JH

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

DENNIS HIGGINBOTHAM, individually and on behalf of all others similarly situated, Plaintiff, v. **BAXTER INTERNATIONAL, INC., HARRY M. JANSEN KRAEMER, JR., BRIAN P. ANDERSON,** and **JOHN GREISCH,** Defendants.	**CIVIL ACTION NO. 04 C 4909** Hart **JURY TRIAL DEMANDED**

J.N. FILED SEP. 28, 2005 SEP 28 2005 MICHAEL W. DOBBINS CLERK, U.S. DISTRICT COURT

SECOND AMENDED CLASS ACTION COMPLAINT

Lead Plaintiff, the Steelworkers Pension Trust, individually and on behalf of all other persons similarly situated, by its undersigned attorneys, for its complaint against defendants, alleges the following based upon personal knowledge as to itself and its own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through its attorneys, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Baxter International, Inc. ("Baxter" or the "Company"), securities analysts' reports and advisories about the Company, information obtainable on the Internet, documents procured from confidential sources at the Brazilian Ministry of Justice, and interviews with certain former Baxter employees and

consultants, and Brazilian health officials. Lead Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal class action on behalf of purchasers of the securities of Baxter between March 12, 2004 and July 21, 2004, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. On July 22, 2004, Baxter stunned the market by announcing that it planned to restate its financial results for the years 2001 through 2003, and for the first quarter of 2004. The effect of the restatement was to decrease previously reported net sales results by $37 million and to decrease previously reported net income by $33 million.

3. The restatement was necessary because Baxter's previously issued financial statements had materially inflated reported revenue and net income due to Baxter's Brazilian subsidiary (i) recording fictitious sales to fictitious customers; (ii) recording fictitious sales to actual customers; (iii) engaging in improper rebate arrangements; and (iv) failing to properly provide for bad debts, in violation of Generally Accepted Accounting Principles ("GAAP").

4. The restatement was attributed by the Company itself to incorrect revenue recognition and inadequate provisions for bad debts in Brazil during the Class Period, in violation of GAAP. GAAP are those principles recognized by the accounting profession and the SEC as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Accordingly, the false accounting which triggered the restatement caused the Company to downwardly revise prospective earnings guidance.

5. On August 6, 2004, the company restated previously issued financial information for 2001 through 2003 that was contained in its Forms 10-K for the years ended December 31, 2003, 2002 and 2001, by filing a Form 10-K/A for the year ended December 31, 2003. The Company's previously reported quarterly financial information was also restated by the filing of Forms 10-Q/A for the quarters ended March 31, 2004 and September 30, 2003, also on August 6, 2004. Baxter's August 6, 2004 Form 10-K/A and Forms 10-Q/A are collectively referred to herein as the "Restatement".

6. As reported in a July 23, 2004 article in the Chicago Tribune, entitled "Baxter finds trouble in Brazil", Baxter's "Brazilian operations. . . generate $100 million a year in sales." This $100 million annual sales figure is also noted in an August 14, 2004 article in the National Post's Financial Post & FP Investing - Canada, entitled "Facing up to far-flung risks: The head office sometimes notices overseas units too late" (byline by Arindam Nag, Reuters).

7. With thirteen fiscal quarters affected by the Restatement, representing approximately $325 million in Brazilian sales, the Restatement was material as it eliminated over 10% of the total reported Brazilian sales revenue during the thirteen quarter period. The overstatement of revenue was particularly material because it impacted net income on a near-dollar-for-dollar basis (i.e., a $37 million income overstatement served to overstate net income by $33 million) and because it grossly obscured gross margins (a $33 million after-tax income on $37 million of revenue suggests a gross margin of near 100%) and earnings trends.

8. The relevant facts, as set forth particularly below, strongly support the contention that defendants Anderson and del Salto knew of the Brazilian fraud no later than March 9, 2004 and April 29, 2004, respectively, and concealed the existence of the fraud from the investing public until

after they had "cashed out". Moreover, as set forth below, on a July 22, 2004 conference call defendant Parkinson admitted that Baxter management had been made aware of the Brazilian fraud as early as May 2004, yet continued to conceal it while issuing false financial statements and false Sarbanes-Oxley certifications. Indeed, the facts also demonstrate that Baxter's Sarbanes-Oxley certifications, set forth in the Company's 2003 Form 10-K and 1st quarter 2004 Form 10-Q, were signed by certain defendants despite the fact that the Company undertook no actions with respect to Sarbanes-Oxley implementation in Brazil until September of 2004, when it first retained Deloitte & Touche LLP to do so. Defendants also failed to file a Form 8-K correcting their false statements, despite being aware that a fraud was being concealed from the investing public.

9. The facts also support the contention that defendants found it impossible to continue to conceal the Brazilian fraud beyond July 21, 2004, almost certainly because PriceWaterhouseCoopers LLP ("PwC") (the Company's independent auditor, the firm assisting Baxter in the investigation of the Brazilian fraud, and the firm required to review Baxter's June 30, 2004 Form 10-Q pursuant to SEC rules) refused to acquiesce to non-disclosure of the fraud in the June 30, 2004 Form 10-Q due to GAAP disclosure rules (FASB Statement No. 5 and APB Opinion No. 28) as well as newly enacted Public Company Accounting Oversight Board guidance (Auditing Standard No. 2) and SEC guidance (see http://www.sec.gov/rules/pcaob/34-49884.htm and http://www.sec.gov/info/accountants/controlfaq0604.htm). Accordingly, the July 22, 2004 press release was issued. It stated, in relevant part:

> The company also announced that it plans to restate its financial results for the years 2001 through 2003, and for the first quarter of 2004. The restatement is primarily the result of incorrect revenue recognition and inadequate provisions for bad debts in Brazil during that period, which will result in a decrease in net income over the restatement period by an amount expected to be no more than $40 million, or $0.07

> per diluted share. The restatement is expected to result in adjustments to sales over the period of an amount not more than $70 million, representing less than 0.5 percent of sales in any year.
>
> Greisch added, "While the adjustments to any of the individual years subject to restatement may not seem significant to Baxter's overall operations, the company concluded that a restatement is the most appropriate action."

10. News of the Restatement caused shares of Baxter's common stock to fall $1.48 per share, or 4.59 percent, to close at $30.79 per share on unusually heavy trading volume, thereby damaging Lead Plaintiff and the Class. By way of comparison, on that same day, the Dow Jones Industrial Average rose by 4 points; the Nasdaq Composite Index rose by 15 points; and the NYSE Health Care Index (of which Baxter is a component) rose by 28 points.

JURISDICTION AND VENUE

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

12. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. §§ 1331.

13. Venue is proper in this Judicial District pursuant to § 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, the Company maintains a principal executive office in this Judicial District, at One Baxter Parkway, Deerfield, Illinois, 60015.

14. In connection with the acts, conduct and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

15. Lead Plaintiff, Steelworkers Pension Trust, purchased Baxter securities at artificially inflated prices during the Class Period, as follows, and has been damaged thereby: (i) 8,300 shares at $33.27 on 4/20/04; (ii) 11,700 shares at $34.25 on 4/21/04; (iii) 6,900 shares at $32.77 on 4/27/04; (iv) 44,210 shares at $31.72 on 5/10/04; (v) 3,900 shares at $31.80 on 5/13/04; and (vi) 22,235 shares at $32.72 on 6/10/04.

16. Defendant Baxter is a Delaware corporation with its principal executive offices located at One Baxter Parkway, Deerfield, Illinois, 60015. Baxter operates as a global medical products and services company with expertise in medical devices, pharmaceuticals and biotechnology to assist healthcare professionals and their patients with the treatment of complex medical conditions, including hemophilia, immune disorders, infectious diseases, cancer, kidney disease, trauma and other conditions. The Company's continuing operations consist of three segments: Medication Delivery, which provides a range of intravenous solutions and specialty products that are used in combination for fluid replenishment, general anesthesia, nutrition therapy, pain management, antibiotic therapy and chemotherapy; BioScience, which develops biopharmaceuticals, biosurgery products, vaccines and blood collection, processing and storage products and technologies for transfusion therapies; and Renal, which develops products and provides services to treat end-stage kidney disease. The company generates approximately 50% of its revenues outside the United States, selling its products and services in over 100 countries. Baxter's principal international markets are Europe, Japan, Canada, Asia and Latin America.

17. Defendant Robert L. Parkinson, Jr. ("Parkinson") was Chairman of the Board, Chief Executive Officer and President from April 26, 2004 through the end of the Class Period.

18. Defendant Carlos del Salto ("del Salto") was Senior Vice President of Baxter Healthcare Corporation from 2003 to August 2004 and Senior Vice President of Baxter World Trade Corporation and President-Intercontinental/Asia from 1996 until 2003. Del Salto was a member of Baxter's executive management team. and managed a diverse geographic region that encompassed Latin America as well as Asia and Japan.

19. Defendant Brian P. Anderson ("Anderson") was, from February 1998 until June 21, 2004, the Company's Senior Vice President and Chief Financial Officer. Anderson was responsible for all finance functions, supply chain, and information technology.

20. Defendant John J. Greisch ("Greisch") was Corporate Vice President and Chief Financial Officer from June 21, 2004 through the end of the Class Period. From January to June 2004, he served as a Corporate Vice President of Baxter World Trade Corporation and Baxter Healthcare Corporation and President-BioScience. From May 2003 to January 2004, Greisch served as Vice President of Finance and Strategy for the BioScience division. From March 2002 until April 2003, Greisch served as Vice President of Finance for the Renal division.

21. Parkinson, Anderson, del Salto, and Greisch – the Company's senior management throughout the majority of the Class Period – are collectively referred to hereinafter as the "Individual Defendants."

22. As set forth in Baxter's May 19, 2004 Proxy Statement, "[m]anagement is responsible for Baxter's internal controls and the financial reporting process." May 19, 2004 Proxy Statement at p. 20.

CLASS ACTION ALLEGATIONS

23. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all those who purchased or otherwise acquired the securities of Baxter during the Class Period and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

24. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the New York Stock Exchange was the principal market on which the company's common stock was traded. At January 30, 2004, there were approximately 63,088 holders of record of the company's common stock. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Baxter or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

25. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

26. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

(a) whether defendants violated the federal securities laws as alleged herein;

(b) whether defendants were responsible for overseeing and accurately reporting the financial results for the Company's Brazilian operations;

(c) whether defendants were responsible for insuring Baxter had adequate internal controls;

(d) whether statements made by defendants to the investing public during the Class Period misrepresented the Company's financial results;

(e) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations, internal controls and management of Baxter;

(f) whether the Individual Defendants had the ability to control Baxter and/or Baxter's Brazilian management; and

(g) to what extent the members of the Class have sustained damages and the proper measure of damages.

28. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

Background

29. Baxter operates a global medical products and services company with expertise in medical devices, pharmaceuticals and biotechnology. The Company's business consists of three segments: Medication Delivery, BioScience, and Renal, with operations in North America, Europe, Latin America, and Asia.

30. During 2003, Baxter management had lost credibility with the investment community and Wall Street. For example, see a December 24, 2003 article in the Chicago Tribune, entitled "Baxter shares slip with forecast; Revision for '03 troubles investors," which quotes David Lothson, an analyst with UBS in New York, as stating: "We see the biggest casualty as management credibility."

31. As a result of the market's discontent with then Chairman of the Board and CEO Harry Kraemer, in January 2004 Kraemer was forced to announce his resignation effective upon appointment of a successor (January 26, 2004 Baxter press release). As later reported in an April 23, 2004 article in the Chicago Tribune, entitled "4,000 jobs to be cut at Baxter; New round comes as CEO shift nears", byline by Bruce Japsen:

> Baxter's escalating job reductions come during a turbulent period marked by investor dismay over a series of quarterly earnings disappointments. Those miscues punished Baxter's share price, damaged its credibility with Wall Street and led to the downfall of its chief executive, Harry Kraemer.

32. On January 29, 2004, defendant Anderson (CFO) presented a bullish earnings guidance in a conference call with analysts, stating: ". . . for 2004, for the total Company, our sales growth is expected to be in the three to five percent range for organic growth, i.e. assuming no

benefit from foreign currency. Earnings per share we're targeting in the range of $1.75 to $1.85 including 10 cents of incremental benefit from the restructuring actions we announced last July." See transcript of the January 29, 2004 conference call. That call caused the price of the Company's stock to soar upward.

33. On March 9, 2004, defendant Anderson filed notice with the SEC on Form 144 of a planned sale of 44,902 shares of Baxter stock. The announced sale was highly unusual because defendant Anderson had not, in preceding years, sold any of his Baxter stock. Accordingly, this action by defendant Anderson strongly supports an inference of scienter with regard to the ongoing Brazilian fraud and a cognizance of the adverse impact that disclosure of this fraud and the imminent resultant restatement would have on the price of the Company's stock.

The Breakdown of Internal Controls in Brazil

34. As set forth in the August 6, 2004 Restatement, "[t]he restatement is primarily the result of the inappropriate application of accounting principles for revenue recognition and inadequate provisions for bad debts in Brazil during the period."

35. A comprehensive investigation by the Audit Committee of the Board of Directors revealed: (i) "an ineffective control environment maintained by senior management in Brazil, including intentional overrides by senior management in Brazil of internal controls"; (ii) "inadequate revenue recognition controls in Brazil"; (iii) "inadequate controls in Brazil to ensure adherence to generally accepted accounting principles for loss contingencies, including bad debts"; and (iv) "ineffective financial review by management responsible for the Intercontinental region, which includes Latin America." See 10-K/A at Item 9A.

36. These issues caused the Company itself to conclude that collectively, they "constitute a material weakness in the company's internal controls over financial reporting." Id.

37. Certain of the improperly recognized revenues were derived from sales to fictitious customers, fictitious sales to actual customers, and the manipulation of bids for the sale of blood byproducts to the Brazilian government. Certain of the inadequate provisions for bad debts were the result of Baxter's Brazilian management's involvement in improper rebate arrangements with product vendors.

Fictitious Contracts

38. According to a former Baxter executive employed throughout the Class Period and knowledgeable regarding the Brazilian situation which prompted Baxter to restate ("Confidential Witness 1" or "CW1"), the Brazilian operation's financial accounting was performed by Baxter employees in Brazil, under the direction of the Finance Director, Robert Vlasak, and his staff of thirty people.

39. According to CW1, the financial results for Baxter's Brazilian operations were inputted both manually and automatically, and recorded on a stand-alone local ledger system. The financial results, including receivables and bad debts, were calculated in Reals (Brazilian currency), inputted to Baxter's global system where it was converted to U.S. Dollars, and then forwarded to senior Baxter management in Deerfield, on a monthly basis, specifically including defendant Greisch.

40. Additionally, according to a confidential witness who was retained by Baxter as a consultant on the issue of financial controls ("Confidential Witness 4" or "CW4"), all Brazilian

transactions were entered into the J.D. Edwards software system, which enabled senior management in Deerfield to see the transactions on a "real-time" basis.

41. As described by CW1, the Company's Brazilian management set its own goals and quotas, and forwarded those expectations to senior management in Deerfield for approval.

42. The Brazilian managers responsible for setting those targets were Finance Director Vlasak, President Giancarlo Prestinoni, and Sales Manager Nelson Sanches.

43. According to CW1, Vlasak, Prestinoni, and Sanches doctored the company's books by booking sales to fictitious customers and booking fictitious sales to existing customers, presumably in order to meet the sales quotas they had previously set and represented to senior management. These fictitious sales were, according to CW1, the primary reason for the Restatement.

44. Additionally, according to CW4, these fictitious sales were inputted by Baxter's Brazilian personnel so as to achieve certain targets which entitled them to larger bonuses.

45. According to CW4, Baxter's Brazilian personnel began to pull legitimate sales from a future month into the preceding month in order to meet sales and revenue quotas. On the invoices, they would insert an earlier date of sale. At first, it was sales from one day of the next month, but as the fraud continued they had to pull sales from more and more days in order to "back fill" the void left by pulling sales from one month into another. The fraud continued this way until late 2003, at which time there were no more future sales from which to pull, so they began to create fictitious sales in order to meet their sales and revenue quotas. This persisted into the first quarter of 2004 at which time it unraveled. CW4 characterized the Brazilian problems as a "systematic fraud."

46. These fictitious contracts were brought to the attention of defendant Greisch on a regular basis, and to defendant Anderson no later than May 2004, according to CW1.

47. Additionally, the Individual Defendants were responsible for regularly determining the proper allowance for doubtful accounts, yet failed to do so for several years. As set forth in the Restatement, "In determining the amount of the allowance for doubtful accounts, **management** considers historical credit losses, the past due status of receivables, payment history and other customer-specific information, and any other relevant factors or considerations. Receivables are written off when **management** determines they are uncollectible." 10-K/A at p. 46 (emphasis added).

Operation Vampire

48. On April 29, 2004, Baxter was accused by the Brazilian Ministry of Justice, Office of the Secretary of Economic Rights, Department of Economic Protection and Defense, and an administrative proceeding was initiated, to prosecute an alleged cartel practice in bidding processes administered by the Ministry of Health for the purchase of blood byproducts (elements derived from blood – plasma, platelets, erythrocytes, etc. – and used individually by transfusion to treat various diseases). This was done in response to the publication of a "complaint" in the newspaper *Correio Brasiliense* on April 20, 2004.

49. On May 19, 2004, as part of "Operation Vampire", which investigated several irregularities in the blood products sector, the Brazilian Federal Police launched several search and seizure operations. Press reports suggested that the scheme had been operating since the early 1990's, and resulted in losses of nearly 2 billion Reals for the government coffers.

50. Also on May 19, 2004, Luiz Claudio Gomes da Silva, the head of the Brazilian Health Ministry's office for government-supplied medicines, and other alleged members of the so-called

"Blood Mafia" were arrested. Among those arrested was former Baxter employee Elias Esperidiao Abboadalla.

51. On May 21, 2004, the newspaper *Correio Brasiliense* published a report (Section 1, page 14) stating that the Brazilian General Accounting Office (TCU) conducted an audit to analyze the bidding processes administered by the Ministry of Health from 1998 to 2002, and its report indicated the existence of a cartel among the producers of blood byproducts:

> "According to the TCU, the companies agreed upon prices in advance (...) The TCU also indicates that the participants divided up lots. The bidder with the lowest bid only bid on a percentage of the product. Thus, the second-place bidder (and sometimes the third and fourth-place bidders also) were called upon to offer the rest of the lot at the same price as the winner (...) There were no appeals or challenges in the bidding processes."

52. Also on May 21, 2004, the newspaper *Folha de São Paulo* published a report (Section 1, page A4) stating the names of the 9 (nine) companies that would be most cited in the TCU report: Immuno AG, Octapharma AG, Centeon LLC, American National Red Cross [sic] (ARC), Biotest Pharma, Baxter Export Corporation, Alpha Thereapeutic Corporation, Bio Products Laboratory (BPL), and LFB (the latter was cited as a non-profit institution).

53. According to the interim Minister of Health, Gastão Wagner, the suspects had been over billing the foreign purchase of factors 8 and 9, two blood byproducts essential for the coagulation of blood used in treating hemophiliacs. Brazil does not yet have the technological resources to produce them.

54. On May 26, 2004, the Secretary of Economic Rights ordered that a preliminary investigation be launched against several companies, including Baxter.

The Improper Rebates

55. According to a former Brazilian Baxter executive ("Confidential Witness 2" or "CW2"), several Brazilian Baxter employees were terminated in 2004, following the company's internal audit team's preliminary investigation. Those individuals included Elias Esperidiao Abboadalla, the former Marketing Director (arrested by the Brazilian Federal Police in connection with Operation Vampire), and Cornelia Helga Bauer, the General Director.

56. CW2 became aware of Baxter's unlawful activities in June 2004, based on a complaint from a vendor who said that he had been approached by Ramis Abub who required improper rebates on the purchase of products. The vendor identified Massimo Di Gioacchino, Human Resources Director; Giancarlo Prestinoni, President; and Robert Vlasak, Finance Director, as also being involved in the rebate scheme. Nelson Sanches, Sales Manager, was also identified as being involved in the activity and he was very close to the above mentioned subjects and participated in all meetings with them.

57. According to CW2, Di Gioacchino, Prestinoni, and Vlasak were the primary participants in the rebates, each had huge amounts of outstanding bad debts owed to Baxter, and each would continuously give unwarranted lengthy extensions on debts owed to Baxter.

58. Robert Vlasak (Finance Director), Giancarlo Prestinoni (President), Nelson Sanches (Sales Manager), Cornelia Helga Bauer, (General Director), Massimo Di Gioacchino (Human Resources Director), and Elias Esperidiao Abboadalla (Marketing Director) while not named as defendants, are primary violators of § 10(b), having engaged in a scheme to defraud. They are referred to herein collectively as ("Baxter's Brazilian Management").

59. According to CW4, the problems with Baxter's Brazilian operations were discovered around the end of the first quarter of 2004.

Materially False And Misleading
Statements Issued During The Class Period

60. The Class Period begins on March 12, 2004, the date on which the Company's 2003 Form 10-K was filed with the SEC. This document, which was signed by defendant Anderson, discussed the objective of the Company's "strategic focus" in Latin America as "enhancing its [the Company's] IV solutions and nutrition businesses, growing its multisource injectable franchise and expanding its contract manufacturing services." Moreover, it represented that "sales growth in both 2003 and 2002 was driven principally by sales of products for peritoneal dialysis" and that "increased penetration of products for peritoneal dialysis continues to be strongest in emerging markets such as Latin America and Asia, where many people with end-stage renal disease are currently under-treated."

61. Significantly, the Company's 2003 Form 10-K stated that defendant Anderson was "responsible for all finance functions, supply chain and information technology." It also contained a "Report Of Management" which was signed by defendant Anderson and which stated:

> Management is responsible for the integrity and accuracy of the consolidated financial statements of Baxter International Inc. (Baxter) and other financial data included in this Annual Report. The financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America and include amounts based on the best estimates and judgments of management with appropriate consideration given to materiality.
>
> Management believes that the foundation of an effective system of internal controls is a strong ethical company culture. The Corporate Responsibility Office, which was established in 1993 and reports to the Public Policy Committee of the Board of Directors, is responsible for developing and communicating Baxter's business practice standards and policies; providing guidance and operating multiple channels

of communication for reporting potential business practice violations, including a confidential toll-free telephone number; and monitoring global compliance through, among other processes, its structure of regional business practice committees. The monitoring process includes an annual certification of compliance with Baxter's business practice standards by senior managers and thousands of other employees worldwide. These activities are coordinated and implemented by Baxter's Business Practices staff.

Management maintains a system of internal controls (including disclosure controls) designed to provide reasonable assurance that Baxter's assets are protected and that transactions are appropriately authorized and recorded to permit the preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. Disclosure controls designed to the concept of reasonable assurance are based on the recognition that there are inherent limitations in all systems of controls, and the cost of such systems should not exceed the benefits derived. The system of internal controls are supported by qualified personnel, organizational assignments that provide appropriate delegation of authority and division of responsibility, written policies and procedures, and Baxter's Disclosure Committee. Internal controls are monitored by a staff of corporate auditors who recommend changes to the system in response to changes in business conditions and operations.

The Audit Committee of the Board of Directors, which is composed entirely of independent directors, meets periodically with management, the corporate auditors and the independent auditor to review audit plans and results, internal controls, financial reports and related matters. Both the corporate auditors and the independent auditor report directly to the Audit Committee, periodically meet privately with the committee and have unrestricted access to its individual members. The Audit Committee has established policies and practices consistent with corporate reform laws to ensure auditor independence.

PricewaterhouseCoopers LLP, independent auditors, are engaged by the Audit Committee to audit Baxter's consolidated financial statements in accordance with auditing standards generally accepted in the United States of America. Their opinion is based on procedures that they believe to be sufficient to provide reasonable assurance that the consolidated financial statements contain no material errors.

62. Additionally, the Company's 2003 Form 10-K contained a signed certification by defendant Anderson which stated:

I, Brian P. Anderson, certify that:

1. I have reviewed this annual report on Form 10-K of Baxter International Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

    a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are

reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

*****

Brian P. Anderson, as Senior Vice President and Chief Financial Officer of Baxter International Inc. (the "Company"), certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Company's Annual Report on Form 10-K for the year ended December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

63. The Company's 2003 Form 10-K was materially false and misleading because:

a. it touted the growth of the Company's business in Latin America while failing to disclose the fact that a significant portion of this growth represented fraudulently reported sales in Brazil and that cessation of the fraudulent revenue and earnings would adversely affect prospective revenue and earnings guidance;

b. it purported to disclose all significant "commitments and contingencies" (on the face of the audited financial statements which were contained within the Company's 2003 Form 10-K, in the notes appended thereto, and in other textual portions of the Company's 2003 Form 10-K) when it failed to disclose the material contingencies surrounding the Brazilian fraud (i.e., the cost of investigating the fraud, quantifying adjustments, preparing and filing restated financial statements, engaging counsel to handle the legal ramifications of the fraud, etc.);

c. the financial statements contained therein were materially false and misleading as later disclosed through the Restatement;

d. the "Report Of Management" which was signed by defendant Anderson led the investment community to believe that the Company's financial statements embodied "integrity and accuracy" and were "prepared in conformity with accounting principles generally accepted in the United States of America" when they were not;

e. the "Report Of Management" which was signed by defendant Anderson led the investment community to believe that Baxter "maintained" a system of internal controls (including disclosure controls) designed to provide reasonable assurance that Baxter's assets are protected and that transactions are appropriately authorized and recorded to permit the preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, when this was not true. As later reported in an August 14, 2004 article in the National Post's Financial Post & FP Investing - Canada, entitled "Facing up to far-flung risks: The head office sometimes notices overseas units too late" (byline by Arindam Nag, Reuters), the Company took no measures to assure that Baxter "maintained" a system of effective internal controls in Brazil. The article states: "Baxter rarely had its Brazilian unit audited by external auditors because revenue was too small, US$100-million out of about US$9-billion in total revenue.";

f. the "Report Of Management" which was signed by defendant Anderson led the investment community to believe that Baxter's internal controls were "monitored by a staff of corporate auditors who recommend changes to the system in response to changes in business conditions and operations", when no such monitoring occurred in Brazil; and

g. the Sarbanes-Oxley certification signed by defendant Anderson failed to disclose that Sarbanes-Oxley compliance was not at that time implemented in Brazil. According to CW4, based upon his own observations and conversations with Baxter's internal audit personnel in Deerfield, Baxter did not even begin implementing Sarbanes-Oxley compliance procedures in Brazil until September 2004, at which time it retained Deloitte & Touche to oversee the process. CW4 described that process as consisting of an outside entity (Deloitte) conducting a study of Baxter's internal controls to determine if the controls were capable of reflecting accurate financial statements.

64. The 2003 Form 10-K was also materially false and misleading because it failed to comply with SEC MD&A disclosure mandates.

65. On May 18, 1989, the SEC issued an interpretive release (Securities Act Release No. 6835) which stated, in relevant part:

> The MD&A requirements are intended to provide, in one section of a filing, material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future. As the Concept Release states:
>
> The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company. The Item asks management to discuss the dynamics of the business and to analyze the financials.
>
> As the Commission has stated, "[i]t is the responsibility of management to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company."

66. SEC Staff Accounting Bulletin No. 101, drawing from Regulation S-K, Article 303, and Financial Reporting Release No. 36, also reiterated the importance of MD&A in financial statements:

> Management's Discussion & Analysis (MD&A) requires a discussion of liquidity, capital resources, results of operations and other information necessary of a registrant's financial condition, changes in financial condition and results of operations. This includes unusual or infrequent transactions, known trends, **or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income** and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase

or decrease. The Commission stated in Financial Reporting Release No. 36 that **MD&A should "give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects for the future."** [Emphasis added; footnotes omitted.]

67. Item 7 of Form 10-K and Item 2 of Form 10-Q, requires the issuer to furnish information required by Item 303 of Regulation S-K [17 C.F.R. § 229.303]. In discussing results of operations, Item 303 of Regulation S-K requires the registrant to "[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable or unfavorable impact on net sales or revenues or income from continuing operations."

68. The Instructions to Paragraph 303(a) further state, "[t]he discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results."

69. Thus, under these standards, the management of a public corporation must disclose in its periodic reports filed with the SEC, "known trends or any known demands, commitments, events or uncertainties" that are reasonably likely to have a material impact on a company's sales revenues, income or liquidity, or cause previously reported financial information not to be indicative of future operating results. 17 C.F.R. § 229.303(a)(1)-(3) and Instruction 3.

70. In addition, the SEC, in its May 18, 1989 Interpretive Release No. 34-26831, has indicated that registrants should employ the following two-step analysis in determining when a known trend or uncertainty is required to be included in the MD&A disclosure pursuant to Item 303 of Regulation S-K: (a) A disclosure duty exists where a trend, demand, commitment, event or

uncertainty is both presently known to management; and (b) is reasonably likely to have a material effect on the registrant's financial condition or results of operations.

71. As described above, Baxter's 2003 Form 10-K failed to comply with MD&A disclosure requirements because it failed to disclose the existence of an ongoing fraud which materially impacted the Company's business operations in a key market, the resultant adverse implications concerning the Company's prospects of future business growth in this market, and the resultant required revisions to the Company's previously reported financial results.

72. As indicated above, Baxter was ultimately required to restate the financial statements which were presented in the 2003 Form 10-K in order to correct the material misstatements arising from the fact that Baxter's Brazilian subsidiary had recorded fictitious sales to fictitious customers, recorded fictitious sales to actual customers, engaged in improper rebate arrangements, and failed to properly provide for bad debts. Accordingly, the financial statements which were presented in the 2003 Form 10-K were materially false and misleading and in violation of the following GAAP:

a. The principle that revenues and gains generally are not recognized until realized or realizable, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues. (Statement Of Financial Accounting Concepts No. 5)

b. The principle that the quality of reliability and, in particular, of representational faithfulness leaves no room for accounting representations that subordinate substance to form. (Statement Of Financial Accounting Concepts No. 2)

c. The principle that losses be accrued for when a loss contingency exists. (Statement of Financial Accounting Standards No. 5)

d. The principle that if no accrual is made for a loss contingency disclosure of the contingency shall be made when there is at least a reasonable possibility

that a loss or an additional loss may have been incurred. (Statement of Financial Accounting Standards No. 5)

e. The principle that revenues should ordinarily be accounted for at the time a transaction is completed, with appropriate provision for uncollectible accounts. (Accounting Principles Board Opinion No. 10)

f. The principle that revenues and gains generally are not recognized until realized or realizable, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues. (Statement Of Financial Accounting Concepts No. 5)

g. The principle that disclosure of accounting policies should identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the financial statements. (APB Opinion No. 22)

h. The principle that revenue generally is realized or realizable and earned when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller's price to the buyer is fixed or determinable, and collectibility is reasonably assured. (SEC Staff Accounting Bulletin No. 101)

73. By no later than March 31, 2004, several Brazilian employees had learned of the Brazilian fraud and brought it to the attention of Baxter Management. As stated by Confidential Witness #5 ("CW5") who had been responsible for training Baxter's financial executives, "some of the Brazilian Baxter employees had discovered the problem **at the end of the first quarter of 2004, and brought it to the attention of Baxter Management.**" As discussed below, there is a strong inference that these Brazilian employees informed defendants Anderson and del Salto. This is consistent with the statement of CW4, who indicated that Baxter's Internal Audit Department became aware of the Brazilian fraud "around the end of the first quarter of 2004." In this regard, March 9, 2004 may be considered as "the end of the first quarter of 2004."

74. On April 19, 2004, Baxter issued a press release stating that defendant Parkinson would succeed Kraemer as the Company's Chairman and Chief Executive Officer, effective April 26, 2004.

75. On April 22, 2004, Baxter held a conference call during which defendant Anderson stated: ". . . our results were in line with our expectations and the guidance we provided on the last call."

76. Discussing the Company's cash management and receivables, Anderson stated during the conference call: "DSO at the end of the first quarter of this year was 64.7 days and declined by about a half a day compared to the first quarter of last year. . . receivables were an outflow of 99 million in the quarter. . . " Providing revenue and earnings guidance, Anderson stated: "For full year I continue to expect organic sales growth of 3 to 5 percent. . . I would expect full year gross margin in 2004 to be approximately 43 percent, and the operating margin ratio we expect to be in the 17 percent range for the full year. Earnings per share remains unchanged with guidance of $1.75 to $1.85. . ."

77. Defendant Anderson's comments were materially false and misleading because he failed to disclose that the reported results were in line with previously announced expectations and publicly announced guidance only as a result of his deliberate or reckless failure to cause Baxter's financial statements to reflect adjustments to correct for the overstatements of revenue and net income attributable to the financial statement fraud in Brazil, and to accrue for the contingent losses resulting therefrom. Moreover, the earnings per share guidance did not take into account the adverse impact of eliminating bogus future Brazilian revenue and earnings.

78. On April 26, 2004, defendant Anderson sold 44,902 shares of his Baxter stock for proceeds totaling $1,458,865.98. As stated above, **the sale was unusual because defendant Anderson had not, in preceding years, sold any Baxter stock. The sale was also unusual because it took place within days of del Salto's significant insider sale. This action by defendant Anderson strongly supports an inference of scienter with regard to the ongoing Brazilian fraud**.

79. On April 29, 2004, defendant del Salto sold 140,000 shares of Baxter Stock at prices ranging from $31.57 - $32.18 per share, for proceeds totaling $4,444,890.00. **The sale of 140,000 shares represented the disposition of virtually all of his holdings of Baxter stock**. **The sale was also highly unusual because defendant del Salto had not, in preceding years, sold any Baxter stock. The sale was also unusual because it took place within days of Anderson's significant insider sale. This action by defendant del Salto strongly supports an inference of scienter with regard to the ongoing Brazilian fraud**.

80. On May 4, 2004, the Company held its annual meeting of stockholders. A press release issued by the Company that day stated:

> At the company's Annual Meeting of Stockholders today, Baxter International Inc. (NYSE: BAX) introduced its new chairman and chief executive officer, reviewed the company's financial performance and emphasized its focus on achieving sustainable performance.
>
> Presiding over his first Annual Meeting at Baxter since assuming his position last week, Chairman and Chief Executive Officer Robert L. Parkinson, Jr. highlighted the company's strengths that drew him to the position, and personally committed to tap the value within Baxter.
>
> "The embedded value in this company is tremendous," Parkinson said. "We must and will identify ways to extract and apply that value for the benefit of our shareholders, and most certainly for the patients who benefit the most from what we do."

"We must sharpen our focus on science and technology" the lifeblood of the healthcare business "to improve the growth prospects for our company," Parkinson continued. "Success in significantly improving our financial position will provide us with the latitude to pursue new product initiatives that complement our existing businesses and that can benefit from our existing global strengths."

At the meeting, Baxter shareholders elected directors John D. Forsyth, Gail D. Fosler and Carole J. Uhrich to three-year terms on the company's board. Shareholders also ratified the appointment of PricewaterhouseCoopers LLP as independent auditors for Baxter, but voted down a shareholder proposal related to cumulative voting in the election of directors to the company's board.

81. As later revealed during the July 22, 2004 conference call, there was a meeting of Baxter's Board of Directors in May 2004. The transcript of the July 22, 2004 call reads, in relevant part, as follows:

> MIKE WEINSTEIN, ANALYST, JP MORGAN: Good morning. Let's just start with Brazil, because I just want to make sure we have covered that in enough depth. Maybe you could just give us a little bit of insight into how this came to light and the process behind them covering it?
> BOB PARKINSON: As was mentioned in John's comments, this actually emanated and came inside to the home office from an employee in our operation through our established business practices office. **We became aware of a call or an e-mail or letter -- I can't recall which it was -- from an employee in Brazilian operations some time in the May time frame.**
>
> *****
>
> DAVID LOTHSON, ANALYST, UBS WARBURG: Having taken over a company with some real challenges, one of them, of course, is cash flow. And when you look at the dividends you've been paying for the last several years, that puts you in the hole to begin every year. Are you rethinking whether or not that level of payout is appropriate at this point in time? Is that part of your long-term restructuring thoughts?
>
> BOB PARKINSON: No, we meet once a year with the Board, Dave, to talk about this. **We talked about it as recently as this spring, in the May Board meeting**. The position of the Company at this point is no change in our dividend policy.

82. It is reasonable to infer that in preparation for the annual meeting of stockholders there was discussion between Board members and defendants Anderson and del Salto regarding the reason for the unusual sales of stock in order to prepare for questions from stockholders. Accordingly, either defendant Anderson and/or defendant del Salto informed Board members of the reason for their unusual stock sales (the likely adverse consequences of disclosure of the Brazilian fraud on the price of the Company's stock) prior to the annual meeting of stockholders, or they concealed it from the Board members. In either instance, Baxter's management knew of the fraud at least as of May 4, 2004 and failed to disclose this material information to stockholders at the annual meeting.

83. On May 10, 2004, the Company's 2004 first quarter Form 10-Q was filed with the SEC. It stated: "Increased penetration of products for peritoneal dialysis continues to be strongest in emerging markets such as Latin America and Asia, where many people with end-stage renal disease are currently under-treated." Discussing the Company's "focus" on cash management and receivables, it stated: "With this increased focus, the company improved its accounts receivable collections (days sales outstanding improved from 65.2 days at March 31, 2003 to 64.7 days at March 31, 2004)." Defendant Anderson signed the document and defendants Anderson and Parkinson signed certifications dated May 10, 2004, which stated:

> I, Robert L. Parkinson, Jr., certify that:
>
> 1. I have reviewed this quarterly report on Form 10-Q of Baxter International Inc.;
>
> 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

    a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004 Robert L. Parkinson, Jr.

*****

I, Brian P. Anderson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Baxter International Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the

registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004 Brian P. Anderson

*****

Robert L. Parkinson, Jr., as Chairman of the Board and Chief Executive Officer of Baxter International Inc. (the "Company"), certifies, pursuant to 18 U.S.C. °1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Robert L. Parkinson, Jr.
Chairman of the Board and Chief Executive Officer
May 10, 2004

*****

Brian P. Anderson, as Senior Vice President and Chief Financial Officer of Baxter International Inc. (the "Company"), certifies, pursuant to 18 U.S.C. °1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Brian P. Anderson
Senior Vice President and Chief Financial Officer
May 10, 2004

84. The Company's 2004 first quarter Form 10-Q (and the financial statements therein which violated GAAP for interim financial reporting - APB Opinion No. 28 - as well as the previously specified GAAP above - and were later required to be restated) was materially false and misleading for substantially the same reasons that the 2003 Form 10-K was materially false and misleading as discussed in paragraphs 63 through 72 above.

85. Although the exact date on which defendants Anderson and Parkinson and Baxter's Board of Directors became aware of the "call or an e-mail or letter" is unknown, defendant Parkinson has admitted that it was "in the May time frame." Accordingly, defendants Anderson and Parkinson and Baxter's management and Board of Directors knew of the Brazilian fraud either before the Company's 2004 first quarter Form 10-Q had been filed with the SEC or at some point in time within three weeks of the filing date. In addition, as alleged above, defendants Anderson and del Salto knew of the fraud prior to the date of the Company's filing of its 2004 first quarter Form 10-Q and prior to the annual stockholders meeting.

86. In contravention of SEC disclosure rules, the Company's 2004 first quarter Form 10-Q failed to disclose the existence of the fraud and no Form 8-K was filed informing the SEC (and the investment community) of the material weakness which had been discovered in the Company's system of internal controls and the likely financial statement ramifications (restatement) thereof and the adverse consequences of the fraud on Baxter's future revenue and net income.

87. On June 21, 2004, Baxter issued a press release stating that the Board of Directors had elected John Greisch, Senior Vice President and Chief Financial Officer, effective immediately, succeeding defendant Anderson "who will be leaving the company."

88. The June 21, 2004 press release was materially false and misleading because it failed to disclose that defendant Anderson was "leaving the company" because he was fired for concealing the Brazilian fraud, illegally profiting on insider trading, making materially false and misleading statements to the investment community, and causing SEC filings, press releases, and other public statements to be materially false and misleading.

89. Although defendants del Salto, Parkinson, Greisch, and Anderson knew as early as March 8, 2004, and certainly no later than May 31, 2004, of the "material weakness in the company's internal control over financial reporting" (as ultimately disclosed in Baxter's June 30, 2004 Form 10-Q) and the financial statement fraud involving "revenue recognition and inadequate provisions for bad debts, largely in Brazil" (as ultimately disclosed during the July 22, 2004 conference call), they intentionally or recklessly concealed this information from the investment community when they had a duty to promptly disseminate accurate and truthful information with respect to the Company's operations and financial condition, to cause and direct that such information be disseminated promptly, and to promptly correct any previously disseminated information that was misleading to the market. Their failure to discharge their duties artificially inflated the value of Baxter's securities during the Class Period, and injured Lead Plaintiff and members of the Class.

90. Defendants elected to engage in damage control rather than comply with federal securities laws. In this regard, these defendants elected to conceal the existence of the material weakness in the Company's internal control over financial reporting and the resultant financial

statement fraud hoping that an army of accountants and attorneys engaged in investigating, researching, and brainstorming activities would sooner or later come up with a justifiable excuse for nondisclosure. They were wrong. There was no justifiable excuse for nondisclosure, and there was no excuse for the delayed disclosure.

91. On July 22, 2004, Baxter announced that it planned to restate its financial results for the years 2001 through 2003, and for the first quarter of 2004. During a conference call held on this day, defendant Parkinson stated: "While I don't underestimate the magnitude of the challenges that we face as a company, **our first step is to regain credibility with our shareholders**, correct our course, and move forward with a sense of direction. Clearly, we have experienced too many surprises in the recent past." Indeed, the July 22, 2004 announcement was a surprise to everyone other than defendants who deferred from as early as March 8, 2004 to July 22, 2004, the disclosure of the Brazilian situation which ultimately caused the Company to state in the July 22, 2004 press release: "the Company is reducing guidance for the year based primarily on lower earnings expectations in Brazil. . ." Had disclosure of the overstatement of Brazilian revenue and earnings been made in March or May 2004, a downward revision of revenue and earnings guidance would have been necessitated, and the price of the Company's stock would have then dropped.

92. In July 2004 Standard & Poor's changed its outlook to negative credit watch (June 30, 2004 Form 10-Q).

The Truth Begins to Emerge

93. On July 22, 2004, Baxter's belated restatement announcement caused shares of Baxter's common stock to fall $1.48 per share, or 4.59 percent, to close at $30.79 per share on unusually heavy trading volume, thereby damaging Lead Plaintiff and the Class. By way of

comparison, on that same day, the Dow Jones Industrial Average rose by 4 points; the Nasdaq Composite Index rose by 15 points; and the NYSE Health Care Index (of which Baxter is a component) rose by 28 points.

94. As noted by Baxter's management in the August 6, 2004 Restatement, as a result of the restatement, in aggregate, net sales decreased $37 million and net income decreased $33 million over the three year period ended December 31, 2003. For the first quarter of 2004, net sales were unchanged as a result of the restatement and net income was decreased by $2 million.

Efficient Market

95. The market for Baxter's securities was open, well-developed and efficient at all relevant times. Indeed, Baxter was covered by many well known brokerage firms. Throughout the Class Period, Baxter was followed by analysts at the following firms, among others: (i) AG Edwards; (ii) Argus Research Corp.; (iii) Banc of America; (iv) Bear Stearns; (v) Buckingham Research; (vi) CIBC World Markets; (vii) Crowell, Weedon & Co.; (viii) Dominick & Dominick; (ix) Goldman Sachs & Co.; (x) J.P. Morgan; (xi) Leerink & Swann; (xii) Merrill Lynch; (xiii) Morgan Stanley Dean Witter; (xiv) RBC World Markets; (xv) SG Cowen; (xvi) Wachovia; and (xvii) William Blair.

96. As a result of these materially false and misleading statements and failures to disclose, Baxter's securities traded at artificially inflated prices during the Class Period. Lead Plaintiff and other members of the Class purchased or otherwise acquired Baxter securities relying upon the integrity of the market price of Baxter's securities and market information relating to Baxter, and have been damaged thereby.

97. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Baxter's securities, by publicly issuing false and misleading statements and