Summary of Financial Projections Issues in Recent ESOP Litigation

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This discussion identifies issues with management-prepared financial projections that have been raised by the U.S. Department of Labor (the "DOL") and by private plaintiffs in ESOP litigation. The objective of this discussion is to inform employee stock ownership plan ("ESOP") advisers, ESOP sponsor companies, and prospective ESOP sponsor companies of the factors to consider when preparing and assessing company management's financial projections. This discussion includes a review of (1) conversations with representatives of the DOL, (2) fiduciary process settlement agreements, and (3) a list of 16 ESOP-related judicial decisions.

Introduction

Company financial projections are often one of the primary inputs into a business or stock valuation analysis. After all, the value of a business today is based on what the business will earn tomorrow. The analysts generally relies on financial projections to estimate the future income of a business.

A well-developed financial projection can serve as a road map for the sponsor company and a building block for the financial adviser's business valuation. On the other hand, unsupported financial projections typically lead to inaccurate opinions of value (as the saying goes, "garbage in, garbage out").

The issue of reliance on management-prepared financial projections is particularly relevant for ESOP trustees and for the trustee's financial advisers. Trustees and adviser's consider such financial projections when assessing whether a transaction price represents adequate consideration.

Adequate consideration for privately held securities is defined in Section 3(18)(b) of the Employee Retirement Income Securities Act of 1974 ("ERISA") as "the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary."

On May 17, 1988, the DOL issued the "Proposed Regulation Relating to the Definition of Adequate Consideration" (the "DOL Proposed Regulation") to further define the term "adequate consideration." Although the DOL Proposed Regulation was never made into law, it is standard practice for trustees and financial advisers to consider the DOL Proposed Regulation when assessing ESOP sponsor company transactions.

The DOL Proposed Regulation defines fair market value as "the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well-informed about the asset and the market for the asset."[1]

The issue of reliance on management-prepared financial projections is frequently listed as one of the elements that can lead the trustee to enter into a prohibited transaction on behalf of the ESOP.

This discussion highlights communication and commentary from the DOL with respect to financial projections. This discussion reviews the following three sources to provide an overview of the issues related to financial projections:

1. Direct communication from DOL representatives
2. Fiduciary process settlement agreements
3. Recent ESOP litigation

Understanding the commentary from the DOL can only improve the review and assessment of company financial projections.

Notes from the Q&A with Tim Hauser

Tim Hauser, the deputy assistant secretary for program operations of the Employee Benefits Security Administration ("EBSA") (effectively, the chief operating officer of EBSA, the DOL agency that enforces ERISA) stated that "a common problem [with ESOP sponsor company appraisals] is reliance on unrealistic projections." He further stated that the use of "aggressive and unrealistic projections [is] a chronic problem with ESOPs."[2]

Mr. Hauser noted the inherent conflict of interest when "management projections" are prepared by the counterparty to the ESOP in a transaction (that is, when the selling shareholders or subordinates to the selling shareholders prepare the financial projections).

According to Mr. Hauser, many of the cases brought by the DOL have involved a lack of scrutiny from ESOP fiduciaries, where "ESOP fiduciaries are accepting projections without asking themselves about how realistic the projections are."

The DOL often sees a standard disclaimer in valuation reports that (1) the analysis is based on management-prepared financial projections and (2) the financial adviser will not vouch for the financial projections. In Mr. Hauser's opinion, ESOP fiduciaries need to insist on more than management's representations related to financial projections.

Some basic questions that Mr. Hauser proposed to ask as part of the trustee's due diligence are as follows:

- How do the company projections compare to the company performance and any projections of the company's peers?
- How do the financial projections compare to the historical performance of the company?
- How plausible is it that the company could really go forward with these financial projections?
- How volatile or sensitive are the financial projections to various assumptions?
- What happens if the financial projections are off by a couple percentage points?
- What happens if there is a recession?
- Will the company be able to service the debt in these types of downside scenarios?
- What will happen to the company's value as competition drives down profits or as performance reverts to the mean?

Mr. Hauser claimed that the DOL has not filed suit against anyone for failing to predict a recession (referring to the recession that began in 2008). He stated that the focus of the DOL is whether the fiduciary acted prudently, loyally, and in good faith at the time of the transaction.

Fiduciary Process Settlement Agreements

To date, there have been five fiduciary process settlement agreements between the DOL and independent trustees ("process agreements").[3] Members of the DOL have referred to the terms of the process agreements as best practices for ESOP practitioners.[4]

The terms of the process agreements are very similar—identifying the differences in each process agreement is beyond the scope of this discussion. This discussion considers the terms of the process agreements that apply directly to the review of management-prepared financial projections.

The process agreements ask that the fiduciary:

- identify the individuals responsible for providing any financial projections relied on in the valuation report;
- identify whether those individuals have or reasonably may be determined to have any conflicts of interest in regard to the ESOP (including but not limited to any interest in the purchase or sale of the subject ESOP sponsor company stock);
- identify whether those individuals serve as agents or employees of persons with such conflicts and the precise nature of any such conflicts; and
- record in writing how the trustee and the trustee financial adviser considered such conflicts in determining the value of ESOP sponsor company securities.

The process agreements request that the fiduciary:

1. document in writing an opinion as to the reasonableness of any financial projections considered in connection with the transaction and
2. explain why and to what extent the projections are or are not reasonable.

At a minimum, the analysis should consider how the financial projections compare to—and whether they are reasonable in light of—the ESOP sponsor's five-year historical averages and/or medians and the five-year historical averages and/or medians of a group of guideline public companies (if any exist) for the following metrics, unless five-year data are unavailable (in which case, the analyses should use averages extending as far back as possible):

- Return on assets
- Return on equity
- Earnings before interest and taxes ("EBIT") margins
- Earnings before interest, taxes, depreciation, and amortization ("EBITDA") margins
- Ratio of capital expenditures to sales
- Revenue growth rate
- Ratio of free cash flow to invested capital to sales

If the ESOP sponsor company is projected to meet or exceed its historical performance or the historical performance of the group of comparable public companies on any of the metrics described above, the trustee should document in writing all material assumptions supporting such projections and why those assumptions are reasonable.

According to the process agreement, trustees should perform the following:

- They should describe the risks facing the ESOP sponsor that could cause the ESOP sponsor's financial performance to fall materially below the financial projections relied upon by the trustee financial adviser.
- They should analyze and document in writing whether the ESOP sponsor will be able to service the debt taken on in connection with the transaction (including the ability to service the debt in the event that the ESOP sponsor fails to meet the financial projections relied on in the stock valuation).
- They should critically assess the reasonableness of any financial projections (particularly management projections), and if the valuation report does not document in writing the reasonableness of such projections to the trustee's satisfaction, the trustee will prepare supplemental documentation explaining why and to what extent the projections are or are not reasonable.

If the trustee believes the financial projections are unreasonable, the trustee should ask its financial adviser to account for the unreasonable financial projections in its valuation, request new and reasonable projections from management, or reject the transaction. The trustee should document the bases for its decision.

Projection Issues Raised in Recent ESOP Litigation

We reviewed recent ESOP litigation, including (1) judicial opinions related to cases brought against ESOP fiduciaries and (2) complaints raised by the DOL for ESOP cases that either settled before going to trial or are currently pending.

We reviewed the following judicial opinions:

- *Brundle, on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Trust N.A.* (the "Constellis litigation")
- *Perez v. First Bankers Trust Services, Inc., et al.* (the "SJP litigation")

We reviewed the following ESOP-related complaints brought by the DOL. Each of these complaints raised specific issues with respect to the financial projections utilized by the trustee and the trustee's financial adviser as part of an ESOP transaction.

- *Acosta v. Big G Express, Inc., et al.* filed on November 29, 2017 (the "Big G litigation")
- *Acosta v. Wilmington Trust, N.A. et al.* filed on August 22, 2017 (the "Graphite Sales litigation")
- *Acosta v. Reliance Trust Company, Inc., et al.* filed on May 4, 2017 (the "Tobacco Rag litigation")
- *Perez v. First Bankers Trust Services, Inc., et al.* filed on December 28, 2016 (the "Sonnax litigation")
- *Perez v. Bankers Trust Company et al.* filed on November 14, 2016 (the "Mona Vie litigation")
- *Perez v. Adam Vinoskey et al.* filed on October 14, 2016 (the "Sentry litigation")
- *Perez v. Commodity Control Corporation et al.* filed on January 20, 2016 (the "Commodity Control litigation")

- *Perez v. Gruber Systems, Inc., et al.* filed on May 29, 2015 (the "Gruber litigation")
- *Perez v. PBI Bank, Inc., et al.* filed on August 29, 2014 (the "AIT Labs litigation")
- *Perez v. First Bankers Trust Services, Inc., et al.* filed on November 28, 2012 (the "Maran litigation")
- *Perez v. First Bankers Trust Services, Inc., et al.* filed on November 28, 2012 (the "Rembar litigation")
- *Solis v. Greatbanc Trust Company et al.* filed on September 28, 2012 (the "Sierra Aluminum litigation")
- *Solis v. Dennis Webb et al.* filed on April 25, 2012 (the "Parrot Cellular litigation")
- *Solis v. Herbert Bruister et al.* filed on April 29, 2010 (the "Bruister litigation")

We refer to the judicial opinions and the DOL complaints collectively as the "case list." Each case alleges a breach of fiduciary duty against the respective ESOP fiduciary or fiduciaries. All but one of the cases was brought by the DOL—the *Constellis* litigation was raised by an ESOP participant. For simplification purposes, we will refer to the DOL and the *Constellis* litigation plaintiffs collectively as "plaintiffs."

For each litigation case discussed herein, reliance on projections is just one of the criticisms raised by plaintiffs. In addition, the complaints present only one side of the argument. This discussion is not meant to state whether the procedures undertaken were right or wrong, but rather, to provide an overview of plaintiffs' positions with respect to projections.

The *Constellis* litigation is the only case in our case list that specified a damages amount related to the projections. In the *Constellis* litigation, management's growth projections were one of the nine valuation factors considered in the plaintiff's calculation of damages.

The plaintiff's expert estimated total damages related to management's growth projections of $8,650,000. The court stated that both sides made compelling expert analyses related to the projections, and with the lack of a precise mechanism for resolving the two sides, assigned damages of $4,325,000 (the midpoint of the two estimates) related to the use of management's projections. The court ultimately concluded total damages of $29,773,250.

For the other cases, there is no way of knowing (1) the severity of the projection issue and (2) whether the ultimate conclusion (i.e., the settlement or the damages assignment) was attributable to the allegations related to projections.

Exhibit 1 presents a summary of (1) the projection issues raised by the DOL and (2) judicial commentary/decisions related to financial projections.

We grouped the financial projection issues into the following broad categories:

1. Revenue growth rate
2. Profit margins
3. Inconsistent with historical results
4. Inconsistent with industry expectations,
5. Inconsistent with economic expectations
6. Inconsistent with prior financial projections prepared by company management
7. Failure to adequately address compensation
8. Inconsistent level of capital expenditures
9. Customer concentration
10. Failure to account for a cyclical industry
11. Inappropriate long-term growth rate
12. The lack of financial projections

Below is a review of the nature of these specific projection categories. This review provides (1) a summary of the general comments from plaintiffs with regard to projections and (2) specific examples related to each of the broad categories from individual cases.

Revenue Growth Rate

The revenue growth rate was the most common issue related to management-prepared financial projections raised in our case list.

Often, the complaints specified the reason that the growth rate projections were unreliable (such as the projection was inconsistent with historical growth rates, industry growth rates, or economic growth rates).

Profit Margins

The projected margins were an issue raised in eight cases from our case list. The margins generally were critiqued with regard to the subject company's historical margins and/or industry margins.

For instance, the *Tobacco Rag* litigation complaint characterized the operating margin projections as "unduly optimistic" and "out of line with projections within the most analogous industry."[5]

Inconsistent with Historical Results

Another issue raised in the case list filings was that the financial projections (in terms of either revenue

Exhibit 1
Summary of ESOP-Related Judicial Matters

Financial Projection Issue	Total (16 cases)	Constellis	SJP	Big G Express	Graphite Sales	Tobacco Rag	Sonnax	Mona Vie	Sentry	Commodity Control	Gruber	AIT Labs	Maran	Rembar	Sierra Aluminum	Parrot Cellular	Bruister
Revenue Growth Rate	12	X	X	X	X		X	X			X	X	X		X	X	X
Profit Margins	8					X	X				X	X	X		X	X	X
Inconsistent with Historical Results	9		X		X		X	X		X	X		X		X		X
Inconsistent with Industry	8		X	X		X				X		X	X		X		X
Inconsistent with Economy	3		X	X									X				
Prior Projections	2	X										X					
Compensation	3					X								X		X	
Capital Expenditures	2											X			X		
Cyclical	4		X						X				X		X		
Customer Concentration	5	X	X			X							X				X
Long-Term Growth Rate	2						X			X							
Lack of Projections	1								X								

growth, margins, or cash flow) were inconsistent with historical measures.

Often, the case list filings compared the subject company's historical revenue compound annual growth rate ("CAGR") to the projected revenue CAGR. In a few instances, total projected revenue over a certain period was compared to historical revenue over the same historical period.

For instance, the *Maran* complaint compares the total revenue of $471.2 million generated by Maran from 2002 to 2006 to the total Maran projected revenue of $782.2 million from 2007 to 2011.[6]

Projected profit margins were compared to the subject company historical profit margins.

One of the ways that projected cash flow was critiqued was a comparison of historical cash flow over, say, a five-year period versus projected cash flow over the projected five-year period. As an aside, the cash flow comparison is not as straightforward as the revenue and margin comparisons, because there are various measures of cash flow (i.e., cash flow to invested capital, cash flow to equity, operating cash flow, etc.). This type of comparison should be done on an "apples-to-apples" basis.

Failure to consider and/or adjust financial projections for recent, interim-period results was cited by the DOL as an issue in the *SJP* and *Graphite Sales* litigations. In both instances, the respective company was underperforming its projections for the current year, and no adjustments were made to the financial projections.

The *Gruber* complaint critiqued the Gruber management projections because the financial projections disregarded the liabilities and operating losses related to the company's operating division in China. According to the complaint, this inconsistency with historical results caused the projections to be "highly optimistic."[7]

The *Mona Vie* complaint argued that the revenue growth rates in management-prepared projections were inconsistent with company trends, based on the Mona Vie decline in revenue in 2009 and 2010 and the recent decrease in distributor enrollment, which was considered a key driver of growth for Mona Vie as a multilevel marketing company.[8]

According to the *Mona Vie* complaint, the trustee financial adviser "attempted to remedy the use of unrealistic growth projections by applying a specious 50 percent discount rate in its discounted cash flow analysis. It is an improper valuation method to address doubt in the achievability of management projections by merely increasing the company specific risk premium component of the discount rate in a discounted cash flow analysis. Instead of proceeding with the transaction, [the trustee] should have asked Mona Vie management to adjust the projections to account for the perceived deficiencies

or request new projections from Mona Vie that were reasonable."[9]

The *Sonnax* complaint criticized the financial projections as follows:

> The projections forecasted robust and steadily increasing revenue and margin growth for Sonnax. Sonnax based these projections on five historical years surveyed. However, each of the five years forecasted was higher than Sonnax's best historical year, which itself was significantly higher than any of the other four historical years. And the steadily rising growth assumed in the projections is undermined by the erratic and often declining growth in the five historical years surveyed.[10]

Inconsistent with the Industry

There were eight cases from the case list filings that mentioned that the projections were inconsistent with industry expectations. This issue was generally in terms of either revenue growth or margins as compared to the guideline publicly traded companies and/or comments from industry reports.

The *Maran* complaint provides an example of this type of projection issue. According to the complaint, the Maran fairness analysis did not appropriately address revenue growth relative to industry revenue growth. Maran produced primarily private label denim apparel for retailers such as Wal-Mart, K-Mart, and Kohls, whereas higher-end denim products from guideline companies were the industry's "hottest segment."[11]

The complaint inferred that the financial adviser failed to differentiate between the expected growth for higher-end companies and the lower growth of private label products.

Inconsistent with the Economy

There were three cases from the case list that specifically mention that the financial projections were not consistent with economic expectations. This issue was generally raised with regard to projected revenue growth.

For instance, the *Big G* complaint states that projected revenue growth of 13 percent was inconsistent with the company's historical CAGR of 8 percent, given the declining economic conditions.[12] The Big G ESOP installation transaction was completed on October 29, 2009.

The *Maran* complaint stated that the "U.S. economy was showing clear signs of slowing down" at the time of the Maran transaction (the Maran transaction was closed November 2006). The valuation report provided by the trustee financial adviser stated that "economic growth expectations point towards a slowdown for 2006 relative to 2004 and 2005 levels."[13]

According to the *Maran* complaint, these factors were not accounted for in the fairness opinion analysis that was performed for the ESOP transaction.

Inconsistent with Prior Projections

There were two instances where the financial projections that were relied on were considered inconsistent with prior financial projections. In both of these instances, the subject companies had previous valuations that were performed for non-ESOP purposes.

The *AIT Labs* complaint states that the ESOP transaction projections were "substantially above" the financial projections that were used by another valuation firm a few months before the ESOP transaction as part of a tax valuation analysis.[14]

In the *Constellis* litigation, the trustee did not review previous financial projections prepared by company management. Previously, Constellis management prepared projections for (1) an earlier proposed acquisition of Constellis and (2) a valuation analysis prepared for transfer tax purposes.

A review of these previous projections would have revealed that Constellis management had previously only prepared one-year financial projections (as opposed to the five-year financial projections that were provided for the ESOP transaction). Also, Constellis management had prepared "inflated" projections as part of the prior Constellis sales process that was unsuccessful.

According to the *Constellis* judicial opinion, the "failure to request those previous projections resulted in a number of missed opportunities to appreciate some of the risks behind the projections relied upon by the [trustee financial adviser]."

Compensation

There were three cases from the case list where "compensation" was a financial projection issue.

The *Rembar* complaint commented on the financial projections for failing to include a level of compensation for a new CEO. The Rembar transaction involved a selling shareholder that was the retiring company CEO, and there was no compensation included for a replacement CEO.

The *Tobacco Rag* litigation commented on the trustee financial adviser's "adjustments to earnings for executive compensation where no evidence indicated the Company's executives had agreed to cut their compensation."[15]

The *Parrot Cellular* complaint argued that a $12 million deferred compensation agreement with one of the selling shareholders was not adequately included in the projection and/or the valuation analysis.

Capital Expenditures

Two of the cases from the case list had issues related to capital expenditures. These issues generally related to financial projections that excluded capital expenditures that were otherwise necessary to achieve the financial projections.

The *AIT Labs* complaint highlighted the disconnect between the AIT Labs historical capital expenditures of approximately 12.0 percent of revenue versus the projected capital expenditures that were 0.9 percent of revenue. The trustee financial adviser's report stated that AIT Labs had a competitive advantage, because it had a business model that adopted leading edge technology.[16]

The financial projection included consistent revenue growth, but the capital expenditures that supported the growth were diminished. This disconnect was not documented in the report.

In the *Sierra Aluminum* litigation, the company planned to acquire a third aluminum press. This press would increase the company's production capacity, which was limited as of the transaction date.

According to the *Sierra Aluminum* complaint, the financial projections did not include a capital outlay for the new press, which was expected to cost between $13 million and $15 million. The complaint also mentions that the press could have been treated as an operating lease, but there was no adjustment for increased operating expenses in the financial projection either.[17]

Cyclicality

The failure to account for a cyclical business was listed in four cases from the case list.

The *SJP* litigation financial projection included flat revenue growth in 2007, 4 percent revenue growth in 2008, 6 percent revenue growth in 2009, 8 percent revenue growth in 2010, and 6 percent revenue growth in 2011. This projected growth was criticized by the DOL based on the industry headwinds and the cyclical nature of the residential construction industry. The expert for the DOL adjusted management projections by applying (1) a 15 percent decrease in revenue in 2007 and (2) a 5 percent revenue growth rate thereafter.[18]

The *Sierra Aluminum* complaint criticized the fairness analysis for failing to account for "the possibility of a drop in aluminum prices, an increase in raw material costs or, at a minimum, a reversion to average prices."[19]

The Sierra Aluminum transaction was completed on June 20, 2006, when aluminum prices and demand for aluminum products were heightened.

Customer Concentration

Customer concentration was an issue for five cases on the case list. This criticism generally referred to failure to adequately address the risk associated with customer concentrations in the financial projections.

The *Maran* complaint noted that Wal-Mart accounted for 50.8 percent of the Maran sales prior to the ESOP transaction. The Maran contract with Wal-Mart was renewed on an annual basis, with no guarantee of renewal. Also, the trustee financial adviser report stated that Wal-Mart had been "increasingly successful at sourcing private-label denim directly from suppliers."

According to the complaint, Wal-Mart had considerable leverage over Maran for future negotiations.[20]

According to the *Constellis* judicial opinion, "[a]nother red flag to which [the trustee] did not adequately respond was the riskiness of Constellis' contract concentration." At the time of the ESOP installation transaction, approximately 70 percent of the Constellis revenue was from two contracts. It was alleged that the trustee did not consult with either of the primary customers of Constellis.

According to the *SJP* judicial opinion, one customer (Hovnanian Homes) accounted for approximately 60 percent of SJP revenue as of the transaction date. While the offering memorandum provided by the SJP seller representatives stated that SJP had been steadily diversifying away from Hovnanian Homes, the opposite was true.[21]

The Hovnanian Homes 2006 annual report stated that 2006 was "a challenging year for our company as we encountered a sudden downturn in many of our housing markets." The annual report also stated that Hovnanian Homes planned to operate its business as if housing markets were in a prolonged downturn. Part of the Hovnanian Homes tightening strategy involved "aggressively renegotiating with key partners" to reduce costs.

Long-Term Growth Rate

The long-term growth rate was criticized in two cases from the case list. In the income approach valuation method, the expected long-term growth rate is an input that is generally applied to the company income stream into perpetuity.

In the *Sonnax* litigation, the complaint characterized the trustee financial adviser's use of an 8 percent terminal growth rate as "unreasonable." According to the complaint, typical terminal growth rates are between 2 percent and 4 percent.[22]

Lack of Financial Projections

It may come as a surprise, but there was one instance where an ESOP transaction was criticized for not including financial projections. In this instance, the income approach direct capitalization method was relied on. All income approach methods are based on future income. However, the direct capitalization method relies on a constant (or steady state) income amount that is not overtly projected.

The *Sentry* complaint criticized the "profit projections" relied on by the financial adviser. The profit projections were based on the company's historical earnings from 2007 to 2009. It was alleged that the earnings estimate did not rely on the results from 2004 to 2006, when the company's performance was not as strong.

According to the complaint, the valuation focused on the results in the "peak years," which is inappropriate for an "extremely cyclical" business.[23] For perspective, Sentry designs and sells equipment such as conveyors and bottling machines for soft drink manufacturers.

Summary and Conclusion

For years, ESOP advisers have requested revised regulations from the DOL that would provide guidance for implementing successful ESOP transactions. It is unlikely that new regulations will be issued any time soon.

In lieu of administrative regulations, this discussion provides a summary of the issues raised by the DOL and by private plaintiffs related to management-prepared financial projections. Improving the preparation and assessment of financial projections should lead to informed decisions by ESOP trustees and successful ESOP transactions—a win for ESOP participants, selling shareholders, the DOL, and ESOP advisers.

Notes:

1. DOL Proposed Regulation Section 2510.3-18(b)(2).
2. Quotes in this section come from a discussion authored by Chip Brown, CPA, from the Spring 2015 issue of Willamette Management Associates *Insights* titled " Q&A with Tim Hauser of the U.S. Department of Labor."
3. The five process agreements have been with GreatBanc Trust Company; First Bankers Trust Services, Inc.; James F. Joyner; Alpha Investment Consulting Group, LLC; and Lubbock National Bank.
4. See the EBSA news release dated June 3, 2014, "Others in the industry would do well to take notice of the protections put in place by [the Sierra Aluminum process agreement]," and the Q&A with Tim Hauser, "If people follow the [Sierra Aluminum process agreement] as best practices, we all would be hugely better off."
5. See paragraph 37(a) of the Tobacco Rag complaint.
6. See paragraph 32 of the Maran complaint.
7. See paragraph 26 of the Gruber complaint.
8. See paragraphs 18 and 20 of the Mona Vie litigation complaint.
9. Id., paragraph 19.
10. See paragraph 29 of the Sonnax complaint.
11. See paragraph 41 of the Maran complaint.
12. See paragraph 20(j) of the Big G complaint.
13. See paragraph 31 of the Maran complaint.
14. See paragraph 41 of the AIT Labs complaint.
15. See paragraph 37(f) of the Tobacco Rag complaint.
16. See paragraph 43 of the AIT Labs complaint.
17. See paragraphs 47 and 48 of the Sierra Aluminum complaint.
18. See paragraph 723 of the SJP opinion.
19. See paragraph 55 of the Sierra Aluminum complaint.
20. See paragraphs 35 and 36 of the Maran complaint.
21. See paragraph 149 of the SJP opinion.
22. See paragraphs 27 and 28 of the Sonnax complaint.
23. See paragraph 15(a) of the Sentry complaint.

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