [I]t is a source of some pride among senior management of the company, we delivered on the promise of 1994 to double the sales and earnings of the company by year-end 2000. So, all in all, a momentous year.

290. In a letter to Bristol-Myers shareholders dated February 6, 2001, which was signed by defendants Heimbold and Dolan, that Company stated that in 2000: "We reached important goals in sales and earnings," and that:

> Back in the beginning of 1994, we set what was then an extremely ambitious goal: to double 1993 sales, earnings and earnings per share by the end of 2000. We have achieved that goal, exceeding both the earnings and earnings per-share growth targets and almost making it in sales. And, as we were doing so, we established a new mark, which we call our Mega-Double goal, in which we aim to double our company once again, this time in just five years.

291. Heimbold and Dolan also wrote that "[f]ourteen key product lines grew at double-digit rates in 2000. Total company sales increased to $21.3 billion. Net earnings increased 13% to $4.7 billion, and diluted earnings per share increased 15% to $2.36."

292. On April 2, 2001, the Company filed its Annual Report on Form 10-K with the SEC for the period ended December 31, 2000, which was signed by Heimbold, Schiff, Dolan and Mee. The 2000 Form 10-K reported substantially the same financial results described in the January 24 Press Release. With respect to restructuring, the 2000 Form 10-K disclosed that during 2000, the Company recorded pretax charges of $508 million for continuing operations, primarily related to workforce reductions, downsizing and streamlining of operations.

293. In addition, the 2000 Form 10-K reported sales of the Company's pharmaceutical drugs for fiscal 2000 as follows:

2000 Reported Pharmaceutical Sales
(dollars in millions)

	2000
PRAVACHOL	$1,817
GLUCOPHAGE	1,732
TAXOL	1,592
PLAVIX	903
BUSPAR	709
PARAPLATIN	690
ZERIT	618
MONOPRIL	442
CEFZIL	391
AVAPRO	381
SERZONE	360
CAPOTEN/CAPOZIDE	356
VIDEX	202

294. The statements identified in paragraphs 285 to 293 were materially false and misleading because:

(a) The defendants' statements regarding earnings growth, sales and earnings per share lacked any reasonable basis in fact because, as the defendants knew or recklessly disregarded, they were based on the continuation of improper accounting practices described above;

(b) Similarly, the defendants' statements regarding the Company's future growth lacked any reasonable basis in fact because, as the defendants knew or recklessly disregarded, were based on the continuation of improper accounting practices described above;

(c) The Company's financial statements overstated net sales by $475 million and pre-tax earnings by $399 million as a result of the improper booking of consignment sales to Cardinal and McKesson;

(d) The Company's pre-tax earnings included $66 million that was improperly reversed into income as a result of the improper "cookie jar" reserves for asset divestitures, which were used to manage the Company's earnings;

(e) The defendants improperly established a $25 million reserve as a restructuring expense in order to manage the Company's earnings;

(f) The Company's financial statements overstated net sales and pre-tax earnings by $47 million as a result of the improper booking of sales returns;

(g) The Company's reported sales of its pharmaceutical drugs were materially overstated as set forth above at ¶ 64; and

(h) The Company attained the "ambitious goal" of doubling earnings and earnings per share between 1993 and 2000 solely as a result of the channel-stuffing scheme and accounting improprieties set forth above.

295. On April 25, 2001, the Company issued a press release announcing its results for the first quarter of 2001. According to the press release, sales from continuing operations for the quarter grew 5% (8% excluding foreign exchange) to $4.7 billion from $4.5 billion in 2000, including an 8% increase (10% excluding foreign exchange) for worldwide pharmaceuticals sales. It also announced that earnings before income taxes from continuing operations for the quarter increased 10% to $1,687 million from $1,530 million, net earnings from continuing operations increased 10% to $1,243 million from $1,129 million, basic earnings per share increased 12% to $0.64 from $0.57 and diluted earnings per share increased 13% to $0.63 from $0.56.

296. Defendant Heimbold was quoted in the press release as stating:

> As reflected by the first quarter results, Bristol-Myers Squibb is off to a solid start in fulfilling our commitment to meet or exceed earnings per share growth expectations for 2001. We remain comfortable with current consensus estimates of $ 2.41 for diluted earnings per share for the year. . . . ***Our growth strategy remains focused on our core Medicines business where we saw very good double-digit pharmaceuticals sales growth of 10% worldwide, excluding foreign exchange, with especially good growth of 13% in the U.S.*** Notable drivers of that growth included that GLUCOPHAGE(R) product line, increasing 31% with sales of $ 557 million, PLAVIX(R), up 48% to $ 298 million, AVAPRO(R), up 28% to $111 million and PRAVACHOL(R), up 10% with sales of $ 507 million in the quarter. (Emphasis added).

297. During a conference call with Wall Street analysts on April 25, 2001, defendants Schiff and Lane reported on the Company's first quarter 2001 results, and provided substantially the same information described in the April 25th press release. Schiff also stated that:

> Our earnings per share that we issued this morning for the first quarter was 63 cents fully diluted continuing operation, that is a 13% increase over last year. It is one penny over First Call consensus estimates, and it is in line with what [Dolan] and [Heimbold] said to you back at our September [28, 2000] analyst meeting. Our outlook for 2001 is that we are very comfortable with current consensus

estimates of $2.41 and that is in line with what [Heimbold] and [Dolan] told you at the analyst meeting in September.

298. Schiff added that "domestic pharmaceutical sales [for the first quarter] were up 13%." He also said that:

> [T]here is really no unusual items in the marketing, selling, administrative and other. Selling itself is about the same level we saw last year and the remaining part really comes through, as I said foreign exchange and cost efficiencies, cost effectiveness, but there are no unusual items in that item.

299. On May 16, 2001, the Company filed its quarterly report for the period ended March 31, 2001, which was signed by Bains and Schiff. The First Quarter 2001 10-Q reported substantially the same results as the April 25th press release and stated "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of Bristol-Myers Squibb Company (the "Company") at March 31, 2001 and December 31, 2000, and the results of operations and cash flows for the three months ended March 31, 2001 and 2000." The First Quarter 2001 10-Q also reported that marketing, selling, administrative and other expenses, as a percentage of sales, declined to 17.8% in the first quarter of 2001 from 21.2% in 2000 as a result of foreign exchange, cost efficiencies and cost effectiveness, and disclosed that its reserve balance for all restructuring activities taken in the first three quarters of 2000, was reduced to $203 million at March 31, 2001, from $247 million at December 31, 2000, as a result of workforce reductions and the downsizing and streamlining of operations.

300. The statements identified in paragraphs 295 to 299 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities

more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the first quarter of fiscal 2001 by $58 million, earnings from continuing operations by $26 million, and net earnings by $26 million. Furthermore, all adjustments necessary for a fair statement of Bristol-Myers financial results for the first quarter 2001 had not been made.

301. During an interview on CNBC on June 8, 2001, defendant Dolan was asked the following question: "[if] you take a look at . . . the drug index versus Bristol-Myers and Bristol-Myers has clearly outperformed the overall market. But do you think it is fairly valued at this point?" Dolan responded that "I think there is a great opportunity for investors. I think if you look at the long term prospects of our company, our [price-to-earnings] multiple, I think it's a great long term value and a real opportunity for investors to get in." This statement was materially false and misleading because defendant Dolan knew or recklessly disregarded the fact that the only reason Bristol-Myers appeared to be a "long term value" was because the defendants were artificially inflating the Company's numbers as set forth above.

302. On July 25, 2001, the Company issued a press release announcing its results for the second quarter of 2001. According to the press release, sales from continuing operations for the quarter grew 7% (9% excluding foreign exchange) to $4.7 billion from $4.4 billion in 2000, including an increase in worldwide pharmaceutical sales of 8% (10% excluding foreign exchange). The Company also announced that earnings before income taxes from continuing operations for the quarter increased 10% to $1,501 million from $1,361 million, net earnings from continuing operations increased 10% to $1,102 million from $1,005 million, basic earnings

per share increased 12% to $0.57 from $0.51 and diluted earnings per share increased 12% to $0.56 from $0.50.

303. Defendant Dolan was quoted in the press release as stating:

> Bristol-Myers Squibb continued to deliver on its growth objectives with a well-executed second quarter . . . Earnings growth remained in the double digits. We were pleased as well with good top line growth overall of 9% (excluding foreign exchange), spurred by significant volume increases of several key products. The GLUCOPHAGE® product line had sales of $763 million, a 57% increase over prior year.

304. During a conference call with Wall Street analysts on July 25, 2001, defendants Schiff and Lane reported on the Company's second quarter 2001 results, and provided substantially the same information described in the July 25th press release. Schiff added that:

> [W]ith regard to our outlook for 2001, we are reiterating our guidance from the first quarter. We remain comfortable with current First Call consensus estimates for our current business and operations of $2.41 diluted – fully diluted – earnings per share for this year. That's a 12% increase. That number is also consistent with what we said back in September 2000 at our analyst meeting.

305. During this conference call, Lane characterized sales of Glucovance as a "strong performance," and added, "I think we're very comfortable with our ability to continue to promote those brands, after the introduction of generics, as brands that can stand on their own right and continue to grow." In response to this statement, Steven Tighe, an analyst with Merrill Lynch, asked, "no inventory issues?" Lane responded, "no." Following up on this issue, an analyst with Lincoln Capital Management, asked Lane:

> I just want to understand the impact of Glucophage again . . . it just looks like the actual sales trends here are somewhat ahead of prescription trends. Would you expect third quarter revenue for Glucovance and Glucophage XR to be above second quarter levels?

306. Lane responded:

We don't – we have not given [Glucophage sales] guidance on a quarter to quarter basis on revenues. I just reiterate that, you know, I think you need to look very carefully at the new prescription performance, the continued switch rate, and the rate at which total prescriptions are following new prescriptions. ***That's what's driving performance.***

307. Jeff Chaffkin, an analyst with UBS Warburg, asked Lane:

I'm sorry to go back to this, but this Glucovance and Glucophage XR numbers. I think Rick [Lane] implied that there was no unusual buy-in or inventory levels. There were price increases for Glucophage and I believe [Glucovance] this quarter. It certainly appeared that there were net buy-ins on all three products and that all three levels of inventories relative to scrips are fairly significantly above trend line. I guess a couple key questions. Was there a price increase on the products? Was there a net buy-in? And where do you believe the actual inventory levels are in terms of the month's supply or relative to normal ratios? Sounds like somebody's got several months supply out there. And I guess going back to Alan's question--we're really trying to decide what the trend line is for the following couple of quarters.

308. Lane responded:

There was a price increase for Glucophage and Glucovance of 4.9% on May 1st. I can't give you any specific guidance on what kind of inventory purchases there were in advance of that. I don't think there's anything unusual there.

309. Schiff then commented:

Yeah. Let me--a couple of questions have now come up on wholesaler inventory. The way we look at it—we look at it overall for all our products. We look at it closely. And looking at the wholesaler inventories at the end of June we compare them to March we compare them to December 31st year end. They're all about the same levels. So we don't see anything unusual and we look at it on a kind of a total basis.

310. During this July 25, 2001 conference call, Mara Goldstein, an analyst with CIBC World Markets, asked Schiff: "I just want to ask about OTN. The 39% increase is certainly well above the trends we've seen . . . can you just comment on that?" Schiff responded:

The trends I have seen have been in the 30% range. I think we saw about 32-33% in the first quarter. Similar amounts in the fourth quarter as well. So I think thosee trends are fairly consistent for at least the last two, three, maybe even the last four quarters.

311. During this same conference call, a research analyst with Capital Guardian Trust asked Schiff,

Fred, it's still not too late to begin revealing to us your other income details. It's particularly concerning this year because I think financial flexibility is going to play a significant part in achieving your objectives and that well might be the case next year too. How about it?

312. Schiff responded:

Thanks a lot for your suggestion. I think I've heard it before. Just a couple of thoughts on it. You know annually that information is in the annual report so you have that. Second, let me assure you and everyone else on the call if there's anything unusual in that item I will definitely tell you. I think when I run through the P&L I give you all the trends and I give you all the key items that we think are important."

313. An analyst with Dresdner RCN, then asked Schiff:

In looking at your marketing, selling and administrative lines and your advertising and product promotion lines one of these lines or another has declined significantly on an absolute basis in each of the last three quarters. Can you kind of give us some guidance on how to model this going forward?

314. Schiff responded:

The model that we've given so far, the projection, is the outlook for earnings per share for the entire year 2001 and we haven't provided any line-by-line analysis. What we try to do, and what I try to do, is provide you every quarter with enough information so you know what's happening in each of the line items so then you can apply it to your models and I've tried to do that on this call and hopefully that you have the information in terms of the drivers and what's going on with marketing, selling administrative and other.

315. On August 14, 2001, the Company filed its quarterly report for the period ended June 30, 2001, which was signed by Bains and Schiff. The Second Quarter 2001 10-Q reported

substantially the same results as reported in the July 25th press release and stated that: "[I]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of Bristol-Myers Squibb Company (the "Company") at June 30, 2001 and December 31, 2000, and the results of operations for the three and six months ended June 30, 2001 and 2000, and cash flows for the six months ended June 30, 2001 and 2000." The Second Quarter 2001 10-Q also disclosed that marketing, selling, administrative and other expenses, as a percentage of sales, declined to 20.0% in the quarter from 22.3% in 2000 as a result of productivity, cost efficiencies and cost effectiveness. With respect to restructuring, the 10-Q stated that its reserve balance for all restructuring activities taken in the first three quarters of 2000 was reduced to $131 million at June 30, 2001 from $247 million at December 31, 2000 and that restructuring activities included workforce reductions and the downsizing and streamlining of operations.

316. The statements identified in paragraphs 302 to 315 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the second quarter of fiscal 2001 by $390 million, earnings from continuing operations by $148 million, and net earnings by $148 million. Furthermore, all adjustments necessary for a fair statement of Bristol-Myers' financial results for the second quarter 2001 had not been made.

317. On October 23, 2001, the Company issued a press release announcing its third quarter 2001 results. According to the press release, sales from continuing operations for the

quarter grew 4% (7% excluding foreign exchange) to $4.7 billion from $4.6 billion in 2000, including an increase in worldwide pharmaceutical sales of 6% (8% excluding foreign exchange). The Company further stated that excluding the impact of generic competition in the U.S. for Taxol and BuSpar, sales would have increased by 11% (14% excluding foreign exchange). Further, the Company announced that earnings before income taxes from continuing operations, excluding non-recurring items, increased 10% to $1,675 million from $1,527 million, net earnings from continuing operations increased 9% to $1,231 million, basic earnings per share increased 10% to $0.64 and diluted earnings per share increased 11% to $0.63. Defendant Dolan was quoted in the press release as stating:

> We're pleased with our solid financial performance in the third quarter. . . . At the same time that many of our largest products have experienced strong increases in sales, we've also made significant strides in executing our strategy for longer-term growth. We completed the acquisition of DuPont Pharmaceuticals, entered into a landmark agreement with ImClone Systems to co-develop and co-promote the novel cancer drug, IMC-C225, and announced plans to re-file the New Drug Application for VANLEV, in the treatment of hypertension. ***These three accomplishments represent important drivers of future growth for our core Medicines business***. (Emphasis added).
>
> During the quarter, around the world, we saw continued robust performance for four crucial engines of growth: the GLUCOPHAGE® family of diabetes products, up 44%; PLAVIX®, an anti-platelet drug, up 64%; AVAPRO®, an anti-hypertensive, which increased 37%; and PRAVACHOL®, a cholesterol lowering drug, which grew 26% over the same period last year."

318. During a conference call with Wall Street analysts on October 23, 2001, defendants Schiff and Lane reported on the Company's third quarter 2001 results, and provided substantially the same information described in the October 23rd press release. During this call, Barbara Ryan, an analyst with Deutsche Bank, asked Schiff:

> I know that Fred [Schiff] mentioned during the call that inventory levels for the company may be slightly ahead of what typically would be the case, and you did

have a price increase of 5.3% for [Glucophage] XR and Glucovance and it was our understanding, going into this quarter, that there was also a bulge in the inventories emanating from the second quarter. So could you just comment specifically on Glucophage inventory levels, both for Glucophage XR and [Glucovance] . . . ?

319. Schiff responded:

We look at the inventory levels in total. We don't look at it really by specific product. We've always looked at it overall. Basis of looking at it overall, as I mentioned, is up a couple of weeks. ***We do expect it to be lower in the fourth quarter. As you know we monitor these fairly closely***. Another metric we look at is our overall days' sales outstanding for our receivables. If I look at that for the U.S. business, as well as for the total company, and I look at it as of the end of September 30th of this year and compare it to last year, its at comparable levels. So, that's how we look at it and look at it overall and I'm fine with the receivable levels at the end of the quarter as well. (Emphasis added).

320. During the conference call, Schiff added that:

[D]uring the quarter we reported a one time gain of $240 million . . . this was offset dollar-for-dollar with a restructuring charge and a litigation settlement. The restructuring charge of $198 million was incurred as we continue to strengthen our medicines and pharmaceutical business. The charge included the termination of a contract sales force in the U.S. and the closure of certain overseas manufacturing facilities. As to our outlook for 2001, we are comfortable with current consensus estimates of $2.41.

321. On November 14, 2001, the Company filed its quarterly report for the third quarter ended September 30, 2001, which was signed by Tomlin and Bains. The Third Quarter 2001 10-Q reported essentially the same results as reported in the October 23rd press release and stated that "[i]n the opinion of management, the accompanying unaudited consolidated financial statements include all adjustments (consisting only of normal adjustments) necessary for a fair presentation of the financial position of [Bristol-Myers] at September 30, 2001 and December 31, 2000, and the results of operations for the three and nine months ended September 30, 2001 and 2000, and cash flows for the nine months ended September 30, 2001 and 2000." The Third

Quarter 2001 10-Q also reported that the Company's reserve balance for restructuring charges was reduced to $93 million at September 30, 2001 from $247 million at December 31, 2000, for workforce reductions and the downsizing and streamlining of operations. The Company also disclosed a pre-tax charge of $240 million, of which $198 million related to the termination of a contract sales force in the U.S. and closure of overseas manufacturing and $42 million for settlement of a litigation related to Mead Johnson.

322. The statements identified in paragraphs 317 to 321 were materially false and misleading because, as a result of the channel-stuffing scheme and accounting irregularities more particularly set forth above, the defendants knowingly or recklessly manipulated earnings and overstated net sales for the third quarter of fiscal 2001 by $213 million, earnings from continuing operations by $58 million, and net earnings by $58 million. Furthermore, all adjustments necessary for a fair statement of Bristol-Myers financial results for the third quarter 2001 had not been made.

323. On December 13, 2001, the Company issued a press release providing EPS guidance for 2002. In the press release, the Company reported that estimated EPS for 2002 were expected to be, on a fully diluted basis, between $2.25 and $2.35 and reconfirmed that 2001 EPS will increase 12% to $2.41.

324. In the press release, Defendant Dolan stated that:

> We see 2002 as an important bridge year to improved performance in 2003 and beyond. We are optimistic about the five new medicines that we are filing for regulatory approval in a 12-month period. The success of these filings and launches should make 2003 a strong growth year.
>
> Even as we assume $1.7 billion decline in sales due to loss of exclusivity for Glucophage IR, we are redirecting significant resources to further support the Medicines business. Specifically, we are investing in research, development,

advertising and promotion to support the planned launches of our potential blockbuster products and other opportunities.

325. During a conference call with Wall Street analysts on December 13, 2001, defendants Dolan, Schiff and Lane provided substantially the same information described in the December 13th press release. During the call, Defendant Dolan remarked about the Company's inventory buildup: "We said in the third quarter the inventory levels were slightly higher [and] they would be reduced by the end of the year and that is the guidance we [are] really giving on the inventory levels." Dolan also stated that: "Now regarding sales next year, Pravachol, Plavix, Tequin XR, Glucovance, Avapro, Avandia, Monopril, and many others continue to look very strong . . . but [their reported gains] will be muted by the erosion of Glucophage IR, BuSpar and Taxol . . . " Dolan also commented that "we weathered some meaningful exclusivity losses with Taxol and BuSpar in 2001 and managed to continue to deliver 12% earnings per share growth reflective of us delivering on that commitment."

326. The statements identified in paragraphs 323 to 325 were materially false and misleading because the defendants knew or recklessly disregarded that inventory levels of their wholesalers were inflated as a result of the Company's improper channel-stuffing and that, despite their statements to the contrary, inventory levels would not be reduced by the end of the year. In addition, the defendants knew or recklessly disregarded the fact that the Company's net sales and earnings were artificially inflated as a result of the channel-stuffing scheme and accounting irregularities described above.

327. On January 24, 2002, the Company issued a press release announcing its results for the fourth quarter and fiscal year 2001. In the press release, the Company reaffirmed earnings guidance for the full year 2002 in the range of $2.25 to $2.35 for diluted EPS. It also reported

that fourth quarter sales increased 10% (11% excluding foreign exchange) to $5.3 billion, including sales from the DuPont acquisition. Excluding sales from the DuPont acquisition, sales increased on a continuing operations basis for the fourth quarter 3% (4% excluding foreign exchange) to $4.9 billion. the Company also announced that fourth quarter earnings from continuing operations before income taxes (excluding the effects of the DuPont and ImClone transactions and non-recurring items) increased 9% to $1,579 million, net earnings increased 9% to $1,160 million, basic earnings per share increased 9% to $0.60 and diluted earnings per share increased 9% to $0.59.

328. With respect to its year-end results, the Company announced that sales increased 7% (9% excluding foreign exchange) to $19.4 billion, including sales from the DuPont acquisition. Excluding sales from the DuPont acquisition, sales increased on a continuing operations basis for the year 5% (7% excluding foreign exchange) to $19.1 billion. Worldwide pharmaceutical sales increased 6% for the year to $15.3 billion (with DuPont pharmaceuticals adding an additional $336 million). Further, earnings from continuing operations before income taxes increased 11% to $6,442 million, net earnings increased 10% to $4,736 million and diluted earnings per share increased 12% to $2.41.

329. Defendant Dolan was quoted in the January 24th press release as stating:

> 2001 was a critical year of transformation for Bristol-Myers Squibb, as we moved aggressively to become a more pharmaceuticals-focused company . . . We also invested in a promising pipeline of new pharmaceutical products, including a number of first- or possibly best-in-class compounds with blockbuster potential that we expect to submit for filing by the end of 2002. In addition, we laid important groundwork in 2001 to achieve greater growth over the long-term, even as we realized double-digit growth in eight products and product lines, including our blockbuster medicines Pravachol(R) and Plavix(R). During 2002, we will continue to focus on accelerating our pipeline, investing in our key in-line products, building external alliances and enhancing productivity. These measures

will contribute to our accelerated growth in 2003 and beyond, when we expect to launch at least three blockbuster potential products a year for the next several years.

330. During a conference call with Wall Street analysts on January 24, 2002, defendants Dolan, Schiff and Lane reported on the Company's fourth quarter and year-end 2001 results, and provided substantially the same information described in the January 24th press release. During the call, Jeffrey Chaffkin, an analyst with UBS Warburg, asked defendant Schiff:

Fred, just to be clear, the guidance of $2.25 to $2.35 [2002 EPS], does that assume these inventory levels go back down to normal or is that an additional swing factor relative to the number?

331. Schiff responded:

Over the course of 2002 we plan on reducing our inventory levels. That is in the plan, that is part of it and obviously part of what we're seeing in the products losing exclusivity. ***That was already incorporated in the numbers I gave you as well as our discussion of December 13th***. (Emphasis added).

332. During this conference call, Barbara Ryan, an analyst with Deutsche Bank, asked:

I know you spoke broadly on the inventory situation, but I'm just wondering if you can give us any guidance in Plavix in the quarter because it looked like you raised the price, I'm assuming as of January 1, by 11%, and was there any wholesaler buying in anticipation of that, just specifically related to Plavix?

333. Defendant Lane responded that:

We raised the price of Plavix by 7% in January. I don't believe we expect any significant change in inventory for Plavix.

334. Schiff also responded that:

We said we had anticipated that [inventory] would be declining in the fourth quarter. As I mentioned, it was up one to two weeks. As you also know, we look at it in total, we look at it overall and we look at it also in terms of working capital statistics. On a working capital statistics basis we saw improvement from third to

fourth quarter. That is really on a cash flow basis. So that is kind of how we look overall at the wholesaler inventory levels.

335. In a letter to Bristol-Myers shareholders, dated February 5, 2002, defendant Dolan stated that "total sales had increased 7% (9% excluding foreign exchange) to $19.4 billion . . . and diluted earnings per share had increased by 12 percent to $2.41." Dolan also wrote that "[s]ales at year-end 2000 were up 93 percent from 1993 . . . while earnings and earnings per share had more than doubled."

336. On April 1, 2002, the Company filed its Annual Report on Form 10-K with the SEC for the period ended December 31, 2001, which was signed by Dolan, Schiff and Tomlin. The 2001 Form 10-K reported essentially the same results as reported in the January 24th press release. The 2001 Form 10-K also stated that although the Company was unable to validate its wholesaler inventory levels, Bristol-Myers believed the average wholesaler inventories of products in the U.S. "included approximately four weeks of additional sales."

337. In addition, the 2001 Form 10-K reported that marketing, selling and administrative expenses, as a percentage of sales, decreased to 20.1% in 2001 from 21.2% in 2000 and 22.4% in 1999 and that the decreasing trend was a result of continued improvement in cost-efficiencies and a reduction in sales force expenses.

338. The 2001 Form 10-K also disclosed that during 2001, the Company recorded pretax restructuring charges of $739 million for continuing operations related to workforce reductions, contract sales force termination, exiting product lines and the downsizing and streamlining of business operations.

339. Further, the 2001 Form 10-K attested to the Company's strong internal controls:

The Company maintains a system of internal accounting policies, procedures and

controls intended to provide reasonable assurance, given the inherent limitations of all internal control systems, at appropriate costs, that transactions are executed in accordance with Company authorization, that they are properly recorded and reported in the financial statements and that assets are adequately safeguarded. The Company's internal auditors continually evaluate the adequacy and effectiveness of this system of internal accounting policies, procedures and controls, and actions are taken to correct deficiencies as they are identified.

340. The 2001 Form 10-K also reported sales of the Company's pharmaceuticals as follows:

2001 Reported Pharmaceutical Sales
(dollars in millions)

	2001
PRAVACHOL	$2,173
GLUCOPHAGE	2,049
PLAVIX	1,350
TAXOL	1,197
PARAPLATIN	702
ZERIT	546
AVAPRO	510
MONOPRIL	458
SERZONE	409
CEFZIL	363
BUSPAR	338
GLUCOVANCE	330
TEQUIN	320
GLUCOPHAGE XR	303
CAPOTEN/CAPOZIDE	285
VIDEX	259

341. The statements identified in paragraphs 327 to 340 were materially false and misleading because:

(a) The defendants' statements regarding record earnings growth, sales and earnings per share lacked any reasonable basis in fact because, as the defendant knew or recklessly disregarded, they were based on the continuation of improper accounting practices described above;

(b) Similarly, the defendants' statements regarding the Company's future growth lacked any reasonable basis in fact because, as the defendant knew or recklessly disregarded, were based on the continuation of improper accounting practices described above;

(c) The Company's financial statements overstated net sales by $1.015 billion and pre-tax earnings by $789 million as a result of the improper booking of consignment sales to Cardinal and McKesson;

(d) The Company failed to disclose the fact that it had shipped approximately $550 million to $750 million of excess inventory to wholesalers other than Cardinal and McKesson;

(e) The Company's financial statements overstated net sales by $81 million and pre-tax earnings by $77 million as a result of the improper booking of consignment sales to McKesson pursuant to the March 2001 distribution agreement, which allowed for the provision of warehousing and order fulfillment services for the Company's OTN subsidiary;

(f) Pre-tax earnings included $164 million that was improperly reversed into income as a result of the improper "cookie jar" reserves for asset divestitures and acquisitions, which were used to manage the Company's earnings;

(g) The defendants improperly established restructuring reserves in the amount of $93 million;

(h) The Company's financial statements overstated net sales and pre-tax earnings by $28 million as a result of the improper booking of sales returns;

(i) The Company's financial statements overstated net sales and pre-tax income by $86 million as a result of the defendants' failure to properly account for Medicaid, prime vendor and managed care rebates;

(j) The Company materially misstated its strong internal controls. As admitted by the Company, in connection with the audit of the 2002 financial statements, the Company's auditors identified two "material weaknesses" related to the Company's "accounting and public financial reporting of significant matters and to its internal recording and management review and oversight of certain accounting matters;"

(k) The defendants failed to properly record a charge of $35 million, or nearly $0.02 of EPS, incurred in the fourth quarter of 2001 relating to the settlement of the BuSpar lawsuit;

(l) The defendants improperly accounted for the amortization of a $200 million payment during the fourth quarter of 2001 resulting from the modification of its codevelopment arrangements for Irbesartan (Avapro) with Sanofi-Synthenolabo; and

(m) The Company's reported sales of its pharmaceutical drugs were materially overstated as set forth above at paragraph 64.

342. On April 3, 2002, the Company issued a press release announcing that it was lowering its first quarter 2002 EPS estimate to between $0.44 and $0.47 per share, or down 25% to 30%, compared to the same period in 2001. In this press release, Dolan reported that:

> Given the performance of several key products versus sales expectations, as well as actions taken to reduce inventory levels, the company now estimates that sales

for the first quarter of 2002 will decline approximately 7 percent from the first quarter of 2001.

* * *

We fully expected 2002 to be a transition year. The challenges we had anticipated have been compounded by business and organizational issues that we have identified and which are now being addressed in a fundamental and comprehensive fashion. I am confident that the successful implementation of the initiatives we have outlined today will result in a much stronger, healthier Bristol-Myers Squibb for the long term and for all concerned.

343. Later that day on a conference call with analysts, Dolan stated:

Well, we had a plan in December that we believed in. As we saw the business trends in the early months of 2002, ***we did an in-depth and exhaustive review and re-looked at every business in the company***. One of our business plans, primary care in the U.S., which is the entire delta in terms of our expectations, was found to be dramatically off track. And as we learned more, ***we dug deeper and that's why we made these changes in response***.

344. During this same call, defendant Schiff said:

I think if I understood the question correctly, you are really talking about the 25 to 30 percent decline from where we were when we last spoke about it in January and December. And that decline is specifically tied into revenue reduction. So it's really revenue driven. And if you go back to Peter's comments, ***it's a couple of key products that were in the plan, and today when we're looking at estimates of those products, they are significantly lower. Glucophage family in particularly is much lower. Avandia, Serzone, Tequin are the key products that are lower that really make up that revenue reduction***. That revenue reduction that we're seeing is causing the results to get to the 25 to 30 percent lower. And I think that equates to your 75 cents per share, if I got it right.

345. On April 25, 2002, the Company issued a press release announcing its first quarter results for 2002. Defendant Dolan was quoted in the April 25 press release as stating:

We are reporting results in line with what we stated on April 3rd. While I am disappointed by the company's performance this quarter versus the first quarter of last year, many of the underlying fundamentals of our business remain strong, as evidenced by the solid double-digit worldwide growth in the quarter of key in-line products like PRAVACHOL, PLAVIX and AVAPRO . . .

346. In the April 25th press release, the Company re-affirmed earnings guidance for the full year 2002 of $1.69 to $1.81 per share on a diluted earnings basis, and reported that wholesaler inventory reductions should approximate $0.40 in EPS impact over roughly the next four quarters.

347. On May 15, 2002, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended March 31, 2002, which was signed by defendant Bains. The First Quarter 2002 10-Q reported substantially the same results as the April 25th press release. Attesting to the propriety of the Company's accounting, the First Quarter 2002 10-Q also disclosed:

> We prepared the unaudited condensed consolidated financial statements following the requirements of the Securities and Exchange Commission (SEC) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. Generally Accepted Accounting Principles (GAAP) can be condensed or omitted. We are responsible for the unaudited financial statements included in this document. The consolidated financial statements include all normal and recurring adjustments necessary for a fair presentation of our financial position at March 31, 2002 and December 31, 2001, and the results of our operations and cash flows for the three months ended March 31, 2002 and 2001.

348. The First Quarter 2002 10-Q also reported that marketing, selling, and administrative expenses decreased 2% from $911 million in 2001 to $896 million in 2002, and it disclosed that the Company reduced its restructuring reserves in the first quarter by $86 million for restructuring activities, including workforce reductions, contract sales force termination, exiting product lines and the downsizing and streamlining of business operations.

349. The statements identified in paragraphs 342 to 348 were materially false and misleading because:

(a) The defendants failed to disclose the scope of the channel-stuffing scheme and that the Company had improperly recognized "consignments" as "sales" since at least 1999;

(b) The defendants failed to disclose the extent to which the Company had improperly used restructuring, divestiture and acquisition reserves to manage profits;

(c) The defendants failed to disclose that the SEC had commenced an investigation into the Company's channel-stuffing scheme back in April 2002;

(d) The defendants failed to properly account for a $60 million "milestone" payment in connection with the ImClone transaction;

(e) The defendants improperly accounted for the amortization of a $200 million payment during the fourth quarter of 2001 and the first six months of 2002 resulting from the modification of its co-development arrangements for Irbesartan (Avapro) with Sanofi-Synthelabo; and

(f) All adjustments necessary for a fair statement of Bristol-Myers financial results for the first quarter of 2001 had not been made.

350. On June 20, 2002, the Company announced that it was:

> [C]ontinuing to work cooperatively with domestic wholesalers and product partners to aggressively reduce excess inventory levels. The company indicated that if it is able to achieve the inventory work down goal set for the second quarter, the impact on its results in the quarter may be in the range of $0.14 to $0.17 per share on a diluted basis.

351. On July 23, 2002, the Company announced its second quarter and six-months results for 2002. In this press release, the Company reported that in the Second Quarter:

> [S]ubstantial progress in reducing U.S. wholesaler inventory to desirable levels, working cooperatively with domestic wholesalers and product partners . . . the company estimates that nearly 90% of the total workdown impact will be achieved

by year-end 2002, with average inventory for the company's exclusive products by year end at or near desirable levels."

352. On August 14, 2002, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended June 30, 2002, which was signed by Dolan and Bains. The Second Quarter 2002 10-Q reported that:

> We have made substantial progress in reducing U.S. wholesaler inventories to desirable levels. We estimate that nearly half of the total earnings per share impact of the workdown of domestic wholesaler inventory to desirable levels was achieved in the first half of 2002.

353. The Second Quarter 2002 10-Q also reported that:

> We prepared the unaudited condensed consolidated financial statements following the requirements of the Securities and Exchange Commission (SEC) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. Generally Accepted Accounting Principles (GAAP) can be condensed or omitted. We are responsible for the unaudited financial statements included in this document. The consolidated financial statements include all normal and recurring adjustments necessary for a fair presentation of our financial position at June 30, 2002 and December 31, 2001, and the results of our operations for the three and six month periods ended June 30, 2002 and 2001, and cash flows for the six months ended June 30, 2002 and 2001.

354. The statements made in paragraphs 350 to 353 were materially false and misleading because:

(a) The defendants failed to fully disclose the scope or duration of the inventory buildup, and the improper recognition of revenue through treating "consignments" as "sales;"

(b) The defendants failed to disclose the extent to which the Company had improperly utilized restructuring reserves and other accounting gimmicks, as detailed herein, to improperly manage earnings;

(c) The defendants had not made progress in working down excess inventories; indeed, according to a UBS Warburg analyst report dated October 8, 2002, the Company's excess inventory actually ***increased*** from $822 million in March 31, 2002, to almost $1.2 billion by June 30, 2002; and

(d) All adjustments necessary for a fair statement of Bristol-Myers financial results for the second quarter 2002 had not been made.

355. On August 14, 2002, defendant Dolan filed a notarized statement with the SEC, which he signed under oath, attesting that, to the best of his knowledge, based upon a review of the covered reports of Bristol-Myers, "no covered report contained an untrue statement of a material fact . . . [or] omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading . . ." The Bristol-Myers Form 10-K for the year ended December 31, 2001, was included in the definition of a "covered report."

356. Dolan's August 14th statement was materially false and misleading because Dolan knew or recklessly disregarded that the Company's 2001 Form 10-K was false and misleading for all of the reasons set forth above. Further, as would be revealed by *The Wall Street Journal* on December 24th, in the spring of 2002 he had hired Mary Jo White, a partner with the law firm of Debevoise & Plimpton and a former U.S. Attorney for the Southern District of New York, to perform an internal review of the Company's wholesaler inventory buildup, and by April 2002, the SEC had commenced an investigation into the channel-stuffing scheme.

357. On October 24, 2002, the Company announced that it expected to restate approximately $2.0 billion in sales revenue recorded in 2000 and 2001. The Company claimed

that the decision to issue the restatement was based on further review and consideration of the Company's wholesaler inventory buildup. The Company also announced that the expected restatement would reflect primarily adjustments in the timing of revenue recognition of the Company's pharmaceutical sales to certain of its wholesalers.

358. On October 24, 2002, Dolan participated in a conference call with Wall Street analysts. During this call Dolan said that:

> [T]he Restatement is expected to reflect primarily adjustments in the timing of revenue recognition of the Company's U.S. pharmaceutical sales to certain of our wholesalers. Beyond that, I would refer you to our press release that lays out some of the principle components of the restatement given the relatively recent nature of the decision, we can't say more about it at this time.

359. The statements made in paragraphs 337 to 358 were materially false and misleading because the defendants failed to disclose the extent to which the Company had improperly utilized restructuring reserves and other accounting gimmicks, as detailed herein, to improperly manage earnings.

360. It was not until December 12, 2002 that more, but not all, of the accounting gimmicks came to light in an article by *The Wall Street Journal*. This article reported that current and former Bristol-Myers executives disclosed that the defendants had engaged in an earnings management scheme to meet consensus expectations using inappropriate "restructuring reserves" and undisclosed "immaterial" transactions to meet earnings expectations, and by reporting gains on asset sales as credits to operating expenses so to improve the trend of decreased expenses. In response to these allegations, John Skule, a Bristol-Myers spokesman, said: "It's simply untrue that the company used earnings management to obscure the true state of the Company."

361. The denial of the Company was materially false and misleading because the issues described in the article mirrored the accounting improprieties that the Company has now admitted it utilized to manage earnings.

VIII. CLAIMS FOR RELIEF

COUNT ONE

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

362. Lead Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

363. Throughout the Class Period, the defendants, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the United States mails and a national securities exchange, employed a device, scheme and artifice to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon Lead Plaintiffs and the members of the Class.

364. The Company and the Individual Defendants, as the most senior officers of Bristol-Myers during the Class Period, are liable as direct participants in all of the wrongs complained of herein. Through their positions of control and authority, the Individual Defendants were in a position to and did control all of the Company's false and misleading statements and omissions, including the contents of all of its public filings and press releases as more particularly set forth above. In addition, certain of these false and misleading statements constitute "group published information," which the Individual Defendants were responsible for

creating. The Company is liable for each of the statements of the Individual Defendants through the principles of respondeat superior.

365. The defendants are liable for the following specific false and misleading statements:

(a) Each of the Individual Defendants is liable for the Company's quarterly and year-end filings during his tenure as a senior officer of the Company.

(b) Defendant Heimbold is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 39-41, 47-51, 256, 260-261, 266, 270, 274-275, 277, 287, 290-291 and 296-297.

(c) Defendant Dolan is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 51, 116, 118, 158, 175, 192, 207, 290-291, 301, 303, 317, 324-325, 329, 335, 342-343, 345, 355 and 358.

(d) Defendant Mee is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 278-279, 281 and 288-289.

(e) Defendant Schiff is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 112, 120, 161, 205, 207, 209, 212, 216-217, 297-298, 304, 309-310, 312, 314, 319-320, 325, 331, 334, and 344.

(f) Defendant Lane is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 51, 159, 160, 163, 174, 275, 278, 282, 288, 297, 304-306, 308, 319-320, 325, 331, and 333.

(g) Defendant Ringrose is also liable for his own statements in press releases, conference calls, etc. as more particularly set forth above in paragraphs 159 and 162-166.

366. As detailed above, the defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of concealing Bristol Myers' operating condition and future business prospects from the investing pubic and supporting the artificially inflated price of its securities.

367. Lead Plaintiffs and the other members of the Class relied upon the defendants' statements and upon the integrity of the market in purchasing shares of Bristol-Myers common stock at artificially inflated prices.

368. In bringing these claims, Lead Plaintiffs and the members of the Class are entitled to the presumption of reliance established by the fraud-on-the-market doctrine. At all times relevant to this Complaint, the market for Bristol-Myers common stock was an efficient market for the following reason, among others:

(a) Bristol-Myers common stock traded on the NYSE, a highly efficient market. The average weekly trading volume throughout the Class Period was 32,706,200 shares;

(b) As a regulated issuer, Bristol-Myers filed periodic public reports with the SEC;

(c) Bristol-Myers common stock was followed by numerous securities analysts employed by major brokerage firms, such as Merrill Lynch, Lehman Brothers, Deutsche

Bank and UBS Warburg, who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace; and

(d) Bristol-Myers regularly issued press releases, which were carried by national and international news wires. Each of these releases was publicly available and entered into the public marketplace.

(e) The market price of Bristol-Myers common stock reflected the effect of news disseminated in the market.

369. As a direct and proximate cause of the wrongful conduct described herein, Lead Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Bristol-Myers common stock. Had Lead Plaintiffs and the other members of the Class known of the material adverse information not disclosed by the defendants, or been aware of the truth behind the defendants' material misstatements, they would not have purchased Bristol-Myers stock at artificially inflated prices.

370. This claim was brought within one year after the discovery of the fraud and within three years of the making of the statements alleged herein to be materially false and misleading.

371. By virtue of the foregoing, the defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to Lead Plaintiffs and the members of the Class, each of whom has been damaged as a result of such violations.

COUNT TWO

Against the Defendants Heimbold, Dolan, Schiff Mee and Lane for Violations of Section 20(a) of the Exchange Act

372. Lead Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

373. Throughout the Class Period, defendants Heimbold, Dolan, Schiff, Mee and Lane, by virtue of their positions, stock ownership and/or specific acts described above, were controlling persons within the meaning of Section 20(a) of the 1934 Act.

374. Defendants Heimbold, Dolan, Schiff, Mee and Lane, had the power to, and did, directly and indirectly, exercise control over Bristol-Myers, including the content and dissemination of statements which the Lead Plaintiffs allege are false and misleading. Heimbold, Dolan, Schiff, Mee and Lane, were each provided with and had access to reports, filings, press releases and other statements alleged to be misleading prior to and/or shortly after they were issued and had the ability to prevent the issuance or correct the statements. Defendants Heimbold, Dolan, Schiff, Mee and Lane, had direct and supervisory involvement in the day-to-day operations of the Company and induced Bristol-Myers to engage in the acts constituting violations of the federal securities laws, as set forth in Count One above.

375. Further, defendants Heimbold, Dolan, Mee and Lane all served as members of the Company's Executive Committee. As set forth in the Company's Bylaws, attached as an exhibit to the Form 10-K for fiscal 2000, filed with the SEC on March 30, 2001, the Executive Committee "shall have and may exercise, during the intervals between the meetings of the Board of Directors, all of the powers of the Board of Directors in the management of the business and affairs of the Comp any (and shall have power to authorize the seal of the Company to be affixed to all papers which may require it) . . ."

Defendant Heimbold

376. Defendant Heimbold was a control person of the Company by virtue of his position as the Company's CEO from his appointment in 1994 through May, 2001, and as Chairman of the Board of Directors from 1995 through September 12, 2001, and his substantial

ownership position of the Company's stock. Heimbold exercised actual power or control over the improprieties alleged herein and was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements. Heimbold participated in the day-to-day management of the Company throughout the Class Period, made numerous statements on behalf of the Company. He signed the 1999 and 2000 Annual Reports, and was directly responsible for reviewing quarterly reports filed with the SEC from the start of the Class Period through his departure from the Company on September 12, 2001.

Defendant Dolan

377. Defendant Dolan was a control person of the Company by virtue of his position as the Company's President since January 2000, CEO since May 1, 2001, and Chairman of the Board of Directors since September 12, 2001, and his substantial ownership position of the Company's stock. Since January 2000, Dolan also served on the management committee, which was part of the Office of the Chairman, and was responsible for addressing "strategic, organizational, scientific, and policy issues" affecting the entire Company. By virtue of his position in the Company as President, CEO, Chairman of the Board, and member of the management committee, Dolan exercised actual power, or control over the improprieties alleged herein and was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements. Dolan participated in the day-to-day management of the Company and, throughout the Class Period, made numerous statements on behalf of the Company. He signed the 1999, 2000 and 2001 Annual Reports, and was directly responsible for reviewing quarterly reports filed with the SEC from at least the first quarter of 2000 through the end of the Class Period.

Defendant Mee

378. Defendant Mee was a control person of the Company by virtue of his position as the Company's Senior Vice President and Chief Financial Officer from 1994 through April 2001, and as Executive Vice President since January 2000, and because of his substantial ownership position of the Company's stock. From January 2000 until his retirement from the Company in April 2001 Mee also served on the management committee, which was part of the Office of the Chairman and was responsible for addressing "strategic, organizational, scientific, and policy issues" affecting the entire Company. By virtue of his position as Chief Financial Officer, Mee was directly responsible for the Company's financial statements, which were at the heart of the accounting fraud complained of herein. He was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements that contained materially false and misleading statements that were disseminated during the Class Period. From the start of the Class Period through April 2001, Mee made numerous statements on behalf of the Company. He signed the 1999 and 2000 Annual Reports, and was principally responsible for reviewing the quarterly reports filed with the SEC.

Defendant Schiff

379. Defendant Schiff was a control person of the Company by virtue of his position as the Company's Senior Vice President and Chief Financial Officer from April 2001 until he left the Company in April 2002, and as the Company's Vice President of Financial Operations and Controller from 1997 through 2000. As a Senior Vice President and Chief Financial Officer, and former Controller, Schiff was directly responsible for the Company's financial statements, which were at the heart of the accounting fraud complained of herein. He was in a position to control or

influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements that contained materially false and misleading statements that were disseminated during the Class Period. Throughout the Class Period, Schiff made numerous statements on behalf of the Company, and he signed the 1999, 2000, and 2001 Annual Reports, as well as the quarterly reports filed with the SEC from the start of the Class Period through the second quarter of 2001.

Defendant Lane

380. Defendant Lane was a control person of the Company by virtue of his position as the Company's President of the Worldwide Medicines Group, which includes the Pharmaceutical Research Institute, from January 2000 until April 3, 2002, and as President of the Company's U.S. Pharmaceutical Division from 1998. From January 2000, until his departure from the Company in April 2002, Lane also served on the management committee, which was part of the Office of the Chairman, and was responsible for addressing "strategic, organizational, scientific, and policy issues" affecting the entire Company. Lane had the power and authority to cause the Company to engage in the wrongful conduct complained of herein, and was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements, that contained materially false and misleading statements that were disseminated during the Class Period.

381. To the extent that Bristol-Myers' is liable for violations of the Exchange Act as alleged herein, defendants Heimbold, Dolan, Mee, Schiff and Lane are liable to Lead Plaintiffs and the Class pursuant to Section 20(a) of the Exchange Act to the same extent as Bristol-Myers.

382. As a direct and proximate cause of their wrongful conduct, Lead Plaintiffs and the Class suffered damages in connection with their purchases of Bristol-Myers stock at artificially inflated prices.

383. This claim was brought within one year after the discovery of the fraud and within three years of the making of the statements alleged herein to be materially false and misleading.

IX. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiffs, on their own behalf and on behalf of the Class, pray for judgment as follows:

A. Declaring this action to be a proper class action and certifying Lead Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Lead Plaintiffs and the other members of the Class against all defendants, jointly and severally, for the damages sustained as a result of the wrongdoings of defendants, together with interest thereon;

C. Awarding Lead Plaintiffs the fees and expenses incurred in this action, including reasonable allowance of fees for Lead Plaintiffs' attorneys, and experts;

D. Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder, including attaching, impounding, imposing a constructive trust upon or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that Lead Plaintiffs have an effective remedy; and

E. Granting such other and further relief as the Court may deem just and proper.

X. JURY TRIAL DEMAND

Lead Plaintiffs demand a jury trial of all issues so triable.

Dated: April 11, 2003

Respectfully submitted,

Daniel L. Berger (DB-7748)
J. Erik Sandstedt (JS-9148)
John A. Kehoe (JK-4589)
Joseph Fonti (JF-3201)
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1285 Avenue of the Americas, 33rd Floor
New York, New York 10019
Telephone: 212-554-1400
Facsimile: 212-554-1444

Co-Lead Counsel for Lead Plaintiffs Teachers' Retirement System of Louisiana and General Retirement System of the City of Detroit and the Class

Jeffrey C. Block (JB-0387)
Wendy Zoberman
Leslie Stern
Julie Richmond
BERMAN DEVALERIO PEASE TABACCO BURT & PUCILLO, LLP
One Liberty Square
Boston, Massachusetts 02109
Telephone: 617-542-8300
Facsimile: 617-542-1194

Co-Lead Counsel for Lead Plaintiffs Louisiana State Employees' Retirement System and Fresno County Employees' Retirement Association and the Class

Exhibit A

Teachers' Retirement System of Louisiana

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
SELL	10/25/99	(9,000)	$74.7500
SELL	11/15/99	(16,000)	$76.2500
SELL	12/07/99	(900)	$67.6875
BUY	12/08/99	10,000	$68.1625
SELL	01/10/00	(19,300)	$67.7302
SELL	01/11/00	(9,000)	$67.6875
BUY	01/12/00	6,400	$67.3135
SELL	01/13/00	(10,900)	$66.5568
BUY	01/19/00	2,400	$67.7500
SELL	01/19/00	(2,400)	$67.7500
SELL	03/01/00	(39,700)	$52.0625
BUY	03/06/00	21,000	$47.0000
SELL	03/15/00	(108,600)	$51.1371
SELL	03/29/00	(53,600)	$56.7500
SELL	04/04/00	(24,300)	$64.5000
BUY	04/20/00	11,000	$49.8125
BUY	04/25/00	55,000	$51.5000
BUY	05/09/00	21,000	$53.9554
BUY	06/05/00	40,000	$51.3750
SELL	06/21/00	(700)	$54.0938
BUY	07/03/00	25,300	$57.3584
SELL	07/05/00	(20,000)	$58.6750
SELL	07/06/00	(40,000)	$58.7500
SELL	07/28/00	(500)	$50.3688
BUY	07/31/00	25,000	$49.8200
BUY	08/01/00	111,200	$50.5530
SELL	08/24/00	(50,000)	$55.1600
BUY	09/12/00	39,500	$51.8934
SELL	10/11/00	(100)	$57.5000
SELL	10/23/00	(62,800)	$62.5625
BUY	11/15/00	200	$62.9375
SELL	12/08/00	(43,000)	$66.77
SELL	12/15/00	(8,400)	$68.57
SELL	12/15/00	(25,000)	$69.00
BUY	12/29/00	8,000	$74.25
SELL	01/10/01	(16,100)	$65.38
BUY	01/25/01	200	$64.63
SELL	02/06/01	(8,300)	$64.22
SELL	02/14/01	(6,000)	$61.98
BUY	02/21/01	25,000	$63.17
BUY	02/23/01	25,000	$61.78
BUY	02/28/01	10,000	$62.54
BUY	03/21/01	10,000	$54.60

Teachers' Retirement System of Louisiana

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
BUY	05/24/01	66,000	$53.12
BUY	06/12/01	54,000	$56.00
BUY	06/13/01	10,000	$56.04
SELL	06/15/01	(6,500)	$56.39
BUY	06/19/01	15,000	$55.25
BUY	06/19/01	32,000	$55.23
BUY	06/19/01	3,100	$55.18
BUY	06/20/01	10,000	$55.10
BUY	06/26/01	80,000	$53.01
SELL	06/29/01	(11,100)	$52.31
SELL	09/20/01	(30,600)	$53.25
SELL	09/21/01	(20,000)	$51.62
SELL	09/27/01	(6,800)	$54.64
BUY	09/27/01	23,100	$53.25
BUY	10/09/01	4,700	$58.04
BUY	12/14/01	10,000	$49.95
BUY	03/21/02	10,000	$41.08
BUY	04/02/02	25,000	$38.43
BUY	04/02/02	50,000	$38.43
SELL	04/05/02	(9,000)	$32.32
SELL	04/08/02	(3,500)	$32.38
BUY	04/08/02	10,000	$32.49
SELL	04/09/02	(35,000)	$31.96
SELL	04/10/02	(55,000)	$31.16
SELL	04/12/02	(50,000)	$31.15
SELL	04/12/02	(33,000)	$31.15
BUY	04/16/02	61,900	$32.00
BUY	04/18/02	10,000	$32.75
SELL	04/25/02	(45,000)	$29.78
SELL	04/25/02	(30,000)	$29.78
BUY	05/06/02	5,000	$29.12
BUY	06/11/02	5,000	$26.77
BUY	06/13/02	10,000	$26.83
BUY	07/03/02	28,400	$25.70
BUY	07/16/02	10,000	$20.93
SELL	07/19/02	(53,000)	$21.43
SELL	08/16/02	(38,000)	$23.20
SELL	08/23/02	(13,400)	$23.82
BUY	08/30/02	20,000	$25.88
BUY	08/30/02	6,000	$25.93
BUY	10/11/02	57,400	$22.50
BUY	11/26/02	15,000	$26.04
BUY	12/06/02	61,100	$26.28

Teachers' Retirement System of Louisiana

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
BUY	12/11/02	20,000	$27.79
BUY	12/23/02	10,000	$23.95
BUY	12/24/02	26,200	$23.55
BUY	12/27/02	20,000	$23.48
BUY	01/23/03	5,000	$25.12
BUY	02/26/03	600	$23.06

LASERS

Transactions of Bristol-Myers Squibb Co. (BMY)
For the Period: 01/01/00-4/24/02

Transaction	Date	Amount	Price per share
SELL	01/28/00	(1,300)	$64.250
BUY	01/31/00	9,000	$66.000
SELL	02/10/00	(16,600)	$60.919
BUY	03/06/00	21,500	$46.000
BUY	03/30/00	42,930	$57.460
SELL	04/25/00	(38,000)	$50.184
SELL	05/05/00	(5,100)	$52.750
SELL	05/15/00	(16,700)	$55.688
SELL	06/02/00	(2,100)	$51.563
SELL	06/02/00	(57,800)	$52.816
BUY	06/12/00	10,800	$52.067
SELL	07/19/00	(33,600)	$52.103
SELL	07/21/00	(87,880)	$50.050
SELL	09/07/00	(1,400)	$50.938
SELL	09/12/00	(26,800)	$51.765
SELL	09/29/00	(23,600)	$57.125
BUY	09/29/00	115,200	$57.095
BUY	10/09/00	18,400	$57.323
BUY	10/10/00	5,500	$58.224
SELL	10/26/00	(15,000)	$62.625
BUY	10/26/00	9,900	$62.625
SELL	10/27/00	(15,350)	$61.000
BUY	10/27/00	6,500	$61.000
BUY	11/03/00	3,100	$61.938
BUY	12/20/00	7,700	$71.563
SELL	12/29/00	(4,300)	$73.938
SELL	01/02/01	(13,390)	$71.500
SELL	01/25/01	(48,360)	$64.574
SELL	01/25/01	(200)	$64.532
SELL	01/25/01	(24,340)	$64.574
BUY	01/25/01	45,000	$64.835
SELL	01/26/01	(3,400)	$64.971
SELL	01/26/01	(10,600)	$64.479
SELL	01/29/01	(8,460)	$64.307
BUY	03/20/01	900	$56.776
BUY	04/05/01	9,400	$58.160
BUY	06/27/01	6,100	$52.100

General Retirement System of the City of Detroit

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
SELL	10/29/99	(15,200)	$76.2500
BUY	02/29/00	7,600	$65.0852
BUY	02/29/00	10,000	$62.2500
SELL	03/31/00	(17,300)	$46.6875
BUY	04/03/00	16,800	$57.7500
SELL	04/03/00	(16,800)	$57.7500
BUY	04/04/00	24,800	$64.7500
BUY	04/05/00	1,400	$64.2500
BUY	04/05/00	900	$64.1875
BUY	04/06/00	900	$60.7500
BUY	04/07/00	4,300	$59.5509
BUY	04/10/00	2,538	$60.6142
BUY	04/17/00	900	$64.1250
BUY	04/17/00	900	$63.3750
SELL	04/20/00	(2,453)	$49.5877
BUY	04/28/00	1,100	$52.5000
BUY	05/03/00	1,100	$51.3750
BUY	05/09/00	10,300	$53.3750
BUY	05/11/00	9,900	$54.6250
SELL	05/15/00	(1,115)	$55.1046
BUY	05/19/00	1,100	$57.6875
BUY	05/22/00	26,400	$57.6496
BUY	05/23/00	25,000	$58.1625
BUY	05/31/00	500	$55.8750
BUY	06/06/00	1,000	$51.7500
BUY	06/14/00	900	$54.7500
BUY	06/28/00	13,400	$54.4375
BUY	06/30/00	700	$57.4375
BUY	07/11/00	13,900	$58.6049
BUY	07/14/00	1,200	$54.5000
BUY	07/14/00	2,230	$52.7056
BUY	08/01/00	900	$51.0556
SELL	08/30/00	(1,115)	$53.2256
BUY	08/31/00	800	$53.4375
SELL	09/06/00	(1,115)	$50.1264
SELL	09/07/00	(1,115)	$50.8716
BUY	09/12/00	18,100	$51.9827
SELL	09/13/00	(1,115)	$52.6634
BUY	09/22/00	9,400	$58.0000
BUY	09/28/00	14,000	$58.9079
BUY	10/20/00	7,000	$60.0625
SELL	11/01/00	(446)	$62.2500
SELL	11/08/00	(4,000)	$63.0000

General Retirement System of the City of Detroit

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
SELL	11/29/00	(7,400)	$72.6250
SELL	12/06/00	(2,000)	$66.0000
SELL	12/21/00	(5,600)	$70.6250
SELL	01/10/01	(7,700)	$66.0000
SELL	03/02/01	(6,300)	$63.8000
SELL	03/06/01	(10,900)	$61.9600
SELL	03/16/01	(11,900)	$56.1692
SELL	03/26/01	(4,900)	$56.5800
SELL	05/01/01	(14,600)	$55.0081
SELL	05/02/01	(1,784)	$55.0327
SELL	05/14/01	(1,115)	$56.2437
SELL	05/21/01	(4,500)	$55.0000
SELL	05/29/01	(5,901)	$54.5012
SELL	05/30/01	(6,065)	$54.6603
SELL	05/30/01	(2,529)	$54.4638
BUY	06/07/01	13,500	$57.1000
SELL	06/22/01	(18,800)	$53.8611
SELL	06/27/01	(3,500)	$52.7400
BUY	07/09/01	4,900	$54.1292
BUY	07/31/01	8,028	$59.1390
BUY	08/01/01	170	$57.8500
BUY	08/03/01	722	$57.8344
BUY	08/10/01	335	$56.7995
BUY	08/17/01	335	$55.9184
BUY	09/07/01	223	$56.2000
SELL	09/19/01	(466)	$55.7261
SELL	09/21/01	(21,800)	$51.6994
SELL	09/21/01	(459)	$51.5667
SELL	09/24/01	(306)	$51.7607
SELL	10/15/01	(780)	$58.8569
SELL	11/05/01	(5,200)	$53.0200
BUY	11/07/01	498	$55.8153
BUY	11/28/01	722	$53.9977
BUY	11/30/01	226	$53.9500
BUY	12/04/01	902	$53.7908
BUY	12/05/01	451	$52.9985
BUY	12/11/01	26,500	$55.1519
SELL	12/12/01	(13,900)	$50.6742
BUY	12/13/01	17,400	$50.3498
BUY	12/26/01	831	$53.1455
BUY	12/26/01	1,424	$53.0229
BUY	12/27/01	113	$52.3095
SELL	12/28/01	(14,600)	$51.9000

General Retirement System of the City of Detroit

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
BUY	12/31/01	564	$51.4568
BUY	01/03/02	15,900	$51.1221
BUY	01/03/02	1,505	$50.8732
BUY	01/04/02	15,100	$51.1678
BUY	01/04/02	1,652	$50.8259
BUY	02/05/02	645	$43.9979
BUY	02/06/02	8,600	$44.0169
BUY	02/07/02	17,400	$42.5211
SELL	03/25/02	(1,300)	$39.9100
SELL	03/25/02	(1,114)	$40.0301
SELL	03/25/02	(42)	$39.9576
SELL	03/26/02	(13,500)	$39.9500
BUY	04/01/02	6,600	$40.1435
BUY	04/02/02	4,000	$38.3000
SELL	04/04/02	(1,618)	$30.7324
SELL	04/04/02	(1,849)	$31.5868
SELL	04/04/02	(231)	$32.1500
SELL	04/05/02	(7,100)	$32.2500
SELL	04/08/02	(10,000)	$32.2400
SELL	04/09/02	(20,000)	$32.0518
SELL	04/19/02	(11,900)	$33.1849
BUY	05/01/02	18,800	$29.3154
BUY	05/13/02	6,000	$28.3865
SELL	07/11/02	(20,300)	$21.5000
SELL	07/15/02	(924)	$22.9969
SELL	07/19/02	(578)	$22.0223
SELL	07/19/02	(924)	$22.1726
SELL	07/26/02	(7,500)	$20.1080
SELL	08/15/02	(9,800)	$22.0000
SELL	09/04/02	(12,900)	$24.7737
SELL	09/19/02	(1,156)	$24.1923
SELL	10/24/02	(1,156)	$24.2618
BUY	11/07/02	121,700	$26.6721
SELL	11/22/02	(462)	$26.5071
SELL	12/12/02	(1,502)	$24.9469
SELL	12/20/02	(24,600)	$23.5158
SELL	12/23/02	(8,900)	$23.4714
SELL	12/24/02	(2,800)	$23.6045
SELL	12/26/02	(6,000)	$23.5941
BUY	01/03/03	8,400	$24.5736
SELL	01/13/03	(30,100)	$25.1175
SELL	01/14/03	(7,700)	$25.2296
SELL	01/15/03	(1,600)	$25.2421

General Retirement System of the City of Detroit

Transactions of Bristol-Myers Squibb Co. (BMY)

Class Period for Amended Complaint: 10/19/99-3/10/03

Transaction	Date	Amount	Price per share
SELL	02/04/03	(1,159)	$23.5000
SELL	02/11/03	(1,525)	$23.2819
SELL	02/11/03	(792)	$23.6197

BRISTOL-MYERS SQUIBB

Class Period: 10/19/99-03/10/03

Shareholder Fresno County Employees Retirement Asscoiation

Trade Date	Description	# Shares Bought	# Shares Sold	# Shares Remaining	Price / Share
12/23/99	Shares	45,100		45,100	$66.205
12/27/99	Shares	36,600		81,700	$66.764
01/07/00	Shares	6,300		88,000	$66.460
01/10/00	Shares	9,100		97,100	$67.467
01/11/00	Shares	6,200		103,300	$67.674
02/07/00	Shares		(1,500)	101,800	$63.188
04/19/00	Shares	25,800		127,600	$48.250
05/11/00	Shares	9,100		136,700	$54.003
05/16/00	Shares	18,700		155,400	$56.500
05/16/00	Shares		(43,600)	111,800	$65.117
05/26/00	Shares		(34,900)	76,900	$56.563
08/01/00	Shares	43,600		120,500	$65.117
08/04/00	Shares		(3,800)	116,700	$52.313
08/07/00	Shares		(76,900)	39,800	54.3823
08/10/00	Shares		(15,700)	24,100	$51.250
08/10/00	Shares		(100)	24,000	$51.250
08/10/00	Shares		(2,400)	21,600	$51.250
08/10/00	Shares		(100)	21,500	$51.250
08/14/00	Shares		(100)	21,400	$50.625
08/18/00	Shares		(200)	21,200	$51.375
12/11/00	Shares		(100)	21,100	$66.563
12/15/00	Shares		(200)	20,900	$68.213
12/27/00	Shares		(1,000)	19,900	$71.953
02/06/01	Shares		(100)	19,800	$63.550
06/15/01	Shares		(200)	19,600	$55.521
06/21/01	Shares		(1,700)	17,900	$55.370
06/22/01	Shares	100		18,000	$54.046
06/28/01	Shares	200		18,200	$52.700
06/28/01	Shares	5,900		24,100	$52.917
06/28/01	Shares	19,100		43,200	$52.863
08/03/01	Shares		(100)	43,100	$57.800
09/17/01	Shares		(1,000)	42,100	$57.707
09/19/01	Shares		(3,000)	39,100	$55.575
10/05/01	Shares	17,300		56,400	$56.413
10/11/01	Shares	13,100		69,500	$58.531
10/16/01	Shares		(3,300)	66,200	$58.719
10/17/01	Shares		(500)	65,700	$58.500
10/17/01	Shares		(1,700)	64,000	$58.550
10/26/01	Shares		(1,000)	63,000	$55.974
10/29/01	Shares		(6,800)	56,200	$55.082
10/30/01	Shares		(6,200)	50,000	$53.818
10/30/01	Shares		(1,700)	48,300	$53.613
11/21/01	Shares	25,600		73,900	$55.218
11/29/01	Shares		(4,900)	69,000	$54.073
11/29/01	Shares		(100)	68,900	$54.011
12/20/01	Shares		(12,200)	56,700	$52.213
12/21/01	Shares	1,200		57,900	$52.882
12/26/01	Shares	7,100		65,000	$53.001
01/07/02	Shares	26,000		91,000	$50.487
01/10/02	Shares		(13,300)	77,700	$49.738
01/24/02	Shares	25,000		102,700	$47.386
03/13/02	Shares		(15,400)	87,300	$49.722

Trade Date	Description	# Shares Bought	# Shares Sold	# Shares Remaining	Price / Share
03/18/02	Shares		(8,850)	78,450	$49.177
03/19/02	Shares		(8,450)	70,000	$48.713
04/02/02	Shares	17,100		87,100	$38.331
04/04/02	Shares	11,700		98,800	$30.461
04/05/02	Shares	9,100		107,900	$32.192
04/10/02	Shares	8,600		116,500	$31.152
04/12/02	Shares	2,500		119,000	$31.066
04/15/02	Shares	8,200		127,200	$31.530
04/19/02	Shares	19,800		147,000	$32.786
06/04/02	Shares	3,900		150,900	$28.578
06/05/02	Shares	3,200		154,100	$28.229
06/21/02	Shares		(800)	153,300	$25.156
07/11/02	Shares	4,200		157,500	$21.423
07/19/02	Shares		(300)	157,200	$22.200
12/20/02	Shares	500		157,700	$23.572
12/20/02	Shares	100		157,800	$23.410
02/13/03	Shares		(22,500)	135,300	$22.272
02/14/03	Shares		(8,000)	127,300	$22.253
02/18/03	Shares		(3,400)	123,900	$22.369
03/28/03	Shares		(5,800)	118,100	$21.678
Subtotals:		430,000	(311,900)		
# Shares Remaining:			118,100		

Exhibit B

In re Bristol-Myers Squibb Securities Litigation

Additional Plaintiffs

Aliza Brody

Nancy Burns

Martyn Chilvers

Alan Chopp IRA

Steven Denmark IRA

Donald Fargnoli

Ira Gaines

Charles E. Henley

The Robert D. Jaffee Revocable Trust

Michael Pickar

Patti Gorsky Pollack

Barbara Purcell

Gloria Rein

Audrey M. Ross-Klein

Brett Stancil

Arnold Spitz

David Wilmer

In re Bristol-Myers Squibb Securities Litigation

Certificate of Service

This is to certify that the undersigned caused the foregoing *Consolidated Class Action Complaint* to be served By Hand and by Regular U.S. Mail on the following counsel:

Evan R. Chesler, Esq.
Richard Stark, Esq.
CRAVATH SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Frederick Hafetz, Esq.
HAFETZ & NECHELES
500 5th Avenue, 29th Floor
New York, NY 10174

Elliot Cohen, Esq.
Robert Carmen, Esq.
JENKENS & GILCHRIST PARKER CHAPIN LLP
405 Lexington Avenue
New York, NY 10174

This 11th day of April 2003,

Matthew Leonard

Matthew Leonard