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Transaction ID 19405436
Case No. 2728-VCS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LEAR CORP. SHAREHOLDERS LITIGATION	))	CONSOLIDATED C.A. No. 2728-VCS

FOURTH AMENDED CONSOLIDATED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs allege upon information and belief, except for paragraph 13 hereof, which Plaintiffs allege upon knowledge, as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action derivatively in the right of and for the benefit of Lear Corporation ("Lear" or the "Company") in connection with the proposed sale of the Company to American Real Estate Partners, L.P. ("AREP"), AREP Car Holdings Corp., and AREP Car Acquisition Corp. (collectively the "AREP Entities") for $37.25 per share (the "Proposed Transaction") pursuant to a merger agreement announced on February 9, 2007 (the "Initial Merger Agreement"), as amended by Amendment No. 1 to the Initial Merger Agreement (the "Amended Merger Agreement"), dated July 9, 2007, to provide for a marginal increase of $1.25 per share in consideration for a wasteful termination provision worth approximately $25 million (the "Termination Provision"). Lear shareholders overwhelmingly voted against the transaction on July 16, 2007, and the negative vote triggered the $25 million Termination Provision payout to AREP.

2. Defendants Robert E. Rossiter ("Rossiter"), James H. Vandenberghe ("Vandenberghe"), David E. Fry ("Fry"), Vincent J. Intrieri ("Intrieri"), Conrad Mallett ("Mallett"), Larry W. McCurdy ("McCurdy"), David P. Spalding ("Spalding"), James A. Stern ("Stern"), Richard F. Wallman ("Wallman"), and Henry D.G. Wallace ("Wallace") are directors of Lear (collectively, the "Individual Defendants"). The AREP Entities are controlled by Carl C. Icahn ("Icahn"), who, with his affiliates, began acquiring significant amounts of the Company's

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shares in the spring of 2006 based on a consensus that the Company's market price did not reflect its intrinsic value. Plaintiffs had alleged that the proposed sale of Lear to the AREP Entities pursuant to the Amended Merger Agreement constituted a breach of the fiduciary duties owed by the Individual Defendants to the Company and its shareholders, aided and abetted by the AREP Entities.

3. As plaintiffs previously contended, the terms of the Initial Merger Agreement reflected a preference for the AREP Entities in that the deal actually tilted the playing field in favor of this buyer. For example, as detailed herein, the oppressive terms agreed to in the Initial Merger Agreement effectively eliminated the benefit of any "go-shop" provision of this initial deal, and despite the fact that the Individual Defendants knew that the majority of shareholders would vote against the Amended Merger Agreement, they included terms to enrich Icahn and AREP at the Company's expense and to allow his acquisition of a greater percentage of the Company's shares than Delaware law would otherwise allow.

4. Plaintiffs brought their lawsuits following the public announcement of the Initial Merger Agreement. On February 22, 2007, the Court consolidated the plaintiffs' lawsuits into the above-captioned action (collectively—with its pleadings, motions, and other submissions to the Court, the discovery process, written correspondence and oral communications between the parties concerning this action, hearings before the Court, and the Court's orders and opinions—this "Litigation"). Plaintiffs promptly moved for a preliminary injunction and expedited proceedings to stop the Proposed Transaction. After several conferences with the parties, the Court set a hearing date for February 28, 2007 to hear plaintiffs' motion for expedited proceedings. Plaintiffs filed their Consolidated Complaint on February 23, 2007 and filed their Amended Consolidated Complaint on March 27, 2007.

5. On March 20, 2007, the Company filed a Form PREM14A Preliminary Proxy Statement with the United States Securities and Exchange Commission ("SEC") to solicit the shareholder vote on the Proposed Transaction (the "Preliminary Proxy"). Subsequently, on May 1, 2007, Lear filed Amendment No. 1 to its Preliminary Proxy Statement with the SEC on Form PRER14A. Again, on May 17, 2007, Lear revised its Preliminary Proxy Statement and filed Amendment No. 2 with the SEC on Form PRER14A. On May 23, 2007, Lear filed a Form DEFM14A for the Proposed Transaction (the "May 23 Proxy").

6. By the Order dated June 15, 2007, the Court granted, in part, plaintiffs' Motion for Preliminary Injunction, finding that plaintiffs were likely to succeed on their claim that defendants failed to fully and fairly disclose the fact that Defendant Rossiter had threatened to retire in November 2006 in order to secure his pension and his equity interest in the Company, that the Company had spent considerable time and effort to prevent him from retiring early, and that the Initial Merger Agreement presented the most ideal solution for Rossiter's personal financial concerns. The Court mandated the disclosure of this information, and Lear filed with the SEC Supplement No. 1 to its May 23 Proxy on June 18, 2007 ("June 18 Supplement") along with a Form 8-K with the Court's opinion and a letter from one of the last remaining potential bidders criticizing the go-shop process and the promptness and completeness of information provided by the Company. As a result of these disclosures, the Court allowed the vote, which was scheduled for June 27, 2007, to proceed.

7. On June 19, 2007, Institutional Shareholder Services ("ISS"), an influential shareholder advisory organization, joined the chorus of critics of the Initial Merger Agreement when it issued a report encouraging Lear shareholders to vote against the deal. In its report, ISS cited, among other things, the Court's preliminary injunction opinion and its critique of Rossiter's undisclosed conflict of interest. Less than a week before ISS issued its negative report—on June

13, 2007—Reuters had published an article about ISS's powerful influence on shareholder votes on merger agreements, quoting the co-chairman of the proxy solicitation firm Innisfree M&A Inc. in describing ISS as "extremely influential" in this context and stating that an ISS opinion "could move more than 20 percent of a shareholder vote." On June 21, 2007, the Company wrote a letter (the "June 21 Letter") to shareholders addressing concerns raised by ISS and announcing that the vote on the Initial Merger Agreement would be postponed until July 12, 2007. According to the June 21 Letter, the purpose of the delay was to give shareholders additional time to consider the Company's response to ISS's criticisms. The Company filed the June 21 Letter with the SEC as a Schedule 14A proxy statement on Form DEFA14A on June 22, 2007. In fact, Lear management had realized by June 21, 2007 that the Initial Merger Agreement would not be approved by the shareholders and that they needed a delay to develop a plan to save their deal.

8. On July 9, 2007, Lear announced that it had approved the Amended Merger Agreement and filed Supplement No. 2 to its May 23 Proxy (the "July 9 Supplement") explaining the new terms:

> On July 9, 2007, we, together with Parent and Merger Sub, entered into Amendment No. 1 to the merger agreement . . . , which amends the merger agreement to increase the consideration payable to Lear stockholders from $36.00 per share to $37.25 per share, in each case in cash, without interest and less any applicable withholding tax. The amendment also provides that if the requisite stockholder vote for the merger is not obtained on or prior to July 16, 2007, subject to certain exceptions, the Company will pay Parent $12.5 million, issue to Parent 335,570 shares of the Company's common stock and increase from 24% to 27% the share ownership limitation under the waiver of Section 203 of the Delaware General Corporation Law (the "DGCL") previously granted by the Company to Icahn affiliates.

At a claimed value of $37.25 per share, the 335,570 shares of Lear common stock owed to Icahn in the event of termination equaled $12,499,982, creating an effective $25,000,000 termination fee if the deal were voted down. Pursuant to Section 2.07 of the Amended Merger Agreement, the consideration the Company paid to the AREP Entities can be credited against any fees and

expenses the Company would otherwise be obligated to pay the AREP Entities in the event the Proposed Transaction was rejected and the Company entered into an alternative transaction within the twelve-month "tail" provided in the Merger Agreement.

9. As alleged in more detail herein, the Individual Defendants breached fiduciary duties owed to the Company by entering into the Amended Merger Agreement without further evaluation and despite their knowledge that the Amended Merger Agreement faced almost certain rejection by Lear's shareholders.

10. On July 16, 2007, the shareholders rejected the Amended Merger Agreement, by an overwhelming vote of 50.4% "against" and 29% "for" the Amended Merger Agreement. Because a shareholder's failure to vote carried the same effect as a vote against the Amended Merger Agreement, 71% of shareholders effectively voted against the transaction. Of the 22,208,407 votes in favor of the Amended Merger Agreement, approximately 57% were cast by AREP and Icahn and the directors. Thus, approximately 13% of the public non-affiliated shareholders voted for the deal. For this, the Company has paid $12,500,000 and issued 335,570 shares of Lear stock to AREP as required by the Termination Provision. The 335,570 shares of Lear stock had an approximate value of $12.6 million as of the close of trading on July 16, 2007. Plaintiffs bring this action in the right of and for the benefit of the Company to seek redress for the Individual Defendants' breaches of their fiduciary duty of good faith in approving the Amended Merger Agreement.

11. Furthermore, prior to approving the Amended Merger Agreement, the Individual Defendants failed to secure an evaluation of the fairness of the deal from either of the Company's financial advisors, but instead relied on the advisors' statements that conditions for the automotive industry as a whole had not improved. The fact that AREP's financial advisor, Morgan Joseph, was able to complete an evaluation ahead of the July 9, 2007 approval of the

Amended Merger Agreement makes the unreasonableness of the Individual Defendants' cursory evaluation all the more apparent. As demonstrated herein, the Individual Defendants approved the Amended Merger Agreement without scrutiny or thoughtful deliberation and despite their knowledge that the proposed increase in per-share consideration would be insufficient to secure shareholders' support of the deal.

12. In fact, it now appears that the Individual Defendants approved the Amended Merger Agreement with actual knowledge that the $37.25 offering price was inadequate and unfair. During a presentation at the Gabelli & Company, Inc., Auto Aftermarket Symposium (the "Gabelli Conference"), held on October 31, 2007, James Vandenberghe, Lear's Vice Chairperson and then-Interim CFO, stated that he and the Company agreed with the prior assessments of Richard S. Pzena ("Pzena") – an owner of as much as 16% of Lear's shares at one time – that Lear's stock was worth $60 per share. Vandenbenghe stated at the Gabelli Conference:

> We didn't have any difference of opinion [with Pzena]. He thought the stock was work $60 – so did we. We just couldn't get it at the time. That was the problem was what were faced with at [the] time. But, no, there's no issue between [Pzena] and us. They're – I think they're continuing to buy. In fact, they just recently made a – increased their stake.

(Emphasis added.)

THE PARTIES

13. Plaintiffs Classic Fund Management AG ("Classic Fund"), Market Street Securities, and Harry Massie, Jr.,[2] each currently own shares of Lear common stock. Each plaintiff has been the owner of Lear common stock since prior to the wrongs complained of herein. Classic Fund controls the shares pursuant to the laws of Lichtenstein for three funds under its direct control and management. The funds that hold the shares of Lear are not separate legal entities, and the unit holders of the funds do not separately own the underlying stocks in the funds. The funds cannot act separate and apart from Classic Fund, which has exclusive authority

[2] Plaintiffs Classic Fund Management AG and Market Street Securities Inc. have each executed an Affidavit pursuant to Court of Chancery Rule 23.1(b) in connection with the filing of their Fourth Amended Consolidated Shareholder Derivative Complaint.

to buy or sell the Lear shares, vote them, and take legal action in connection with its control over the funds. Classic Fund in no way intended to disclaim its standing to bring this lawsuit by language in its Schedule13G filed with the SEC on April 19, 2006 or previous filings, and Classic Fund filed an amended Schedule 13G on May 30, 2007 to clear up any confusion in this regard.

14. Defendant Lear is a Delaware Corporation that provides automotive interior systems worldwide. The company currently has two core product segments: (1) Seating and (2) Electronic and Electrical. The Seating segment includes seat systems and the components thereof. The Electronic and Electrical segment includes electronic products and electrical systems distribution, primarily wire harnesses and junction boxes; interior control and entertainment systems; and wireless systems. As of May 23, 2007, the Company had 76,685,623 shares of common stock outstanding. Lear Corporation serves automotive and light truck markets. The Company was founded in 1917 and maintains its principal offices at 21557 Telegraph Road, Southfield, Michigan 48034.

15. The Company's long-term profitability reportedly comes from the seating business. Unlike other businesses in the auto supply chain, seating has historically been a profitable industry. Two major players—Lear and Johnson Controls—have 80% market share, which is split evenly. The business does not require heavy capital spending, and seats, because of their bulkiness, cannot be shipped very far, which further limits competition. Lear had $12 billion in revenue in this business last year, and historically has seen mid-single-digit growth. Lear is also a major player in the electronics business, with $3 billion in revenue and margins in the upper single digits. The interiors business, which Lear disposed of last year, had been losing money in recent years.

16. Defendant Rossiter is the Chairman of the Board of Lear, a position he has held since January 1, 2003. Defendant Rossiter has been a Director of the Company since 1988 and

serves as the Company's Chief Executive Officer, a position he has held since October 2000. Defendant Rossiter served as President of the Company from 1984 until December 2002 and served as Chief Operating Officer from 1988 to April 1997 and from November 1998 to October 2000. Defendant Rossiter also served as the Company's Chief Operating Officer, International Operations, from April 1997 to November 1998.

17. Defendant Fry is and has been a director of Lear since August 2002. He has also been the President and Chief Executive Officer of Northwood University since 1982. Additionally, Defendant Fry serves as a director of Reynolds and Reynolds Company, Decker Energy International, and Chemical Bank and Trust Co. (Midland, Michigan). Defendant Fry is also a director and member of the executive committee of the Automotive Hall of Fame and past Chairman of the Michigan Higher Education Facilities Authority.

18. Defendant Intrieri is and has been a director of Lear since 2006. Defendant Intrieri has been affiliated with Icahn Associates Corp. since 1998. Defendant Intrieri has been a director of American Property Investors, Inc., the general partner of American Real Estate Partners, L.P., both affiliates of Icahn since July 2006. Since November 2004, Defendant Intrieri has been Senior Managing Director of Icahn Partners LP and Icahn Partners Master Fund LP, private investment funds controlled by Mr. Icahn. From 1998 to March 2003, Defendant Intrieri served as portfolio manager for Icahn Associates Corp. Defendant Intrieri also serves as the Senior Managing Director for other entities owned and controlled by Mr. Icahn. He is the President and Chief Executive Officer of Phillip Services Corporation, a director of American Railcar Industries, Inc., and a director of XO Holdings, Inc., each affiliated with Icahn. He is also chairman of the board of Viskase Companies, Inc., a public company in which Icahn holds an interest.

19. Defendant Mallett is and has been a director of Lear since August 2002, and has been the President and CEO of Sinai Grace Hospital since August 2003. Prior to his current position, Justice Mallett served as the Chief Administrative Officer of the Detroit Medical Center beginning in March 2003. Previously, he served as President and General Counsel of Hawkins Food Group LLC from April 2002 to March 2003 and Transition Director for Detroit Mayor Kwame M. Kilpatrick and Chief Operating Officer for the City of Detroit from January 2002 to April 2002. From August 1999 to April 2002, Justice Mallett was General Counsel and Chief Administrative Officer of the Detroit Medical Center. Justice Mallett was also a Partner in the law firm of Miller, Canfield, Paddock & Stone from January 1999 to August 1999. Justice Mallett was a Justice of the Michigan Supreme Court from December 1990 to January 1999 and served a two-year term as Chief Justice beginning in 1997. Justice Mallett also serves as a director of TechTeam Global, Inc. and serves as a General Board Member of the Metropolitan Detroit YMCA.

20. Defendant McCurdy is and has been a director of Lear since 1988. In July 2000, Defendant McCurdy retired from Dana Corporation, a motor vehicle parts manufacturer and after-market supplier, where he had served as President, Dana Automotive Aftermarket Group, since July 1998. Defendant McCurdy was Chairman of the Board, President and Chief Executive Officer of Echlin, a motor vehicle parts manufacturer, from March 1997 until July 1998 when it was merged into Dana Corporation. Prior to his work for Echlin, Defendant McCurdy was Executive Vice President, Operations of Cooper Industries, a diversified manufacturing company, from April 1994 to March 1997. Defendant McCurdy also serves as a director of Mohawk Industries, Inc., as well as the non-executive Chairman of Affinia Group Inc., a privately held supplier of after-market motor vehicle parts. McCurdy chairs the Special Committee established by the Lear Board on January 25, 2007 and delegated with the responsibility of reviewing,

evaluating, and negotiating any proposed Icahn transaction. McCurdy also serves on the Executive Committee with defendants Stern, Wallace, Parrott, Rossiter, and Spalding; on the Compensation Committee with defendants Wallman, Mallett, and Spalding; and chairs the Audit Committee, serving on that committee with defendants Stern, Wallace, and Wallman.

21. Defendant Parrott is and has been a director of Lear since February 1997. In January 2003, Defendant Parrott retired from Metaldyne Corporation where he served as President of Business Operations since December 2000. Metaldyne Corporation—an integrated metal solutions supplier—purchased Simpson Industries, Inc., in December 2000. Defendant Parrott was the Chief Executive Officer of Simpson Industries, Inc., from 1994 to December 2000 and Chairman of Simpson Industries, Inc., from November 1997 to December 2000.

22. Defendant Spalding is and has been a director of Lear since 1991. Defendant Spalding has been a Vice Chairman of The Cypress Group L.L.C., a private equity fund manager, since 1994. Defendant Spalding is also a director of AMTROL, Inc., Republic National Cabinet Corporation, and Cooper-Standard Automotive Inc.

23. Defendant Stern is and has been a director of Lear since 1991. Defendant Stern is Chairman of The Cypress Group L.L.C.—a private equity fund manager—a position he has held since 1994. He is also a director of Affinia Group Inc., AMTROL, Inc., WESCO International, Inc., and MedPointe Inc. Stern serves on the Special Committee established by the Lear Board on January 25, 2007 and delegated with the responsibility of reviewing, evaluating, and negotiating any proposed Icahn transaction. He also chairs the Executive Committee, serving on that committee with defendants McCurdy, Wallace, Parrott, Rossiter, and Spalding; chairs the Nominating and Corporate Governance Committee, serving on that committee with defendants Mallett and Fry; and serves on the Audit Committee with defendants McCurdy, Wallace, and Wallman.

24. Defendant Wallman is and has been a director of Lear since November 2003. Defendant Wallman has more than 25 years of executive-level operations and financial oversight experience, most recently as Senior Vice President and Chief Financial Officer of Honeywell International, Inc., from 2000 to 2003 and of AlliedSignal, Inc., from 1995 to 1999. He has also held positions with International Business Machines Corporation, Chrysler Corporation, and Ford Motor Company ("Ford"). Defendant Wallman also serves as a director of Hayes-Lemmerz International, Inc., Ariba, Inc., Avaya Inc., and ExpressJet Holdings, Inc.

25. Defendant Wallace is and has been a director of Lear since February 2005. Defendant Wallace worked for 30 years at Ford Motor Company until his retirement in 2001 and held several executive-level operations and financial oversight positions, most recently as Group Vice President, Mazda & Asia Pacific Operations in 2001, Chief Financial Officer in 2000 and Group Vice President, Asia Pacific Operations in 1999. Defendant Wallace also serves as a director of AMBAC Financial Group, Inc., Diebold, Inc., and Hayes-Lemmerz International, Inc. Stern serves on the Special Committee established by the Lear Board on January 25, 2007 and delegated with the responsibility of reviewing, evaluating, and negotiating any proposed Icahn transaction. He also serves on the Executive Committee with defendants Stern, McCurdy, Parrott, Rossiter, and Spalding.

26. Defendant Vandenberghe was the Company's Interim Chief Financial Officer, a position he has held from March 10, 2006 to October 1, 2007, and was recently named the Company's Vice-Chairman. Defendant Vandenberghe is and has been a director of Lear since 1995 and Vice Chairman of Lear since November 1998. He served as Lear's President and Chief Operating Officer–North American Operations from April 1997 to November 1998. He also served as the Company's Chief Financial Officer from 1988 to April 1997 and as Executive Vice President from 1993 to April 1997.

27. As directors of the Company, the Individual Defendants, referred to in paragraphs 16 through and including 26, are in a fiduciary relationship with the Company, plaintiffs, and the other public shareholders of Lear. Accordingly, the Individual Defendants owe these constituents the highest obligations of good faith, fair dealing, due care, loyalty, and full and candid disclosure.

28. The Company's filings with the SEC reveal that insiders dominate the Company's Board. For example, Intrieri is a close associate of Icahn and serves as his nominee on the Board. Rossiter (Vice-Chairman and CEO) and Vandenberghe (Vice-Chairman and then-interim CFO) were supposed to continue to serve as senior management with the Company following completion of the Proposed Transaction at substantial levels of compensation. Since at least November 2006, Rossiter has been seriously concerned about the security of his accumulated net assets, which are linked to Lear in various ways—held in an unsecured Supplemental Retirement Program ("SRP" or "SERP" for Supplemental Executive Retirement Program), stock, stock options, and other interests. Rossiter approached McCurdy in November 2006 seeking help securing his Lear SRP, which Rossiter feared was unfunded and vulnerable to the Company's general creditors. That SRP is worth approximately $10,400,000, and he has various forms of stock interests in Lear worth approximately $11,500,000 (at $36 per share). Although Rossiter could secure his SRP by retiring from the Company at any time and demanding a lump-sum payment, doing so would require him to forfeit his $2,500,000 yearly compensation while subjecting his $10,400,000 SRP to ordinary income taxes and associated lost opportunity costs. Retiring precipitously would also further shroud Lear in uncertainty and threaten the value of his $11,500,000 equity interest in the Company. Vandenberghe faces a similar option and has suggested that he may retire soon as well.

29. The Company also employs Parrott's daughter, who earned $126,866 in 2005. The Company also employs Michael Spalding, the brother of Defendant Spalding, as a Senior Account Manager at Lear's DaimlerChrysler Division. In 2005, the Company paid Michael Spalding $99,442. Until February 2005, Defendant Rossiter served as a Trustee of Northwood University, of which Defendant David E. Fry is President and Chief Executive Officer. Lear actively recruits employees from Northwood and has sponsored automotive programs at Northwood.

30. Defendant AREP is a Delaware limited partnership engaged in the gaming, real estate, and home fashion businesses. AREP maintains its headquarters at 767 Fifth Avenue, Suite 4700, New York, New York 10153. Icahn controls AREP. He is the Chairman of the Board of Directors of American Property Investors, Inc., the General Partner of AREP. In addition, Intrieri also is a director of AREP.

31. Defendant AREP Car Holdings Corp. is a Delaware corporation formed February 1, 2007 to effect the Proposed Transaction. AREP Car Holdings Corp.'s registered agent in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

32. Defendant AREP Car Acquisition Corp. is a Delaware corporation formed February 1, 2007 and is a wholly owned subsidiary of AREP Car Holdings Corp. AREP Car Acquisition Corp.'s registered agent in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

DERIVATIVE ALLEGATIONS

33. Plaintiffs bring this Action derivatively in the right and for the benefit of the Company pursuant to Delaware Chancery Court Rule 23.1 to redress injuries suffered and to be

suffered by the Company as a result of the breaches of fiduciary duty by the Individual Defendants.

34. Plaintiffs will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights, and they have retained counsel experienced in litigating these types of actions.

35. Plaintiffs are owners of Lear shares and were owners of Lear stock during all times relevant to the Individual Defendants' wrongful course of conduct as alleged herein.

36. As a result of the facts set forth herein, plaintiffs have not made any demand on the Company's Board of Directors to institute this action. Such demand would be a futile and useless act because, for the reasons herein, the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

SUBSTANTIVE ALLEGATIONS

The Company Is and Has Been Poised for Future Growth

37. The Company has performed particularly well as reflected by its most recent financial performance. On August 2, 2007, the Company reported for the second straight quarter that earnings had exceeded expectations and revised upward its full-year 2007 outlook for the second time since approving the Initial Merger Agreement on February 9, 2007. The Company issued its previous upward revision on April 25, 2007. Since January 26, 2007, the Company's expected core operating earnings have increased from an estimated $560 to $600 million to an estimated $580 to $620 million to its current estimate of $600 to $640 million. As Rossiter explained in an August 2, 2007 press release, the improved financial results represent the culmination of restructuring activities that began well over a year ago: "[t]he Lear team was able to deliver improved financial results as benefits from restructuring activities, ongoing cost and

efficiency actions and new business globally more than offset lower production in North America."

38. These recent results are consistent with the outlook provided by the Company in July 2006. On July 28, 2006, the Company issued a press release reporting record net sales of $4.8 billion and pretax income of $31.5 million, which included costs related to restructuring actions, impairments, and other special items of $24.0 million. The Company's net sales were up from the prior year, primarily reflecting the addition of new business globally, offset in part by lower production on several Lear platforms in North America and Europe. Operating performance improved in comparison to the previous year primarily due to the increase in net sales as well as benefits from cost and operating efficiencies in the Company's core businesses. The July 28, 2006 press release also stated in relevant part the following:

> Lear also made progress on important strategic initiatives, including the signing of a definitive agreement to contribute substantially all of its European Interiors business to International Automotive Components Group, LLC in return for a 34% equity interest, subject to adjustment, and the Company continued to aggressively expand its business in Asia and with Asian automakers globally.
>
> During the quarter, Lear was awarded several new programs in China, and in India, Lear won its first business with Tata Motors. In addition, Lear opened a new TACLE joint venture facility in Sunderland, England with its Japanese partner Tachi-S, to support future vehicle programs with Nissan in Europe. This is Lear's third TACLE joint venture facility, including a plant under construction in Mt. Juliet, Tennessee to serve Nissan in North America and a facility in China to serve Asia. Lear's plant in Montgomery, Alabama is ramping up to full production to supply seats for the all-new Hyundai Santa Fe sport utility vehicle and another new location in San Antonio, Texas will be supplying interior trim for the 2007 Toyota Tundra.

(Emphasis added.)

39. In this same July 28, 2006 press release, Defendant Rossiter stated in relevant part:

> The Lear team remains focused on improving quality and ensuring flawless launch execution while we aggressively implement cost improvement and operating efficiency initiatives . . . . Although there are many challenges facing

> our industry, we are taking aggressive actions to address these issues and further improve our operating results. We will continue to be product-line focused; competitive on a global basis; and dedicated to working collaboratively with our customers.

(Emphasis added.)

40. On that same day, the Company also held a publicly accessible conference call with analysts and investors to report its financial results for the second quarter 2006. On that conference call, Defendant Vandenberghe, stated in pertinent part the following:

> [B]ased on our current vehicle production and raw material price forecast, we're holding our full-year 2006 earnings guidance. This reflects our favorable first-half performance, including solid improvement in Seating, continued growth and margin improvement in Asia, ongoing operating efficiency actions and increasing net benefits from our restructuring actions.
>
> * * *
>
> [W]e posted record net sales of 4.8 billion, up about 400 million or 9% from last year. This increase was driven by the addition of new business globally.
>
> Our income before interest, other expenses, and income taxes was 110.3 million compared to 30 million a year ago. The improvement reflects the increase in net sales, operating improvements and lower costs for restructuring actions and other special items. On a pretax basis, our results improved from a loss of 50 million last year to a profit of 31.5 million this year. We did report a net loss of 6.4 million, or $0.10 per share.

(Emphasis added.)

41. On that same July 28, 2006 conference call, Defendant Rossiter also touted the Company's significant quarterly improvements:

> I am extremely proud of what they have accomplished. Earlier this year, we said that our results would improve, and they have. Looking ahead, we expect lower production on our key programs compared to a year ago. We see launch activity and costs moderating in the second half. Also, capital spending returned to more normal levels following peak spending last year. We are forecasting positive free cash flow for the year.

(Emphasis added.)

42. The Company's prospects are also reflected in a presentation entitled "Second-Quarter Results and Full-Year 2006 Financial Guidance," extracted from the Company's website, dated July 28, 2006, which demonstrates the Company's significant increase in growth:

43. On October 17, 2006, the Company announced that it had entered into a definitive agreement to issue $200 million of common stock in a private placement to affiliates of and funds managed by Icahn. The offering included 8,695,653 shares of Lear common stock issued at $23.00 per share. The purchase agreement entered into in connection with the transaction provided Icahn with the right to a representative on the Company's Board of Directors and contained certain other corporate governance terms and conditions with respect to Icahn's ownership position.

44. On October 26, 2006, the Company reported financial results for the third quarter of 2006, guidance for the full year of 2006, and a preliminary outlook for 2007. In the press release, the Company announced net sales of $4.1 billion and a pretax loss of $65.9 million,

including $46.1 million related to restructuring costs and a loss on the divestiture of the Company's European Interiors business. These results were compared with year-earlier net sales of $4.0 billion and a pretax loss of $787.8 million, including $777.7 million related to impairments and restructuring costs.

45. In this same October 26, 2006 press release, Defendant Rossiter stated in relevant part as follows:

> In response to very challenging industry conditions, we are continuing to aggressively implement cost reduction and restructuring actions to improve future profitability. Margins in our Seating business are showing solid improvement, and the actions we are taking to improve our manufacturing footprint will benefit our Electronic and Electrical margins in the future. We are also moving forward with our strategy to put in place a new, more sustainable business model for our Interior segment . . . .

(Emphasis added.)

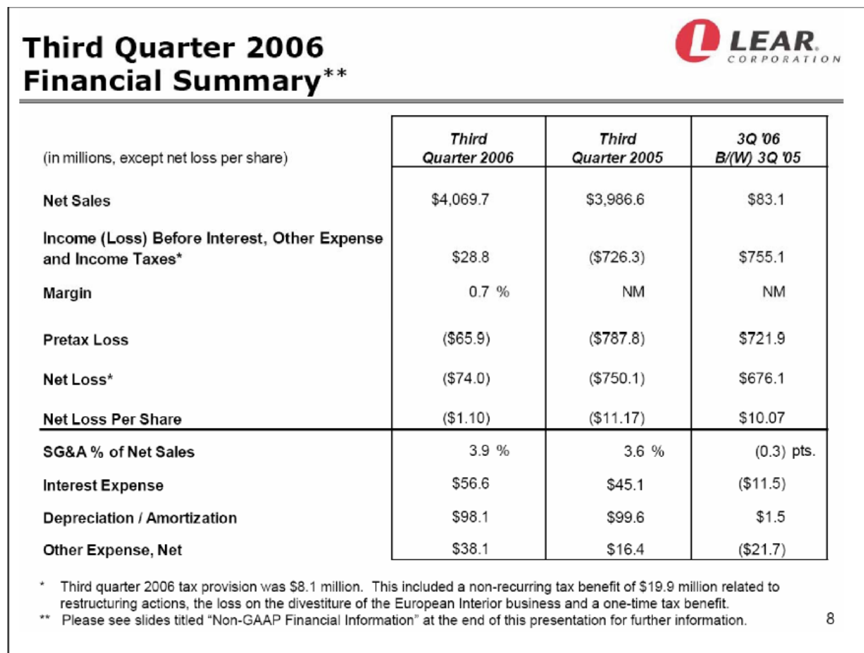
46. On that same day, the Company held a publicly accessible conference call with analysts and investors to report its financial results for the third quarter 2006, during which call Defendant Rossiter made the following statement:

> We're continuing to restructure our North American business. Our plan is being implemented and is on track. We're streamlining our business to become more competitive in the future. And the fact that the industry conditions are so tough right now, really says that we're on the right track. Recently, also we announced that an agreement to sell stock to one of our major investors, the Icahn Group. They see significant value in Lear and we saw an opportunity to improve our financial flexibility and [it] also gives us the opportunity to look at opportunities to strengthen our core business going forward. We are growing our business in Asia as we planned, and we're also improving our footprint globally with Asian producers and low cost country sourcing. And on the new technology front, Lear introduced the first solid-state smart junction box. It is a new product that enhances functionality and at the same time significantly lowers cost. I feel good about where we're going and the things that we're doing. Our core values have not changed.
>
> I think it does give Lear a competitive advantage. I have to tell you today, we know that we're the highest quality producer of products in our segments and we also believe that we provide the best customer satisfaction and our goal is to maintain our competitive advantage going forward. From a restructuring standpoint, we have significant things that we have completed already. And we

> expect to upgrade so that we can compete in the future and this industry is changing and I believe it provides us opportunity, but also the actions we're taking will make us more competitive.

(Emphasis added)

47. The Company's prospects were also explained in a presentation entitled "Third-Quarter 2006 Results, Fourth-Quarter 2006 Guidance, and a Preliminary Outlook for 2007," extracted from the Company's web-site, dated October 26, 2006, which demonstrated the Company's significant increase in net sales, income, margin and a significant decrease in pre-tax loss:



Third Quarter 2006 Financial Summary**

LEAR CORPORATION

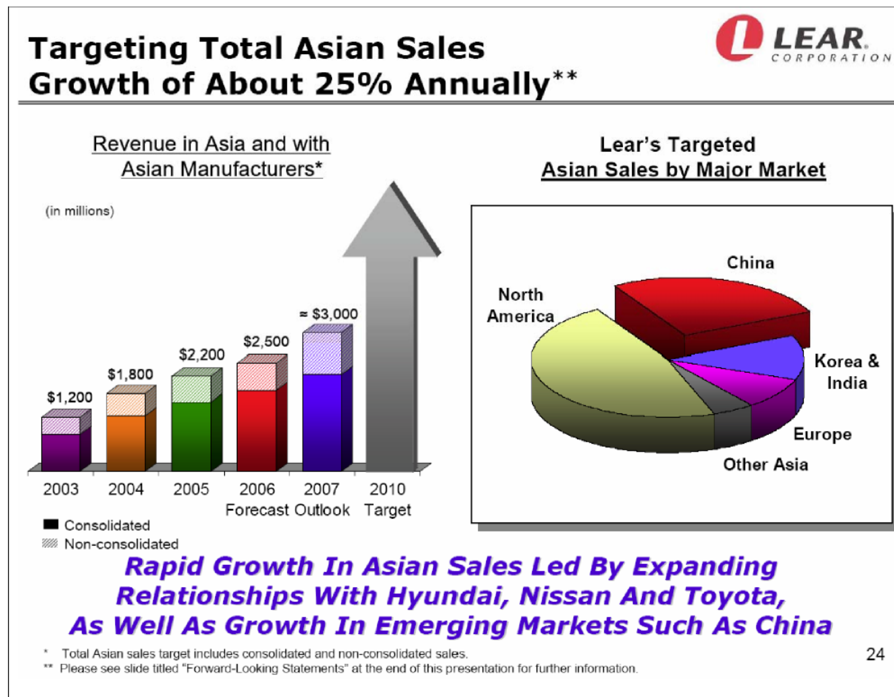
(in millions, except net loss per share)	*Third Quarter 2006*	*Third Quarter 2005*	*3Q '06 B/(W) 3Q '05*
Net Sales	$4,069.7	$3,986.6	$83.1
Income (Loss) Before Interest, Other Expense and Income Taxes*	$28.8	($726.3)	$755.1
Margin	0.7 %	NM	NM
Pretax Loss	($65.9)	($787.8)	$721.9
Net Loss*	($74.0)	($750.1)	$676.1
Net Loss Per Share	($1.10)	($11.17)	$10.07
SG&A % of Net Sales	3.9 %	3.6 %	(0.3) pts.
Interest Expense	$56.6	$45.1	($11.5)
Depreciation / Amortization	$98.1	$99.6	$1.5
Other Expense, Net	$38.1	$16.4	($21.7)

* Third quarter 2006 tax provision was $8.1 million. This included a non-recurring tax benefit of $19.9 million related to restructuring actions, the loss on the divestiture of the European Interior business and a one-time tax benefit.
** Please see slides titled "Non-GAAP Financial Information" at the end of this presentation for further information.

8

48. The October 26, 2006 presentation also projected the Company's significant sales growth from 2003 to 2010 in China. As reflected below, the Company's sales in China are projected to increase about 30% annually:

49. As reflected below, the Company also reported that its Asian sales would grow at around 25% annually:



50. On January 25, 2007, the Company reported net sales of $4.3 billion. The Company's fourth-quarter free cash flow was $254.4 million, compared with $46.0 million in the fourth quarter of 2005. The improvement reflected primarily lower capital spending and the timing of commercial recoveries. For the fiscal year 2006, the Company reported record net sales of $17.8 billion and a pretax loss of $655.5 million, including a loss of $636.0 million related to the divestiture of the Interiors business, restructuring costs of $99.7 million, and a fourth-quarter loss on the extinguishment of debt of $48.5 million. For 2005, the Company reported net sales of $17.1 billion and a pretax loss of $1.187 billion. Excluding the loss on divestiture, restructuring costs and other special items, the Company had pretax income of $114.7 million in 2006.

51. In this same January 25, 2007 press release, Defendant Rossiter stated in relevant part as follows:

> In a challenging environment last year, we improved our financial results for the full year, improved our liquidity position and took a number of important steps to reposition Lear for future success . . . . We refocused our strategy to manage our business on a product-line basis. We increased our emphasis on new technology and innovation with our Core Dimension™ strategy. We also continued to make steady progress in diversifying our sales on a customer, regional and vehicle segment basis.

(Emphasis added.)

52. On that same day, the Company also held a publicly accessible conference call with analysts and investors to report its financial results for the fourth quarter 2006, during which call, Defendant Rossiter stated in pertinent part the following:

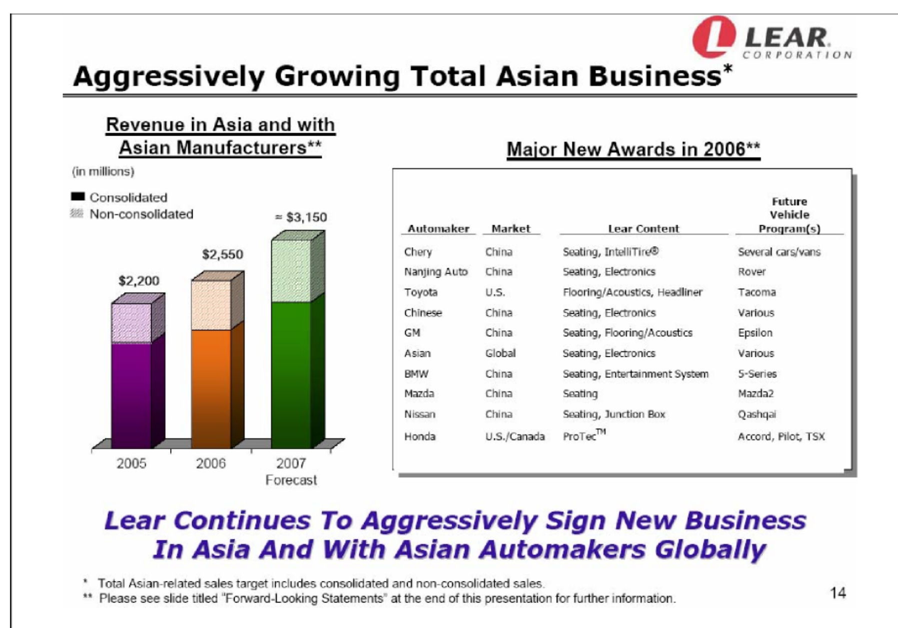
> I'd like to review our highlights from 2006. Environment last year was difficult but we were able to improve our overall financial results, strengthen our liquidity positions and took steps to reposition the Company for the future. As you know, we now manage our business on a product line basis. Our global restructuring initiative has improved our long term competitiveness. These actions have included capacity and census reductions, as well as global footprint actions.
>
> We have also made steady progress in expanding our infrastructure in Asia, and we are growing our business with the Asian producers globally. We further diversified our sales by customer, region, and vehicle basis. Lastly, we

> repositioned our Interiors business for future success, with our agreement to transfer to international automotive components group in return for a minority interest. In summary, I believe we accomplished a great deal in 2006 and a difficult environment. We've improved our financial flexibility and our competitive position.

(Emphasis added.)

53. Once again, the Company issued a presentation entitled "Fourth-Quarter/Full Year 2006 Results and 2007 Financial Guidance," extracted from the Company's web-site, dated January 25, 2007, which demonstrates the Company's significant increase in net sales and core operating earnings.

54. Also, the January 25, 2007 presentation reported the Company's significant increase in new business in Asia:



Automaker	Market	Lear Content	Future Vehicle Program(s)
Chery	China	Seating, IntelliTire®	Several cars/vans
Nanjing Auto	China	Seating, Electronics	Rover
Toyota	U.S.	Flooring/Acoustics, Headliner	Tacoma
Chinese	China	Seating, Electronics	Various
GM	China	Seating, Flooring/Acoustics	Epsilon
Asian	Global	Seating, Electronics	Various
BMW	China	Seating, Entertainment System	5-Series
Mazda	China	Seating	Mazda2
Nissan	China	Seating, Junction Box	Qashqai
Honda	U.S./Canada	ProTec™	Accord, Pilot, TSX

<u>The Company Stabilized Itself in 2006</u>

55. As evidenced by the First and Second Quarter 2007 earnings reports with their consecutive upward revisions, Lear had positioned itself to continue to remain competitive by July 2006. Among the successful moves that Lear's management had taken included refinancing certain near-term debt obligations that staved off the specter of bankruptcy, in addition to

investments in the Company's manufacturing infrastructure. These moves, and other factors, made Lear an attractive acquisition candidate by placing it on stable financial footing.

56. By the time the Board approved the Initial Merger Agreement, Lear's management had been actively restructuring the business for two years, and the Company had been poised to return to its previous levels of profitability since July 2006, when Lear announced that it had entered into a joint venture with International Automotive Components Group, LLC ("IAC") to contribute substantially all of Lear's European Interiors Systems Division ("ISD Europe") to IAC in exchange for a 34% equity interest in IAC. The ISD Europe transaction closed on October 17, 2006 and was followed by Lear's disposal of its North American Interiors business on or about March 31, 2007, through another joint venture with IAC.

57. Lear's divestiture of its money-losing Interiors business was an important step in revitalizing the financial health of Lear. Indeed, Stephen Worth ("Worth")—a representative of Lear's financial advisor, Evercore Partners ("Evercore")—has testified that the divestiture of the Interiors business made the Company "stronger" going forward and removed a significant distraction to Lear's management. Through that divestiture, Lear achieved the ability to concentrate on its more profitable Seating and Electronics and Electrical businesses.

58. To that end, Lear also implemented a long-range plan to return to its historical levels of profitability. This long-range plan included a restructuring of the Company's Seating and Electrical businesses. Worth has testified that the effect of the restructuring will be "quite positive" for the Company going forward. REDACTED

REDACTED

REDACTED

59. REDACTED

REDACTED

60. A filing with the SEC by Pzena, one of the Company's largest shareholders, confirmed that the Company was poised for financial growth when the Board approved the Initial Merger Agreement. According to Pzena, in the seating business, operating margins excluding restructuring costs rebounded to 5.6% in 2006 from 3.2% in 2005. Both Pzena and Company management agreed that normal margins were between 6% and 7%. Pzena believed that margins were likely to return to historical levels as the product mix improved and raw material price increases were either passed on and/or the price of raw materials began to decline. Lear itself, as recently as late last year, predicted a return to normal margins in 2008. In the electronics business, operating margins remained depressed at 4.9%, whereas normal margins were approximately 7%.

61. According to Pzena, several factors would enable Lear to return to normal margins. The first was raw material prices. Lear would obviously benefit if raw material prices fell. However, even if they did not, Pzena said that the Company would also be able to pass through a portion of those price increases to customers as its two main competitors expected to

do. Lear would also benefit from the end of a series of restructurings that cost $300 million over the past two years. In addition, the Company would get a boost from an estimated $1.2 billion in tax loss carry-forwards, which Pzena believed had a net present value in excess of $4 a share. In addition, Lear's interest in the joint venture to which it sold its interiors business had more than $4 per share in value.

62. According to Pzena, Lear should grow revenue roughly 2% per year for the remainder of the decade. However, Lear has had several different revenue growth estimates in the past few months. In July 2006, Lear management told the Company's Board that there would be almost no revenue growth for the next three years. Three months later, Lear told investors at an investor conference in Europe that it was targeting 5% annual sales growth. Then, according to Pzena, after Lear began negotiating with Icahn, management told the Board it expected revenue to fall an average of 3% a year over the next three years. As easily manipulated internal projections changed, a lower growth rate justified a lower deal price.

63. To the contrary, Pzena's analysis pointed to roughly $16 billion in revenue over the same time. With that modest growth rate, Lear's earnings could accelerate rapidly over the next few years. The Company could expect to earn more than $4 per share in 2009, compared with a loss of $1.50 in 2006 and a profit of $2.04 per share in 2007, as expected by the consensus of Wall Street analysts.

64. Pzena continued, "Lear itself appears to share our optimistic view of the future." In a presentation to analysts in January, the Company said its main priority was to return the business to historic levels of operating margins and free cash flow. The Company said it expected to get $125 million in annual savings from its recent restructuring. It also predicted that seating margins would improve to the mid 5% level, that electronics margins would rise to between 5.5% and 6%, and that it would have solidly positive free cash flow. The Company was

guiding to between $560 million and $600 million in core operating earnings for 2007 at the time the Board approved the Initial Merger Agreement.

Icahn's Investments in Lear and an Inquiry from Another Potential Buyer

65. Given the Company's potential upside relative to the market price of its common stock (among other reasons), Icahn began exploring the possibility of acquiring an interest in the Company in or around early 2006. According to Intrieri—Icahn's principle lieutenant—Icahn and his affiliates had identified Lear as a company that had significant upside value. Intrieri has testified that, around that time, the Company was trading around $17 per share. Icahn believed that Lear was "distressed," but had the opportunity "to refinance its bank debt, increase [its] bank line, and therefore could avoid bankruptcy." Accordingly, in Icahn's view, the market was undervaluing the Company's stock, and during the spring of 2006, Icahn made a significant, initial investment in the Company, buying approximately $100 million of Lear shares in the open market.

66. The Company's reaction to Icahn's investment was one of alarm. Rossiter was "scared" about Icahn's investment. Nonetheless, the Company took no steps to implement any defensive measures to guard against the aggressive corporate tactics for which Icahn has been known. Rossiter has testified that, despite his fear of Icahn, he refused to implement a poison pill, stating, "Hey, look, if somebody wants to come after the board and management agreed that if somebody wanted to come after the company, that we should not try to stop them from coming after the company."

67. REDACTED

REDACTED

REDACTED

REDACTED Although the Board purportedly was discussing "strategic alternatives" as early as November 2005, neither Rossiter nor anyone else on the Board initiated an active market check.

68. By October of 2006, Icahn had increased his stake in the Company to approximately ten percent of Lear's outstanding shares. Icahn then decided that he wanted to increase his position even further. Leading up to that decision, Icahn had been actively monitoring his investment in Lear. In management meetings (held at Icahn's request), Icahn apparently stated his continuing belief that Lear's stock was undervalued. Accordingly, Icahn indicated an intention to management to "substantially increase his equity interest in Lear."

69. Icahn informed the Company that he intended to make a Hart-Scott-Rodino filing on October 10, 2006, reflecting his intention to acquire up to $500 million of Lear common stock.[3] Icahn requested that the Company waive the statutory protections provided in Section 203 of the Delaware General Corporation Law ("Section 203"). Initially, Icahn requested that there be no conditions imposed on the Section 203 waiver, except for a cap on his equity interest (in the range of twenty to twenty-five percent). According to Intrieri, however, Icahn originally did not want any cap on his equity interest (suggesting that he had designs on acquiring the Company

[3] A Hart-Scott-Rodino filing is required once a stockholder reaches a ten percent equity interest.

even as early as October of 2006). The cap had to be negotiated by the Company's general counsel, Daniel Ninivaggi ("Ninivaggi").

70. Initially, Icahn approached the Company regarding the Section 203 waiver because of a desire to purchase more stock in the open market. Rossiter, however, seized on the opportunity as a way to firm up the Company's balance sheet and, ostensibly, make the Company a better takeover target. According to his testimony, Rossiter believed that the infusion of capital from an investment by Icahn would allow Lear to make certain acquisitions to build its business.[4] According to Rossiter, he then took back to the Board the idea of an Icahn stock purchase directly from the Company. The Board's response to a proposed issuance of stock equal to approximately 15% of the Company's outstanding equity was to form the Special Committee—the same Special Committee that eventually "negotiated" the Initial Merger Agreement on behalf of the Company's public shareholders.

Rossiter's Desire to Secure His Net Worth

71. Rossiter strongly desired to have the Company bought out in order to secure his net worth, which was linked to Lear's success or failure. Although the CEO stated that he favored privatization "[j]ust to get out of the public arena," he was compelled to secure his accumulated wealth linked to Lear, and Lear's going private represented the optimal solution. According to Towers Perrin presentations received from the consulting firm via subpoena, Rossiter's chief concern was losing his Supplemental Retirement Program benefits to the Company's creditors and that the remainder of his accumulated wealth was similarly linked to Lear's success, which was dependent on the health of the automotive sector overall.

[4] It seems notable that Rossiter has testified that the uses for Icahn's investment could include strategic acquisitions. It makes little sense for a company in dire financial straits to be attempting to grow itself though acquisition. Perhaps, as Icahn seems to have recognized, the Company was in a much better financial position than, for example, the Initial Merger Agreement consideration reflected.

72. As of February 2007, Rossiter's net worth linked to Lear consisted of approximately $11,500,000 in equity and $10,400,000 in his SRP benefits. He could not withdraw his $10.4 million pension without penalty until he was age 65, and from his perspective, those funds represented unsecured and unfunded promises. He could not cash in his stock because of blackout periods and his fear that his sale of Lear stock would give the impression that he had lost faith in the Company. Rossiter's only option to secure these benefits was to retire early and cash out his SRP and sell his stock, but doing so would come at a cost. Not only would he forgo his $2.5 million annual salary, he'd receive considerably less from his SRP. According to Towers Perrin,

> The nonqualified SRP and qualified DB pension benefits that are currently payable to the CEO are subject to significant early retirement reduction (i.e., reduced 9.6% per year before age 65)—This reduction will "wear away" if the CEO continues employment to age 65.

This reduction of 9.6% per year would mean that Rossiter would receive 29% less if he cashed out his SRP in July 2007 rather than waiting until he turned 65 in February 2011.

73. Therefore, Rossiter faced a "Catch-22." He could retire early and secure his SRP by receiving it as a lump-sum payment, but he would forgo future salary compensation at $2,500,000 per year, would have to pay income taxes (as ordinary income) on the entire sum, would suffer the 9.6% per-year early retirement reduction, and would place at risk the value of at least some of his $11,500,000 in stock holdings by adding to the uncertainty surrounding Lear by his precipitous retirement. And he could not cash out his stock without creating the impression that he had lost confidence in the Company, thereby putting at risk the value of his other shares and, perhaps, the security of his retirement funds if the uncertainty was great enough. In essence, Rossiter was trapped and unable to cash out his Lear holdings without somehow harming the Company.

74. Rossiter took these concerns to McCurdy—who would later become the Special Committee Chairman with authority to evaluate and negotiate the Proposed Transaction—sometime in late October or early November 2006 (around the time that the private offering to Icahn increased Lear's share value). REDACTED

REDACTED

REDACTED Without McCurdy's help, Rossiter believed that the only way he could secure his wealth would be early retirement.

75. In an attempt to ameliorate Rossiter's concerns and prevent his early retirement, the Company engaged compensation consultant Towers Perrin to devise solutions that would allow Rossiter to secure his retirement funds without retiring. After meeting with Rossiter, Towers Perrin reported to the Board: REDACTED

REDACTED

76. Eventually, Towers Perrin devised five alternative solutions and proposed each to the Compensation Committee on November 13, 2006. Thereafter, the consultant and the Compensation Committee settled on a preferred solution, and McCurdy and Spalding offered that preferred solution and three alternatives to Rossiter on or about December 15, 2007. After some consideration, Rossiter rejected the proposals and expressed his intent to submit a counter-proposal in mid-January 2007. According to Rossiter, after he realized that all of the proposals

would require public disclosure, he decided against them, resolving instead to make a decision about his retirement during the next several months. He never had to make that decision because, as he explained in his deposition, "it was never brought up again . . . the Icahn offer came." Indeed, just one month after Rossiter rejected the proposals presented by McCurdy and Spalding and around the time they expected to hear back from him with a counter-proposal, the Icahn acquisition idea conspicuously emerged after a private dinner meeting in New York between Rossiter, Icahn, Intrieri, Ninivaggi, and Vandenberghe. The proposed acquisition would solve Rossiter's dilemma in the best manner possible.

<u>A Proposal to Take the Company Private Conspicuously Emerges</u>

77. On January 16, 2007, during a dinner meeting between Rossiter, Ninivaggi, Intrieri, and Icahn in New York, the topic of Icahn's purchasing the Company arose. In his deposition, Icahn recounted the January 16 meeting as follows:

> We were talking, Bob was sort of complaining about the business, about being a public company, about the fact that, you know, the whole industry, people were worried in the industry, you know, about these automotive suppliers, you know. There were bankruptcies, and he was sort of complaining that the suppliers were worried about—customers were somewhat worried. I said, why don't you go private. And he looked at me. I remember that part. I remember he looked at me, said, you know, that might not be a bad idea.

78. According to his testimony, Icahn had not thought about taking Lear private before that January 16 meeting: "I had not thought about it too much before . . . I think it came from his [Rossiter's] words, you know . . . ." Intrieri has also stated that the idea of proposing an acquisition of Lear never occurred to Intrieri before the January 16 dinner meeting.

79. In his deposition, Icahn described the conversation leading up to discussion of a proposed transaction at the January 16 meeting as follows:

> . . . [Rossiter] seemed, I don't know if the word is unhappy is the right word, but he seemed pretty, you know, upset to some extent about the whole industry, what's going on, and about the customers.

> And I said look, you know, do we buy it? It's interesting. I think it should be privatized, because then you get a way, if you have a credibility of like myself in it, or even another private company, somebody very well capitalized, you're not going to have to be worried about the fact that, whether it is true or not, that your suppliers and your customers are worried about what is going to happen to this company, its going the way of Adelphi [sic], you know, and I was saying that. He said you might be right.
>
> But I also said, hey, Bob, if we go further with this—yeah, I remember now, your the guy that has all these X's, you are the guy that knows everything here. I sure wouldn't want it that we just buy it and you're going to leave, you know, because obviously you're going to make some good money from the stock and I wouldn't want you to be leaving. He said, "No, I would stay. I would stay." And that's how I think it came about.

This testimony also alludes to how a potential Icahn transaction would solve Rossiter's problem—he would receive a very large cash payment so that he would not need to work, but because his SRP would be secured with Ichan capital, he would no longer need to retire early.

80. At the January 16 meeting, Rossiter was also careful not to overplay his hand about the Company's future. After candidly describing his impression of the immediate challenges facing the Company presented by the current automotive industry environment and other short-term concerns—including declining production levels, the impact of oil prices on demand for certain of the Company's key platforms, and the uncertainty over Lear's North American customers' upcoming labor negotiations—Rossiter discussed the Company's positive long-term outlook from investment plans in Asia and other growth markets and its restructuring initiatives, particularly in North America and Western Europe.

81. During the same dinner at which the acquisition proposal was first mentioned, Icahn expressed his intention to retain senior management even before he made a formal offer to buy the Company. Icahn apparently told Rossiter, at least, that he would make Rossiter rich for staying to work for him. And as Icahn explained in his deposition, Rossiter agreed to stay:

> But I also said, hey, Bob, if we go further with this – yeah, I remember now you're the guy that has all these X's, you are the guy that knows everything here. I sure wouldn't want it that we just buy it and you're going to leave, you know,

> because obviously you're going to make some good money from the stock and I wouldn't want you to be leaving. He said, "No, I would stay. I would stay." And that's how I think it came about.

During the same conversation, Icahn told Rossiter that he wanted to retain Lear's other top management as well.

<u>The First Imprudent Steps toward a Proposed Merger Agreement</u>

82. Discussions about a potential merger continued for a week between Rossiter, Icahn, Ninivaggi, and Intrieri before Rossiter informed another member of the Board, and the first person he called was McCurdy. In the Court's Order enjoining the vote on the Initial Merger Agreement due to the Individual Defendants' breach of their duty of disclosure, the Court succinctly described the events leading up to the Board's first official action on the proposal:

> Following the January 16 meeting, Rossiter, Icahn, Ninivaggi and Intrieri explored the process by which Icahn could obtain due diligence materials to review in support of a potential bid. The four spoke frequently, and the mood was friendly as Icahn expressed an interest in retaining the existing management of Lear, including Rossiter, Ninivaggi, the company's CFO Vandenberghe, and its COO and President Douglas DelGrosso. Also contributing to the collegial mood was Icahn's indication that he would not proceed with a hostile bid if the Lear board was not open to negotiating with him.
>
> After a week of discussions, on January 23, Rossiter began to inform the other members of the Lear board about the ongoing merger discussions. That day, Rossiter called two of Lear's independent directors, Larry McCurdy and James Stern, to inform them of what had transpired over the previous week. He also involved Lear's outside legal counsel, Ninivaggi's former law firm, Winston & Strawn, in the discussions with Icahn for the first time. The following day, three more of Lear's independent directors—David Spalding, Henry Wallace, and Richard Wallman—were brought into the process, and, on January 25, the full board was convened.
>
> At the January 25 board meeting, Ninivaggi presented the board with the status of the ongoing merger talks because Rossiter was traveling overseas on other business. Once up to speed, the board formed a "Special Committee" to oversee the merger process. As is typical of such committees, the Lear Special Committee was empowered to evaluate and negotiate proposals from Icahn and to consider alternatives thereto. Unlike similar committees in some other contexts, however, the defendants admit that the Lear Special Committee was formed to facilitate swifter responses than could be achieved by the full board, not to act as substitute for conflicted management. The three independent

> directors appointed to the Special Committee—McCurdy (the Committee's chairman), Stern, and Wallace—were selected based on their industry expertise and experience in the merger and acquisition arena.
>
> Upon its formation, the Special Committee did not insert itself or its advisors into the merger negotiations. The Special Committee stood back from the front lines of due diligence and the negotiation of price and other merger terms. Because the Special Committee did not view the Icahn overture as presenting a conflict situation for Rossiter or his subordinates—or at least not one that required the Special Committee to take the lead—it allowed Rossiter to spearhead the negotiations. The Committee believed him to be the most knowledgeable person regarding Lear, as an effective salesman, and thus the best negotiator.

83. At the time of Rossiter's initial discussion with McCurdy about his concerns in November 2006, Lear's stock price would have just risen to the low $30s because, as the May 23 Proxy explains, "[t]he announcement of Lear's private placement of common stock to affiliates of Mr. Icahn on October 16, 2006, caused a sudden increase in the market price of Lear's common stock that was unrelated to any development in Lear's operations, financial condition or business prospects." Rossiter was ready to cash out then, when Lear shares were trading significantly below the Initial Merger Agreement's $36 per-share price, which represented a premium of 55.1% based on the 52-week volume weighted price of Lear common stock as of February 2, 2007.

84. Despite Audit Committee Chairman McCurdy's first-hand knowledge that concerns about the security of his SRP and impediments to cashing out his stock were causing serious financial stress for Rossiter and his family, the Special Committee, as McCurdy testified, allowed Rossiter to head negotiations with Icahn and gave him free rein:

> . . . We were not concerned about conflict of interest at this stage having worked with Mr. Rossiter for many years and understanding that his motives are—have always been for the benefit of the company and also quite honestly Mr. Rossiter had he chosen to leave the company through his retirement programs at the time of the transaction would have made as much money as he would by staying as a continuing employee of the company.
>
> So, we were not concerned about conflict.

85. When asked why the Special Committee did not handle negotiations with Icahn, Rossiter responded as follows:

> Well, because they didn't know him I don't think. But I don't really know. You'd have to ask them that because I was just instructed to carry on the discussions. And I'm the CEO of the company. Their contacts were made through me. I was instructed by the special committee to go back and pursue him. That was it. Or follow up on or answer the questions or whatever. I think that's my job.

86. When, in the weeks that followed, significant shareholder opposition to the price offered in the Initial Merger Agreement became public, it should have been evident to the Individual Defendants that Rossiter, who was ready to cash out his equity at $30 per share, found Icahn's proposed $36 more reasonable than the other shareholders. By receiving a proposed $11,390,821 payout under the Initial Merger Agreement for his equity interest in the Company, anything in the neighborhood of $36 per share represented the financial security that Rossiter had longed for. The Individual Defendants should have evaluated initially and repeatedly—especially after the proposed deal received such opposition from its major shareholders and, in particular, before approving an amendment to the initial deal based only on its evaluation of the initial deal five months later—how the terms of the proposed Initial Merger Agreement represented much-needed financial security to the Company's chief negotiator. They should have considered and evaluated how the deal that Rossiter negotiated may have been influenced by the fact that, through the deal, Rossiter would no longer need to worry about the unfunded promises of his retirement plan or "too much potential risk" from holding a non-diversified auto-sector-dependent portfolio because the former would be secured by Icahn's capital and the latter would be secured in Rossiter's own bank account. The Individual Defendants need only look as far as Rossiter's deposition to understand the concern that he felt for his net worth. In discussing the current state of that industry during his deposition, he stated that "[t]here is too much risk out there, and as a

result, the strategic guys are for the most part really looking at ways to offset their automotive holdings."

87. Because of this risk and Rossiter's financial concerns, which he had made apparent to Icahn, Icahn sensed that Rossiter "really wanted to do the deal" going into the negotiations. Thus, as Ninivaggi explained, "[w]henever Carl [Icahn] called, he wanted to talk to Bob."

There Were No "Negotiations" of the Terms of the Initial Merger Agreement

88. Any "negotiations" about the core terms of the Initial Merger Agreement were one-sided and forced on Lear during two phone calls without any meaningful input from the Board or the Special Committee.

89. On February 2, 2007, during a ten-minute phone call between Rossiter, Ninivaggi, Icahn, and Intrieri, Icahn said that he would pay $35 per share, agree only to a 45-day go-shop, and would require a termination fee of 3% of the equity value of the deal plus up to $20 million in expenses. Icahn's offer was not what the Board was expecting. As early as January 25, 2006, the Board had discussed its desire for a 60-day go-shop period. Based on his analysis of Lear's trading price, Ninivaggi expected the initial offer to be at least $36 to $37 per share. Comments by Rossiter at his deposition suggest that he expected a higher offer as well. Perhaps most telling as to what the Board expected is the fact that on or about the last day in January 2007, Lear management instructed Lear's compensation consultant, Towers Perrin, to run an analysis assuming a purchase price of $38 per share, suggesting that Lear's "take" was $38.

90. Late on the evening of February 2, 2007, during a call of undeterminable length between Rossiter, Vandenberghe, DelGrosso, and a Winston & Strawn lawyer, Icahn upped his offer to $35.25. Rossiter refused that offer. No member of the special committee was on the call because, according to Ninivaggi, "[t]hey had no desire" to be directly involved in the

negotiations. Icahn then raised his bid to $36.00 per share and said he would not raise it again, giving the Company a "take it or leave it" ultimatum. Icahn recounted the conversation as follows: "[s]o, I said, look I'm giving you my best bid, this is it, take it or leave it and then I'm going, it's over, and that was 36." Giving an apt description of the tenor of the "negotiations," Icahn has bluntly testified that he told Rossiter "don't come home tonight and think about whether you can have gotten more. You're not getting any so that was the end of the discussion."

91. The next morning, Rossiter on his own and without anyone else on the line negotiated with Icahn and informed him that the Company wanted a higher offer and a lower termination fee. Rossiter made this assertion even though the Special Committee never gave him specific guidance on how much it wanted him to demand. Icahn refused to budge on price. Ultimately, Icahn agreed to lower the termination fee if the Board approved a superior offer during the go-shop period. As described herein, given the fact that a superior offer could not be realistically negotiated during the 45-day period, Icahn's "concession" was meaningless.

92. At this crucial point in the negotiations, after Icahn threatened to pull his $36 per share offer, Rossiter and Icahn decided the material terms of the Initial Merger Agreement that was approved by the Board. In explaining Icahn's threat in his deposition, Rossiter demonstrated how his short-term financial concerns conflicted with other shareholders' interests and potentially impacted negotiations:

> I was afraid, seriously, at the time that if he dropped out, there was no threat that he'd sell the stock, but I was afraid that he would. And if he did, then I felt that the value that had come to the company as a result of him being in would be lost on the downside. With all the inherent risk out there and everything going bad in the industry, I was afraid that we'd lose this opportunity.
>
> And I didn't understand the go-shop. And they kept trying to explain this go-shop period to me and I really didn't understand it.
>
> But what I took back to the board was I think, one, improved terms and improved price of $36, I felt it established the floor as what I carried to them. Yeah, I want more, I'll continue discussions, keep trying. But I think we ought to listen to this

> guy's offer. And we have a go-shop period on it that gives us ability to find out in the open market if there are any other bidders. If there's more value in the company that we can extract for our shareholders and ourselves. And I thought it gave us the best possible alternative to what we were faced with at that point, which was uncertainty.

93. Through this Litigation, if not before, each of the Individual Defendants must have learned how Rossiter raised concerns about his retirement to McCurdy in November 2006 and how he was so preoccupied with the Company's short-term prospects when negotiating the terms of the Initial Merger Agreement. As Rossiter wrote to Wallman in support of Icahn's October 2006 $200 million investment in Lear, Rossiter feared "[w]e are a sick company operating in a sick industry." However, such analysis did not accurately describe Lear's position after its restructuring efforts, and Rossiter's personal financial situation made him an inappropriate choice for lead negotiator. Despite being confronted with these facts through discovery and by the Court's Order enjoining the shareholder vote, the Individual Defendants never reevaluated the reasonableness of their decision to make Rossiter lead negotiator or to approve the terms he recommended or how their unquestioning faith in Lear management may have affected their judgment.

94. Through this Litigation, the Individual Defendants should have learned about Lear management's greater preoccupation with cementing the Icahn deal than with ensuring its procedures maximized value to shareholders—as evidenced by Ninivaggi's February 4, 2007 email to Intrieri in which he explains that the reverse break-up fee is the "biggest issue so far" preventing approval of the deal. The Individual Defendants knew that in addition to fostering the initial idea of taking Lear private, Rossiter negotiated the key terms of the deal and recommended Icahn's $36 per-share offer to the Board after negotiating with him alone. As discussed above, Rossiter described his recommendation to the Board after that one-on-one negotiation with Icahn as follows:

> But what I took back to the board was I think, one, improved terms and improved price of $36; I felt it established the floor as what I carried to them. Yeah, I want more, I'll continue discussions, keep trying. But I think we ought to listen to this guy's offer.

(Emphasis added.)

As explained to the Individual Defendants in briefing on this issue, a one-dollar per-share increase in the offer price would have represented a mere $350,000 to Rossiter, a measly gain compared to his personal financial uncertainty if Lear continued as a public company. To Rossiter, an Icahn deal at any price meant his continued employment at $2.5 million per year, a secured and immediately payable pension at full value, and the ability to cash out around $11,000,000 in Lear stocks immediately at a value unthinkable nine months earlier. As suggested by the omission of these facts from the May 23 Proxy, the Individual Defendants either did not appreciate their significance or hoped to conceal them. However, after the Court's June 15, 2007 Order and the discovery and briefing that led up to it, the Individual Defendants could no longer claim ignorance of these material facts. The Individual Defendants' conscious failure to reevaluate the fairness of the Initial Merger Agreement's terms, their continued blind trust in Lear management's recommendations, and their dismissive disregard for shareholders' objections constitute violations of their fiduciary duty of good faith to the Company.

95. What should have made the fact that Rossiter recommended to the Special Committee $36 per share all the more troubling to the Individual Defendants is that all indications suggested that Lear management's best estimate of the Company's value was, at least, the $38 per share reflected in the Towers Perrin report dated February 2, 2007, that they commissioned and directed.

The Company Feigns a Pre-Merger Agreement Market Check and Allowed Icahn to Shut It Down

96. In an apparent panic at Icahn's hard-ball negotiating style, the Board asked J.P. Morgan to finally begin canvassing the market for offers without alerting Icahn. Icahn quickly uncovered the truth and threatened to pull his proposal: "I said call [the Board] up and just get it down because I'm pulling it." According to Vandenberghe's testimony in his deposition, Icahn made further threats:

> Q: [D]id Mr. Icahn ever communicate any alternatives that he might pursue in the event the company declined to approve the 36 dollar merger proposal?
>
> A: Yeah, basically he said that, you know, if the company turned down the offer, you know, he would just sit back, remain a shareholder. And you know in the event this stock were to drop back down to 30 or 29, that he would come in later with a lower offer.

The Board quickly caved in and stopped J.P. Morgan's market check at the behest of management despite the fact that J.P. Morgan's efforts to market the Company before agreeing to the Initial Merger Agreement were bearing fruit. REDACTED

REDACTED

REDACTED The J.P. Morgan pre-merger market check was essentially over before it started.

Announcement of Icahn's Offer Sparks an Outcry Among Lear Shareholders

97. On February 5, 2007—after the Individual Defendants had tentatively approved the substantive terms of the deal but before the Initial Merger Agreement was signed—Lear announced that AREP made an offer to acquire all of the issued and outstanding shares of Lear for $36.00 per share in cash. The press release stated in relevant part:

> Southfield, Mich., February 5, 2007—Lear Corporation [NYSE: LEA], a leading global supplier of automotive seating, electronics and electrical distribution

> systems, today announced that following discussions with the Company, American Real Estate Partners LP, an affiliate of Carl C. Icahn, has made an offer to acquire all of the issued and outstanding shares of Lear Corporation for $36.00 per share in cash.
>
> Any transaction would be subject to negotiation and execution of definitive documentation and other conditions. Lear's Board of Directors is expected to formally consider the acquisition proposal following the conclusion of on-going negotiations.
>
> The acquisition proposal contemplates that Bob Rossiter, Lear's chairman and CEO, and the rest of the senior management team will remain with the Company.

98. Immediately after the public announcement, shares of Company stock surged nearly 11.5% to close at $38.64 per share and reached a peak of $41.14. Investors and analysts opined that the offer was too low. In particular, Morningstar analyst John Novak commented that this is "not such a great deal for shareholders." According to his estimates, the Company was worth somewhere in the mid-$40s per share, and AREP's offer to purchase it for $36 per share came at a substantial discount.

99. On that same day, Pzena announced that it had informed certain Lear directors of its strong opposition to the possible sale of the Company to AREP. At that time, Pzena held on behalf of its clients around 6,800,000 shares, or approximately 10.1%, of Lear. The letter to the Board of Directors setting forth Pzena's reasons for its opposition to the proposed transaction read as follows:

> To the Independent Directors of Lear Corporation:
>
> We are writing to express our alarm about the possible sale of Lear Corporation to Carl Icahn's American Real Estate Partners LP at a price which we believe to be far below the fair value of the company. As you know, we are one of Lear's largest shareholders and we have long believed in Lear's business and its plan for recovery. Our view is that the company's earnings are well below their normal level and that Lear is being valued by the market as if there is little chance of an earnings recovery. Our analysis suggests that earnings are likely to recover to more than $4.00 per share over the next few years from consensus analyst estimates of $2.00 per share for 2007. Consequently, we believe the company's value to be closer to $60 per share.

> As you may or may not know, we had a lengthy discussion with Mr. Icahn's team in November when they bought their stake in the company at a very attractive price. We shared our belief in the greater than $4.00 earnings power and $60 valuation and they appeared to agree with our assessment at that time. To claim today that $36 is a fair price is quite disingenuous.
>
> It is our fear that the company's management may have lost sight of the long-term value inherent in the company and that their personal interest in the transaction may create an inherent conflict. We are well aware of Wall Street's short-term mentality and the pressure it can bring on companies. It is our hope that Lear does not succumb to that pressure and sell the business for less than it is worth over the long term.
>
> We would like to remind the board of its fiduciary obligation to shareholders and urge you to seek other offers for the firm. We think it is incumbent on the board to exclude the management from this process since preserving their jobs and/or enriching themselves can come at the expense of shareholders. The trend towards private equity firms teaming up with management to "steal" companies from their owners is alarming and we urge you to take a stand to ensure this does not happen at Lear.
>
> We are happy to meet with you to share our view of valuation should you deem it interesting or desirable. To the extent that this particular transaction is put to a shareholder vote, we intend to vote against it.
>
> Sincerely,
>
> Richard S. Pzena
Co-Chief Investment Officer
Pzena Investment Management
>
> John P. Goetz
Co-Chief Investment Officer

100. As discussed herein, apparently the Board did not disagree with Pzena's assessment of Lear's valuation but never disclosed that fact to investors until after Lear's shareholders rejected the deal. During an investor conference held on October 31, 2007, Vandenberghe admitted that "[w]e didn't have any difference of opinion. He thought the stock was worth $60 – so did we."

101. In an article in TheStreet.com, entitled "Battle Looming at Lear," Pzena stated that he would push for a shareholder revolt:

> For sure, we're going to vote against it, and we're going to encourage other people to vote against it. A lot of stock traded hands above the deal price in the last few days, so I'm guessing there are a lot of people who will not be happy

with this deal, and I'm hoping we can rally support against it.

102. Also on February 5, the investment arm of Evercore, Evercore Asset Management LLC ("Evercore AM"), came out publicly against Icahn's offer. In a letter to the Company's Board of Directors dated February 5, 2007, Evercore AM wrote to "register its disappointment" with Icahn's $36 per share offer. Evercore AM stated that it had been encouraged by steps taken by Lear's management in recent months to improve the Company's prospects and noted that the Company had refinanced its long-term debt, divested its European interiors business, planned a joint venture for its domestic interiors business, and restructured its core seating business. Evercore AM stated that all of those actions were commendable and stressed that they would require time to realize their value. In light of those changes and the Company's potential upside, Evercore AM expressed its strong opposition to the Merger. It noted that the actions already taken by management had the potential to restore Lear's earnings in excess of $4.00 per share. Against that type of earnings power, Evercore AM asserted that a price of $36 per share was "simply unreasonable." Based on its analysis, a fair per-share value for Lear would be in excess of $60.00. Needless to say, Evercore AM would vote against the Proposed Transaction.

The Lear Board Ignored Its Advisor's Warnings as It Breached Its Fiduciary Duty

103. The deal-protection devices in the Initial Merger Agreement, when coupled with other circumstances surrounding Icahn's ownership, rendered meaningless any ex post market check—here in the form of a "go-shop." The termination fee agreed upon in the Initial Merger Agreement had a preclusive effect by raising the costs for any alternate party's superior bid, hurting value that ought to be afforded to Lear's public shareholders. J.P. Morgan recognized that the egregious termination fees in the Initial Merger Agreement precluded an effective go-shop and warned Lear of that fact via an e-mail from Dennis Hersch, the head of Global M&A at

J.P. Morgan, sent to Ninivaggi on February 7, 2007, just one day before the Lear Board formally approved the Initial Merger Agreement:

> I wanted to share with you our thoughts for this afternoon's meeting. As you can imagine the results of our outbound calls are inconclusive—there will be sponsor interest once the Company begins a formal process whether before or after signing a deal with Icahn. If the Board wants to proceed with the Icahn deal, we will urge that the break fee be lowered dramatically and the match right be eliminated. Realistically, it is a different situation with the stock trading well north of 36 and making these changes will insure a fair post-signing market check. In addition, as a champion of shareholder rights, he should not insist on value-chilling mechanisms.

Ninivaggi responded, "Please call me." Although it is unclear whether the Individual Defendants learned about Hersch's opinion before their vote on the Initial Merger Agreement, they knew about it through this Litigation.

<u>Approval of the Initial Merger Agreement with AREP</u>

104. Despite the opposition from Lear's shareholders, J.P. Morgan's admonition about the Initial Merger Agreement's terms, and the Vandenberghe's apparent agreement with Pzena's $60 per share valuation, on February 9, 2007, the Company announced that it had entered into an Agreement and Plan of Merger with AREP (the Merger Agreement). The Initial Merger Agreement provided for a 45-day go-shop period that expired on March 26, 2007 and that Lear could terminate the Initial Merger Agreement based on a Superior Transaction. Notably, however, the go-shop provision did not mandate that the Company conduct an ex post market check, but rather, it simply permitted the Company to do so. The go-shop provisions, however, were illusory, unfair, and tilted the sale process in favor of AREP. Moreover, termination entitled AREP to receive a termination fee payable by Lear.

105. If, in certain instances, the Initial Merger Agreement were terminated by either the Company or AREP, including if the Individual Defendants recommended a Superior Proposal or the shareholders voted down the Merger and the Company entered into an alternative

transaction within one year, the Company would be required to pay AREP a termination fee. This termination fee would have paid AREP anywhere between $6.13 to $8.35 per share based on its ownership of 11,994,943 shares. Lear would apparently have been required to pay a termination fee even if it accepted a Superior Proposal during the 45-day go-shop period.

106. Pursuant to Section 5.2(e) of the Initial Merger Agreement, the Company had to give AREP ten days written notice if the Company solicited an offer superior to the AREP deal and decided to terminate the AREP transaction. The Initial Merger Agreement provided that the Company could not terminate the AREP transaction without first providing the other bidder's terms to AREP and negotiating with AREP to determine if AREP was willing to match the superior offer. Also pursuant to the Initial Merger Agreement, if the rival bidder increased its offer, the Company would need to provide AREP ten days notice and again negotiate with it to determine if AREP would top the improved rival offer. This process could have continued indefinitely except that AREP was entitled to three days written notice for every subsequent increase in the rival bidder's offer (the Initial Merger Agreement specified that the Company must negotiate once with AREP only if the initial rival bid were greater than $37.00 per share).

107. In other words, the Initial Merger Agreement gave AREP access to any rival bidder's information and allowed AREP a free right to top any superior offer. Accordingly, no rival bidder was likely to emerge and act as a stalking horse for AREP because the Initial Merger Agreement unfairly assured that any "auction" would favor AREP.

108. The termination provisions of the Initial Merger Agreement further demonstrated that the Individual Defendants unfairly locked-up the deal in favor of AREP. Pursuant to Section 7.4 of the Initial Merger Agreement, the Company would have been required to pay AREP a cash termination fee of $73,500,000, plus an amount equal to the lesser of AREP's expenses and $6,000,000, if the Company had accepted a superior bid and terminated the AREP deal prior to

the end of a 45-day solicitation period. If the Company had accepted a superior bid and terminated the AREP deal after the 45-day solicitation period, the Company would have been required to pay AREP a cash termination fee of $85,225,000 plus an amount equal to the lesser of AREP's expenses and $15,000,000. The Individual Defendants thus agreed to give away to AREP up to almost $100,000,000 if the Company accepted an offer from a rival bidder superior to the wholly inadequate $36.00 AREP deal price during the so-called solicitation period.

109. Notably, the differentiation between the termination fee during and after the go-shop was illusory. As J.P. Morgan's Christopher Ventresca has testified, not even the Company's financial advisor believed that 45 days was sufficient to perform the necessary due diligence and formulate a proposal:

> Q: Do you have a view as to whether 45 days is an adequate period of time to conduct a go-shop process for a company like Lear?
>
> A: My personal view on this is you – while you have the 45 day go-shop, you actually have more time beyond 45 days, up to the shareholder vote. The only difference between those windows is the economic size of the break fee within those two windows.
>
> So within 45 days my view was sufficient interest for people to determine if they wanted to make an acquisition proposal; and in the aggregate, knowing it would be even longer than 45 days to likely get to a shareholder vote, that both of these winded provided time for people to assess their interest.

If there was no way, in J.P. Morgan's view, that the Company could receive, consider, and accept a Superior Proposal in the window provided by the go-shop, then any difference between the termination fee before or after that period was meaningless. Moreover, this fact, coupled with the prospect of Icahn's matching right, made the market even less likely to provide any other bids for the Company. Icahn's stranglehold on Lear was a reason why many buyers stayed on the sidelines. As Worth has testified, "[s]ome buyers as we contacted them expressed a view that Carl Icahn might simply top them if they were to make a bid.... They simply said why do I want

to get in a fight with Carl Icahn…." If the Individual Defendants failed to appreciate these facts initially, they understood them through the course of this Litigation.

110. The failure to negotiate more reasonable deal-protection measures from Icahn ultimately resulted in a lost opportunity to secure a higher bid from Tata AutoComp Systems Limited ("TACO") as the restrictive time constraints, deal-protection mechanisms, and incentives for management to prefer the Icahn deal combined to prevent a higher offer. During its abbreviated canvass, J.P. Morgan did not check the market for potential strategic–financial partnerships, nor was it so instructed by the Special Committee. Feedback during the post-deal go-shop period indicated that maximum shareholder value would most likely be achieved through a financial buyer working with a strategic bidder who could provide significant synergies. As became evident through the discussions with TACO, strategic–financial partnerships require more time in order to form the proper partnerships and to assess and negotiate valuation and structure issues. Lear simply assumed that the state of the auto sector was such that no strategic bidder would be forthcoming; however, the same weakness of the auto sector should have informed Lear that a diligent search for maximum value would require additional time for strategic and financial buyers to partner, assess the Company, and comprehensively address structure and valuation issues. Rather than allow the time needed and encourage strategic–financial partnerships in this challenged industry, Lear hamstrung potential bidders with strenuous deal-protection measures and short deadlines.

The Initial Merger Agreement Would Have Enriched Senior Management

111. AREP co-opted Lear's management in its scheme to obtain special value for itself at the expense of the public shareholders by stating that AREP intended to keep senior management in place. As indicated in the Financial Times on February 5, 2007, "by its very nature, any chief executive officer looking to buy his company faces a huge conflict of interest

with the company's stockholders." It continued, "[t]he job of an executive is to make a company as valuable as possible so its shares reach the highest possible price; that same executive looking to buy the company is motivated to purchase it at the lowest possible price so that he can reap a maximum reward in the future."

112. Icahn offered incumbent management pay packages worth tens of millions of dollars and, not surprisingly, management supported Icahn's bid. The top executives were promised guaranteed contracts and bonuses; their current stock and options holdings would immediately vest and be paid out; a portion of their retirement benefits would be paid early; and they would receive options to buy a total of 1.6% of the company at a price equal to the deal price. If Lear's value rose to the equivalent of $60 before these options expire, this piece of their compensation alone would be worth more than $29 million for Rossiter, Vandenberghe, and DelGrosso. Finally, the Company would have set aside up to 6% of its shares as grants to employees, the total value of which would top $275 million at a $60-share-price equivalent.

113. As mentioned above, what was most troubling about these favorable terms for management was the fact that the Company's CEO had recently approached the Special Committee Chairman about his intention to retire unless the Company could find some way to discretely protect his retirement and that the Company had spent $50,000 in consulting fees to ameliorate his concerns.

<u>Market Analysts and Shareholders React Negatively to the Proposed Transaction</u>

114. On February 9, 2007, Reuters reported that fund manager Brandes Investment Partners LP ("Brandes") intended to vote against "billionaire investor Carl Icahn's proposed $2.31 billion buyout offer for Lear Corp." Brandes stated that it would vote against the deal on behalf of its clients who owned 2.85 million shares in Lear (about 3.9% of the total shares outstanding).

115. Also, on February 9, 2007, BusinessWeek.com reported in an article entitled "King Lear" that AREP and Icahn might not be the only potential bidders interested in the Company:

> At least one large shareholder thinks the company will continue to make progress and that Icahn's bid is a lowball offer. Richard Pzena, chief investment officer of Pzena Investment Management, which owns nearly 11% of the stock, says that in the long run Lear is worth $60 a share. Pzena says he has spoken with other shareholders and has told the company that his firm doesn't like Icahn's bid.
>
> The company is making all the necessary steps to stage a recovery, says Pzena. If they want to sell the company, they should put it up for bid.
>
> The other side says that Wall Street still doesn't like parts companies, so getting to $60 a share would be a long shot. Lear's stock is up nearly 30% this year, more than any other in the segment, says company spokesman Mel Stephens. So it could be the right time for some investors to cash out.
>
> In any case, Icahn can likely look forward to some competition. Pzena says one option is to find others to bid on the business. Morgan Stanley (MS) analyst Jonathan Steinmetz says Canadian interiors firm Magna International (MGA) or French seat maker Faurecia could both be interested.

(Emphasis added.)

116. On February 13, 2007, in an article reported in TheStreet.com, entitled "Lear Has Some Explaining to Do," the proposed offer by Icahn was reported as follows:

> Carl Icahn is a value investor. He buys assets on the cheap. If he doesn't get a deep discount, then he passes up the purchase.
>
> Before the market opened on Feb. 5, Icahn offered $36 per share in a buyout offer for Lear (LEA). That's less than a 4% premium over the prior closing price of $34.67. The stock rose in anticipation of higher offers until Feb. 8, when trading was halted at $40.07. Lear announced the next morning that it was going to accept the $36 offer.
>
> It's fair to say that Lear's board of directors is familiar with Icahn. With ownership of 17.8% of Lear's shares, he is the company's largest shareholder. Just three months ago, the company sold a private placement of stock to Icahn for $200 million. Also, Lear gave Icahn a seat on its board of directors.
>
> Lear's board is aware of Icahn's reputation as a deep value investor. Implicit in its acceptance of his $36-per share offer is this: Lear's board believes Icahn has changed his stripes. Pursuant to their fiduciary duty to protect shareholders, Lear

directors apparently think that Icahn is now a "full" value investor.

Of course, it's nonsense to say that Icahn has changed. There can be but one reason why Icahn offered to buy Lear for $36 per share. It's because the price represents a deep discount to value.

This is obvious by the structure of the deal. Icahn is buying the company "as is." He's not bringing in new management to facilitate a turnaround. He's not asking for major changes in company operations. He's not bringing synergies to the table to significantly increase efficiency. He's not doing anything to unlock the value of this asset. It follows, then, that Icahn's sole motivation to do this deal is price.

In a letter to Lear's board, money manager Richard Pzena, who owns 10% of the company's stock, called Icahn's $36-pershare bid "horrendous." He said that the value of Lear is closer to $60 per share and that the company has earning power of $4 per share in a couple of years. As I'll explain below, my analysis of Lear indicates that Pzena's valuation is reasonable and his earnings estimates are conservative.

Lear should be valued based on normalized earnings. Valuation should not be based on an extrapolation of Lear's trough years (2001 and 2005), nor its peak years (1997 and 2004).

When normalized operating margins of 6% are applied to the $12 billion (revenue) seating business and normalized operating margins of 7.5% are applied to the $3 billion (revenue) electronics business, the reason for Icahn's attraction to Lear becomes clear. On a normalized basis, Lear generates about $1 billion per year in operating cash flow.

Because Icahn already owns 17.8% of Lear's shares, he will only have to pay an additional $2.27 billion for the right to own that $1 billion operating cash flow stream. It's worth noting, too, that Icahn is getting a high-quality business. For example, Lear dominates the seating market, with a 40% market share. This is a solid noncommodity business that earns 25% on invested capital.

By my calculations, Pzena's earnings-per-share estimate of $4 in a couple of years appears low. Normalized net margins for this business should be at least 2.1% to 2.2%. A net profit margin at these levels implies $4.40 to $4.66 in earnings per share in 2009.

Why Did Lear Accept Icahn's Offer?

Last Friday, Bob Rossiter, Lear's chairman and chief executive officer, said in a press release: "We believe that the transaction price, which represents a multiple of about 9 times our forecasted 2007 core operating earnings – excluding the Interior business – provides shareholders with significant value."

> Management has some explaining to do to shareholders. Rossiter, who stands to make $20 million if shareholders approve the Icahn bid, claims "significant value" based on a multiple of 2007 operating earnings. However, in an Oct. 26, 2006, earnings release, the company makes it clear that margins in 2007 will be well below "historical" levels.
>
> It is misleading, if not disingenuous, to claim significant value for shareholders based on a multiple of below normal earnings. By my calculations, based on company-provided numbers (see Lear's Oct. 26 earnings release), Rossiter applies the 9 multiple to core operating earnings that are 40% below normal.
>
> Rossiter said last Friday that "we intend to solicit other offers to ensure that value is maximized for all of our shareholders." He needs to explain to shareholders, then, why Lear agreed to put up a sizable roadblock to other bidders – namely, a $100 million breakup fee payable to Icahn. This fee is outrageous considering the buyout offer amounted to a 4% premium when it was offered and an 11% discount to market value when the stock was halted on Feb. 8.
>
> Investors should take note of this warning issued by Pzena in his letter to Lear directors:
>
> "The trend toward private equity firms teaming with management to 'steal' companies from their owners is alarming."
>
> In my view, Lear's board of directors has failed to protect shareholder property for the reasons explained above. That leaves it to shareholders to protect themselves. In an upcoming vote, Lear shareholders will decide whether to sell their shares to Icahn for $36 per share or not. For this Lear shareholder, the decision on which way to vote couldn't be easier.

(Emphasis added.)

117. On February 9, 2007, the investment advisors for plaintiff Classic Fund, owner of nearly 3.8 million shares of Lear common stock, also wrote a letter to Lear's Board. In that letter, plaintiff Classic Fund's advisors expressed their surprise and disappointment about the fact that the Individual Defendants had agreed to enter into the Proposed Transaction. They repeated their earlier position that the price in the deal was unacceptably low, and that the Company's justification for agreeing with the price was inconsistent with prior statements made by the Individual Defendants.

118. The Individual Defendants have also learned that plaintiffs' expert, M. Travis Keath ,CFA, CPA ("Mr. Keath"), confirmed in his analysis that the $36.00 per share offering price was financially inadequate. Mr. Keath opined that a fair price for Lear's shares should range from "the high $30s to as high as the low-to mid-$40s." Mr. Keath's opinion was consistent with the opinions of shareholders and market analysts. As Mr. Keath observed, the market was expecting a higher bid as Lear's shares traded above the offering price during 63 of the 73 trading days following the public announcement of Merger. Mr. Keath also performed "public peer" and "precedent transaction" analyses that both yielded valuation results for Lear superior to the $36.00 per share offering price. In addition, Mr. Keath conducted a discounted cash-flow analysis using financial data from five different sources including data J.P. Morgan found and used in its calculations. That analysis again showed that Lear was worth more than $36.00 per share.

This Litigation Commences and the Go-Shop Period Ends Without an Acquisition Proposal

119. Plaintiffs filed suit following the public announcement of the Initial Merger Agreement, and on February 22, 2007, the Court consolidated the plaintiffs' cases into above-captioned action. Plaintiffs filed their Consolidated Complaint on February 23, 2007, and filed their Amended Consolidated Complaint on March 27, 2007, and expedited discovery commenced promptly thereafter. On that same day, the Company announced that the solicitation period under the Initial Merger Agreement had expired without the Company having received an acquisition proposal from another party. Lear further stated that, as permitted by the Initial Merger Agreement, Lear would continue on-going discussions with certain parties who had expressed an interest in exploring a possible acquisition proposal prior to the expiration of the solicitation period.

The Company Makes Repeated Material Misrepresentations and Omissions in Proxy Statements

120. The Company had filed its Preliminary Proxy statement on March 20, 2007, and the May 23 Definitive Proxy represented the fourth iteration of that initial statement. The May 23 Proxy was supplemented by the June 18 Supplement (upon the Court's insistence) and the July 9 Supplement. As alleged herein, the "Supplemented Proxy", through its various iterations, failed to disclose highly significant and material information necessary for Lear's public shareholders to make an informed decision regarding the Amended Merger Agreement and, importantly, whether to seek appraisal to obtain fair value for their shares. Moreover, the information omitted from the Supplemented Proxy was that which a reasonable investor would have viewed as significantly altering the total mix of information made available. The Individual Defendants' failure to disclose material facts in and their dissemination of material facts through the Supplemented Proxy further rendered the Proposed Transaction unfair and coercive.

May 23 Proxy Fails to Disclose CEO Rossiter's Conflict of Interest and Is Ordered to Do So

121. As discussed, the May 23 Proxy failed to fully and fairly disclose numerous conflicts of interest between Rossiter—who served as Lear's principle negotiator of the Initial Merger Agreement—and the Company's public shareholders.

122. Even taking the Individual Defendants at their word that they did not fully appreciate Rossiter's conflict of interest prior to approving the Initial Merger Agreement (as represented to the Court in filings in this Litigation), these conflicts of interest would have become starkly clear to the Individual Defendants during the course of this Litigation, about which the Individual Defendants received regular updates from the Company's counsel. Rossiter's conflict of interest and the Individual Defendants' failure to fully and fairly disclose it to shareholders in violation of their fiduciary duties became the subject of the Court's order, which mandated additional disclosure to shareholders. Rossiter's conflict of interest and his

central role in the negotiation process subsequently became national news and the basis of public criticism of the Initial Merger Agreement and its negotiation process by analysts, shareholders, and influential investor advisory organizations.

123. Despite this actual awareness, the Individual Defendants permitted Rossiter and other management to direct the negotiation process. Rather than investigating and reevaluating the terms of the Initial Merger Agreement and the negotiation process that produced it, the Individual Defendants stubbornly proceeded with the solicitation process. When that process revealed that the Initial Merger Agreement lacked sufficient shareholder support to win approval, the Individual Defendants should have reevaluated the terms of the Initial Merger Agreement, as well as the negotiation and approval process used to reach that agreement, in light of additional relevant financial information. However, rather than reevaluating the Initial Merger Agreement, the Individual Defendants doggedly proceeded with the negotiation of an Amended Merger Agreement with its unreasonable termination provision. Despite numerous red flags suggesting that the negotiation process could have been affected by Rossiter's conflict of interest and suggestions of impropriety cited by the Court, plaintiffs, other shareholders, analysts, and shareholder advisory organizations, the Individual Defendants approved the terms of the Amended Merger Agreement based on a five-month-old fairness analysis of the Initial Merger Agreement and blind faith in management's and Icahn's representations about the solicitation process and the Amended Merger Agreement's likelihood of approval. In so doing, the Individual Defendants have breached their fiduciary duties to the Company and its shareholders.

<u>Additional Failures to Disclose Demonstrate Individual Defendants' Inattention</u>

124. The Individual Defendants' breach of their fiduciary duty to the Company and its shareholders occurred after their repeated failures to disclose relevant facts to shareholders, which had to be addressed through revisions to the Preliminary Proxy. The May 23 Proxy was the

fourth iteration of the Company's Preliminary Proxy describing the transaction, and the May 23 Proxy was supplemented once as required by the Court and a second time to inform shareholders about the Amended Merger Agreement. The first version, filed with the SEC on Form PREM14A, was woefully inadequate, and certain material misrepresentations and omissions were never adequately disclosed, much less explained, and constitute the Individual Defendants' breach of their fiduciary duty of disclosure to shareholders. More fundamentally, the Individual Defendants' failure to investigate or even consider the underlying facts before making determinations about the reasonableness of the Amended Merger Agreement's terms establishes that the Individual Defendants breached their fiduciary duty of good faith.

125. Although the Court declined to enjoin the vote on the Initial Merger Agreement based on these failures to disclose, the Court's decision in that regard was not a validation of the Individual Defendants' conduct or the reasonableness of their actions and in no way released the Individual Defendants from their fiduciary obligations to the Company and its shareholders. Rather, these disclosure issues which have received significant attention in this Litigation would have caused a reasonable director to reevaluate the approval of the Initial Merger Agreement and its negotiation process, especially in light of the following admonition in the Court's June 15, 2007 Order:

> I agree with the plaintiffs that the Special Committee's approach was less than confidence inspiring. Although I do not embrace the notion that persons suffering from conflicts are invariably incapable of putting them aside, I cannot ignore the reality that American business history is littered with examples of managers who exploited the opportunity to work both sides of a deal. In fact, it would be silly to premise a decision on the notion that compensation schemes intended to have powerful incentive effects—such as SERP programs and equity awards—are wholly benign and never, despite their intended purpose of creating alignment between the interests of managers and other stockholders, create incentives that actually give managers reasons to pursue ends not shared by the corporation's public stockholders. Therefore, I will not. Instead, I decide this motion recognizing that Rossiter, while negotiating the merger, had powerful interests to agree to a price and terms suboptimal for public investors so long as the resulting deal: (1) allowed him to promptly liquidate his equity holdings; (2)

secured his ability to accelerate and cash-out his retirement benefits; and (3) gave him the chance to continue in his managerial positions for a reasonable time, with a continued equity stake in Lear that would allow him to profit from its future performance. Given those considerations, a merger at a price lower than the $36 per share that Icahn is paying might well make personal economic sense for Rossiter, when the risks to him of managing Lear as a standalone public company are taken into account.

For these reasons, I believe it would have been preferable for the Special Committee to have had its chairman or, at the very least, its lead banker participate with Rossiter in the negotiations with Icahn. By that means, there would be more assurance that Rossiter would take a tough line and avoid inappropriate discussions that would taint the process. Similarly, if the Special Committee was to proceed as it did, by leaving the negotiations to Rossiter without direct supervision, it could have provided him with more substantial guidance about the strategy he was to employ. The defendants applaud Rossiter for getting Icahn to bid against himself, by increasing his offer in one call by a quarter, and then another seventy-five cents. What they slight is that Icahn both opened and closed the price negotiations by rapidly moving to $36, declaring that his best and final offer, and steadfastly refusing any further price negotiation. Indeed, when Icahn first did that in a call on the evening of February 2, Rossiter did not reconvene the Special Committee, which had just finished meeting telephonically, to discuss what to do with Icahn's new offer. Instead, he slept on it, then called Icahn in the morning to plead for a higher bid without a specific counter to make. Icahn told him the price negotiations were over. And they were. They ended without the Special Committee ever making a counter on price, leaving the Special Committee only to make specific suggestions regarding the deal protections Icahn would receive for his agreement to pay $36.

Although I do not, as will soon be seen, view this negotiation process as a disaster warranting the issuance of an injunction, it is far from ideal and unnecessarily raises concerns about the integrity and skill of those trying to represent Lear's public investors. In reflecting on why this approach was taken, I consider it less than coincidental that Rossiter did not tell the board about Icahn's interest in making a going private proposal until seven days after it was expressed. Although a week seems a short period of time, it is not in this deal context. In seven days, a newly formed Special Committee's advisors can help the Committee do a lot of thinking about how to go about things and what the Committee should seek to achieve; that includes thinking about the Committee's price and deal term objectives, and the most effective way to reach them.

The Lear Special Committee was deprived of important deliberative and tactical time, and, as a result, it quickly decided on an approach to the process not dissimilar to those taken on most issues that come before corporate boards that do not involve conflicts of interest. That is, the directors allowed the actual work to be done by management and signed off on it after the fact. But the work that Rossiter was doing was not like most work. It involved the sale of the company

> in circumstances in which Rossiter (and his top subordinates) had economic interests that were not shared by Lear's public stockholders.

(Emphasis added.) In the same section of its Order, the Court noted that the same motives attributable to Rossiter were shared by Vandenberghe and Douglas DelGrosso ("DelGrosso") and that "[e]ven though Ninivaggi refrained from negotiating his compensation package, Ninivaggi might rationally harbor expectations of a package akin to that received by his colleagues in top management."

<u>The Supplemented Proxy Failed to Disclose the Projections Used by J.P. Morgan in Preparing Valuation and Misrepresented the Certainty of Its Conclusions</u>

126. Through this Litigation, if not before, the Individual Defendants learned that a recent and notable companion to the final valuation presented to them was a sensitivity case indicating significantly higher per-share values – an understanding they already had as indicated with their apparent agreement with Pzena's $60 per share valuation. That more optimistic sensitivity case was last transmitted from J.P. Morgan to Lear management at 3:35 a.m. EST via an email from Fik Durmus ("Durmus"), which stated as follows:

> Attached please find two slide decks. The first one "Longbow valuation update.2.01.07.v1" runs the sensitivity case based on the assumptions that we discussed.
>
> The 2nd one "Longbow valuation update.2.01.07.v2" is slightly different. Please let us know if you have any questions.

127. The presentation immediately following the email (as produced by Lear) had a significantly more optimistic sensitivity case than that of the other attached presentation.

REDACTED

REDACTED As stated, management

submitted only one sensitivity case to the Board—one very close to the more pessimistic second version, but with a new label and one less chart. REDACTED

REDACTED

REDACTED A modified version of the final presentation has been submitted to the SEC with Lear's Schedule 13E3/A.

128. Any reasonable director would have investigated these circumstances and reevaluated his votes in reliance on the resultant valuation once becoming aware of such a significant alteration in the Company's valuation under such questionable circumstances where they already held the view that Lear's shares were worth $60 per share. However, the Individual Defendants disputed the significance of these events to the Court, failed to investigate them, and ultimately, approved the Amended Merger Agreement based on a verbal extrapolation of the same suspicious underlying valuation despite receiving numerous and frequent shareholder objections as to its accuracy.

129. Further suggesting the Board's failure to fully evaluate the circumstances surrounding the valuation, the Supplemented Proxy failed to explain how management and J.P. Morgan chose the second presentation over the first, how and why the projections differed so starkly in such a short period of time, and whether the first or second presentation according to Bates number reflected the assumptions discussed by management and J.P. Morgan on the January 31 call. Nothing in the record suggests that the Individual Defendants ever investigated whether Mr. Durmus (and not Lear management) first suggested the lower projections presented in the wee hours of February 1 (which became the basis of management projections presented to the Board) or what assumptions underlie these different valuations and how and why they changed.

130. The Individual Defendants' suggestion that one of the contemporaneously delivered sensitivity cases is unreliable because it does not reflect downward revisions by J.D. Power does not make sense in the timetable reflected in the record. For one, the J.D. Power figures showing downward revisions were released in December 2006, and according to Vandenberghe, the J.D. Power downward revisions had already been incorporated into management's projections by January 2007: "When we looked again at that, when we looked again at it in November, we saw that the overall industry projections had come down and we had factored that into our '07 guidance that we talked to the Street on in January, and then again when we looked at the risks and opportunities in our long-range plan using the latest J.D. Power projections, we inserted those volumes, we felt that was appropriate because that was the best information available in terms of production outlook which obviously would impact our sales and our operating results."

131. Furthermore, and somewhat contrary to Vandenderghe's deposition testimony, the Supplemental Proxy reports that management started updating the July '06 Long-Range Plan immediately after the January 16, 2007 meeting with Icahn rather than in November 2006: "[f]ollowing the initial discussions between members of our senior management and Mr. Icahn [on] January [16,] 2007, we began the process of updating the July '06 Long-Range Plan to reflect material changes in the long-term North American vehicle production outlook." Ninivaggi confirms this account in his deposition: "in the period leading up to the board meeting on the 25th, [management] had looked at industry conditions, changes in the industry conditions since the July '06 plan was prepared, and there were a number of things primarily production volumes had come down significantly, and we had prepared an updated—somewhat updated long-range plan that included actual—when the July plan was put together, obviously '06 had not been completed[, and so,] we updated the plan to include actual 2006 results." So according to the

Supplemented Proxy and deposition testimony from Ninivaggi and Vandenberghe, the revision of the July ‘06 Long-Range Plan to incorporate downward revisions in North American vehicle production occurred weeks if not months before the early morning of February 1, 2007.

132. Also refuting the Individual Defendants’ argument is the fact that both initial sets of sensitivity cases show a downward revision from the July 2006 Long-Range Plan, which is considerably more optimistic than either of the two sensitivity cases. However, the economic data casts doubt on whether the July 2006 Long-Range Plan needed such a drastic revision.

133. Although Lear contended it had to recalculate financial projections in January 2007 to respond to a sudden decline in the automotive industry, the U.S. automotive market had been in trouble since 2005. In the summer of 2006, General Motors Corporation (“GM”) and Ford announced plans to cut 60,000 jobs because of “rising costs and declining market share.” Analysts posited that “either or both” could go bankrupt because of decreased demand for SUVs and rising gas prices.” In July 2006, Ford closed an F-150 truck plant for two months because dealers were stuck with an abundance of “unsold vehicles.” Other automotive industry corporations showed signs of financial difficulty during this period. Delphi Corporation (“Delphi”), a major parts manufacturer associated with GM, filed for Chapter 11 bankruptcy protection at the end of 2005. Furthermore, in late July 2006, shares in Rockwell Automation, Inc., decreased 10.2% after the auto mechanics systems producer lost nearly 50% of its business. Industry reports issued during summer 2006 highlighted US car manufacturer’s on-going attempts to compete against foreign auto manufacturer’s encroachment on their market shares.[5]

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[5] The Individual Defendants and their expert, Mr. Daniel Fischel, extensively cite a March 2007 U.S. Department of Commerce report to establish a purported sudden 2007 decline in the domestic automotive industry. However, the 2006 version of this report, excluded from the Individual Defendants’ papers, states that “[t]he outlook of U.S. auto suppliers remains gloomy for 2006.” The Individual Defendants also ignore the fact that Lear does substantial amounts of business overseas (35%) and that the March 2007 report specifically stated that the foreign market is “expected to grow in 2007.” Indeed, according to Lear’s most recent Annual Report,

134. Despite U.S. automotive manufacturers' precarious market position, on July 18, 2006, Lear President Defendant DelGrosso predicted Lear's profit margins were to return to "historic levels" by 2008 because of Lear's new involvement in Asian markets.

135. The risk of a strike was also overstated. In mid-July 2007, Delphi and GM began contract negotiations with the UAW through a collective bargaining process. These U.S. auto manufacturers, currently struggling to compete with foreign automakers, are expected to ask the UAW to accept "concessions in wages and health care." The UAW was threatening to strike if a reasonable package for workers failed to be negotiated. UAW leaders also threatened to strike during 2004 and 2005 labor negotiations with Delphi and other auto producers; however, strikes never materialized. The last time the UAW actually followed through with a strike threat was 1998. In fact, Lear COO DelGrosso has stated "he's optimistic that Delphi, the UAW and GM can cut a deal before the unclear button gets pushed." Ultimately, the UAW reached new contract accords with all three major domestic automakers.

136. Plaintiffs were not the only ones to allege that Lear has failed to disclose material financial information in order to properly estimate Lear's value. In its June 2, 2007 letter to Lear, TACO describes repeated requests to and frustrations with the financial information provided by management. TACO explains that even as late as May 30, Lear had failed to provide basic information needed for TACO to evaluate Lear's value in order to make a bid.

137. These facts and circumstances should have raised red flags to the Individual Defendants that their approval of the Initial Merger Agreement should be reevaluated before

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the Company has focused its attention on expanding worldwide as net sales beyond North America grew from $4.6 billion in 2000 to $7.9 billion. The Annual Report further states that Lear's strategy is to expand its Asian and European businesses. Lear also reported revenues from external customers consisted of approximately $11 billion from customers based outside the U.S., in contrast to approximately $6.2 billion from U.S. customers.

moving forward with any transaction. There is nothing in the record to suggest that the Individual Defendants reevaluated their decision in any respect.

The Pre-Deal and Post-Deal "Market Checks" Were Inadequate

138. The prudence of management's decision not to gauge the interest of strategic buyers is cast in doubt by the fact that the sole remaining potential bidder, despite the Merger Agreement's significant impediments to competing bids, was TACO, a strategic buyer who solicited the assistance of private-equity firms. The fact that this strategic buyer did not make a superior bid and that its interest was not checked before the Board's approval of the competition-limiting terms of the Initial Merger Agreement casts doubt on the validity of the pre-deal market check undertaken by J.P. Morgan and the decision not to consult strategic buyers.

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139. Rossiter's predisposition toward a financial buyer and a deal that would retain the entire management team and afford time and opportunity for a transition of executive power from Rossiter to DelGrosso while providing for the short-term liquidation of Rossiter's entire holdings in Lear, may have discouraged strategic buyers.

140. Icahn unilaterally preempted a more thorough pre-deal market check by threatening to withdraw his offer of $36 per share. Management responded to this threat by pushing forward the throttle to complete the deal with Icahn.

141. The Supplemented Proxy touted management's success in negotiating a decreased break-fee provision for bids received during the go-shop period; however, deposition testimony from Lear's financial advisor indicated that this concession was meaningless because 45 days is too short a time period for a reasonably prudent buyer to make an informed bid on the Company.

142. The Supplemented Proxy and the fairness opinion (incorporated therein by reference) suggested that J.P. Morgan had expressed no opinion about the fairness of the terms of the agreement except with respect to the valuation; however, the February 7, 2007 email from Dennis Hersh, Global Chairman of the M&A Department for J.P. Morgan, makes clear to Ninivaggi J.P. Morgan's opinion that the terms of the transaction are unlikely to generate a superior bid during the go-shop period and pleads with Ninivaggi to revisit the issue with Icahn: "If the Board wants to proceed with the Icahn deal, we will urge that the break fee be lowered dramatically and the match right be eliminated." Hersch explains to Ninivaggi that "[r]ealistically, it is a different situation with the stock trading well north of 36, and making these changes will insure a fair post-signing market check." Although the Board may not have received Hersh's message initially because of Ninivaggi's intervention, they knew about it when they approved the terms of the Amended Merger Agreement with its $37.25 per-share consideration and $25 million termination fee.

143. The Supplemented Proxy elaborated on factors influencing the board's decision to engage J.P. Morgan; however, the Proxy fails to disclose that pursuant to the terms of the April 26, 2006 agreement, Lear had a contractual duty "to offer J.P. Morgan the right to act as its exclusive financial advisor (or lead co-advisor at the Company's discretion)" for "any unsolicited proposal from a third party with respect to a potential acquisition by such party of at least 35% of the Company's stock . . . or determines to pursue any investment banking transaction consisting of a sale of at least 35% of the Company's stock" within "18 months of the date hereof [April 26, 2006]."

144. The facts and circumstances described in paragraphs 138-143 above should have raised red flags to the Individual Defendants that their approval of the Initial Merger Agreement should have been reevaluated before the Company moved forward with any transaction. There is

nothing in the record to suggest that the Individual Defendants reevaluated their decision in any respect.

The Sale Process

145. The process leading up to (and after) the execution of the Initial Merger Agreement was both flawed and designed to serve the AREP Entities' interests above those of the Company's public shareholders.

146. For example, the Supplemented Proxy makes plain that the Proposed Transaction and the manner in which it was rushed through make it tantamount to a "shotgun wedding." Specifically,

a. Only 23 days passed (the "Ichan Negotiation Period") between Mr. Icahn's first expression of interest on January 16, 2007 and the Board's approval ("Board Approval") of the Proposed Transaction on February 8, 2007 ;

b. Not a single other suitor was involved in discussions with Lear during the Icahn Negotiation Period;

c. Only two weeks passed between the formation of the Special Committee on January 25, 2007 and Board Approval;

d. Less than two weeks passed between the execution of a confidentiality agreement between Lear and Icahn on January 26, 2007 and the Board Approval;

e. Only nine days passed between the formal engagement by the Special Committee of J.P. Morgan (as financial advisor), Winston & Strawn LLP (as legal counsel) and Richards, Layton & Finger, P.A. (also as legal counsel) on January 30, 2007 and Board Approval; and

f. Only one day passed between the formal engagement of Evercore Partners as an additional financial advisor on February 7, 2007 and Board Approval.

147. The Supplemented Proxy also provides multitudinous reasons as to why the Special Committee and the Board acted imprudently in approving the Initial Merger Agreement. The Proxy's Background of the Merger section gives no indication that Lear was in any imminent peril that would compel the Board to rush to accept Icahn's offer. Nevertheless:

a. The Board ultimately accepted Icahn's $36.00 offer made on the very first day of price negotiations;

b. The $36 price approved by the Board was only one dollar more than $35.00 opening indication, made earlier the same day;

c. The Board appears to have accepted Icahn's representation that $36.00 was his "best and final" offer, notwithstanding the fact that this was obviously not the case. Specifically, Icahn's proposal called for a provision, which was apparently approved by the Board, that he be allowed to match a higher bid should one be forthcoming during the go-shop period;

d. In its discussions on February 3, 2007, the day after receiving Mr. Icahn's first-day $36.00 bid and five days before approving the same bid, the Board declined to seek competing bids in pursuit of a higher offer for its shareholders. The Proxy provides no comprehensible reason as to why the Board made this decision without first seeking the recommendation of the Special Committee and/or its financial advisor;

e. On February 8, 2007, almost immediately after inviting management to discuss the long-range plan and alternatives to entering into the Initial Merger Agreement, the Special Committee gave its unanimous support to the deal. This discussion is no more than window dressing, as the Special Committee should have been informed of these issues well in advance of the day it gave its approval;

f. On February 8, 2007, both the Special Committee and the Lear Board approved the Initial Merger Agreement despite the fact that certain issues remained open, including the additional protection measure AREP was requesting during the go-shop process; and

g. The Supplemented Proxy provides no indication that the strategic planning process undertaken by the Board had been completed, or that the Special Committee or the Board ever made a comparison of the Icahn offer to the shareholder values realizable under the alternatives being considered in the strategic planning process.

148. The statements in the Supplemented Proxy also call into question whether the Special Committee did, in fact, have the authority and autonomy appropriate to negotiate and recommend the Initial Merger Agreement:

a. On January 25, 2007, the Board directed management to advise J.P. Morgan to be prepared to advise the Special Committee. The Special Committee apparently was not given the opportunity to interview other candidates or select an independent advisor, but was instead compelled to engage J.P. Morgan at the Board's direction. This retention occurred despite the obvious conflicts of interest, given J.P. Morgan's previous engagement by Lear;

b. On January 30, 2007, the Special Committee engaged Winston & Strawn LLP (Lear's regular outside legal counsel) as its legal advisor, again despite obvious conflicts of interest;

c. On February 7, 2007, the Special Committee engaged Evercore as an additional financial advisor, yet again despite obvious conflicts of interest (Evercore had previously been engaged by Lear to assist in evaluating strategic alternatives). Furthermore, Evercore inexplicably made its presentation to the Board on the exact same day the Special Committee engaged this financial advisor;

d. Notably, the Supplemented Proxy misleadingly fails to disclose whether the Special Committee considered these conflicts of interest in retaining its advisors, or why it selected these advisors in light of such obvious conflicts of interest; and

e. The Supplemented Proxy also misleadingly fails to disclose whether, or to what extent, any of the Special Committee's advisors has provided services to or received fees from Icahn or any of his affiliates.

<u>Other Potential Offers Existed When the Go-Shop Ended and the Break-Fees Increased</u>

149. According to the Proxy, the go-shop period under the Initial Merger Agreement expired at 11:59 p.m. Eastern Time on March 26, 2007. At that time, the Company stated that it was engaged in ongoing discussions with three parties, who had formed a group for purposes of evaluating a competing proposal. Two members of the group subsequently withdrew their interest and terminated discussions with the Company. According to Defendant Wallace, discussions with one of the parties were ongoing as of May 9:

> Q. At the end of the go-shop period was there one buyer still expressing interest?
> A. Yes.
> Q. And what happened with that buyer after the go-shop period?
> A. The negotiations were continuing.

150. According to the May 23 Proxy, an unnamed remaining party indicated that due to resource constraints, it would require an equity partner or partners to pursue a competing proposal and requested that the Company enter into discussions and provide confidential information to two private equity firms that had indicated an interest in exploring a competing proposal, as a group, with the remaining party. Under the Initial Merger Agreement, the Company was prohibited from doing so without AREP's consent. On May 10, 2007, the Company formally requested AREP's consent, which was granted on May 14, 2007.

151. By letter dated May 30, 2007, counsel for Lear represented to the Court that the discussions with the potential bidder, Tata Autocomp Systems Ltd. (according to the letter), had concluded and that no offer would be forthcoming. On the following day, Lear filed the letter with the SEC via Form 8-K. On June 2, counsel for Tata Automotive Company Systems Limited ("TACO") wrote Ninivaggi in response to Lear's letter to the Court and SEC filing (the "TACO Letter"). The TACO Letter was sent to Ninivaggi in connection with Lear's May 30, 2007 letter to the Court concerning an update on the Company's post-go-shop activities (the "Lear's Update Letter"). According to TACO, Lear's Update Letter was "materially misleading and unfortunate," provided an "unfair version of the events detailing TACO's involvement," and contained "inaccuracies that TACO believes should be addressed," as "its understanding of the history and process is quite different from what was portrayed in [Lear's Update Letter]." Notably, both Ninivaggi and Vandenberghe reviewed and approved the TACO Letter before it was filed.

152. The June 2, 2007 letter from counsel for TACO to Ninivaggi provides further evidence that the post-deal market check was a sham. As explained in the letter, the structure of the pre- and post-deal market checks did not elicit TACO's legitimate and significant interest, and TACO was thwarted by insufficient data and access to management and unrealistic time frames. Comparison of the June 2, 2007 letter and the Special Committee meeting minutes from April 30, 2007 shows that TACO's co-investors' access to data was, in part, controlled by Icahn because of the terms of the Initial Merger Agreement.

153. In particular, a closing passage from TACO's June 2, 2007 letter to Ninivaggi confirms that the post-deal market check was a sham. According to TACO,

> TACO expended considerable management time and expense in the process. TACO is of the view that it has always been serious about the acquisition proposal and was willing to work within the significant process and information constraints imposed by Lear to the extent that TACO would still be able to

> conduct a reasonable due diligence process. TACO's potential co-investor withdrew from the process because of its inability to complete, within the time frame available, the due diligence required for the transaction as a result of the limitations imposed by Lear, specifically Lear's refusal to supply the diligence information, management time, and access to customers that had been requested by TACO and its co-investor.

(Emphasis added.)

154. The TACO Letter elucidates numerous crippling deficiencies in the post-Merger market check activity. First, the TACO Letter reveals that J.P. Morgan did not do an adequate job in selecting potential acquirors. Prior to March 2007 (after the go-shop had begun), for example, TACO never considered Lear as an acquisition opportunity that it could either pursue or decline. J.P. Morgan had not contacted TACO during its market canvass, even though in its presentation to the Board on July 11, 2006 it identified Tata (an affiliate of TACO) as a "potential strategic buyer." Instead, it was not until two financial buyers contacted TACO that they even learned of the possibility of acquiring Lear. These funds had been contacted by J.P. Morgan.

155. Next, defendants tried to force TACO to complete its due diligence within an unrealistic due diligence period. On April 17, 2007, Lear informed TACO and its potential partners that it should make a bid by April 24th, despite the fact that it had only first given TACO access to Lear top management five days prior. According to TACO, this was unrealistic because, among other reasons, Lear's data room "did not contain a significant amount of the material needed to complete the due diligence." Indeed, the TACO letter makes clear that two of TACO's potential partners dropped out of the process because of their opinion that Lear would not allow them to complete their due diligence before it demanded a binding offer.

156. Lear played games with TACO's access to the due diligence room. For example, TACO provided Lear with the names of five potential co-investors on May 4, 2007. Lear's response was to insist that TACO make an even shorter list of potential investors without even allowing the co-investors access to the Company's data, plans and other information. Then, five

days later, TACO requested data room access for only one of those advisors. Lear, however, would not allow the co-investor (or TACO's bankers) access to the data room until after TACO had confirmed the co-investor's identity – after another six days had passed. "Only after this (and eleven days later) did TACO's investment banking and legal advisors receive access to the electronic data room to allow them to commence the due diligence activity." Moreover, when TACO finally did have access to the due diligence room, its advisors concluded that a "significant amount of data, including basic financial statement information, remained to be provided." The data provided also did not contain such "significant information" as the schedules to the Initial Merger Agreement and Lear's First Quarter Global Matter Report.

157. Lear would not provide TACO with information that it had disclosed to other potential buyers: "TACO's understanding is that profitability data mentioned as disclosed to others in Lear's SEC filings has been denied to TACO, and the profit projections described to TACO are different from Lear's filings on May 30."

158. Finally, the TACO Letter makes it clear that Lear's conduct after the go-shop period ended drove away potential acquirors in favor of Icahn and the Merger. According to TACO,

> [T]he access to due diligence information and management time was still limited and TACO's potential co-investor was uncomfortable proceeding on [Lears suggested] timeline of June 15 as well. It is worth noting that a significant amount of data was added to the electronic data room only after TACO's co-investor's request for additional time was considered.

Moreover, "TACO and its potential co-investor were never given access to critical data that we needed to arrive at the real value for the transaction." As a result, and "[b]ecause of its perception that inadequate information was being provided by Lear, TACO's co-investor became uncomfortable with the process and decided to drop out." As a result, TACO also elected to "withdraw itself from the process."

159.

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Lear Management Embarks on Shareholder Solicitation Effort

160. The Special Committee had engaged Mackenzie Partners and others to assist the Company in soliciting proxies on March 26, 2007, but the efforts of Lear management to solicit shareholder support of the Initial Merger Agreement began in earnest in late May 2007. On May 30, 2007, Lear representatives, including Ninivaggi and two members of the Special Committee met with ISS in Washington, D.C. From June 6 to June 8, 2007, Rossiter, Ninivaggi, and Vandenberghe met with major shareholders in Santa Monica, San Diego, Dallas, and New York. Ninivaggi (and perhaps others) also participated in a conference call on June 11, 2007 regarding the shareholder communication strategy and a conference call with the Vanguard Group. Ninivaggi also participated in an investor conference call with California State Teachers Retirement System ("CalSTRS") on June 18, 2007. According to the Supplemented Proxy, the Special Committee received reports on the status of discussions with the Company's shareholders on June 14, 17, and 21, 2007 and periodically received additional reports on the tabulation of stockholder votes for approval of the merger agreement.

Revision to Financial Outlook—No Analysis by J.P. Morgan or Evercore

161. On June 14, 2007, the Special Committee and Audit Committees received a presentation from management regarding the financial outlook for 2007. Based on the presentation, the Company revised its financial outlook for 2007; however, the Special Committee did not direct J.P. Morgan or Evercore to update their analysis of the Company's valuation. Instead, the Supplemented Proxy indicates that the Special Committee performed a perfunctory analysis of the new financial information and its potential effect on the fairness of the Initial Merger Agreement's terms during a June 17, 2007 meeting:

> At the meeting of the special committee on June 17, 2007, the financial advisors to the special committee, JPMorgan and Evercore Partners, provided the special committee with their evaluation of the Company's revised financial outlook. At that meeting, the special committee was informed by JPMorgan that the Company's revised 2007 financial forecast would not materially change JPMorgan's prior financial analysis. A representative of Evercore stated to the special committee that, notwithstanding the Company's revised 2007 financial outlook, he was not aware of any fundamental change in the North American automotive industry environment since February 2007 that would have an impact on the Company. Following these presentations and a discussion among special committee members, its advisors and members of management, the special committee unanimously concluded that no change in the board of directors' recommendation on the merger agreement was warranted.

As mentioned previously, the Special Committee received reports on the status of discussions with shareholders at both a June 14 and a June 17 meeting.

Court Orders Rossiter's Conflict of Interest Disclosed, and ISS and Others Publicly Oppose the Initial Merger Agreement

162. As mentioned above, on June 15, 2007, the Court enjoined the vote on the Initial Merger Agreement until the Company disclosed Rossiter's conflict of interest. The Court's opinion was widely reported in the press. During the following week, three influential investor advisory organizations—ISS, Proxy Governance, Inc., and Glass Lewis & Co.—publicly announced their opposition to the Initial Merger Agreement and encouraged shareholders to vote against the deal, citing concerns about Rossiter's conflict of interest and its effect on negotiations.

During the same week, CalSTRS sent a letter to Rossiter that was widely reported in the press. The letter complained as follows:

> . . . During that [June 18, 2007] call, we expressed our concern that this offer did not reflect the underlying value of the company and that, in the absence of a competing offer; we would prefer that the merger not proceed.
>
> We have also talked to some of the other large shareholders of Lear Corporation and found that they share our belief that this is not an attractive offer and that the merger should be scuttled. CalSTRS is a long-term investor in Lear Corporation and does not wish to see the long-term value accrue to other interested or favored shareholders. The $36.00 per share offer from AREP only represents a 3.8% premium for the shares' closing price on February 2, 2007. The unfairness of this offer has caused us to pursue the issue of Appraisal Rights.
>
> . . . From the filing of the litigation by several shareholders over the merger terms, it is clear that shareholders believe that they are being shut out of any opportunity to receive the true value for Lear.
>
> We are also dismayed by senior management's decision to keep the substantial change-incontrol payments even though the executive team will be practically unchanged as a result of this merger. Finally, we do not believe that the "shopping process" was conducted fairly or thoroughly; this go-shop feature was hamstrung from the beginning by the signed agreement with Icahn and the large termination penalty. The speed with which the Lear board approved this transaction hardly left any time for other suitors to either emerge or entertain merging with the Company. All of these circumstances give the impression of a less than "arms-length" transaction, concocted in short hurried time periods, to the benefit of one large shareholder, Mr. Icahn at the expense of the other 85% owned by public shareholders. Additionally, the related transactions among the board members and the Company also call into question whether the board was fulfilling its fiduciary duty to the public shareholders when it was "negotiating" this deal. . . .
>
> The automotive and automotive supplier industries have been undergoing a secular, wholesale restructuring over the past four years. We believe that this consolidation/restructuring is in its early stages and that while a substantial shakeout may take place, shareholders will be rewarded with tremendous upside from some of the companies; and, we believe that Lear is one of those companies where long-term patient capital will be rewarded. We do not believe that the $36.00 per share offer from American Real Estate Partners is adequate or even close to the true value of Lear.

June 21, 2007 Joint Special Committee–Executive Committee Meeting, Letter to Shareholders, and Vote Postponement

163. On June 21, 2007, the Executive Committee and the Special Committee held a meeting to review the status of Lear's proxy-solicitation efforts and to decide whether the Company should postpone the annual meeting scheduled for June 27, 2007. At this meeting, the Company also considered distributing a letter to shareholders summarizing the Board's reasons for supporting the Initial Merger Agreement and addressing the concerns raised by ISS's negative report on the transaction that had been issued the previous day.

164. According to minutes from the meeting, Ninivaggi gave an update on the preliminary injunction issued by the Delaware Chancery Court. Ninivaggi then reported that he, Vandenberghe, and Rossiter had recently conducted a series of meetings with the Company's larger institutional shareholders over a two-week period and that the reaction to the Proposed Transaction was "mixed." Ninivaggi further reported that ISS had just issued a negative recommendation on the vote, which had been circulated to the members of the committees. Ninivaggi and Winston & Strawn's Bruce Toth then summarized the ISS analysis and answered questions concerning it. Ninivaggi then suggested that the Company postpone the Annual Meeting to attempt to address shareholder concerns and to clarify the underlying basis for the transaction. He then discussed and solicited comments on a shareholder letter, a draft of which had already been circulated to the Special Committee members. After a brief discussion, the members of the committees agreed to postpone the annual meeting from June 27 to July 12, 2007, to distribute the letter to shareholders, and to retain the record date of May 14, 2007, for the annual meeting. The Individual Defendants breached their fiduciary duties by deciding to postpone the vote without further evaluation of the various alternatives and likelihood of shareholder approval of the deal, and the decision and the delay caused the Company significant unnecessary expenses.

165. The minutes of the June 21, 2007 meeting also reflect that Wallace asked whether there had been discussions about AREP restructuring the Initial Merger Agreement's terms. Ninivaggi responded that no substantive discussions had occurred and that management's primary focus was to solicit as much support for the existing deal as possible. However, Ninivaggi conceded that, ultimately, improvement in the Initial Merger Agreement terms could be required to secure shareholder support, but Ninivaggi expressed doubt that Icahn would agree to more favorable terms to the Company. The attendees then reviewed the Company's shareholder communication strategy, and McCurdy subsequently suggested that the Company start considering the ramifications of a negative vote on the Initial Merger Agreement that would include a communication strategy to Lear's various constituencies and planning within the Lear organization.

166. The personal calendars of Ninivaggi and Rossiter indicate that they continued their efforts to solicit shareholder approval of the Initial Merger Agreement. Ninivaggi held a conference call with Ramius Capital on the afternoon of June 21, participated in a call with State Street Advisors on the following afternoon, and along with Rossiter, participated in a call with two New York State Investors and a follow-up meeting with Vanguard on June 26, 2007. In addition to participating in those meetings with Ninivaggi on June 26, Rossiter also had dinner with representatives of State Street Advisors on June 22 and participated in a conference call with Perry Capital on June 27, 2007.

June 28, 2007 Special Committee Meeting

167. On June 28, 2007, the Special Committee convened a meeting to discuss the status of the solicitation of votes for approval of the Initial Merger Agreement, which the July 9 Supplement described as follows:

> On June 28, 2007, the special committee convened a meeting to discuss, among other topics, the status of the solicitation of votes for approval of the merger

> agreement. At that meeting, representatives of JPMorgan and Evercore, as well as the special committee's other advisors and members of the Company's management, discussed in detail the status of stockholder support for the merger agreement and possible courses of action. After receiving advice from members of senior management and the special committee's advisors, the special committee requested that Messrs. McCurdy and Rossiter approach representatives of AREP regarding the possibility of increasing the per share consideration to be paid to the Company's stockholders under the merger agreement.

(Emphasis added.)

168. Thus, despite the fact that the Court had ordered the Company to disclose Rossiter's conflict of interest and the fact that McCurdy was intimately involved in the discussions with Rossiter about his concerns for his pension and equity interest in the Company and even conveyed the various proposals to Rossiter along with Spalding, the Special Committee entrusted to Rossiter and McCurdy the responsibility of negotiating the terms of an amended merger agreement.

169. The minutes from the meeting reflect that McCurdy "indicated that the purpose of the meeting was to provide the Committee with a status report on the solicitation of proxies for approval of the [Merger Agreement] . . . and discuss alternative actions the Committee should evaluate in connection with obtaining shareholder approval."

170. At McCurdy's request for an update, Ninivaggi stated that "over the prior several weeks, senior management of the Company and/or the Company's advisors had spoken with representatives of most of the Company's 50 largest shareholders" and that shareholder reaction continued to be mixed. Ninivaggi further reported that "[a]lthough certain shareholders were coming to appreciate the Board's rationale for recommending the Initial Merger Agreement . . . many thought improved transaction terms were warranted, particularly given the Company's improved financial outlook for 2007." The minutes further detail Ninivaggi's report as follows:

REDACTED

REDACTED

(Emphasis added.)

171. REDACTED

REDACTED

Ninivaggi next stated that given advice from the Company's legal advisors, "any modification of terms would need to be agreed to with AREP over the next several days in order to preserve the Company's July 12th annual meeting date"—based on the time needed to document the changes, amend the proxy statement, and distribute it to shareholders "as well as solicit support from the ISS and shareholders." (Emphasis added.)

172.

REDACTED

REDACTED

173.

REDACTED

174. According to the minutes, "Ninivaggi next commented that in his discussions with representatives of AREP, they had, in a general way, raised the prospect of an increase in the purchase price in exchange for a break-up fee in the event that the shareholders did not approve the Initial Merger Agreement." (Emphasis added.) After a discussion, all agreed that the Special Committee should request that AREP increase the per-share purchase price to secure shareholder support and that McCurdy and Rossiter should communicate this request to Icahn as soon as possible.

175. According to the July 9 Supplement, McCurdy and Rossiter conveyed the request to Icahn, and Icahn promptly rejected it on June 29, 2007.

"Negotiation" of the Amended Merger Agreement and Discussions with ISS

176. On Sunday, July 1, 2007, Ninivaggi met with Icahn and discussed improvement in the terms of the Initial Merger Agreement to secure shareholder support of the deal. According to Ninivaggi's notes for the July 3, 2007 Board update, after a long conversation between Ninivaggi and Icahn about Lear's views on shareholder support for the transaction at $36 or $37

per-share, Ninivaggi believed that Icahn's rejection of the proposal "boiled down to his concern that raising his bid would make him look bad and even worse if [Lear] still were unable to get [shareholder] approval." However, Icahn ultimately agreed to reconsider Lear's offer for a per-share purchase price increase in exchange for a break-up fee if Lear could "demonstrate meaningful [shareholder] support." Ninivaggi agreed to go to plaintiff, Classic Fund, and perhaps other shareholders to gauge interest in settling the litigation and securing Classic Fund's support of the transaction with a price bump.

177. On July 2, 2007, Classic Fund flatly rejected any settlement for a $1.25 per-share increase in consideration. Later, Ninivaggi's notes reflect that he spoke with Sasco—a 4 per cent holder—and Sasco's rejection was similarly resolute. Ninivaggi notes that "[e]ssentially, they are fairly close to the Pzena camp," who believes that $60 per share would be a fair price.

178. Ninivaggi then reported to Icahn that it would be difficult to move large shareholders for a $1 per-share bump. Icahn then raised the possibility of "adding a 'public stub'—that is, allowing shareholders to co-invest in the deal." Ninivaggi had reported at the June 28, 2007 Special Committee meeting that some shareholders had suggested that their vote could be "positively influenced by receiving a stub equity interest in the Company."

179. On July 3, 2007, Ninivaggi reported to the entire Board on the progress in the discussions with Icahn and the large shareholders. Ninivaggi's notes reflect that Icahn was unwilling to take a "traditional approach" to a public equity stub, which would require negotiating an amended merger agreement, re-filing with the SEC and registering the equity, and take two months. Icahn was "unwilling to leave his equity commitment out that long," according to Ninivaggi's notes. Instead, Icahn proposed buying off the largest shareholders—approaching top shareholders before the shareholder meeting and offering a private placement "up to 30-35% of the equity at the same buy-in price." This proposal presented numerous problems, which

Ninivaggi discussed with the Board on July 3, 2007. Eventually, Lear management indicated to Icahn that "public stub would likely be attractive to some [shareholders] but also believe we need the $1 price bump so all [shareholders] are better off." In response to this position, Icahn reportedly responded positively, but raised again a higher break fee if there were a negative shareholder vote. Ninivaggi's notes for the July 3 Board update reflect Lear management's response to Icahn on this point: "[w]e've indicated that we can't go any further on this but will bring to [Board]."

180. Over the course of six days following the July 3 Board update, negotiations with Icahn proceeded and a significant break-up fee became a negotiated term in what became the Amended Merger Agreement approved by the entire Board on July 9, 2007. During the course of the negotiations, Lear management, its proxy solicitor—MacKenzie's Mark Harnett—and Icahn and his associates were fixated on winning the approval of ISS, and Harnett remained in frequent contact with ISS's Director of M&A Insight Division, Chris Young, updating him on the course of negotiations. Harnett and Young were in contact about the amendment to the merger as it was negotiated on July 6, 7, and 8 as shown by emails from Harnett to Ninivaggi and from Icahn Associates to Winston & Strawn's Bruce Toth.

181. On Saturday night, July 7, 2007, Harnett reported to Ninivaggi that Carl (presumably, Icahn) had given ISS's Chris Young a "heads up" on the change in terms proposed. Harnett references his efforts to lobby Young in light of his expressed reservations:

> Chris has commented on the merits but has alluded to the ISS deadline being passed
>
> I've lobbied him on:
> (1) his clients will have [at least] a week to vote or revote based on a new recommendation
>
> (2) We can't move the meeting because our record date would lapse and

> (3) We can't adjourn on Thursday if we lose the adjournment vote which his initial report recommended Against so the ISS "deadline" creates a Catch 22
>
> I'm waiting for a reply.

182. On Sunday morning, July 8, 2007, Harnett reported to Ninivaggi that Chris Young was asking: "'do you know why Lear did not propose a stub equity solution, a la Clear Channel and Harman?'" Harnett stated he wanted "to make sure [he] answer[s] this 100% correct." Ninivaggi's response is that Young "should probably call Carl," presumably Icahn, and when Harnett clarified "Should I tell him to [ask] Carl?," Ninivaggi answered "Yes." Thus, the Individual Defendants allowed Icahn to control discussions with ISS and trusted his report to Ninivaggi about the likelihood of ISS approval of the Amended Merger Agreement rather than conducting an appropriate and independent evaluation of the situation.

183. ISS's endorsement of the Amended Merger Agreement was essential to its prospects of approval by Lear shareholders as demonstrated by the defendants' efforts to solicit ISS' favor during the negotiation process. When the terms of the Amended Merger Agreement were negotiated, ISS was the dominant proxy advisory service, representing over 1,700 clients, and the firm's ability to determine shareholder votes was widely recognized and understood as reflected in recent news reports (such as the June 13, 2007 Reuters article on ISS' influence that suggested ISS recommendations could move more than 20 percent of a shareholder vote) and a recent study on the role of advisory services in proxy voting (by Alexander, Chen, and Seppi entitled The Role of Advisory Services in Proxy Voting dated December 14, 2006). At least part of the influence of ISS's negative recommendation against the Amended Merger Agreement can be seen by comparing the vote totals on June 28, 2007 with the final vote totals (compared below).

Amended Merger Agreement and the Reaction from Shareholders and ISS

184. On July 8, 2007, the Lear Board of Directors approved the Amended Merger Agreement after receiving an offer from Icahn to increase the purchase price to $37.25 per share in exchange for a break-up fee worth $25,000,000—half in cash and half in Lear stock—and an agreement to amend the Section 203 waiver entered into in November 2006 so that Icahn could purchase up to 27 per cent of the Company. In so doing, the Individual Defendants breached fiduciary duties to the Company by failing to evaluate the likelihood of shareholder approval of the amended terms, the availability of alternatives to pursuing the deal with Icahn: all with the knowledge that the amended offering price was nowhere near fair.

185. On the following day, the Individual Defendants caused Lear to file the July 9 Supplement to its May 23 Proxy with the SEC. As explained by the July 9 Supplement, the Individual Defendants entered into the Amended Merger Agreement without an updated evaluation of its terms from either of its financial advisors. An updated valuation from AREP's financial advisor, Morgan Joseph, is attached to a Schedule 13E-3A, suggesting that such a revised evaluation based on Lear's updated financial outlook and other relevant events since February 9, 2007 (when the Board approved the Initial Merger Agreement) was feasible and advisable. It is apparent from the July 9 Supplement and from meeting minutes and Ninivaggi's notes that the Initial Merger Agreement was going to be rejected by the shareholders, and that but for the Individual Defendants' last minute efforts to negotiate an entirely new deal with a different break-up fee and with no go-shop provision or even a minimal effort to canvass the market for potential buyers, the deal would have been dead and the Company would have owed Icahn nothing. Instead, the Board rushed headlong into new negotiations and approved a deal that was ultimately rejected by ISS and the majority of Lear's shareholders – including Pzena.

REDACTED

REDACTED

186. On the next day, July 10, 2007, ISS issued an updated negative recommendation on the Amended Merger Agreement that criticized Lear's efforts to minimally sweeten a deal at great risk of significant expense to the Company through the termination provision. The report also criticized the Board's failure to fully evaluate the Amended Merger Agreement in light of new information and the deal's significant and unusual break-up fee:

> Now, it's entirely understandable why Icahn, who has a reputation as a fierce negotiator, would seek something in return for raising his bid by approximately $100 million in the aggregate. After all, why should Icahn bid against himself, especially after publicly vowing to not raise his offer? We also understand why Lear management may want to salvage the transaction. After all, going private can be especially attractive to senior executives.
>
> On the other hand, it's much less understandable why the Lear board would agree to the unusual provision. The company argues that Lear shareholders are getting an incremental $100 million in value with a "downside cost" of $25 million, which is a "fair and reasonable" trade-off. But was such a trade-off necessary? We note that because of the looming shareholder rejection, the board arguably was in its best negotiating position since this entire process had begun. After all, the board could simply shrug its collective shoulders and blame its own shareholders for the impasse. We note that in ISS' experience evaluating virtually every M&A vote involving a public company, when the target shareholder vote is at risk (and there is no third-party competitive offer), the buyer normally has two choices: (i) raise without a quid pro quo or (ii) walk away. Lear shareholders are left to wonder why its board felt so fearful that Icahn would walk that it capitulated to his demand for such an unusual break fee arrangement, despite the fact that a significant percentage of the company's long-term shareholders apparently have faith in the standalone option.
>
> We note that the proposed transaction was not the end result of a decision by the board to sell the company. The Lear board did not decide after extensive deliberation and expert advice that the standalone option was not a feasible option. If it had made that determination, we presume that the board would have instructed its financial advisor to embark on a pre-signing auction process designed to achieve the highest offer, and the board would be hell bent on assuring that the deal closed. In contrast, the Lear board here simply reacted to a rather informal and unsolicited indication of interest from Icahn, then checked the market via the go-shop. One would expect that a board that pursues such an

> avenue would be relatively sanguine about the deal's potential failure due to majority shareholder opposition. After all, although it faces many near-term challenges, Lear has taken care of its liquidity issues and has begun to reap the payoff from its restructuring efforts, as evidenced by the increased earnings guidance earlier this year.

187. The ISS report also questioned the Individual Defendants' decision not to insist on negotiating a stub-equity option:

> Based on our conversations with institutional shareholders in other (non-Lear) contexts, it appears that big investors find a stub equity option intriguing. Offering this option forces dissenting shareholders who claim to believe in the long-term value opportunity to "put their money where their mouth is" and may be one of the better ways to resolve the ongoing battle between institutional shareholders and financial sponsors.

188. Through frequent discussion between Lear management and ISS and based on feedback from an extensive shareholder solicitation process, the Individual Defendants knew that the stub-equity option would be more likely to win over major shareholders, but that a minimal price bump like the one offered would not garner sufficient shareholder approval votes – it certainly would not convince Pzena who opined that Lear was worth $60 per share. Furthermore, this negative reaction to the Amended Merger Agreement from ISS was known or knowable to the Individual Defendants, and their decision to approve the Amended Merger Agreement without understanding the likelihood of ISS's negative report and its effect on the shareholder vote constituted a breach of their fiduciary duties to the Company, which caused significant damages to Lear. The Individual Defendants' failure to insist on reports from the Company's proxy solicitor instead of merely relying on Lear management's reports represented a reckless disregard of the best interests of the Company.

189. The Individual Defendants abdicated their responsibilities to the Company by blindly following Lear management's advice to pursue a deal with their preferred suitor at a price they knew was unfair. The Individual Defendants ignored significant and repeated red-flag warnings cited herein that management's recommendations were improperly influenced by

personal financial motivations. Rather than conducting an independent evaluation of relevant facts and circumstances, the Individual Defendants followed Lear management's and Icahn's directions.

190. On July 16, 2007, Lear's shareholders overwhelmingly rejected the Amended Merger Agreement. Slightly over 50% of Lear's shareholders voted against the Amended Merger Agreement, and 29% voted in favor of the Amended Merger Agreement. A comparison of these vote totals with those announced at the June 28, 2007 Special Committee meeting demonstrates how shareholders received the terms of the Amended Merger Agreement. At that meeting, Ninivaggi reported to the Special Committee that as of June 27, 2007, approximately 20% of the Company's outstanding shares had been voted in favor of the Initial Merger Agreement (approximately 15,337,000) and 32% had been voted against it (approximately 24,539,399). Compared to the final totals in favor and against the Amended Merger Agreement of 22,208,407 and 38,662,486 respectively, post-June 27, 2007 votes against the Merger outnumbered post-June 27 votes in favor of it by approximately 14,000,000 to 7,000,000 despite the fact that the Amended Merger Agreement approved on July 8, 2007 increased the per-share compensation by $1.25.

191. The market reacted enthusiastically to the negative vote, and Lear's shares shot up to $40 per share for the first time since the proposed deal was announced. J.P. Morgan, a division of Lear's financial advisor in the deal, upgraded the stock issuing the following comments:

> We upgrade LEA from Neutral to Overweight as we see a near-term rerating opportunity after yesterday's rejection by shareholders of Icahn's $37.50 [sic] takeout offer. The offer had forced LEA shares to not participate in the US auto parts sector's broad-based rally of late; we think value investors will now quickly take note of the stock's relative discount (since Q1-end, LEA is +3% vs. +25% for US parts sector). Further, pricing fundamentals in the seating/interior business on new contracts seems to have improved in the past 6-12 months, perhaps explaining JCI's and Magna's reluctance to part with these businesses

> today despite their currently depressed margins. With no near-term balance sheet concerns, we think investors will be happy to play this re-rating story.
>
> • Seating/Interior Industry Fundamentals Improving—Conversations with JCI suggest that it believes its NAFTA interior operating margins could recover from ~1% in 2007 to ~3% in 2009 in a flat production environment. We also note that MGA seems reluctant to divest its troubled interiors business today. We think both of these comments reflect realization of better pricing/economics on future new contracts. It is hard to imagine that LEA is not seeing a similar trend.
>
> • Cheap Valuation. On our 2008 forecast, LEA trades at 5.5x/11.4x on EV/EBITDA and P/E respectively vs. 6.8x/14.7x for the US auto parts sector. We do not see LEA's valuation fully reaching sector-average levels for various reasons, but the current 20% discount seems excessive. Our EBITDA forecast is $934MM for 2007 and $963MM for 2008, with 2007 based on the $620MM midpoint of (the recently upwardly revised) core operating earnings guidance, and 2008 largely reflecting the $25MM of anticipated incremental restructuring savings. While top-line growth is modest in coming years, better future new contract pricing/incremental restructuring savings suggests 2007 EBITDA is a reasonable baseline, and with EPS benefiting further from de-leveraging.

192. As discussed above, the Company reported on August 2, 2007 that earnings had exceeded expectations for the second straight quarter and revised its full-year 2007 outlook upward for the second straight time since approving the Initial Merger Agreement on February 9, 2007. As Rossiter explained in an August 2, 2007 Lear press release, the improved financial results represent the culmination of restructuring activities that began over two years ago. The same factors cited by Rossiter as the reasons for Lear's "unexpected" success have been the basis for shareholders' claims that Icahn's proposed acquisition was unfair since it was first announced.

DEMAND IS EXCUSED

193. Plaintiffs will fairly and adequately represent the interests of the Company and its shareholders in enforcing and prosecuting the Company's rights.

194. Plaintiffs have not made demand on the Company's current board of directors to institute this Action because such demand would be futile. The Individual Defendant directors each participated in the wrongdoing alleged herein and, therefore, each faces a substantial likelihood of liability for his breaches of fiduciary duty. Moreover, to the extent that the

Individual Defendants challenged conduct constitutes a business decision, such was made in violation of the Individual Defendants' fiduciary duty of loyalty, as alleged herein, and thus is not subject to the protection of the business judgment rule. Specifically, in approving the Amended Merger Agreement, the Individual Defendants breached fiduciary duties to the Company by failing to evaluate the likelihood of shareholder approval of the amended terms and the availability of alternatives to pursuing the deal with Icahn.

195. As alleged herein, the Individual Defendants consciously failed to exercise reasonable business judgment. It was and is apparent from the Supplemented Proxy and from meeting minutes and Ninivaggi's notes that the Initial Merger Agreement was going to be rejected by Lear's shareholders, the deal would have been dead, and the Company would have owed Icahn nothing.

196. Through frequent discussions between Lear management and ISS and based on feedback from an extensive shareholder solicitation process, the Individual Defendants knew that a stub-equity option would be more likely to win over major shareholders. Furthermore, the negative reaction to the Amended Merger Agreement from ISS was known or knowable to the Individual Defendants, and their decision to approve the Amended Merger Agreement without understanding the likelihood of ISS's negative report and its effect on the shareholder vote constituted a breach of their fiduciary duties to the Company. The Individual Defendants also knew that Pzena and other substantial institutional shareholder would reject the $1 per share sweetened bid as they understood and agreed with the notion that Lear's shares were really worth $60 per share. The Individual Defendants' failure to insist on reports from the Company's proxy solicitor instead of relying on Lear management's reports on the process represented a reckless disregard of the best interests of the Company.

COUNT I

BREACH OF FIDUCIARY DUTY

(Against the Individual Defendants)

197. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

198. In entering into Amendment No. 1 to the Amended Merger Agreement on the Company's behalf, the Individual Defendants agreed to a deal that offered patently inadequate consideration on coercive terms that favored a significant Company shareholder. The consideration per share that was to be paid to the Company's shareholders in the Proposed Transaction was unfair and inadequate because, among other things: (a) the intrinsic value of the Company's stock was materially in excess of $37.25 per share that the AREP Entities proposed, giving due consideration to the Company's prospects for growth and profitability in light of its business, earnings power, present and future; and (b) the $37.25 per share price was not the result of arm's length negotiations but was fixed arbitrarily by defendants to "cap" the market price of the Company and obtain its assets and business at the lowest possible price.

199. Recognizing the Company's potential for greater growth, the AREP Entities attempted to deny the Company's public shareholders the opportunity to obtain fair value for their equity interest by proposing a transaction at an inadequate premium, thereby denying the Company's public shareholders the opportunity to obtain fair value for their equity interest.

200. The Lear Board acted in bad faith and in violation of its fiduciary duty of loyalty in connection with its decision to approve Amendment No. 1 to the Merger Agreement. Amendment No. 1 to the Merger Agreement included the addition of both: (1) a $12.5 million payment to the AREP Entities and (2) the issuance of 335,570 shares of Lear common stock to the AREP Entities in the event the requisite stockholder vote was not obtained at the Special Meeting to approve the Merger Agreement. The 335,570 shares of Lear stock had an approximate value of $12.6 million as of the close of trading on July 16, 2007.

201. Paying the AREP Entities $25.1 million unjustly enriched the AREP Entities and constituted a violation of the Individual Defendants' fiduciary duties of good faith and loyalty in that they knew that the $37.25 offering price was unfair and that the requisite stockholder votes were not going to be obtained to approve the Merger Agreement at the special meeting of shareholders and therefore the Company would receive no tangible benefit from the payout.

202. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duty, Lear has sustained, and will continue to sustain, substantial harm.

COUNT II
AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY
(Against the AREP Entities)

203. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

204. Because they were fiduciaries of the Company and its shareholders, the Individual Defendants owed duties of due care, undivided loyalty, good faith, and full and fair disclosure to Lear and its shareholders. The Individual Defendants violated and breached these duties.

205. With the knowledge, approval, and participation of each of the Individual Defendants, as alleged herein, the AREP Entities were able to, and in fact did, knowingly render aid and assistance to the Individual Defendants in their breaches of fiduciary duty. The AREP Entities did so knowingly, or but for conscious misconduct would have known, of the Individual Defendants' fiduciary breaches.

206. As a direct and proximate result of the aiding and abetting of the Individual Defendants' breaches of fiduciary duty, Lear has sustained, and will continue to sustain, substantial harm.

COUNT III

UNJUST ENRICHMENT AND WASTE

(Against the AREP Entities and the Individual Defendants)

207. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

208. As a result of the breaches of fiduciary duties (and the aiding and abetting thereof) described above, the AREP Entities have been unjustly enriched at the expense of the Company and its shareholders. The Company thereby has been damaged.

WHEREFORE, plaintiffs demand judgment against defendants, jointly and severally, as follows:

A. Declaring that plaintiffs may maintain this action derivatively and that plaintiffs are adequate representatives on behalf of the Company;

B. Declaring that defendants have violated their fiduciary duty of loyalty to Lear and its Shareholders;

C. Declaring that the AREP Entities aided and abetted the Individual Defendants' duty of loyalty violations;

D. Declaring that the AREP Entities have been unjustly enriched as set forth herein;

E. Determining and awarding to Lear the damages sustained by it as a result of the violations set forth above from each of the defendants herein, jointly and severally, together with pre-judgment and post-judgment interest thereon at the maximum rate allowable by law;

F. Awarding Lear restitution from defendants, and each of them;

G. Awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs and expenses; and

H. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: March 19, 2008

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