IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:04CV99 - MCK

IN RE SPX CORP. SECURITIES LITIGATION	:	**CONSOLIDATED AMENDED COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS**
This Document Relates to:	:	
ALL ACTIONS	:	**JURY TRIAL DEMANDED**

I. INTRODUCTION

1. Plaintiff, by and through its attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief are based upon, among other things, the investigation of counsel, including without limitation: (a) review and analysis of filings made by SPX Corporation ("SPX" or the "Company") with the Securities and Exchange Commission ("SEC"); (b) SPX's press releases; (c) SPX's presentations made to analysts; (d) media reports about the Company; (e) publicly available trading data relating to the price and volume of SPX's common stock; (f) securities analysts reports on SPX; and (g) interviews with former employees of SPX.

2. This action is brought on behalf of purchasers of SPX common stock between the period November 5, 2003 and February 26, 2004 (the "Class Period"). SPX is a global provider of technical products and systems, which is the segment of SPX's operations focused on the manufacture and development of complete technology based systems such as high-tech laboratory equipment and telecommunications services (the "Technical Segment"); industrial

products and services, which had concentrated operations in several areas of industrial development including the manufacturing of specialized hydraulic tools and equipment (the "Industrial Segment"); and flow technology, which entails the production and development of industrial valves for gases, liquids, and slurries (the "Flow Technology Segment"). It is alleged that prior to the commencement of the Class Period on November 5, 2003, SPX and John B. Blystone ("Blystone"), SPX's President, Chairman and Chief Executive Officer ("CEO") had made numerous positive statements regarding SPX's increasing free cash flows ("FCF") and earnings in 2003, even going so far as to forecast 2003 earnings per share ("EPS") of "at least $3.40" as late as October 28, 2003, however, none of these statements caused SPX's common stock to move beyond approximately $48.00 per share. As a result, SPX and Blystone "turned up the heat" in its communications to investors beginning on November 5, 2003.

3. As part of a common fraudulent scheme to defraud, Defendants forecasted dramatic increases in 2003 FCF jumping from $350-$400 million in October to between $375 and $400 million on November 5, 2003; to $415-$450 million on December 12, 2003; and finally to an amount of "at least $520 million" on January 19, 2004. All of these figures were presented in analyst presentations and/or press releases which simultaneously underscored that 2003 EPS would be "at least $3.40" and that that EPS figure was ***"net of any one-time gains***." These highly specific 2003 financial results timed so late in the fourth quarter of 2003 and in early January 2004 were presented to investors to underscore SPX's purported "sustainable" cash flows and earnings. The specific statements were also accompanied by assurances from the Company that SPX had fulfilled its earlier "commitment" to improving "investor transparency" as the Company "moved to Generally Accepted Accounting Principles ("GAAP")

communications" in the Company's disclosures to investors and analysts. All of these positive statements caused a dramatic increase in SPX's common stock price – from a price of $48.66 per share on November 4, 2003, to $57.16 on December 6, 2003, and then to $60.34 per share on January 20, 2004.

4. This rapid 20% stock price appreciation in this concentrated period of time between November 2003 and January 2004 coincided with Defendant Blystone's unloading of massive quantities of his personal SPX shares at prices as high as $62.17 per share. In fact, Defendant Blystone sold 800,000 shares worth over $45 million between January 6 and February 25, 2004. Further, these stock sales occurred only after Blystone first exercised options with strike prices as low as $22.875 per share. Unfortunately for all SPX investors other than Blystone, the stock appreciation ended when Blystone finished selling. Defendant Blystone's last sale occurred on February 25, 2004.

5. After the close of trading on February 26, 2004, SPX disclosed its actual 2003 free cash flow and earnings results. These disclosures showed that, contrary to SPX's specific representations that the GAAP EPS of $3.40 per share was "net of one-time gains" – the reported EPS of $3.41 announced on February 26, 2004, was achieved ***only as a result of the inclusion of a one-time gain*** – an approximate $60 million litigation settlement representing roughly $0.35 per share. Moreover, the reported "record" FCF of $546.1 million was also revealed to have been built ***not*** upon on "sustainable cash flows," but rather non-recurring reductions in "working capital" and other "one-time" items.

6. The market reaction on February 27, 2004 was swift and severe. SPX's common stock price plummeted from $52.71 on February 26, 2004, to $41.53 per share on February 27,

2004, on unusually high trading volume of over 16.22 million shares – resulting in a market loss on that one day of $181.33 million.

7. Investigation of counsel has further shown that certain specific material adverse facts disclosed for the first time on February 26, 2004 – and as a result, contributed to the collapse of SPX common stock price on that date – were known to Defendants during the Class Period and, specifically, while Defendant Blystone was engaged in his massive insider sales. For example, Blystone had, by November 2003 fired the senior management of the segment divisions which were disclosed to have performed poorly in the February 26, 2004 press release – namely, Kendro (Technical Segment), Dielectric (Technical Segment), and Fluid Systems (Flow Technology). These firings had occurred because of negative financial performance which Blystone scrutinized through monthly and quarterly visits to these operating units by a cadre of SPX's corporate officers designated the "Executive Leadership Team." Further, the specific "operating inefficiencies" and "inventory writeoffs" in "industrial tools and hydraulics," referred to in the February 26, 2004 press release, were also well known to Defendants well prior to November 2003 as described below, and were concealed from the Plaintiff and members of the Class pursuant to Defendants' scheme to artificially inflate the price of the stock and defraud Plaintiff, and other members of the Class, who relied on the false and misleading public releases and public filings of Defendants, all to their detriment and damage.

II. <u>JURISDICTION AND VENUE</u>

8. The claims asserted below arise under Sections 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5, Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

9. Jurisdiction is conferred upon this Court by Section 27 of the Exchange Act, 15 U.S.C. § 78aa, 28 U.S.C. §§ 1331 and 1337.

10. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b) since SPX has its principal place of business in this District at 13515 Ballantyne Corporate Place, Charlotte, North Carolina, 28277, and many of the acts alleged herein, including the dissemination of the misleading statements at issue to the investing public, occurred in substantial part in this District.

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

III. THE PARTIES

12. Lead Plaintiff, American Radio Association Pension Fund, purchased shares of SPX on the New York Stock Exchange ("NYSE"), an open and efficient market, during the Class Period, as set forth below:

SHAREHOLDER	**DATE**	**SHARES**	**SHARE COST**	**PURCHASE AMOUNT**
American Radio Association Pension Fund	1/13/2004	3,500	$57.10	$199,850.00

13. Defendant SPX Corporation is a corporation organized under the laws of Delaware with its principal executive offices located at 13515 Ballantyne Corporate Place, Charlotte, North Carolina 28277. The Company manufactures and develops a wide variety of

industrial and technical products and technologies. SPX's Technical Segment is focused on the manufacturing and development of products including medical and laboratory equipment, high-end fire detection systems, and telecommunications systems and services. SPX's Flow Segment, specifically the Valves & Controls division of the Fluid Systems platform, manufactures and produces industrial strength valves for water, gas, and slurries. The Company's Industrial Segment operations are highlighted by the development and manufacture of power transformers and industrial tools and hydraulics equipment.

14. Defendant John B. Blystone ("Blystone") served as SPX's Chairman of the Board of Directors, President and Chief Executive Officer at all relevant times during the Class Period. Blystone signed and certified SPX's Form 10-K for the fiscal year ending December 31, 2002 and the fiscal year ending December 31, 2003. On or about December 31, 2003, while in possession of adverse non-public information Blystone, signed and dated a Form 144 Notice of Propose Sale of Securities in connection with a Rule 10b5-1(c) Planned Sale, which was filed with the Securities and Exchange Commission on or about January 2, 2004. In the seven-weeks leading up to SPX's announcement of its 2003 financial results and the filing of the Company's 2003 Form 10-K, Defendant Blystone sold approximately 800,000 shares of his SPX common stock reaping proceeds of approximately $45.3 million. Further, Blystone's average annual compensation over the three years preceding 2003 of $51.3 million earned Blystone the rank of "third-most-overpaid CEO in America" in 2003. In 2002, Blystone's total compensation was $56,096,468: of that amount, $1,400,000 was in the form of cash salary, $4,194,668 was in the form of a cash bonus, and $49,050,000 was in the form of long-term SPX equity (largely restricted stock awards). Moreover, in 2003, Blystone's total compensation was $8,634,006:

which specifically included a cash salary of $1,400,000, a cash bonus of $6,674,016, and $333,556 in long-term SPX equity. When combined with his insider sales of $45.3 million in January and February of 2004, Defendant Blystone derived more than $110,030,474 million from SPX in total compensation between January 2003 through February 2004.

15. Defendant Blystone, as Chairman of the Board, President and Chief Executive Officer of the Company, was a control person, within the meaning of Section 20 of the Exchange Act. By reason of his positions with the Company, Defendant Blystone was able to, and did, directly and indirectly, in whole or in material part, control the content of public statements issued by or on behalf of the Company. He participated in and approved the issuance of such statements made throughout the Class Period, including the materially false and misleading statements identified herein.

16. By reason of his positions with the Company, Defendant Blystone had access to internal Company documents, reports and other information, including the adverse material non-public information concerning the Company's services, financial condition, and future prospects, and attended management and/or board of directors meetings. As a result of the foregoing, he was responsible for the truthfulness and accuracy of the Company's public reports and releases described herein.

17. Defendant Blystone, as officer of a publicly-held company, had a duty to promptly disseminate truthful and accurate information with respect to SPX and to promptly correct any public statements issued by, or on behalf of, the Company which had become false or misleading.

18. SPX and Defendant Blystone knew or recklessly disregarded that the misleading statements and omissions complained of herein would adversely affect the integrity of the market

for the Company's stock, and would cause the price of the Company's common stock to become artificially inflated. Both SPX and Defendant Blystone acted knowingly or in such a reckless manner as to constitute a fraud and deceit upon Plaintiff and the other members of the Class.

19. SPX and Defendant Blystone are liable, jointly and severally, as participants in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of SPX stock, including making materially false and misleading statements. The scheme (i) deceived the investing public regarding SPX; (ii) artificially inflated the price of SPX stock; and (iii) caused Plaintiff and the Class to purchase SPX stock at artificially inflated prices.

IV. CLASS ACTION ALLEGATIONS

20. 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 persons who purchased SPX common stock on the open market during the period from November 5, 2003 through and including February 26, 2004 (the "Class Period") and who suffered damages thereby. Excluded are Defendant Blystone, members of Defendant Blystone's family, any entity in which Defendant Blystone has a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successor and assigns of Defendant Blystone (the "Class").

21. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe there are, at a minimum, thousands of members of the Class who traded during the Class Period. The Company had more than 76.173 million shares of its common stock outstanding as of October 24, 2003.

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

a) whether the federal securities laws were violated by Defendant Blystone's acts as alleged herein;

b) whether SPX issued false and misleading financial statements during the Class Period;

c) whether Defendant Blystone caused SPX to issue false and misleading financial statements during the Class Period;

d) whether Defendant Blystone acted knowingly or recklessly in issuing false and misleading financial statements;

e) whether the market prices of SPX securities during the Class Period were artificially inflated because of Defendant Blystone's conduct complained of herein; and

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

23. Lead Plaintiff's claims are typical of the claims of the members of the Class as plaintiffs and members of the Class sustained damages arising out of Defendant Blystone's wrongful conduct in violation of federal law as complained of herein.

24. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel's competent and experienced in class actions and securities litigation. Lead plaintiffs have no interests antagonistic to or in conflict with those of the Class.

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

the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

26. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

a) SPX and Defendant Blystone made public misrepresentations or failed to disclose material facts during the Class Period;

b) the omissions and misrepresentations were material;

c) the securities of the Company traded in an efficient market;

d) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities;

e) Plaintiffs and members of the Class purchased their stock between the time Defendant Blystone failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts; and

f) SPX common stock, at all relevant times, traded in an efficient market, reflected by the fact that SPX traded on the NYSE, had average volume of several hundreds of thousands of shares each day, was widely covered by securities analysts from large brokerage firms, such as Prudential Equity Group, Inc., Lehman Brothers, Inc., and Banc of America Securities LLC, and SPX stock price reacted to new market information.

27. Based upon the following, Plaintiff and members of the Class are entitled to the presumption of reliance upon the integrity of the market.

V. SPX AND BLYSTONE'S MANIPULATIVE SCHEMES

A. 2003 Free Cash Flow And EPS As Manipulative Schemes And Devices

28. Free Cash Flow ("FCF") is a financial measure which seeks to reduce the "guess estimation" and arbitrariness of "reported earnings" by recognizing whether or not the outlay of funds is deemed an "expense"(which would be included in the reported "earnings" figure) or an "asset"(which would not be included in the reported "earnings" figure). FCF purports to reflect the remaining cash available after both the payment of all cash expenses and investment required to operate and maintain the firm. FCF is calculated by subtracting from operating cash flows "capital expenditures," which is the money spent on plant and equipment. (It may also be calculated by adding back into "net income," depreciation and amortization and taking an additional adjustment for changes in "working capital"[1] (and then subtracting capital expenditures). Whatever the methodology used to calculate FCF, its growth is widely recognized by investors and security analysts as an indicator or preclude to increased earnings:

> Growing free cash flows are frequently a prelude to increased earnings. Companies that experience surging FCF -- due to revenue growth, efficiency improvements, ***cost reduction, share buy backs, dividend distribution,*** or debt elimination -- can reward investors tomorrow. That is why many in the investment community cherish FCF as a measure of value. When a firm's share price is low and free cash flow is on the rise, the odds are good that earnings and share value will soon be on the up.

(Ben McClure September 17, 2003, Investopedia.Com).

29. However, because FCF is not a GAAP measure and there is no one accepted method of determining the "capital expenditures[2]" to be subtracted from operating cash outflows, FCF may be used to given an appearance of growth in a period of declining core operating earnings.

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[1] Working capital is determined by subtracting current assets from current liabilities.

[2] Captial expenditures in the FCF calculation refers to the amount of expenditures on plant and equipment that are necessary to maintain or sustain the current level of cash flows. A practical expedient is to use actual expenditures for plant and equipment.

Moreover, working capital can be artificially reduced by one-time reductions of "current assets" through, for example, accounts receivable sales and short term inventory reduction. While FCF eliminates the effects that accounting method choices have on GAAP net income, FCF is also subject to manipulation. For example, a company may under-invest in its plant and equipment, causing a surge in current FCF, but to the detriment of its ability to sustain that level of cash flow. In addition, companies can temporarily boost FCF by including in operating cash flows the effects of transactions such as non-recurring one-time gains or financing transactions such as the sale of accounts receivable. ***The impacts of these transactions may provide a one-time boost to FCF but are unlikely to be sustainable.***

> Without a regulatory standard for determining FCF, investors often disagree on exactly which items should and should not be treated as ***capital expenditures***. Investors must therefore keep an eye on companies with high levels of FCF to see if these companies are under-reporting capital expenditure and R&D. Companies can also temporarily boost FCF by stretching out their payments, tightening payment collection policies, and depleting inventories. ***These activities diminish current liabilities and changes to working capital. But the impacts are likely to be temporary.***

(*Id.*)(emphasis added).

30. Manipulation of the components used to calculate FCF may cause ***temporary*** surges in FCF. Such surges would, where manipulation of FCF has occurred, be followed by a financial decline, once normal capital expenditures and the required investment in working capital are applied against diminished operating earnings.

31. The inclusion of non-operating gains (*i.e.,* non-recurring one-time gains) in a company's calculation of earnings per share, which is a GAAP measure, may also be used to mask the absence of sustainable earnings and cash flows by boosting the EPS. SPX and Blystone, between

February 2003 and November 4, 2003, repeatedly announced dramatically improving 2003 FCF and reaffirmed 2003 EPS of "at least $3.40."

32. SPX's reported free cash flow from "continuing operations" increased dramatically in 2003 as compared to the prior year. In the first quarter ended March 31, 2003, FCF was $42.7 million (up from $21.2 million for the same in quarter 2002); in the second quarter ended June 30, 2003, FCF was $99 million (down from $119.5 million for the same quarter 2002); in the third quarter ended September 30, 2003, FCF was $100.9 million (up from $73.5 million in the same quarter in 2002); and for the fourth quarter ended December 31, 2003, FCF was $304 million (up dramatically from $149 million in the same quarter in 2002). Full-year 2003 was a "record" year for SPX's free cash flow as the Company reported actual FCF of $546.1 million for the year (a more than 50% increase from the $363 million FCF reported for full-year 2002).

33. These dramatically improved free cash flow figures were intertwined with announcements forecasting 2003 earnings per share of "at least $3.40" per share, both before and during the Class Period, and reiterated in SPX analyst presentations on April 22, 2003, July 28, 2003, June 30, 2003, September 17, 2003, and October 28, 2003. However, despite the reported FCF gains and reported reaffirmations of the $3.40 per share earnings figure, by October 28, 2003, SPX common stock price remained at approximately $48 per share. Investors remained skeptical of the EPS target because through the end of the third quarter SPX had earned only $1.79 per share, meaning that in the fourth quarter SPX had to earn $1.61 per share – an amount almost equal to the earnings in the prior three quarters.

34. It is in this context that, beginning on November 5, 2003, Defendant Blystone and SPX began a "media blitz" assuring analysts of SPX's "sustainable cash flows." Blystone

participated in two separate analyst presentations on November 5, 2003 (the "November Presentation") and December 12, 2003 (the "December Presentation"), and an earnings update press release dated January 19, 2004 – all occurring in, and even after, the fourth quarter of 2003. Specifically, on November 5, 2003, Blystone held an analyst presentation in which he expressly stated that: (1) SPX used rigorous financial measures "to drive long-term sustainable cash flows;" (2) "strong cash flow supported strategic action;" and, (3) "updated" 2003 FCF had improved since October 28, 2003 – only eight days earlier – from between $350 and $400 million up to $375 to $400 million.

35. The November Presentation further represented that 2003 EPS would be "at least $3.40." In describing the $3.40 EPS figure, SPX and Blystone reiterated on two separate slides in the November 5, 2003 presentation that GAAP results – such as earnings per share from continuing operations – were presented ***"net of restructuring charges and other one-time gains and losses."***

36. In the December Presentation, only two weeks before the end of the fourth quarter, Blystone, once again, reiterated the $3.40 per share 2003 estimated EPS figure and, once again, expressly stated, in two separate slides, that GAAP results, such as EPS from continuing operations, were reported as ***"net of restructuring charges and other one-time gains and losses."*** The December Presentation also announced an increase in 2003 estimated FCF to between $415 and $450 million. This barrage of specific positive financial results, so close to the end of the 2003 fiscal year, was not lost on investors and analysts. SPX's common stock price rose from $49.21 per share on November 4, 2003, to $57.43 on December 12, 2003.

37. Finally, on January 19, 2004 – almost three weeks ***after*** the close of the 2003 fiscal year – SPX issued a press release further increasing the estimated 2003 FCF figure to "at least $520

million," and "reaffirming" targeted 2003 EPS from continuing operations of $3.40 per share. These statements – given their specificity, and more importantly, that they were issued after the close of the 2003 fiscal year – further boosted the price of SPX common stock to a closing price of $61.02 on January 20, 2004, on a trading volume of over 2.12 million shares. In addition, the January 19, 2004 announcement also caused the Banc of America Securities analyst to raise the 12-month price target on SPX common stock to $62 per share.

38. Blystone having "goosed" SPX stock through announcements in the presentations and press releases since November 5, 2003 allowed him to personally "cash in." On December 31, 2003 Blystone submitted to the SEC a "plan" to sell up to 1.3 million shares of SPX stock over the "next three months." Having made this filing, Defendant Blystone then proceeded to sell 800,000 shares of SPX common stock, for aggregate proceeds of $45.3 million, between January 6, 2004 and February 26, 2004.

39. Unfortunately for SPX investors however, the positive statements made between November 5, 2003 and February 25, 2003 were materially false and misleading. SPX did not determine its EPS from continuing operations "net of one-time gains and losses." As disclosed on February 26, 2004, the $3.41 EPS figure was only attained from the inclusion of a $60 million one-time gain from a patent infringement settlement. Without that approximately $0.40 per share one-time gain, SPX's cash flow and earnings figures substantially declined over fiscal year 2003. The $3.41 per share EPS from continuing operations figure was also artificially boosted by the substantial stock repurchases that took place throughout 2003.

40. It also became apparent from the disclosure of SPX final 2003 financial results on February 26, 2004, that FCF had not been achieved by increased "sustainable cash flows" from

operating activities, but rather, from one-time adjustments that dramatically reduced working capital. Specifically, on February 26, 2004, SPX disclosed that the enormous 2003 FCF of $546 million was achieved only by "short term fixes" including as follows:

a) $66.4 million decrease in accounts receivable (a "current asset"), $30.6 million of which was derived from the sale of accounts receivable;

b) $20.9 million decrease in inventory; and

c) $55.8 million decrease in accounts payable and accrued interest expense.

41. The market response to these disclosures was both swift and severe. SPX's common stock price declined from $53.50 on February 26, 2004 to $42.00 on February 27, 2004, with over 16 million shares trading. This represented a single day market loss of $183 million.

42. Analyst reaction was also severe. The Banc of America Securities analyst stated that results confirmed a "huge quality issue," not only with the results, but with SPX itself.

43. To the extent there was any doubt that there were no sustainable earnings or cash flows underlying the $546 million FCF number touted during the Class Period, the reported "Free Cash Flow" in the very next quarter ended March 31, 2004 (first quarter 2004) was negative $92 million, as set forth more fully below (Paragraph 99).

44. The February 26, 2004 disclosure also pointed to material adverse facts, revenue and earnings declines and massive undisclosed firings of senior management, known to Defendant Blystone when he sold his shares of SPX stock. Specifically, the press release disclosed the reasons for the "organic revenue" and "segment income margin" declines in the fourth quarter of 2003. SPX pointed to, in the Technical Products and Services segment, declines in the Broadcast & Communications platform, as well as declines in the Laboratory and Life Sciences platform due to

flat revenues at Kendro for 2003. SPX also pointed to, in the Industrial Products and Services segment, to "inventory write-downs and operating inefficiencies at the industrial tools and hydraulics business." (SPX February 26, 2004 Press Release).

45. Finally, SPX pointed to, in the Flow Technology segment, "organic revenue" declines in its Fluid Systems platform.

46. However, Blystone and SPX rigorously scrutinized operations at each segment so as to be aware of the adverse systematic problems which caused the declines that the company reported in February 2004.

47. Blystone and SPX formed a committee -- the "Executive Leadership Team ("ELT") -- predominately composed from members of its executive management located at headquarters in Asheville, North Carolina, and select members of management from SPX's individual segments and business division. Throughout late 2002 and 2003, the ELT's purpose was to act as a liaison between SPX corporate headquarters and the individual businesses the comprised the divisions and segments with made up SPX. At the end of each month members from the ELT traveled to each subsidiary company and handed down gross revenue, operating margin, net income and productivity targets for the reporting period, which on average were twenty (20%) higher than previously achieved levels. These targets/goals were derived from empirical calculations and projections of what SPX corporate wanted each business, division, and segment to achieve for that month, quarter and fiscal year, respectively, without any regard for historical performance, the current market/industry environment, current operations or the advice/knowledge of the incumbent management operating the subsidiary company.

48. The members of the ELT were Jay Ferguson ("Ferguson"), William Griffiths

("Griffiths"), Bob Messier ("Messier"), Dennis Pope ("Pope"), Joseph Young ("Young"), and Daniel Biggs ("Biggs"), who visited SPX's subsidiaries in order to hand down SPX's unrealistic and irrational operating expectations. ELT visited their platform units at least on a quarterly basis, and for a number of units, such as Kendro, the visits took place on a monthly basis.

B. Undisclosed Firings at Technical Products and Services' Kendro Operations

49. Kendro Laboratory Products, acquired by SPX in or around July 2001, served pharmaceutical, biotechnology, clinical, diagnostic and blood processing sectors worldwide, and supplies much of the equipment needed by academic, commercial and government laboratories. By 2002, Kendro had been fully integrated into the Laboratory and Life Sciences Platform of the Technical Products and Services Segment. Moreover, by mid-2002 the unit became the primary source of revenue growth within the Laboratory and Life Sciences Platform. For fiscal year 2002, Kendro accounted for 34% of the total revenue in the Technical Segment alone, which translates into more than 8% of SPX's totals revenues.

50. In April of 2003, several members of the top management at Kendro were terminated because of the failures to meet revenue and earnings targets at Kendro.

51. In October of 2003, the overwhelming majority of Kendro's customer service department in Newtown, Connecticut was eliminated. Since Kendro no longer had the customer service resources to meet the needs of their long-standing customer base, by the fourth quarter of 2003 Kendro had lost up to approximately15-25% of the Company's existing customer. Around the same time in 2003, SPX fired Sue Mortifoglio, the Vice President of Marketing and Sales at Kendro Laboratory Products.

C. Undisclosed Firings in Flow Technology's Fluid Systems

Platform and Technical Segment's Broadcast & Communications Systems and Services Platform

52. Also, SPX's Valves & Controls ("V&C") division, a component of SPX's Flow Technology segment also suffered from undisclosed firing of senior management in 2003. V&C was the primary source of revenue within Flow Technology, representing approximately $956.34 million, or 69% of 2002 segment revenue. The Flow Technology segment designs, manufactures and markets solutions and products that are used to process or transport fluids, as well as solutions and products that are used in heart transfer applications and airflow treatment systems. Flow Technology includes Fluid Systems (otherwise referred to as V&C) and Cooling Technologies and Services – *i.e.*, airflow treatment.

53. In November 2003, due to V&C's inability to achieve targets, SPX fired Keith Thompson, President, and Howard Winn, Chief Financial Officer. None of these firings – known to Defendant Blystone – were publically disclosed.

54. Similarly, Broadcast & Communications Systems and Services ("B&C"), a platform in the Technical Segment representing approximately 13% of SPX's 2003 gross revenue, concentrated in the production and manufacturing of "turn-key solutions." The B&C platform included Dielectric and Radiodetection operating units in 2003.

55. In June 2003, because Dielectric failed to achieve revenue and earnings targets, SPX fired Dielectric's President, Greg Langston; the Vice President of Operations; and the Vice President of Human Resources. None of these firings – known to Defendant Blystone – were publically disclosed.

D. Undisclosed "Operating Inefficiencies" and "Inventory Write-Downs" at Industrial Tools and Hydraulics Business

Known During Class Period Insider Trading

56. Specialty Engineered Products, a platform of the Industrial Products and Services Segment, accounted for 54% of Industrial Segment revenue (17% of SPX revenue) and 57% of Industrial Segment revenue (16% of SPX revenue) in 2002 and 2003, respectively. In terms of actual dollar amounts, the Specialty Engineered Products platform contributed $865.7 million and $815.1 million to SPX's total revenue in 2002 and 2003, respectively.

57. The "operating inefficiencies" at the Industrial Tool and Hydraulics business, referred to in the February 26 Press Release, stemmed from the acquisition and consolidation of Fluid Power and Fenner Fluid Power in 2001. The merger and consolidation was effectuated by the purchase of Fenner's facility in Rockford, Illinois, and the subsequent relocation of Fluid Power to the Rockford facility. The consolidation of the two production units in a single facility proved to be a substantial problem. Along with the employees, production materials, and machines, huge amounts of inventory were relocated to a facility less than half the size of the previous facility in which Fluid Power operated. In fact, in 2001 Arthur Andersen Consulting, LLP conducted an investigation into the efficiency and profitability of the consolidation. Their conclusions, distributed via internal memo throughout SPX and SPX Fluid Power, advised against the consolidation of Fluid Power and Fenner, due to inefficiencies and costs.

58. The need for an "inventory write-down" at SPX Fluid Power was known to SPX and Blystone, though it was never disclosed to the public. Indeed, there were large quantities of obsolete and broken inventory, that had been moved to the Rockford plant when Fluid Power and Fenner were consolidated, and that was taken from the facility warehouse and placed in a huge "tent" adjacent to the warehouse. The inventory stored in the tent is only inventory that could have been the subject

of the inventory write-downs incurred by SPX in 2003.

E. <u>Background Statements Prior To The Commencement Of The Class Period</u>

59. On February 12, 2003, in announcing 2002 financial results, Blystone emphasized that in a challenging marketplace" SPX had a successful year pointing first to "free cash flow equal to 125% of net income." SPX also offered analyst EPS guidance for 2003 of between $3.40 - $3.75 per share compared to the $3.33 per share earning in 2002. On February 12, 2003 SPX common stock price closed at $36.35 per share.

60. On or about July 28, 2003, SPX, in a press release and an analyst presentation, announced financial results for the second quarter ending June 30, 2003. Blystone, once again, touted the growth in "free cash flow from continuing operations" even in a "challenging" market. Blystone stated:

> For the quarter we generated **free cash flow equal to 194% of income from continuing operations, while diluted earnings per share from continuing operations** were $0.66 compared to $0.79 in 2002. The primary use of free cash flow during the quarter was to repurchase equity.

(SPX July 28, 2003 Press Release)(emphasis added p.1).

61. Blystone also reiterated the 2003 estimated EPS from continuing operations of "at least $3.40" per share, despite reported EPS in the second quarter of 2003 of only $0.80 per share:

> We remain confident in delivering on our financial commitments for the year of diluted earnings per share from continuing operations of at least $3.40 and free cash flow from continuing operations of at least $350 million.

(SPX Press Release July 28, 2003, p. 1).

62. On or about August 25, 2003, Graef Crystal, a noted compensation consultant, determined Defendant Blystone to be the "third-most-overpaid CEO in America" with an average

annual pay of $51.3 million." (Graef Crystal, August 13, 2003, "U.S. CEO Pay Averages $12M Annually; Jobs No. 1," Bloomberg.Com).

63. On September 17, 2003, SPX issued a press release entitled "SPX Increases 2003 Free Cash Flow Target and Reconfirms Diluted GAAP EPS from Continuing Operations of at least $3.40." In the release, Defendant Blystone increased projected 2003 FCF to between $350 - $400 million and EPS of "at least $3.40" per share.

64. On or about October 28, 2003, SPX issued a press release announcing its third quarter results. In the release, Defendant Blystone emphasized the "FCF from continuing operations" achievement, an increased 2003E FCF target of $350-$400, and SPX's commitment to the 2003 estimated EPS of "at least $3.40" per share.

65. On October 28, 2003, SPX filed its September 30 quarterly 10-Q with the SEC. In a simultaneous press release, SPX announced third quarter 2003 results of $1.24B in revenues, diluted EPS from continuing operations of $0.98, and FCF from continuing operations of $100.9M.

66. The Prudential analyst, in a report on SPX dated October 28, 2003, stated **SPX was "making believers out of most"** and that SPX could achieve the 2003 $3.40 per share target:

> We are raising our 2003 EPS to $3.40, up from $3.35, to reflect the likelihood that SPX will achieve its 2003 EPS target of $3.40. In short, while the company is making believers out of most that couldn't fathom how the company could earn $3.40 in 2003, they clearly have walked across some thin ice to achieve this goal. However, the company's diversity helped it achieve its results, with very strong performance from SPX's Services & Solutions business.

(Prudential Analyst Report, October 28, 2003, p. 1).

67. Nevertheless, to achieve the $3.40 EPS number, SPX would have to earn $1.61 per share in the fourth quarter of 2003 alone. As a result, it is not surprising that in his October 28, 2003

report, the Prudential analyst remained skeptical, stating SPX still had to ***"restore investors' faith in the sustainability of the source of the company's earnings."*** (Prudential Analyst Report, October 28, 2003, p. 3)(emphasis added).

VI. MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

68. As if responding directly to that call for assurances proof of "sustainable SPX earnings," Blystone and SPX "stepped up" its positive communications with investors. SPX and Blystone held analyst presentations on November 5, 2003, December 12, 2003, and issued a specific event announcement on January 9, 2004, each of which reaffirmed the 2003 earnings target or results of "at least $3.40" per share, and intertwined those announcements with even greater than forecasted 2003 free cash flow figures. These reassurances – and attendant analyst upgrades such as the Merrill Lynch upgrade on November 28, 2003 – positively impacted the stock price which rose from $49.00 per share on November 4, 2003 to $57.00 per share on January 5, 2004, and $60.00 per share on January 20, 2004, "paving the way" for Blystone's massive stock sale at between $56.23 per share and $62.17 per share from January 6, 2004 to February 26, 2004.

November Presentation

69. In the November 5, 2003 Analyst Presentation, SPX touted its use of the Value Improvement Process® as the driving force behind the Company's long-term sustainable cash flow:

> Free Cash Flow
> EVA Decision-Making Framework / Conversion: Over 100% Net Income / Sustainable Growth
>
> Utilizing the SPX Value Improvement Process® To Drive **Long-Term Sustainable Cash Flow**

(SPX November 5, 2003, Analyst Presentation, p. 3)(emphasis added).

70. The statements set forth above in paragraphs 68 and 69 were materially false and misleading because SPX and Blystone knew that in 2003 there had been no "sustainable growth" as set forth above. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

71. The November 5, 2003 Analyst Presentation contained the Company's "November 2003 Update" of SPX's original full-year 2003 commitments to investors. In the "update" slide, SPX, once again, increased its estimated 2003 free cash flow target range to $375 to $400 million from the previous range of $350 to $400 million, although the Company did not provide the reasons triggering the upward guidance. The corresponding press release stated the following:

> SPX today tightened its 2003 free cash flow target range to $375M to $400M. The free cash flow target range is based on cash from continuing operations of $460M to $485M less capital expenditures of $85M. Today's announcement is a change from the company's most recent revised 2003 free cash flow target of $350m to $400M.

(PR Newswire November 5, 2003, "SPX Updates 2003 Free Cash Flow Target").

72. The statements set forth above in paragraph 71 were materially false and misleading because the updated "2003 free cash flow target range to $375 to $400 million" was not based upon sustainable growth of cash flow from operations, but rather "short term fixes" designed to prop up the price of SPX common stock. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February

26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

73. The "November 2003 Update" detailed in the November 5, 2003 Analyst Presentation stated that the Company, in an effort to increase investor transparency, had not only fulfilled their original commitment to "communicate earnings on GAAP" bases, but, by November, had successfully "moved to GAAP communications." SPX also touts increased investor transparency resulting from presentations held by seven of the Company's platforms, combined with accelerated SEC filings and "EVA Day." In conjunction with the "move" to GAAP communications to increase investor transparency, SPX reveals its 2003 GAAP financial targets, specifically, estimated full-year free cash flow from operations and diluted EPS from continuing operations. On two separate slides in the November Presentation, which both contain SPX's 2003 GAAP financial targets, the Company specifically notes that ***"GAAP results are net of restructuring charges and other one-time charges or gains."***

	February 2003 **Original Commitment**	**November 2003** **Update**
Investor Transparency	• Communicate earnings on GAAP • Business-level access • More informative presentations	• Moved to GAAP Communications • Presentations from 7 platforms • EVA Day; Accelerated SEC filings

(SPX Analyst Presentation November 5, 2003, p. 12).

* * *

NOTE: GAAP results are net of "restructuring charges and other one-time charges or gains."

(SPX Analyst Presentation November 5, 2003, p. 16, 20).

74. The statements set forth above in paragraph 73 were materially false and misleading because SPX and Blystone knew that the estimated 2003 EPS from continuing operations figure of "at least $3.40" that the Company had been consistently reaffirming to investors and analysts throughout 2003 could not be met without the inclusion of "one-time gains" from non-operating activities. Furthermore, SPX's touted fulfilling its commitment to increase "investor transparency" through GAAP communications, platform presentations, and "EVA Day" – a day-long company-wide conference focused on fostering the EVA philosophy – were "smoke-screens" for Blystone and SPX prop up SPX's EPS through non-operating activities, including aggressive share repurchases and "one-time gains." The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

$60 Million Microsoft Patent Infringement Award

75. On November 14, 2003, it was reported that a federal jury had ordered Microsoft Corp. pay $62.3 million in damages to a subsidiary of SPX.

December Presentation

76. On December 12, 2003, SPX reiterated again its 2003 earnings estimate of "at least $3.40" per share in its slide presentation to analysts. Just like in the earlier November 5, 2003 Presentation, the December Presentation included a footnote after all GAAP financial targets stating,

"GAAP results ***are net*** of restructuring charges and other ***one time gains*** or losses." The same slide also touted ***free cash flow from continuing operations*** of between $415 and $450 million. (SPX December 12, 2003, Analyst Presentation, p. 14)(emphasis added).

77. The statements set forth above in paragraph 76 were materially false and misleading because SPX and Blystone knew that the estimated 2003 EPS from continuing operations figure of "at least $3.40" per share that the Company had been consistently reaffirming to investors and analysts throughout 2003 could not be met without the inclusion of "one-time gains" from non-operating activities. Furthermore, SPX's touted fulfilling its commitment to increase "investor transparency" through GAAP communications, platform presentations, and EVA Day were "smoke-screens" for Blystone and SPX prop-up the Company's 2003 EPS through non-operating activities, including aggressive share repurchases and "one-time gains." Furthermore, the updated "2003 free cash flow target range to $415 to $450 million," with less than three weeks before the end of the fiscal year, was not based upon sustainable growth of cash flow from operations, but rather "short term fixes" designed to prop up the price of SPX common stock. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

78. In the December 12, 2003 Analyst Presentation, SPX touted the success of its Value Improvement Process® as the driving force behind the Company's long-term sustainable cash flow:

<u>Free Cash Flow</u>

EVA Decision-Making Framework / Conversion: Over 100% Net Income / Sustainable Growth

Utilizing the SPX Value Improvement Process® To Drive **Long-Term Sustainable Cash Flow**

(SPX December 12, 2003, Analyst Presentation, p. 3)(emphasis added).

79. The statements set forth above in paragraph 78 were materially false and misleading because SPX's touted estimates of 2003 FCF from operations were neither the result of "long-term sustainable growth" due to the Company's Value Improvement Process®, nor the result of sustainable growth in operating cash flow. SPX and Blystone were able to increase forecasted 2003 FCF through the use of "short term fixes" designed to prop up the price of SPX common stock. The manipulation of the Company's FCF figures by SPX and Blystone throughout the Class Period became evident to analysts and investors when the promises of "long-term sustainable cash flow" and "sustainable growth" in FCF were broken upon SPX's reporting of a negative $92 million free cash flow from operating activities in the first quarter of 2004. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

80. The December 12, 2003 Analyst Presentation also presented the following "Common Questions & Answers":

Q: Why aren't you giving quarterly guidance?

A: We have provided only annual GAAP modeling targets for 2003. Due to the nature of GAAP results and our EVA methodology, there can be

> significant volatility during quarters. We therefore feel it is not appropriate to provide quarterly targets.
>
> Q: Why did you limit yourself to discussing GAAP results?
>
> A: Many of our largest shareholders and the analysts that cover the stock recommended it–and it is consistent with the spirit of new SEC regulations.

(SPX December 12, 2003, Analyst Presentation FAQ's, p. 16).

81. On or about December 24, 2003, Microsoft agreed to pay $60M to settle a patent infringement lawsuit. The settlement, payable December 30, 2003, net of legal fees and other expenses, provided SPX with an additional $41.9 million.

82. SPX did not disclose its plans to use those funds to achieve its forecasted earnings target of $3.40 per share from continuing operations.

83. On January 2, 2003, SPX announced that Defendant Blystone filed a 10b5-1 plan with the SEC ("The Plan"). The Plan stated that Defendant Blystone could – if he chose to – exercise more than 1.5 million stock options transferred to him by the Board of Directors in 2003, and sell those shares on the open market:

> SPX Corporation announced today that John B. Blystone, Chairman, President and CEO, has adopted a plan in accordance with Rule 10b5-1 of the Securities and Exchange Act of 1934, as amended. **The plan allows for the exercise of stock options for 1,565,000 shares of SPX common stock and the sale of those shares in a systematic manner.** Mr. Blystone adopted the plan in order to diversify his assets for personal financial and estate planning purposes. In accordance with the trading plan, the sales will occur from time to time, and will be under the direction of J.P. Morgan Securities, Inc. Mr. Blystone is in full compliance with the company's stock ownership guidelines and his current level of ownership of common stock will not be affected by this plan. SEC Rule 10b5-1 allows corporate executives to establish pre-arranged plans to sell a specified number of shares of company stock in accordance with a plan schedule. These plans permit executives to change their investment portfolio gradually. This minimizes the market effects of stock sales by spreading sales out over a more extended period of time rather than carrying out sales during limited trading windows following quarterly earnings announcements. **It also avoids concerns about initiating stock transactions**

> **while the executive may be aware of material nonpublic information.** Once a plan is established, the executive does not retain or exercise any discretion over sales of stock under the plan and the pre-planned trades can be executed at later dates as set forth in the plan, without regard to any subsequent material nonpublic information that the executive might receive.

(PR Newswire, January 2, 2004, "SPX Chairman Adopts 10b5-1 Plan")(emphasis added).

84. The statements set forth above in paragraphs 83 were materially false and misleading because under the financial reporting practices of the Company, SPX and Blystone had the final 2003 earnings figures from all of SPX's divisions by January 5, 2004 -- each division was required to submit its final figures no more than four days after the close of the quarter. On January 5, 2004, the actual earnings figures reported to SPX and Blystone by the individual divisions was unquestionably "material nonpublic information." Defendant Blystone then initiated the first of a series of sales of SPX common stock on the day after he had become "aware of material nonpublic information," information which he knew would have a damaging effect on SPX's per share price, and thus, a damaging effect on the value of his ownership interest in SPX. Well aware of the analyst skepticism of SPX's earnings quality and management credibility, SPX and Blystone, having actual knowledge of the earnings and operating misses on January 5, 2004, proceeded to continue to manipulate investor and analyst perception of the quality of SPX's 2003 full-year earnings in order to boost the price of SPX shares. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

85. On January 6, 2004, Blystone commences insider sales.

86. On January 19, 2004 SPX reported free cash flow of "at least $520 million" and diluted earnings per share of "at least $3.40."

> In addition, the company today increased its full year 2003 free cash flow target to at least $520 million, based on cash from continuing operations of at least $592 million less capital expenditures of $72 million. Today's announcement is an increase from the company's most recent revised free cash flow target of $415 to $450 million, based on cash flow from continuing operations of $485 to $530 million less capital expenditures of $70 to $80 million. The company also reconfirmed its 2003 diluted earnings per share from continuing operations of "at least $3.40 per share."

(PR Newswire, January 19, 2004, p. 1).

87. The statements set forth above in paragraph 86 were materially false and misleading because, as set forth in paragraph 84, under the financial reporting practices of the Company, SPX and Blystone had the final 2003 earnings figures from all of SPX's divisions by January 5, 2004, one day before Defendant Blystone initiated a series of profitable sales of SPX common stock. Once again, SPX and Blystone touted further increases in the 2003 targeted free cash flow from operating activities, and once again, the press release in which SPX and Blystone guided the figures upward contained no explanatory bases for the increase. In fact, the 2003 FCF target increase to "at least $520 million" is just another manipulative tactic by SPX and Blystone, using "short term fixes" designed to prop up the price per share of SPX common stock. On January 20, 2004 (the next trading day), SPX common stock price closed at $60.34, up from $57.89 (the closing price on the trading day prior to the announcement) on January 16, 2004. At market close on January 20, 2004, SPX's share price had increased more than $11.00 per share, an increase solely attributable to the manipulative and misleading earnings forecasts touted by SPX and Blystone beginning on November

5, 2003. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

88. Moreover, statements set forth above in paragraph 86 were materially false and misleading because the January 19, 2003 press release contained no disclosure by SPX as to the $60 million net benefit from the patent infringement settlement with Microsoft which SPX received on December 30, 2003 as set forth in the above paragraph 81. Moreover, SPX made no disclosure of plans to include, net of tax, the one-time gain from the award in the calculation of fiscal year 2003 earnings per share from continuing operations. The sources for the allegations contained in this paragraph are: (a) SPX's February 26, 2004 Press Release; (b) SPX's 2003 Form 10-K filed with the SEC on February 26, 2004; (c) SPX's February 26, 2004 Analyst Presentation; (d) the February 26, 2004 Banc of America Securities Analyst Report; (e) February 27, 2004 Lehman Brothers Analyst Report; (f) SPX's Form 10-Q for the quarter ending March 31, 2004; and (g) May 2, 2004 Prudential Securities Analyst Report.

89. The January 19, 2004 Press Release, in which SPX, in addition to increasing the 2003 FCF target and reaffirming $3.40 EPS for 2003, also increased fourth quarter 2003 estimated growth to10%, up 4% from a previous 6% estimate led Banc of America Securities to increase its target price to $62.00 per share (from $55.00 per share) and increase analyst earnings estimates for full-year 2003 to $3.50 per share.

February 26, 2004: Truth Begins To Be Disclosed

90. On February 26, 2004, SPX issued a press release after the close of the trading day, which announced "diluted earnings per share from continuing operations of $3.41," but that figure was only achieved by the inclusion of one time gains of between $0.35 and $0.40 per share from the $60 million patent infringement settlement with Microsoft.

91. The February 26, 2004 press release disclosed, in fact, substantial operating declines as follows:

> **Technical Products and Systems**
>
> Organic revenue declines were experienced in broadcast and communication systems and services and laboratory and life science products. ***While organic revenues declined low single digits in laboratory and life sciences, revenues at Kendro, the primary unit in this platform, were flat in 2003 compared to 2002.*** Broadcast and communications' organic revenues declined 23.5% due to regulatory delays in the HDTV rollout and a decline in demand for telecommunication line management systems.
>
> **Industrial Products and Services**
>
> Segment revenues were $1.43 billion in 2003, a decrease of $178.2 million or 11.1% from $1.60 billion in 2002. ***The decrease was due to the significant organic revenue decline in power systems and lower organic revenue in specialty engineered products.*** Reduced demand and pricing pressures continued to impact power generation end markets. Accordingly, power systems experienced a decline in revenues in 2003 of approximately 45%.
>
> Compaction equipment reported organic revenue growth of 11.4% due primarily to the favorable translation impact of the strong Euro relative to the U.S. Dollar and market share gains in Asia.
>
> Segment income was $137.0 million, a decrease of $96.0 million or 41.2% from $233.0 million in 2002. As a percentage of revenues, segment income was 9.6% in 2003 compared to 14.5% in 2002 due primarily to the weak power systems market, as well as pricing and operating margins at compaction equipment ***and inventory write-downs and operating inefficiencies at the industrial tool and hydraulics business.*** Segment income decreased approximately $63.0 million at power systems due to reduced demand and pricing pressures.

> **Flow Technology**
>
> Segment income was $163.6 million, a decrease of $4.1 million or 2.4% from $167.7 million in 2002. As a percentage of revenues, segment income was 16.7%, down from 17.7% in 2002 due primarily to bolt-on acquisitions completed in 2002 and 2003 of companies that had historically lower margins than existing businesses.

(SPX February 26, 2004 Press Release)(emphasis added).

92. The Microsoft settlement was disclosed in the release as follows:

> **Legal Settlement:** On December 23, 2003, SPX reached a favorable settlement award through its subsidiary, Imagexpo LLC, associated with a patent infringement claim against Microsoft Corporation. As part of the settlement, all claims were dismissed with prejudice and Microsoft was granted an irrevocable, non-exclusive license to the patent for the remaining useful life of the patent. In consideration of the settlement, ***SPX received cash proceeds of $60.0 million and recorded a gain of $41.9 million as other income***, after taking into consideration related expenses. Accrued costs of $15.6 million related to the 2003 Microsoft patent litigation settlement will be paid in the first quarter of 2004.

(*Id.*)(emphasis added).

93. On or about February 26, 2004, SPX said "it expects EPS to be flat to up 6% in 2004, in part because of pension contributions and a move to restricted stock awards. SPX said it expects EPS of $3.41 to $3.60 in 2004 and total revenue growth of about 5%. . ..Analysts on average expect SPX to earn $3.85 per share for 2004."

(Reuters, February 26, 2004, "SPX Sees 2004 EPS Flat to up 6%").

94. On February 26, 2004, Banc of America Securities lowered their estimated 12-month price target on SPX shares to $53.00 from $62.00. In its analyst report, Banc of America Securities stated that SPX's fourth quarter earnings per share from continuing operations of $1.30 per share ($0.10 below analyst estimates) did not result from operating activities, but rather from an $0.18 net benefit from below the line items. A more egregious discrepancy, according to the analyst, was that SPX's operating margins missed consensus estimates by $0.24, which was more than offset by

substantial non-operating items. While SPX reported earnings did beat the consensus by a penny, reported EPS of $3.41, the analyst emphasized that "on an operating basis things at SPX were much worse than even expected":

> Valuation and Target Price Analysis: We retain our Neutral rating but are ***cutting our Target Price to $53 from $62***. Our new TP assumes the stock trades at a 20% discount to its peers (HON, TYC, TXT, UTX) off '05 est.
>
> * * *
>
> SPX reported Q4 EPS of $1.30, $0.10 below ur est. & this was with the help of $0.18 net benefit from below-the-line items. Revenue came in slightly ahead but segment op profit missed our forecast by ~$0.24. However, this was more than offset by beneficial patent settlement (+$0.35) less higher interest expense (-$0.14) & other non-operating items (-$0.07). ***While on a reported basis co. beat cons. by a penny, it's clear that things are much worse than we expected at the divisions.***

(Banc of America Securities, February 26, 2004 Analyst Report, p. 1)(emphasis added).

95. The February 26, 2004 Banc of America Securities analyst report also pointed to SPX's 2003 reported operating profits of $182 million missing estimates by $32 million for the year. Full year 2003 operating margins were also reported below forecasted levels at 12.5%, short of estimates by 2.3%:

> Q4 op profit miss driven by weaker results in every segment. Consolidated op profit cam in at $182mm, $32mm below our forecast. Consolidated op margin (pre-charges) missed our forecast by 230bps coming in at 12.5%, down 290bys yr/yr.

(*Id.,* p. 1).

96. On February 27, 2004, J.P. Morgan's analysts downgraded SPX to "underweight" from "overweight." On or about February 27, 2004, J.P. Morgan cites the company's 2003 results and disappointing guidance for the full year as the motivation for the downgrade. Solomon Smith Barney, Inc. also cut its rating on SPX to "Sell" from "Buy," while reducing its target price to $45. (Oster Dow Jones Select, February 27, 2004, "DJ. US Stocks Are Rising, As GDP Is Revised Upward For 4Q." and Reuters News, February 27, 2004, "SPX Shares Tumble on Weak 2004

Outlook, Downgrades.”).

97. That same day, Lehman Brothers analysts reduced their target price for SPX common stock from $65.00 per share to $55.00 per share, citing significantly weaker than expected performance:

> SPX performance in 4Q03 came in weaker than we expected. The company reported 4Q03 EPS of $1.30 and full year EPS of $3.41, in line with management’s GAAP-based guidance. However, we estimate that reported earnings include a net benefit of $0.20 related to various one-time items in 4Q03. ***Although SPX had pre-announced the largest one-time gains/charges we did not include them in our projections believing that SPX could meet its EPS target of $3.40+ operationally.***

(Lehman Brothers Analyst Report, February 27, 2004, p. 1)(emphasis added).

98. The market reaction to this failure to achieve the $3.41 EPS was swift and severe. SPX common stock price plummeted from $52.71 per share on February 25, 2004 to a closing price of $41.53 per share on February 27, 2004.

<u>Announcement of Negative $92 Million Free Cash Flow</u>

99. On or about May 2, 2004 SPX reported financial results for the quarter March 31, 2004. The results were devastating. ***Free cash flow collapsed to a negative $92 million.***

100. Prudential Securities analyst, Nicholas Heymann, wrote it was “highly questionable” why working capital was used to “support” “nominally profitable incremental sales growth.”

101. Moreover in a section entitled “Questions loom larger as underlying performance dims at SPX these days” Mr. Heymann concluded that SPX's reported financial results had been masking that its earnings were *not* sustainable.

> After SPX reported 1Q’04 EPS last Friday, the stock headed steadily lower, falling 7% for the day. This occurred despite reported EPS to $0.49 were roughly in line with expectations of $0.48 and $0.50 in the year ago period. However, most investors familiar with SPX's GAAP earnings have come to realized they recently have not necessarily reflected the company's underlying sustainable earnings power.

> On Friday, we believe this is what an increasing number of investors once again concluded after reviewing the details of the company's latest 1Q04 earing report."

(Prudential Securities May 2, 2004, SPX Analyst Report).

102. Prudential analyst Nicholas Heymann found no rational explanation for the sharp rise in working capital which was wholly inconsistent with the working capital decline in just the prior quarter. Indeed, the sharp increase in working capital seemed to have no link to the only incremental increase in sales in the first quarter:

> In particular, in addition to the apparent decline in SPX's underlying earnings power despite significantly higher sales (see details below). We believe even value investors who have recently begun to accumulate the shares came to the stark conclusion that with free cash flow falling \$128 million to a negative \$92 million from \$36 million in the year ago period, what investors see in SPX's reported EPS is not consistently equivalent to the company's sustainable earnings power. During the quarter, SPX's capital spending fell 38% from year ago levels and the company factored some receivables to effectively offset an \$18 million rise in its cash taxes from virtually zero in the year ago period. While we can explain about half the shortfall due to "one-time events" or unusual items, the sharp rise in working capital to support a 6% increase in sales (excluding acquisitions and FX) while the company's underlying earnings power fell at least 8% or more is very hard for any kind of investor to reconcile. In short, despite reported sales rising 17% or \$147 million, operating earnings were flat (including the benefit from lower special charges). This essentially means incremental operating margins on the higher sales were well below the operating profitability of SPX's based business. ***For a company that prides itself on allocating capital based on positive or negative Economic Value added (EVA), the logic for SPX funding over \$60 million in additional working capital in 1Q04 to expand sales which reduced the company's overall level or operating profitability escapes us.***

(*Id.*)(emphasis added).

103. Prudential analyst Nicholas Heymann also concluded that these finished results raised "fundamental questions" regarding SPX prior financial reporting with its diminished operating condition now "bleeding through":

> *This raises some very fundamental questions*. Did SPX make some very poor recent acquisitions that didn't turn out as well as expected? Did the company misallocate

> capita1 in prior periods which now is handicapping the company's performance? We are not sure about he answers to these questions, but something sure seems out of balance. For one things, we sense that SPX spent far too much money since late 2002 through the end of last year buying back its stock (over $300 million) to shrink its share based so as to offset weaker than expected operating performance last year. ***However, today the true colors of SPX diminished operating competitiveness seem to be bleeding through its financial results to the extent to magnitude to share repurchase can obscure.*** It seems that one reason offered by management for SPX's recently diminished performance, the inability to raise prices fast enough to cover rapidly rising input costs, may reflect a decline in the company's underlying cost competitiveness. We believe this has to be part of the reason the company noted it was having such a hard time raising prices to cover its higher input costs during 1Q04 at a time of widespread price increases being announced and apparently sticking at all our other industrial companies in virtually all the markets they serve. In fact, we can't remember one other company that suffered margin compression recently from higher input costs - they simply raised their prices to cover the rising costs or accelerated their outsourcing efforts to reduce other types of cots that didn't rise.
>
> Given the pervasiveness that industrial prices are now being raised by virtually all companies since early this year, *something seems significantly askew to us* when SPX can't raise prices to cover its input costs.

(*Id.*)(emphasis added).

104. Finally, Mr. Heymann did not "mince words" about what Blystone's insider trading in the context of what now appears to have been propped prior financial results going to far as to say any prior statements by management about is commitment to shareholders were rendered "hollow" by Defendant Blystone's insider trading:

> ***. . . management clearly seemed to be uncannily clairvoyant about the company's declining competitiveness when they moved to sell significant portions of their holdings late last year and early this year before 4Q03 EPS were reported earlier this year.*** Given how hard the company has worked to try to emphasize it is always being run in the best interests of shareholders, we find a hollow ring to these claims in light of the company's current predicament and management's prior actions.

(*Id.*)(emphasis added).

SCIENTER ALLEGATIONS

105. The <u>intentional and/or reckless</u> nature of the conduct by SPX and Blystone is reflected by the following:

a. The increase in the number of positive earnings releases in analyst presentations during the fourth quarter of 2003 and the press release in January of 2004;

b. The content of the November 2003 and December 2003 Analyst Presentations, and the January 19, 2004 press release, in reiterating SPX's 2003 financial results emphasizing cash flow and earnings growth by specified amounts and that the "at least $3.40 per share" EPS forecast for full -year 2003 was "net of one-time gains;"

c. The dramatic increase in SPX's common stock price between November 5, 2003 and January 6, 2004 from approximately $48.00 per share to as high as $62.17 per share; and

d. The timing and magnitude of Defendant Blystone's $45.3 million of insider sales in January and February of 2004 as follows:

JOHN B. BLYSTONE, CHAIRMAN, CHIEF EXECUTIVE OFFICER,

PRESIDENT, AND DIRECTOR

Date	Shares	Price	Proceeds
1/06/2004	100,000	$57.65 - 57.96	$5,776,501
1/14/2004	72,800	$56.90	$4,142,320
1/15/2004	27,200	$57.08	$1,552,5761
1/20/2004	100,000	$60.85 - 62.17	$6,157,600
1/28/2004	67,600	$59.90	$4,028,960
1/29/2004	8,700	$59.28	$515,736
2/3/2004	32,400	$56.52	$1,831,248
2/4/2004	60,200	$56.23	$3,385,046
2/11/2004	131,100	$56.85 - 57.28	$7,463,355
2/17/2004	73,000	$56.63	$4,133,990
2/18/2004	11,000	$56.74	$624,140
2/25/2004	56,400	$51.51 - 52.38	$2,907,339
TOTAL:	**800,000**	********	**$45.3 million**

STATUTORY SAFE HARBOR

106. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false forward-looking statements plead in this Complaint to the extent that said forward-looking statements were not identified as a "forward-looking statement" when made or to the extent that meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statements did not accompany those forward-looking statements. Alternatively, to the extent

that the statutory safe harbor does apply to any forward-looking statements because at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the forward-looking statement was authorized and/or approved by an executive officer of the Company who knew that those statements were false when made.

COUNT I

(Against All Defendants For Violations of Section 10(b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission)

107. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

108. This Count is asserted against all Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 promulgated thereunder.

109. During the Class Period, Defendants, singularly and in concert, directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class, and made various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiff and the other members of the Class to purchase SPX common stock during the Class Period at artificially inflated prices.

110. During the Class Period, Defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and recklessly issued, caused to be issued, participated in the

preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

111. Throughout the Class Period, SPX acted through the Defendant Blystone, who was portrayed and represented to the financial press and public as its valid representative. The willfulness, motive, knowledge, and recklessness of Defendant Blystone is therefore imputed to SPX, which is primarily liable for the securities law violations of the Defendant Blystone while acting in his official capacity as a Company representative, or, in the alternative, is liable for the acts of Defendant Blystone under the doctrine of respondent superior.

112. As a result of the dissemination of the false and misleading statements set forth above, the market price of SPX common stock was artificially inflated during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by said Defendants, Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the stock in purchasing SPX common stock. Had Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

113. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

114. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not

misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class in connection with their purchases of SPX common stock during the Class Period.

COUNT II

(Against Defendant Blystone For Violations <u>of Section 20(a) of the Exchange Act)</u>

115. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

116. Defendant Blystone, by virtue of his position, stock ownership and/or specific acts described above, was, at the time of the wrongs alleged herein, a controlling person within the meaning of Section 20(a) of the 1934 Act.

117. Defendant Blystone had the power and influence and exercised the same to cause SPX to engage in the illegal conduct and practices complained of herein.

118. By reason of the conduct alleged in Count I of the Complaint, Defendant Blystone is liable for the aforesaid wrongful conduct, and is liable to Plaintiff and to the other members of the Class for the substantial damages which they suffered in connection with his purchases of SPX common stock during the Class Period.

<u>PRAYER FOR RELIEF AND JURY DEMAND</u>

WHEREFORE, Plaintiff, on its own behalf and on behalf of the Class, prays for judgment as follows:

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

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

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

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

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted,

By: ______________________________

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