

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:) Honorable Terence Kern
WILLIAMS COMPANIES)
ERISA LITIGATION) Case No. 02-CV-153-K(M)
) (Lead Case)
)
) CLASS ACTION
)
)
) 02-CV-159-K(M)
) 02-CV-285-K(M)
) 02-CV-289-K(C)
)

**CONSOLIDATED THIRD AMENDED COMPLAINT FOR VIOLATIONS OF
THE EMPLOYEE RETIREMENT INCOME SECURITY ACT**

For their Consolidated Third Amended Complaint against Defendants, Plaintiffs' allegations are set out below. Plaintiffs note, however, that as of the date of this Consolidated Third Amended Complaint, deposition discovery has only just begun. As a result, it is likely that as discovery proceeds, the roles of now unknown co-fiduciaries and other actors in the wrongdoing outlined below will be revealed, and Plaintiffs will then seek leave to amend this Complaint to add new parties and/or new claims.

NATURE OF THE ACTION

1. This is a civil enforcement action brought pursuant to Section 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act ("ERISA") (29 U.S.C. § 1132(a)(2) and (a)(3)).

2. The lawsuit concerns The Williams Companies Inc. Investment Plus Plan (hereinafter the "Plan"), a 401(k) Plan established and maintained by Williams Companies, Inc. (hereinafter "Williams" or the "Company") as a benefit for employees to permit tax-advantaged savings for retirement and other long-term goals.

3. Plaintiffs sue The Williams Companies, Inc., Hugh M. Chapman, Thomas H. Cruikshank, William E. Green, W.R. Howell, James C. Lewis, Charles M. Lillis, George A. Lorch, Frank T. MacInnis, Steven J. Malcolm, Gordon R. Parker, Janice D. Stoney, Joseph H.

Williams, Ira D. Hall, Keith E. Bailey, Michael Johnson, Jack D. McCarthy, Nick Bacile, John Bumgarner, Travis Campbell, R. Rand Clark, James Ivey, Howard Kalika, Marcia MacLeod, Ron Mucci, Scott Welch, Mark Wilson, Phillip D. Wright, Dan M. Miller, Lewis A. Posekany, Jr., Rick Rodekohr, and Andrew Sunderman, who, as set forth in more detail below, have been fiduciaries with respect to the Plan within the meaning of § 3(21) of ERISA during the relevant time.

4. The Plaintiffs, Kristine Zeigler, Karen Raider, and Michael VanSickle, are former employees of Williams who are former and current participants of the Plan within the meaning of § 3(7) of ERISA, 29 U.S.C. § 1002(7). They claim that the Defendants are fiduciaries of the Plan, and that the Defendants breached their fiduciary duties to Plaintiffs and the other participants and beneficiaries of the Plan in violation of ERISA § 1104 (29 U.S.C. § 1104) in a variety of ways, in connection with the Plan's acquisition and holding of Williams stock and WCG stock. Pursuant to ERISA § 409, 29 U.S.C. § 1109 they claim that Defendants are obliged to make good to the Plan the losses resulting from the breaches of fiduciary duty. These losses have yet to be calculated, but they will run to the tens of millions of dollars. They further claim that Defendants are subject under ERISA § 409 to other appropriate equitable relief to redress the violations described herein.

5. Because their claims are for Plan-wide relief and apply to the participants and beneficiaries as a whole, and because ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes plan participants such as Kristine Zeigler, Karen Raider, and Michael VanSickle to sue for losses suffered by the Plan as a result of breaches of fiduciary duty, and for other appropriate relief, they seek to bring this action on behalf of themselves and the class of all the participants and beneficiaries of the Plan during the relevant period.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and the specific jurisdictional statute for claims of this type, ERISA §

502(e)(1) (29 U.S.C. § 1132(e)(1)), and personal jurisdiction over Defendants pursuant to Fed. R. Civ. P. 4(k).

7. Venue is properly laid in this district pursuant to ERISA § 502(e)(2) (29 U.S.C. § 1132(e)(2)) because the Plan was administered in this District, some or all of the fiduciary breaches for which relief is sought occurred in this District, and one or more of the Defendants may be found in this District.

THE PLAN

8. The Plan is an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A) (29 U.S.C. § 1002(2)(A)). Further, it is an “eligible individual account plan” within the meaning of ERISA § 407(d)(3) (29 U.S.C. § 1107(d)(3)) and also a “qualified cash or deferred arrangement” within the meaning of I.R.C. § 401(k) (26 U.S.C. § 401(k)). The EIN is 73-0569878 and the Plan number is 008. The Plan is not a party to this action. Pursuant to ERISA, however, the relief requested in this action is for the benefit of the Plan.

9. At all relevant times, Williams was a sponsor of the Plan.

10. The Plan has two separate components: (1) a contributory portion, which consists of voluntary participant contributions and employer matching contributions; and (2) a bonus portion, which consists entirely of employer contributions.

Voluntary Participant Contributions

11. Participants in the Plan may contribute from 1% to 16 % of their compensation (1% to 10% for Highly Compensated Employees) subject to certain limits described by the Internal Revenue Code.

Employer Matching Contributions

12. Williams matches pre-tax and after-tax contributions to the Plan dollar-for-dollar up to 6 percent of the participants’ eligible compensation. All of Williams’ matching contributions are invested solely in Williams common stock, and participants have not been permitted to re-direct the proceeds of these matching contributions among the other investment options until the participant reaches age 50, or upon termination of employment. A participant is

not eligible to receive employer matching contributions for any period of time during which the participant does not make contributions to the Plan.

Company Bonus Contributions to Plan (BESOP)

13. BESOP Fund shares of Williams common stock are allocated on an annual basis to the accounts of participating employees on a pro rata basis according to eligible compensation.

Investment Options

14. The participants and beneficiaries of the Plan are presented with alternative investment options represented to them as suitable for participant contributions and Williams retirement contributions. One of the alternative investment options presented to the participants and beneficiaries of the Plan is Williams common stock. In addition, at the time of the spin-off of Williams Communications Group (hereinafter "WCG") from Williams, and at the time of the Initial Public Offering of WCG stock, the participants holding Williams stock were offered an opportunity to invest in WCG stock.

Vesting

15. Participant voluntary contributions and post-1997 BESOP Employer Contributions are 100% vested. A participant becomes 100% vested in Employer Matching Contributions and pre-1998 BESOP Employer Accounts if the participant retires, terminates employment due to disability, dies, there is a permanent layoff or reduction in force, or there is a complete discontinuance of employer contributions to, or termination or partial termination of, the Plan. Otherwise, an employee's rights in Williams contributions, including pre-1998 BESOP Employer Contributions, vest 20% upon completion of the first year of employment, and an additional 20% for each completed year of employment thereafter until fully vested.

Assets

16. As of December 31, 2001, about \$929 million of \$1.355 billion, or approximately 69% of the assets of the Plan, were in both Williams and WCG stock.

Plan Administration

17. The operation of the Plan is directed by the Benefits Committee, whose members are appointed by the Board of Directors of Williams. The Benefits Committee has the authority and responsibility for the following:

- (1) All amendments to the Plan, except to the extent such authority is reserved to the Board of Directors;
- (2) The approval of any merger or spin-off of any part of the Plan;
- (3) The appointment, removal, or replacement of the Trustee, Investment Managers, any member of the Administrative Committee, or any member of the Investment Committee; and
- (4) The delegation of responsibilities to the Trustee, the Administrative Committee, Investment Committee, or any other person or entity.

18. Additionally, the Benefits Committee may direct the Trustee to delete an Investment Fund from the Plan or establish a new Investment Fund in the Plan.

19. The Benefits Committee has delegated authority to administer the Plan on a day-to-day basis to an Administrative Committee. The Administrative Committee administers the Plan in accordance with its terms and has all the powers necessary to carry out such terms. The Administrative Committee is the Plan Administrator.

PARTIES

Plaintiffs

20. Plaintiff Kristine Zeigler is a resident of Chicago, Illinois. She is a former employee of Williams. Plaintiff Zeigler held approximately 450 shares of Williams stock in the Plan. She also held approximately 371 shares of WCG stock in the Plan. Plaintiff Zeigler acquired WCG stock as a spin-off dividend on April 23, 2001. She withdrew her funds from the Plan on November 2, 2001.

21. Plaintiff Karen Raider is a resident of Owensboro, Kentucky. She is a former employee of Williams. Plaintiff Raider currently holds approximately 710 shares of Williams

stock in the Plan that she acquired through and including June, 2002, as a result of employer contributions. She acquired approximately 440 shares of WCG stock in the Plan as a spin-off dividend on April 23, 2001.

22. Plaintiff Michael VanSickle is a resident of North Pole, Alaska. He is a former employee of Williams. Plaintiff VanSickle acquired Williams stock in the Plan both as a result of employer contributions and through employee directed purchases through and including September, 2001. He also held approximately 855 shares of WCG stock in the Plan. Plaintiffs VanSickle acquired approximately 217 shares of WCG stock during the IPO in October, 1999. He also acquired approximately 638 additional WCG shares as a spin-off dividend on April 23, 2001. He withdrew his funds from the Plan in March, 2002.

23. Plaintiff Zeigler, a former participant in the Plan, Raider, a current participant in the Plan, and VanSickle, a former participant in the Plan, are all participants in the Plan within the meaning of ERISA § 3(7) (29 U.S.C. § 1002(7)). Plaintiff Raider has been a participant in the Plan since February, 1987, while Plaintiff Zeigler was a participant in the Plan from March, 1996 through November, 2001. Plaintiff VanSickle was a participant in the Plan from December, 1998, through December, 2001. Each of the plaintiffs either held or acquired Williams stock and WCG stock in the Plan during the Class Period.

Defendants

24. Defendant The Williams Companies, Inc. is a Delaware corporation with its principal executive offices located at One Williams Center, Tulsa, Oklahoma 74172. The Williams Companies, Inc. engages in energy-related activities, including energy commodity marketing and trading and other energy-related services, including the transportation and storage of natural gas and other energy-related industries. The Williams Companies, Inc. owned 86% of Williams Communications Group, Inc. until it effected a tax-free spin-off of Williams Communications Group, Inc. to its shareholders effective April 23, 2001.

25. Defendant Hugh M. Chapman (“Chapman”) was at times relevant hereto a director of Williams.

26. [Intentionally blank]

27. Defendant Thomas H. Cruikshank (“Cruikshank”) was at times relevant hereto a director of Williams.

28. Defendant William E. Green (“Green”) was at times relevant hereto a director of Williams.

29. Defendant W.R. Howell (“Howell”) was at times relevant hereto a director of Williams.

30. Defendant James C. Lewis (“Lewis”) was at times relevant hereto a director of Williams.

31. Defendant Charles M. Lillis (“Lillis”) was at times relevant hereto a director of Williams.

32. Defendant George A. Lorch (“Lorch”) was at times relevant hereto a director of Williams.

33. Defendant Frank T. MacInnis (“MacInnis”) was at times relevant hereto a director of Williams.

34. Defendant Steven J. Malcolm (“Malcolm”) was at times relevant hereto a director of Williams. Malcolm served as President and Chief Executive Officer of Williams Energy Services from 1998 until 2001. In September, 2001, Malcolm was named President and Chief Operating Officer of Williams. Malcolm then took over as Chief Executive Officer in January, 2002, and Chairman of Williams in May, 2002.

35. [Intentionally blank]

36. Defendant Gordon R. Parker (“Parker”) was at times relevant hereto a director of Williams.

37. Defendant Janice D. Stoney (“Stoney”) was at times relevant hereto a director of Williams.

38. Defendant Joseph H. Williams (“J. Williams”) was at times relevant hereto a director of Williams. J. Williams previously served as Chairman and Chief Executive Officer of Williams.

39. Defendant Ira D. Hall (“Hall”) was at times relevant hereto a director of Williams. Defendants Hall, J. Williams, Stoney, Parker, Malcolm, MacInnis, Lorch, Lillis, Lewis, Howell, Green, Cruikshank, and Chapman are collectively referred to herein as the “Board of Directors.”

40. [Intentionally blank]

41. [Intentionally blank]

42. Defendant Keith E. Bailey (“Bailey”) was at times relevant hereto Chairman, President and Chief Executive Officer of Williams. Bailey also served on the Benefits Committee from 1998 through May 16, 2002.

43. Defendant Michael Johnson (“Johnson”) was at times relevant hereto Senior Vice President of Human Resources and Administration of Williams. Johnson also served on the Benefits Committee from January 1, 2000 through either May 16, 2002 or December 12, 2002, and served on the Investment Committee from March 26, 1999 through September 13, 2000. In October 2002, Johnson took over as Senior Vice President, Strategic Services and Administration.

44. Jack D. McCarthy (“McCarthy”) was Senior Vice President of Finance and Chief Financial Officer of Williams since 1992. McCarthy also served on the Benefits Committee from 1998 through May 16, 2002. Defendants McCarthy, Johnson, Campbell and Bailey are collectively referred to herein as the “Benefits Committee Defendants.”

45. Defendant Nick Bacile (“Bacile”) served on the Investment Committee from 1995 through May 1, 2002.

46. Defendant John Bumgarner (“Bumgarner”) served on the Investment Committee from March 4, 1997 through April 23, 2001. Bumgarner was Williams’ Senior Vice President-Corporate Development and Planning and President of Williams International Company until September 24, 2001 at which time he became Co-Chief Operating Officer of WCG. In addition,

until April 23, 2001, the date of the spin-off of WCG, Bumgarner was Williams' Vice President—Strategic Investments, and a director of WCG. Bumgarner held various officer posts with Williams since 1977. Bumgarner was, throughout his tenure at Williams, a financial strategist who played a key role in all major financial matters concerning Williams.

47. Defendant Travis Campbell (“Campbell”) served on the Investment Committee from March 4, 1997 through December 12, 2002. Campbell also served on the Benefits Committee from May 16, 2002 through December 12, 2002.

48. Defendant R. Rand Clark (“Clark”) served on the Investment Committee from February 24, 1999 through December 12, 2002.

49. Defendant James Ivey (“Ivey”) served on the Investment Committee from August, 1995 through December 12, 2002.

50. Defendant Howard Kalika (“Kalika”) served on the Investment Committee from March 1, 2000 through April 23, 2001.

51. Defendant Marcia MacLeod (“MacLeod”) served on the Investment Committee from November 15, 2000 through June 12, 2002.

52. Defendant Ron Mucci (“Mucci”) served on the Investment Committee from March 1, 2000 through December 12, 2002.

53. Defendant Scott Welch (“Welch”) served on the Investment Committee from March 1, 2000 through December 12, 2002.

54. Defendant Mark Wilson (“Wilson”) was Vice President of Corporate Development from December 2000 until 2002. Wilson also served on the Investment Committee from September 26, 2001 through December 12, 2002. In October of 2002, Wilson became Vice President of Corporate Development of Williams.

55. Defendant Phillip D. Wright (“Wright”) served as Senior Vice President, Enterprise Development and Planning for Williams' energy services group from 1996-2001. Wright was on the Investment Committee from September 15, 1999 through December 12, 2002. In February 2001, Wright served as President and Chief Operating Officer for Williams Energy

Partners. Then, in September 2001, Wright was named as President and Chief Executive Officer for Williams Energy Services. Wright was named Chairman of the board for Williams Energy Partners LP in May 2002 and Senior Vice President and Chief Restructuring Officer of Williams in October 2002. Defendant Dan M. Miller (“Miller”) served on the Investment Committee from July 24, 2000 to April 23, 2001. Defendant Lewis A. Posekany, Jr. (“Posekany”) served on the Investment Committee from July 24, 2000 to September 8, 2000. Defendant Rick Rodekohr (“Rodekohr”) served on the Investment Committee from June 5, 2002 to December 12, 2002. Defendant Andrew Sunderman (“Sunderman”) served on the Investment Committee from June 5, 2002 to December 12, 2002. Defendants Bacile, Bumgarner, Campbell, Clark, Ivey, Kalika, MacLeod, Mucci, Welch, Wilson, Wright, Miller, Posekany, Rodekohr and Sunderman are collectively referred to herein as “Investment Committee Defendants.”

56. On information and belief, because of the individual Defendants’ positions with Williams, they had access to adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets, and present and future business prospects via access to internal corporate documents (including Williams’ operating plan, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors’ meetings and committees thereof, and via reports and other information provided or available to them in connection therewith.

CLASS ACTION ALLEGATIONS

57. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a class (the “Class”) of all persons similarly situated. The Class itself consists of all persons who were participants in or beneficiaries of the Plan at any time from July 24, 2000 through December 12, 2002 (the “Class Period”).

58. Plaintiffs meet the prerequisites to bring this action on behalf of the Class because:

- **Numerosity.** The Class consists of thousands of individuals and is so numerous that joinder of all members as individual plaintiffs is impracticable.
- **Commonality.** There are questions of law and fact common to the Class.
- **Typicality.** Plaintiffs' claims are typical of the claims of the Class.
- **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the Class. They have no interests that are antagonistic to or in conflict with the interest of the Class as a whole, and they have engaged competent counsel, highly experienced in ERISA class actions concerning employer securities in 401(k) plans, as well as in other class and complex litigation, to ensure protection of the interests of the Class as a whole.

59. As an ERISA breach of fiduciary duty action for Plan-wide relief, this is a classic Rule 23(b)(1)(B) class action. The prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. However, this action is also maintainable as a class action under the other subsections (b) of Rule 23:

- **Rule 23(b)(1)(A).** The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for Defendants.
- **Rule 23(b)(2).** The Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.
- **Rule 23(b)(3).** Questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication

of the controversy. This case presents numerous common questions of law and fact including:

- (1) Did the Benefits and Investment Committee Defendants' communications to participants provide "complete and accurate" information concerning the risks of investing in or holding Williams and WCG stock?
- (2) Did the Benefits and Investment Committee Defendants fail to disclose material information concerning the financial health of Williams or WCG, and the extent to which Williams would and did remain subject to the financial risks of WCG after the separation of the companies?
- (3) What steps, if any, did the Benefits and Investment Committee Defendants take to investigate and monitor whether it was appropriate to continue to offer Williams stock or hold WCG stock as a retirement vehicle for participants?
- (4) [Intentionally blank]
- (5) Did the Board of Directors properly appoint and monitor members of the Benefits Committee from May 16, 2002 to December 12, 2002?
- (6) What action, if any, did each of the Defendants take to resolve their conflicts of interest in making decisions relating to Williams and WCG stock in the Plan?
- (7) Did Defendants take adequate steps to protect the Plan and recover Plan damages?

DEFENDANTS' FIDUCIARY STATUS

60. During the Class Period, as explained more fully herein, the Defendants had discretionary authority or discretionary control respecting management of the Plan, and/or

authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or responsibility for the administration of the Plan.

61. During the Class Period, all of the Defendants acted as fiduciaries of the Plan pursuant to ERISA § 3(21)(A) (29 U.S.C. § 1002(21)(A)) and the law interpreting that section.

62. ERISA requires every plan to provide for one or more named fiduciaries, who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1) (29 U.S.C. § 1102(a)(1)). In addition, § 403 (a)(1), 29 U.S.C. § 1103(a)(1), allows authority and discretion to manage and control plan assets to be allocated to additional named fiduciaries. Instead of delegating or allocating fiduciary responsibility for the Plan and its assets to external service providers, Williams chose to comply with the requirement of section 402(a)(1) by internalizing the fiduciary function. It did so in various ways.

63. First, during the Class Period, Williams, through its Board, designated a Benefits Committee empowered by the governing plan documents to control and manage the operation of the Plan, with the power, inter alia, to add or delete Investment Funds from the Plan, to appoint, remove and direct the Trustee, to appoint and remove members of the Investment Committee, Investment Managers, and members of the Administrative Committee (which administers the Plan in accordance with its terms); to establish investment objectives and guidelines to govern the Investment Managers; to delegate responsibility to other persons or entities, and to retain professional service providers. Pursuant to the governing Plan document, the Investment Committee monitors the performance of Investment Funds and Investment Managers, and makes recommendations to the Benefits Committee on Investment Funds and Investment Managers. The Investment Committee also implements any investment objectives or guidelines which may be established by the Benefits Committee. To the extent that Williams acting through its Board of Directors, the Board of Directors itself, the Benefits Committee, and the Investment Committee are each expressly allocated certain fiduciary authority under the terms of the Plan, and the Plan provides for a procedure for the selection of the Benefits Committee and the Investment Committee, Williams' Board of Directors, and Benefits and Investment Committee

Defendants are Named Fiduciaries of the Plan within the meaning of ERISA § 402(a)(2) (29 U.S.C. § 402(a)(2)), subject to the fiduciary responsibility provisions of ERISA.

64. Second, ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under Section 402(a)(1), but also any other persons who act in fact as fiduciaries, *i.e.*, perform fiduciary functions. ERISA § 3(21)(A)(i) (29 U.S.C. § 1002(21)(A)(i)) makes a person a fiduciary “to the extent . . . he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets. . .” During the Class Period, by exercising the authority or control allocated to each of them, including their authority to appoint and remove other fiduciaries, Williams’ Board of Directors, and Benefits and Investment Committee Defendants performed fiduciary functions under this standard, and thereby also acted as fiduciaries under ERISA.

65. [Intentionally blank]

SUBSTANTIVE ALLEGATIONS

A. Background Information.

66. Beginning at least as early as July 2000, market analysts and commentators consistently warned, over the objection of a number of the Defendants, that there existed in the broadband market an over-supply of fiber-optic capacity. As shares of pure fiber-optic network carrier companies fell as much as 50% from their highs during FY:00 and as fears of overcapacity cut into expectations of future revenues, many companies continued their race to lay thousands of miles of fiber-optic cables to build networks and expand the amount of data these networks could carry at an annual rate of increase above 80%. In fact, at or around July 2000, Renaissance Strategy Networks, a market research firm which analyzed the broadband market, concluded that in addition to the huge over-supply of “dark” or “un-lit” fiber capacity that existed, the expected capacity of “lit,” or activated, fiber would also expand by 79% per year, and by 2004 would amount to 160% of peak demand, with the result being deteriorating commodity pricing for broadband. Renaissance further expressed the view that, even assuming

demand increased according to expectations, all potential demand could probably not make use of the fiber network, since access to routes from homes and local networks would be slowed due to less efficient access to the main networks.

67. Evidence of the glut of capacity which existed throughout the Class Period is further demonstrated by the fact that by July 2000, almost 100 million miles of optical fiber – more than enough to reach the sun – were laid around the world, almost all of which was done in the prior two years as companies spent tens of billions of dollars to build broadband communications networks. This massive spending and build-out of capacity way in excess of demand also led to massive price cuts for broadband and record defaults on telecom bonds, which led to an unwillingness on the part of lenders to loan money to broadband suppliers. In fact, during the first half of 2001 alone, telecom companies defaulted on \$13.9 billion of telecommunications bonds, resulting in investor losses of at least \$12.8 billion, according to Fitch credit rating service. This compared to losses on similar bonds of approximately \$5.2 billion for 2000. These debt defaults resulted, in part, from declines in bandwidth prices in 2000 of 60% and of another 60% during the first half of 2001. In fact, between mid-2000 and the end of 1Q:01, lenders had accumulated so much telecom debt, and so many U.S. telecom companies had either filed for bankruptcy or were on the verge thereof, that the telecom industry’s \$700 billion of debt was described by market commentators and analysts as a “ticking time bomb.”

68. At the same time that prices were falling and over-supply problems were growing in the fiber-optic network arena, the opposite was the case in the energy and natural gas markets. In fact, in June 2000, natural gas prices reached record highs in trading on the New York Mercantile Exchange. Thus, in June 2000, as supplies failed to keep up with demand, natural gas commodities prices rose as high as \$3.72 per thousand feet, up 47 percent from contract prices which existed a year ago. Not surprisingly, it was the combination of rising energy prices and stagnating prices, then declining prices for broadband, in addition to higher than expected costs for building and operating the broadband network, that ultimately led Williams to decide to spin-off WCG. Despite Williams’ suggestion at the time that the spin-off was in the best interest of

both companies; the spin-off of WCG was not effectuated to allow WCG “easier access to capital” or to provide more clarity into the operations of the respective companies. Rather, as alleged herein, the spin-off of WCG was engineered for the sole purpose of removing WCG’s mounting losses and rising expenses from Williams’ balance sheet, before it was revealed that these costs and expenses were continuing to escalate beyond announced expectations, and before investors, including employee investors, came to realize the true impaired condition of WCG.

69. Thus, it was against these market conditions that Williams rushed to spin-off WCG in April 2001, prior to the time that investors learned of its true impaired condition and while commodity prices remained high. Williams attempted to dump WCG and thereby remove its losses from Williams’ balance sheet and also avoid a massive write-down as WCG’s stock price was decimated as its impaired condition slowly became known to investors. Williams believed that by dumping WCG, it could then acquire Denver-based Barrett Resources Corp., a natural gas production and exploration company, and quickly hedge Barrett’s reserves through the sale of commodities contracts at all-time high prices through Williams’ commodities trading division. Williams wrongly believed it could both distance itself from the problems at WCG while at the same time reaping huge profits from its hedging transactions. Unfortunately, in order to spin-off WCG, Williams was forced to guarantee approximately \$2.5 billion of WCG debt in order to prop-up WCG and give that company the appearance that it had sufficient financing to fund WCG until such time that it could generate sufficient cash from operations to fund its massive debt and skyrocketing expenses. ***In guaranteeing WCG’s debt while hiding the impairment of that company, however, Williams exposed shareholders, including employee shareholders, of Williams to a huge undisclosed financial liability.***

70. Then, on January 29, 2002, Williams shocked the market by announcing that it would be delaying the release of its 2001 earnings “pending an internal assessment of Williams’ contingent obligations to WCG.” According to the press release, Williams “expects to be able to estimate the financial effect, if any, regarding its ultimate obligation related to WCG’s \$1.4 billion debt and network lease agreement covering assets that cost \$750 million.”

71. Williams further shocked the market in July 2002, when it reported a hefty second quarter loss, instead of an expected profit, and cut its stock dividend by 95 percent.

72. In response to Williams' shocking announcements and other revelations described below, the price of Williams common stock has declined sharply, falling from nearly \$50 per share in June, 1999, to as low as 83 cents per share in July, 2002. WCG common stock is no longer listed for trading.

B. Williams' False and Misleading Financial Results Are Reported to Unsuspecting Employees and the Market.

73. The Benefits and Investment Committee Defendants were obligated (i) to review and evaluate, among other things, information concerning the Company's performance and prospects, including information made public by the Company and by analysts and rating agencies, as well as information learned by or available to them in their high-level positions within Williams, and (ii) to provide complete and accurate information to participants and beneficiaries of the Plan. The Board of Directors had a duty to monitor these Defendants and ensure that they were properly performing their fiduciary functions. Had any of these Defendants fulfilled their fiduciary obligations, they would have discovered the misinformation in the public concerning Williams and WCG stock and taken appropriate action, including one or more of the following: (i) eliminating Williams stock as an investment option under the Plan; (ii) adopting an appropriate divestment policy with respect to Williams stock in the Plan; (iii) appointing an independent fiduciary to evaluate whether Williams stock should remain an investment option under the Plan and/or determine an appropriate strategy for divestment; (iv) adopting a policy for limiting the amount of Williams stock that could be held in the Plan; (v) correcting the misinformation or omissions concerning the value of Williams and/or WCG stock and/or (vi) notifying the Secretary of Labor and/or the SEC of the situation. However, Defendants failed to discharge their fiduciary obligations and instead (i) the Benefits and Investment Committee Defendants continued to manage, direct and approve investment of assets of the Plan in Williams and/or WCG stock and maintained the Williams Stock Fund as an

Investment Fund, and (ii) the Board of Directors failed to properly appoint and monitor members of the Benefits Committee.

1. False and Misleading Statements Regarding WCG and its Spin-off from Williams.

74. On July 24, 2000, Williams issued a press release on behalf of itself and its subsidiary, WCG, which announced that the Board of Williams intended to separate the energy-related businesses (Williams) from the communications businesses (WCG) within 18 months, subject to certain limited contingencies, as follows:

The Board of directors of Williams on Sunday authorized management to pursue a course of action that, if successful and approved by the board, would lead to a complete separation of the company's energy and communications businesses.

[Defendant Bailey], said that while the specific course of action has not been determined, it is envisioned *the process would take no more than 18 months*. He said any change from the current ownership structure would be contingent upon a number of factors, including ensuring favorable tax treatment for Williams' shareholders.

In addition to announcing the spin-off, Defendant Bailey used this release to condition investors, including employee investors, to believe that the stock distribution was being undertaken to allow *both* Williams and WCG to be able to have more "efficient and effective access" to capital and that the spin-off was not a means by which Williams was foisting its non-performing subsidiary onto its shareholders, thereby avoiding massive write-downs, cost and expenses, as follows:

"We believe these steps are *the best way to ensure that both our energy and communications businesses have the efficient and effective access to the capital necessary to pursue the substantial growth opportunities that each enjoys*," [Defendant Bailey] said. Obviously the ability to do that is consistent with *the best longterm interest of our shareholders*.

75. In the statements contained in the July 24, 2000 release, Williams did not disclose that the spin-off was not in the best interest of both Williams and WCG, as the primary motivation for the spin-off of WCG was to allow Williams to shore up its balance sheet so that it

could then issue more stock and/or debt to acquire companies using its common stock as currency and protect its debt rating. Additionally, Williams did not disclose that WCG was operating at levels well below company sponsored expectations, such that revenue projections were overstated, and costs and expenses were understated, and also such that, in an effort to control costs, further action would soon have to be taken that would have a further adverse impact on WCG's profitability. Furthermore, Williams did not disclose that the spin-off actually exposed shareholders of the companies to significant additional undisclosed risks and uncertainties. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

76. During 2Q:00, energy prices soared as natural gas traded on the New York Mercantile Exchange at prices above \$3.75 per thousand cubic feet – up 47% compared to year-ago prices. Rising prices also had a dramatic positive effect on the financial results of Williams, which on July 28, 2000 issued a release announcing that purported quarterly profits had more than quadrupled, as second-quarter net income rose to \$351.8 million, or 78 cents per share, on a diluted basis, and as segment profit from Williams' energy businesses more than doubled that of the same period the prior year, driven primarily by higher income from electric power activities and continued improvement in key energy markets. In addition to the foregoing, Williams and Defendant Bailey also used this release to further condition investors, including employee investors, to believe that WCG was poised to reap substantial gains from the sale of broadband and related services as well as the purported reasons for the spin-off, as follows:

“As our communications business reported yesterday, *we are entering the stretch run in deploying the country's largest next-generation fiber-optic network, with completion scheduled for year end.* Network revenues are growing, and the continuing expansion of our book of business further validates the demand for value-added broadband products and services.”

* * *

The advantages of keeping the business together, such as giving Williams Communications access to construction expertise and rights of

way, *will be almost exhausted once the unit's network is completed later this year, Bailey said.*

77. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

78. In addition to reporting better than expected 2Q:00 results, the drastic increase in the price of natural gas and other energy commodities during this quarter further hastened Williams' urgency to dump WCG, so that it could wipe the losses and expenses associated with its subsidiary off its balance sheet – expenses and losses which it knew or recklessly disregarded were not going to be reduced or contained in the near-term – such that Williams could then finance the purchase of energy supply companies, using both equity and debt, and then hedge these acquired reserves through Williams' commodities trading operations. It was critical to Williams that these transactions occur as soon as possible in order for Williams to take advantage of the uncharacteristically high prices in the commodities markets, and in order to avoid disclosing that WCG was in much worse financial and operational condition than was previously reported or announced.

79. On August 6, 2000, Williams issued a release published on *PR Newswire* which announced that the Internal Revenue Service had approved the tax-free nature of the spin-off of WCG, which was required to occur within 12 months to preserve the IRS order. Defendant Bailey was quoted in this release, as follows:

“This important ruling allows us to move forward with the assurance that, should our board ultimately approve the separation, it will be a tax-free event for our share-holders,” said [Defendant] Bailey. *“As our prior announcement made clear, tax treatment was an important predicate in the board's decision-making process.* We can now turn our attention to the myriad of other details that must be resolved prior to a final decision to move further down this path. *We would not expect to make any progress reports as we move along, and we expect that our next formal communications on this matter will be when the board makes its final decision.”*

80. On October 25, 2000, WCG issued a release published on *PR Newswire* which purported to announce “record” setting results for 3Q:00, the period ended September 30, 2000.

The press release stated that by “significant improvement was driven by record usage of fiber-optic capacity on Williams’ next-generation long-distance network as it approaches completion at the end of 2000.” In addition, the release stated the following:

Execution of Network Build Remains Full Year Ahead of Schedule

Construction of Williams’ domestic inter-city network remains one year ahead of the original schedule, with 33,000 route miles connecting 125 cities due to be completed by year-end 2000. Through September, Williams has 30,500 route miles of installed fiber-optic cable. . .

* * *

“With 27,000 route miles lit, Williams Communications is on track to be the nation’s most efficient, cost-effective broadband network,” said Frank Semple, president of the Williams Network. . . Construction to extend the edges of the Williams Network directly to carrier customers is substantially complete in 11 cities, with 34 cities targeted for completion by the end of 2001 and 50 cities by the end of 2002.

* * *

Network Guidance

Williams Communications continues to target 20 percent sequential growth in recurring network revenue, which excludes one-time dark fiber sales and revenue from PowerTel for the fourth quarter. When this expected growth is combined with strong third quarter capacity sales and ***full-year dark fiber revenue of approximately \$70 million, full-year network revenue is estimated at \$700 million, or about 10 percent greater than current analyst consensus. The company remains confident in its ability to meet current 2001 analyst estimates for total network revenue that range between \$1.3 billion and \$1.4 billion.*** This reflects a 100 percent year-over-year growth in recurring revenue, 100 percent growth in PowerTel revenue and approximately \$100 million in dark fiber-related revenue. ***Consistent with these revenue expectations, the company is targeting the network being EBITDA-positive on an operational basis by the end of 2001.***

According to Defendant Howard Janzen, WCG President and CEO:

“Williams Communications is successfully executing and delivering on our plan to provide the most efficient, innovative, scalable network services in North America – a full year ahead of schedule. Our customers recognize Williams’ commitment to execute and deliver unparalleled

broadband capacity, superior customer service and local-to-global network reach.”

81. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

82. On October 26, 2000, Williams issued a release published on *PR Newswire* which purported to announce results for 3Q:00, the period ended September 30, 2000, Williams’ “fourth successive quarter of year-over-year earnings improvement,” which was driven by higher energy commodity prices, among other positive developments.

83. On November 16, 2000, Williams issued a release published on *PR Newswire* which announced that the Williams Board had authorized company management to continue to pursue the tax-free spin-off of WCG, as follows:

Assuming market conditions and other factors continue to support today’s action, the board would expect to vote during the first part of next year to set a record date, the ratio of a share of Williams Communications stock that will be issued for each share of Williams stock and to direct the distribution of Williams Communications Group shares.

“This important step continues a process that we believe remains in the best long-term interest of our shareholders,” said [Defendant]Bailey. “Our energy and communications businesses have tremendous opportunities before them. *Creating the most effective and efficient access to capital will help fuel that growth, and we believe that can best be achieved by creating two independent businesses.*”

84. Soon thereafter, on November 28, 2000, Williams issued a special press release published on *PR Newswire*, which purported to announce that WCG’s fiber-optic network was “on schedule for year-end completion,” as follows:

Mission Accomplished: Williams Communications' Visionary Network on Schedule For Year-end Completion.

Just two years after announcing re-entry into the telecommunications marketplace, Williams Communications announced today its 33,000-mile network is on schedule for year-end completion, with 31,000 miles installed and 27,500 miles lit.

"In less than 45 days the hard work of our teams across the nation will come to fruition," said Frank Semple, president of Williams Communications' network unit. "The Williams network is perfectly positioned to handle large volumes of traffic from established and emerging carriers. Many carriers are transitioning from their own legacy networks to our visionary network. . ."

. . . **Williams Communications' fiber-optic network**, already the largest among non-legacy providers, **is a full year ahead of the original construction schedule announced in 1998**. It is scheduled to reach 33,000 lit and operational route miles and 125 cities by the end of 2000. . .

85. As commodity energy prices continued to trade above historical levels during the end of 2000, on December 26, 2000, Williams announced that 4Q:00 profits would beat analysts' estimates, due in substantial part to gains in Williams' energy trading unit. That day, *Bloomberg* news service reported that Williams was now expected to earn "well above" \$0.17 per share in 4Q:00, substantially beating the average estimate of analysts polled by First Call/Thompson Financial. Williams didn't give a specific fourth-quarter forecast, but based on the release of this announcement shares of Williams rose \$4.56, or 14 percent, to \$37.44 per share.

86. Soon after raising guidance for Williams' 4Q:00 results, on January 3, 2001, Williams issued a press release published on *PR Newswire* which announced that Williams expected to "meet or exceed 2001 Wall Street estimates," as follows:

Williams said today that expanding earnings capacity in marketing and trading combined with the growth of its other energy businesses should enable the company to meet or exceed Wall Street's 2001 estimates of \$1.26 per share for consolidated and \$1.73 per share for energy-only results.

* * *

Williams Communications, which includes a leading-edge broadband network, single-source communications systems integration and multiple technology applications for business, **expects to produce 2001 network-related revenue that will be approximately \$1.3 billion**, more than double that of recurring 2000 network revenues. **Network EBITDA** (earnings before interest, taxes, depreciation and amortization) **is expected to be positive on a run-rate basis by year-end 2001**.

87. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

88. On or about January 8, 2001, in anticipation of the WCG spin-off, Williams reported in a filing with the SEC that it would be contributing to WCG a promissory note in favor of Williams of approximately \$975 million, in exchange for additional shares of WCG common equity, and that Williams might also contribute certain physical assets, including a building under construction, in exchange for additional shares of WCG equity. According to Williams' filing, it was then "evaluating several credit support mechanisms to enable us to obtain the capital we need to allow us to continue to execute our growth and business strategy." This news had the immediate effect of boosting WCG's bond prices. However, what the market did not know at this time was that Williams had used this transaction as a means of providing WCG with assets which WCG would then sell back to Williams at inflated prices at a later time. Unbeknownst to investors, including employee investors, Williams had entered into this non-arms length transaction as a means of providing WCG with sources of capital which, as a result of WCG's impaired operations, Williams knew WCG would exhaust in the near-term.

89. In addition to the financing transaction announced on January 8, 2001, on January 10, 2001, *Platt's Oilgram News* reported that the prior day shares of Williams declined over 7 percent after Williams, faced with a cash shortage, moved to sell \$1.2 billion of new stock. In addition, upon review of Williams' January 8, 2001, SEC filing made in connection with the offering, as of September 30, 2000, WCG had only \$152 million of borrowing capacity left on its \$1.05 billion credit line, before leverage covenants would be violated. Williams' cash position at year-end 2000 had also dropped significantly, to \$225 million, from \$1.9 billion in the year earlier period. In combination, the equity sales and announced debt forgiveness saved WCG from having to raise cash by selling equity at what was then viewed as a "punishing discount" which would dilute WCG shareholders and further drive down the price of WCG shares, and instead allowed Williams to effectively sell its own stock and pass the new equity through to WCG in the form of debt forgiveness. The effect of these pre-spin-off transactions was to boost

Williams' ownership of WCG while simultaneously bolstering WCG's balance sheet, and reducing Williams' debt ratio from the mid 60% range to the upper 50% range, more in line with its peers. This, and the January 8, 2001, transaction, however, substantially increased Williams' risk of loss related to its WCG obligations.

90. On January 11, 2001, Fitch credit rating service issued a release published on *Business Wire* which announced that it had rated Williams' \$700 million 7.5% notes due 2031 and \$400 million of 6.75 puttable asset term securities (PATs) "BBB." According to Fitch, contributing to Williams' rating was the following:

Williams' pending spin-off of its remaining 85% interest in WCG to shareholders has *positive credit implications for Williams shareholders*. Under GAAP accounting, WCG's \$3.5 billion of outstanding debt is fully consolidated into Williams but is legally non-recourse non-cross defaulted to Williams. Following the complete separation, Fitch believes that Williams will have less of an economic incentive to support WCG in a downside scenario as it will cease to maintain a controlling equity interest in WCG. Therefore, Williams creditors will be able to focus strictly on cash flows from the energy business (both pipelines and nonregulated) to service Williams' remaining \$7.6 billion of debt obligations.

91. On January 12, 2001, *Bloomberg* reported that WCG had filed a "shelf-registration" with the SEC to allow Williams to sell debt, common and/or preferred equity from time to time in any combination or amount up to \$2 billion. Based on this news, shares of WCG rallied \$1.88 to close trading at \$19.50, up 11% on the trading day.

92. On January 29, 2001, WCG announced another reorganizing transaction ostensibly designed to equip WCG to survive as a wholly independent company, which included the sale of WCG's enterprise services business, Williams Communications Solutions, LLC ("Solutions") to Platinum Technologies Inc. ("Platinum"). In exchange for WCG's largest revenue generating unit, contributing over \$1.3 billion in revenues to Williams during 2000, Platinum agreed to pay \$100 million in cash at closing plus provide a \$75 million note payable over 18 months, in addition to collecting certain accounts receivables for WCG totaling \$206 million, subject to a collection fee. In total, excluding Solutions Canadian assets, which were not

sold to Platinum, WCG stated that it expected to realize at between \$350 - \$450 million in cash from the disposition of the entire Solutions segment. Despite the sale, however, WCG was still forced to record a 4Q:00 loss from discontinued operations of up to \$1.17 per share, which includes estimated losses at the time the business was sold. Following this announcement, shares of WCG closed at above \$18.00 per share and Williams stock closed above \$39.00 per share, both stocks up marginally on this announcement.

93. On February 5, 2001, WCG issued a press release published on *PR Newswire* which announced that it had exceeded market expectations for 4Q:01 revenues from continuing operations. In addition to announcing these quarterly results, Williams used this release to condition investors to believe that the Williams network was sufficiently operational so as to drive revenues and profits by the time the spin-off occurred, as follows:

Fourth Quarter Operational Highlights

Network Completed Full Year Ahead of Schedule

Williams Communications completed its 33,000-mile next-generation network connecting 125 cities at the end of 2000 – within three years of the launch date of Jan. 5, 1998, and ***a year earlier than scheduled.*** . . Williams now owns nearly 39,000 route miles of fiber-optic network. . .

* * *

Williams Communications continues to remain confident in its ability to meet or exceed 2001 analysts' estimates for total network revenue that range between \$1.3 billion and \$1.4 billion. . . Consistent with these revenue forecasts, the company expects to be EBITDA-positive on an operational basis by the end of 2001.

Following the publication of this release, shares of WCG traded down \$0.07 to close trading at \$17.98 per share.

94. On February 5, 2001, Williams issued a release published on *PR Newswire* announcing purported results for FY:01 from continuing operations of \$873.2 million, or \$1.95 per share, up from \$178 million, or \$0.40 per share on a restated basis for 1999, as results

continued to be driven by strong demand for energy and high commodity energy prices. In addition, the February 5, 2001 release quoted Defendant Bailey, as follows:

“As we enter 2001, we believe that our performance will meet the expectations of the financial community as the productive capacity that we have aggressively developed in each of our businesses delivers bottom-line results,” [Defendant Bailey] said. “Our recently completed equity offering is a major factor in providing the financial capacity for us to execute the growth strategy of each of our businesses.”

95. On February 13, 2001, *Bloomberg* news service reported that WCG announced that its cash flow loss this year will be narrower than forecast partly because of the sale of the Solutions unit, as follows:

After adjusting for costs from the Solutions unit that is being sold and the spin-off of Williams Communications from its parent, and excluding the Broadband Media unit and certain investments, ***the company expects a narrower loss before interest, taxes, depreciation and amortization than analysts have estimated, it said without giving a specific forecast.***

The Solutions unit designs, installs and manages communications networks for businesses, Williams Communications plans to sell the unit's U.S. and Mexican operations this quarter. The Canadian operations will be sold later in the year, the company said last week.

Any additional assets would be sold before the spin-off from William Cos., the No. 2 U.S. natural-gas pipeline operator. The spin-off is expected in the first half. . .

* * *

Capital spending this year is expected to be \$1.8 billion to \$2.0 billion, the company said. That's “a couple hundred million” below the previous forecasts.

96. On February 15, 2001, *TheStreet.com* reported on the statements made by WCG at a Wall Street analysts' conference, as follows:

Williams Communications keeps promising it will ride the crest of the bandwidth market, and observers at a conference Thursday seemed inclined to agree. The Tulsa, Okla., company which puts fiber in the diets of telecommunications providers made a presentation Thursday morning to investors and analysts at the Wall Street Analysts Conference in New York. ***The company tried to dispel what it called the myth of a coming***

bandwidth glut, promoted its recently completed next-generation 33,000-mile network and even waxed poetic about its baseball like tech-farm system.

But perhaps most notably, Williams stood firm on what many observers are most concerned about: the health of its balance sheet. "We believe we are on a clear path to profitability. We have a sound funding strategy in place.

The Cash Question

Indeed, in these economically softening times, you don't need to be a pessimist or a skeptic to worry if debt-heavy network spenders like Williams will manage to stay afloat. *Finding cash a little hard to come by last year, the company trimmed its network spending and liquidated its stake in Sycamore Networks. But this week, the communications arm, which expects to be spun off from its parent during the first half of the year, reaffirmed its goals of producing operating earnings before interest, taxes, depreciation and amortization, or EBITDA, by the end of the year. . . Williams also forecasts full-year 2001 network revenue of \$1.3 billion to \$1.4 billion.*

As for 2001 consolidated expenditures, Williams expects to spend \$1.8 billion to \$2 billion, with about \$1.5 billion targeted to its network projects. Thursday morning, *the telecom company emphasized it sees a "tremendous shift" in 2001 spending from last year, during which spending went forward laying its "base capabilities" and as a result was "highly nondiscretionary." It said it expects discretionary capital spending to hit 50% this year and to exceed 70% over the next few years."*

"I expect that in the future years spending will continue to decline,"

* * *

Outlining a range of funding options in the pipeline, the company said it is confident of getting about \$3.5 to \$4 billion – above its projected needs. *Among its main funding sources will be a \$1 billion loan and an undetermined amount from stock issuance for asset purchases from Williams Cos. Issuing a structured note, engaging in sale-and-leaseback transactions and increasing its commercial bank facility will also offer more flexibility, Williams said.*

97. On February 27, 2001, *Bloomberg* reported that WCG announced that it was arranging a \$950 million add-on loan to add to its \$1.05 billion credit facility. According to *Bloomberg*, Williams' add-on credit facility includes a \$500 million term loan offered to

institutional investors, with a yield 3.5 percent more than the London interbank offered rate, or “Libor.” Subsequent to this announcement, the yield was raised to Libor +2.75% as a result of the inability of WCG to attract lenders at lower rates of return.

98. The following day, on February 28, 2001, *TheStreet.com* issued a follow-up article on WCG which reported on its latest round of financing, as follows:

Williams Communications is exchanging stock for assets, including an intercompany note, with its parent and largest shareholder, energy company Williams.

Williams Communications which provides voice, data, Internet and video services to communications service providers, will issue 24.3 million additional shares to Williams, which then will own 420 million shares, or 86%, of the unit's stock, up from 85% before the transaction.

Williams Communications will purchase its outstanding promissory note from Williams Cos. and acquire other physical assets, including the 15-story, 750,000-square-foot Williams Technology Center, which, when completed, will sit adjacent to Williams Cos.' headquarters tower.

* * *

Williams Cos. said “this is another key step in executing the financing plan the we have previously outlined. . .”

In addition, at this time Defendant Bailey was also quoted as stating, that:

“We are also evaluating other credit support mechanisms to enable Williams Communications to obtain the capital to fully execute its business strategy,” Bailey said. “Coming out of this transaction with two strong companies capable of continued rapid growth is the primary reason we started down this path last year.”

99. In connection with the announcement of this asset/equity swap between Williams and WCG, on March 1, 2001, *Tulsa World* reported the following:

Williams spokesman Jim Gipson said that at the time the boards of directors of the two companies agreed to the swap in mid-January, Williams Communications stock was selling between \$19 and \$19.50 a share. At the mid-point of that range, the value of the newly-issued stock would be about \$467 million. At the time this transaction was closed, however, shares of Williams Communications Group were trading at \$12.46 per share and shares of Williams were trading at \$41.70 per share.

100. On March 9, 2001, Fitch credit rating service, in affirming WCG's senior unsecured debt rating at "BB-," stated the following:

This rating action follows a series of announcements and anticipated closing of several financial commitments by Williams Communications Group and its parent, The Williams Company, in preparation of an expected tax-free spin-off. By recapitalizing the company and increasing its financial flexibility, Williams Communications Group will enhance its ability to pre-fund its current growth plan to reach free cash flow.

In January 2001, Williams Communications Group filed a shelf registration statement to raise as much as \$2 billion and use the proceeds for network expansion, working capital, and general corporate purposes. The Williams Company is evaluating several credit support mechanisms with contingent equity commitments enabling Williams Communications Group to obtain financing on more favorable terms. Also in January, Williams Communications Group announced the proposed sale of its Solutions business unit, with expected proceeds of approximately \$400 million. By selling Solutions, which had been a drain on cash flow in the past, Williams Communications Group can focus on operating and growing its core broadband network business.

Additional significant transactions include the debt-to-equity conversion of the company's \$950 million inter-company loan, the expansion of its senior credit facility to \$2 billion, a potential Algar Telecom Leste S.A. (ATL) sale, and an expected private equity investment as part of a strategic alliance. ***While Williams Communications Group started the year with a funding gap, the above transactions, along with its current liability position of over \$1 billion, provide Williams Communications Group with more than \$4 billion of funding. Assuming all financial commitments complete as expected, the funding risk to the company is effectively reduced into 2003 and possibly beyond.***

* * *

A number of operational uncertainties which existed at the time of the IPO have been removed as the company transitions from the construction phase to operation of its network. Due to the significant build-out completed last year, Williams Communications Group must increase utilization of its network to achieve better efficiencies from network assets and improve EBITDA margins. Williams Communications Group will use the revenue ramp of its high quality recurring customers to drive results for 2001. By the end of the year, Williams Communications Group expects to be EBITDA positive. ***Since the network is built out, capital expenditures are highly discretionary***

and success-based, providing more flexibility within Williams Communications Group's business plan.

101. According to a *Bloomberg* news service report issued the same day, the Fitch rating came after WCG agreed to pay even higher yields and other incentives. According to the *Bloomberg* report, WCG granted these enhancements after J.P. Morgan Chase & Co. and Bank of America Corp., Williams' biggest lenders, refused to loan more money to WCG because they were already "loaded down with loans to the company." Also according to *Bloomberg*, banks have been hurt by the falling value of many telecom loans, making them reluctant to extend money, and especially following the *Bloomberg* Index of U.S. telecommunications services companies having fallen 42% during the past year. What's more, *Bloomberg* reported that many fund managers aren't willing to buy new loans from telecom companies because they already hold so much of their debt.

102. On March 15, 2001, WCG issued a release published on *PR Newswire* which announced WCG's private placement of \$1.4 billion in structured notes, as follows:

Williams Communications Group announced today the Williams Communications Group Note Trust, a special purpose subsidiary, intends to issue \$1.4 billion structured notes due 2004 in a private placement by the end of the month. The proceeds will be used for capital spending on telecommunications assets.

Williams (NYSE:WILLIAMS COMPANIES) owns approximately 86 percent of Williams Communications' outstanding shares and *is providing indirect credit support for the structured notes through a commitment to issue Williams' equity in the event of a Williams Communications Group default.* . .

103. In rating WCG's \$1.4 billion Note Trust a "BBB-," Fitch credit rating service provided more detail on Williams' credit support, as follows:

The support for the rating comes from a pre-funded six-month interest reserve and contingent equity commitment from Williams Companies. The interest reserve (approximately \$55 million) will be invested in Williams Companies senior unsecured demand loans and will be available for debt service on the Notes in the event Williams Communications Group fails to pay interest on the underlying Williams Communications Group Notes. . .

While multiple principal repayment sources are available, including either repayment or sale of the Williams Communications Group Note..., *Noteholders should view Williams Companies' support and equity commitment as the fundamental basis for the "BBB-" rating. Upon a Note trigger event and subject to certain standstill periods, the share trustee will remarket the Williams Companies mandatory convertible preferred stock on terms that are designed to generate proceeds sufficient to redeem the Notes in full. In the event that the issuance of the preferred securities yields less than the amount due under the Notes, pursuant to the Share Trust Agreement, Williams Companies is required to deliver additional preferred shares (or common stock) for sale until at least \$1.4 billion has been raised. If Williams Companies does not deliver under this obligation, the difference between the principal due on the Notes and the amount raised becomes a contract claim against Williams Companies. Such obligation would represent a general unsecured claim against Williams Companies. Importantly, Williams Companies' obligations under the Share Trust Agreement remain enforceable in the event Williams Communications Group is ultimately spun-off.*

104. On March 30, 2001, the penultimate day of the first quarter, Williams issued a release filed with the SEC pursuant to Form 8-K which announced that the Williams board approved the tax-free spin-off of WCG, as follows:

Williams announced today that its board of directors approved a tax-free spin-off of the company's communications business to Williams' shareholders. The spin-off will be in the form of a dividend. Williams will distribute approximately 400 million shares, or about 95 percent of the Williams Communications common stock it currently owns, to holders of Williams common shares on the record date, which is 5 p.m. Eastern time on April 9. Distribution is to occur April 23.

In addition to announcing the spin-off, Defendant Bailey used the press release to condition investors to believe the following:

"Today's decision brings to a conclusion an effort that began last summer. That is when our board began an analysis of whether separating Williams and Williams Communications would best enable each to reach its full potential and to most effectively access capital markets," said [Defendant] Bailey.

"Obviously, the capital markets are very different today than when we began pursuing this objective, but the conclusion is obvious," he said. "With sufficient capital on hand to meet its needs well into 2002 and its

next-generation network completed and open for business, *we believe Williams Communications is poised to deliver on its great potential.*”

105. On April 10, 2001, the board of Williams announced that they had set the ratio for distribution ratio, pursuant to which shares of WCG would be spun-off to Williams shareholders. According to the Williams board, each shareholder of Williams on the record date, April 9, 2001, would receive .822399 shares of WCG for each Williams share held at the close of trading.

106. On April 20, 2001, only days before the spin-off distribution date, WCG issued a release published on *Business Wire*, which responded to Winstar Communications Inc.'s April 18, 2001, filing for Chapter 11 bankruptcy protection, stating that this event would not have a “significant cash impact in 2001,” as follows:

Williams Communications Responds to Winstar Bankruptcy, Reaffirms First Quarter 2001 Revenue Guidance; Expects to Report EBITDA Results Favorable to Previous Guidance

In 1998, Williams Communications entered into a \$400 million agreement with Winstar for a 25-year commitment to use approximately two percent of the wireless local capacity of Winstar. Under the agreement, Winstar is to construct 270 wireless hubs by the end of 2001. As of March 31, 2001, Winstar had delivered 200 hubs, or antenna sites, to Williams Communications for which it has paid approximately \$300 million. Previously, the company estimated that it would pay an additional \$100 million for the delivery and acceptance of the remaining 70 hubs Winstar is committed to deliver. Williams Communications is not required to pay the additional \$100 million if the remaining hubs are not delivered and accepted.

. . . Williams Communications has not yet fully integrated this wireless capacity into its fiber service offerings and does not expect that any such idling of the wireless hub assets would impact its marketing business plan or product offerings in 2001. Moving forward, Williams Communications is prepared to adjust its product offering plans for subsequent years to compensate if these wireless assets are lost.

* * *

Although a number of uncertainties exist in any bankruptcy and the rights and obligations of Winstar and its creditors will be determined over time in the bankruptcy court, *Williams Communications believes that its net cash position and accounts receivable exposure relative to Winstar, when taken as a whole, will not have a significant cash impact in 2001.*

Williams Communications has not altered its expectations that it will be EBITDA positive on an operational basis by the end of 2001. In addition, Williams Communications reaffirms its first quarter revenue guidance and report EBITDA results that are favorable to previous guidance.

107. In the April 20, 2001, press release, WCG omitted that at the time of the Winstar bankruptcy filing, market conditions had so far deteriorated in the broadband sector that it was impossible for WCG to meet its financial goals for 2001 without substantially revising estimates to include massive cap-ex spending reductions and without making major reductions in its revenue forecasts. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

108. On April 24, 2001, WCG announced that effective at the close of business the prior day, April 23, 2001, Williams completed its tax-free spin-off of WCG in a distribution of 398.5 million shares to Williams' shareholders of record as of April 9, 2001. In connection with the spin-off, Defendant Bailey resigned from the WCG board of directors.

109. Within days of the spin-off, on April 26, 2001, Williams issued a release published on *PR Newswire* which, after effectively divorcing its operating results from those of WCG, announced that 1Q:01 results from "continuing operations" more than doubled on a year-over-year basis, as follows:

Williams today announced unaudited first quarter 2001 results from continuing operations of \$378.3 million, or 78 cents per share, compared with a restated \$138.9 million, or 31 cents per share, for the same period last year.

* * *

"Based on this quarter's results and our view of the balance of the year, *we are again adjusting our estimate for 2001, anticipating results of from \$2.10 to \$2.20 per share,*" [Defendant Bailey] said.

* * *

Results of Williams Communications, which was spun off to shareholders earlier this week, are reported as discontinued operations. Williams' prior-period consolidated financial results have been restated as a result of this transaction.

* * *

Editors note: Unaudited consolidated net income the first quarter from 2001, which includes the effects of discontinued operations, was \$199.2 million, or 41 cents per share, compared with 22 cents per share for the same period last year.

110. By deconsolidating its balance sheet, Williams created the false impression that it had already taken all necessary charges related to the spin-off of WCG, when in fact Williams had failed to create any reserve or make any allocation on its balance sheet for the \$2.5 billion in credit guarantees which it had made for WCG. Williams had also failed to disclose to investors, including employee investors, the true risks which resulted from guaranteeing WCG's debt as a result of the undisclosed, impaired condition of WCG. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

111. Within one week of the spin-off of WCG to shareholders of Williams, on May 1, 2001, *Bloomberg* news service reported that WCG had announced much wider than expected losses for 1Q:01, the period ended March 31, 2001 (the day after the spin-off was officially declared by the Williams board), as follows:

Williams Communications Inc. . . had a wider first quarter loss on costs related to its spin-off from pipeline company Williams Cos. ***The loss widened to \$302.2 million, or 65 cents a share after the payment of preferred dividends, compared with a loss from continuing operations of \$86.2 million, of 18 cents, in the year-earlier quarter.***

* * *

The Tulsa, Oklahoma-based ***company had been expected to post a loss of 55 cents, the average estimate of analysts by First Call/Thompson Financial.***

112. On May 1, 2001, in addition to the *Bloomberg* report, WCG also issued a release published on *PR Newswire* which reiterated these results and which purported to provide the following guidance to investors, as follows:

Although the current economic environment appears to be weakening, Williams Communications continues to see strong demand for bandwidth services. As capital becomes more difficult to obtain, many bandwidth-

centric companies are looking to Williams Communications as an alternative to investing heavily into their own network build-outs.

Williams Communications continues to remain confident in its ability to meet previous 2001 revenue guidance as adjusted for the potential loss of revenue associated with the Winstar contract. As previously disclosed, the bankruptcy filing of Winstar could impact network revenue by approximately \$90 million. Accordingly, Williams Communications is adjusting previous 2001 revenue guidance to \$1.2 - \$1.3 billion to reflect this impact.

. . . Williams Communications continues to project being EBITDA positive on an operational basis by the end of 2001.

. . . [T]he company has been able to reduce its 2001-2002 capital expenditures program from the \$3.9 billion previously forecast, to \$3.2 billion, and still achieve its long-term growth objectives.

113. In the May 1, 2001, release, WCG misstated that it was still on course to meet expected financial and operational forecasts, and that its above plan expenses were one-time expenses related to the spin-off and were not indicative of the impaired condition of WCG. In fact, by this time WCG was not operating according to company sponsored expectations and the higher costs were indicative of the operational and financial problems which existed at WCG throughout the Class Period.

114. On May 1, 2001, Williams was also forced to make a Regulation FD Disclosure filing with the SEC, after it was accidentally disclosed that company outsiders were mistakenly patched into a telephonic meeting of Williams' board of directors, and learned that Williams was considering a proposal to acquire Barrett. According to Williams, Williams made its Reg. FD filing, "the disclosure of the purpose of the meeting to three outside individuals was non-intentional. No terms of any potential proposal were disclosed, nor was any action of the Board of Directors disclosed."

115. Later, on May 7, 2001, Williams issued a release published on *PR Newswire* which announced that it had signed a definitive merger agreement with Barrett, pursuant to which Williams would acquire all of the assets of Barrett in a cash and stock transaction valued

at approximately \$2.8 billion, including the assumption of approximately \$300 million in debt, as follows:

The terms of the merger agreement, which was approved by both companies' Boards of Directors, provides for Williams to promptly commence a first-step cash tender offer of \$73.00 per share for 50 percent of the outstanding Barrett common stock, followed by ***a second-step merger with a fixed ratio of 1.767 shares of Williams common stock for each remaining share of Barrett common stock. . .***

The transaction is valued at \$1.34 per thousand cubic feet of proved gas equivalent reserves and would more than double Williams' proved natural gas reserves, while significantly enhancing its ability to profitably grow its power business.

The cash offer represents a 60% premium to Barrett's price on 3/6/01, the day before the first unsolicited offer was made to acquire Barrett.

116. On May 25, 2001, after stating that WCG may be looking for a private equity investment of up to \$250 million, the *Tulsa World* reported the following:

Williams Communications Group Inc. would like to find a major network customer interested in purchasing a stake in its system, company executives said Thursday.

However, they said, WCG is not cash-poor nor does it need investment or operating capital.

117. On June 4, 2001, WCG shares fell 10.7 percent to hit a then record low of \$3.85 per share, after *Barron's* reported that analyst Robert Gensler, manager of the year's top performing telecommunications fund, stated that ***WCG would either go out of business or file for bankruptcy protection within the next few years.*** On June 5, 2001, *The Daily Oklahoman* reported the following:

Company officials and analysts agreed that investors were likely reacting to bearish comments made by an analyst in this week's *Barron's*. Robert Gensler, manager of the year's top-performing telecommunications fund, grouped Williams Communications with a broadband provider for the Internet industry – and painted a dim picture for both.

* * *

Williams Communications dismissed the comments as "one analyst's opinion," saying the company is destined to emerge as one of the few survivors in the telecom industry. . .

"Once people get under the hood and really look at our company, they'll see that we're much better positioned than almost all the telecom carriers out there," said a representative for Williams Communications.

* * *

However, at least one analyst – *Michael Hodel of Morningstar* – *expressed some caution about the financial condition of Williams Communications. He described Williams Communications as "one of the more heavily leveraged telecom companies out there."*

After the most recent stock decline, WCG shares were down 90.5% from the stock's 52 week high of \$40.63.

118. By June 19, 2001, after WCG's nearest competitor, Level 3 Communications Inc., announced that it would cut 24% of its workforce in response to a "slowing economy," investors and traders bid down the price of WCG's debt to a mere 36 cents on the dollar – indicating that investors believed that WCG would default on its payments. This came only one day after shares of WCG fell an additional 12.5% to a new 52-week low of \$2.75 per share. Despite reports at this time that the industry was "crippled" by an oversupply of fiber-optic networks and a shortage of customers, *WCG again stated that "no layoffs" at WCG were planned (quoting The Daily Oklahoman, 6/19/01).*

119. In addition to the foregoing, within several weeks, as WCG's debt continued to trade at significantly reduced levels, in line with the debt of some firms that have since filed for protection from creditors, the *Rocky Mountain News* reported that these declines were due in substantial part to investors beliefs that the "loss ridden" company is increasingly unlikely to meet scheduled bond payments. Moreover, according to the *Rocky Mountain News*, several money-losing companies similar to WCG, such as Teligent Inc., Viatel Inc., PSINet Inc., Metricom Inc., and 360Networks Inc., had all slid into bankruptcy after stumbling as competition, slack demand, and a slowing U.S. economy stifled revenue growth and made investors less willing to provide additional capital.

120. According to Merrill Lynch & Co., in the April-June quarter their index of high-yield telecom company bonds, which includes Level 3 and WCG and other telecom firms, showed telecom debt had fallen by 18%, and in the first 6 months of 2001 had fallen 21%, including an 11% decline in June alone – their second biggest decline all year. ***Despite the obvious signs of WCG's financial instability, and the questions surrounding WCG's ability to meet its debt covenants and service its debt, at this time Williams made no adjustments to its balance sheet to account for the WCG loan guarantees, and the fact that now WCG faced a substantial likelihood of a default.***

121. Despite WCG's *repeated* denials, the last as late as June 19, 2001, on June 28, 2001, WCG announced that it would ***cut up to 500 jobs***, which WCG deemed "necessary" after re-evaluating costs. The same day, the *Tulsa World* reported the following:

WCG Inc., which has insisted for months that its cash position is strong and its employees base solid amid an anemic technology sector and its plunging stock price, will cut several hundred positions beginning on Monday.

122. In connection with the acquisition of Barrett by Williams, on June 28, 2001, Williams filed with the SEC a false and materially misleading Registration Statement which materially misrepresented material facts and which omitted to disclose facts necessary to make the statements contained therein not false and materially misleading.

123. In the Risk Disclosure section of the Registration Statement, under the heading, "Williams may be subject to liabilities pertaining to its spin-off telecommunications business unit," the Registration Statement stated that Williams maintained an indirect credit support for WCG of \$1.4 billion, as follows:

. . . Williams is providing indirect credit support for \$1.4 billion of Williams Communications' structured notes through a commitment to issue Williams equity in the event of a Williams Communications default, or to the extent Williams Communications' refinancing or remarketing of certain structured notes prior to March 2004 produces proceeds of less than \$1.4 billion. The ability of Material Adverse Change is defined in the Merger Agreement as, "any change or effect (or any development that, insofar as can reasonably be foreseen, is likely to result in any change or

effect) that is materially adverse to the business, properties, assets, condition (financial or otherwise) or results of operations of [Barrett] and its Subsidiaries taken as a whole, or [Williams Companies] and its Subsidiaries taken as a whole, as the case may be."

Williams Communications to make payments on the notes is dependent on its ability to raise additional capital and its subsidiaries' ability to dividend cash to Williams Communications. Williams Communications, however, is obligated to reimburse Williams for any payment Williams may be required to make in connection with these notes.

124. No other disclosures regarding Williams' credit obligations in favor of WCG were disclosed in the Registration Statement. Rather than disclose that Williams would have to support at least \$2.5 billion of WCG debt and that WCG was operating well below company sponsored guidance, the Registration Statement represented and warranted that all necessary disclosures were *already* made and that no material adverse events had occurred between the signing of the Merger Agreement, on May 7, 2001, and the time of the closing of the merger in August 2001, as follows:

In the merger agreement, Williams Companies has made representations and warranties relating to, among other things; SEC filings, the absence of material adverse changes, accuracy of information supplied, compliance with applicable laws and regulations.

* * *

Section 5.5 SEC Documents and Other Reports. Parent has filed with the SEC all documents required to be filed by it since April 1, 1998 under the Securities Act or the Exchange Act (the Parent SEC Documents). *As of their respective filing dates, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC none of the Parent SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.* The financial statements of Parent included in the Parent SEC Documents comply as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be

indicated therein or in the notes thereto) and fairly present the consolidated financial position of Parent and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

125. In regard to the disclosure of Williams' liabilities, the Registration Statement stated the following:

Except as set forth above or in Item 5.3 of the Parent Letter, as of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which Parent or any of its Significant Subsidiaries is a party or by which any of them is bound obligating Parent or any of its Significant Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of capital stock or other voting securities or Parent Stock Equivalents of Parent or of any of its Significant Subsidiaries or obligating Parent or any of its Significant Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking.

* * *

Section 5.11 Liabilities. Except as set forth in the Parent Filed SEC Documents, *neither Parent nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be set forth on a consolidated balance sheet of Parent and its Subsidiaries or in the notes thereto, other than liabilities and obligations incurred in the ordinary course of business since December 31, 2000* and liabilities which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

126. The Barrett acquisition Registration Statement contained at least the following misrepresentations:

(i) that Williams provided "credit support for \$1.4 billion of Williams Communications' structured notes," when in fact at the time of the merger Williams had guaranteed upwards of \$2.5 billion in WCG debt;

(ii) that either Williams' SEC filings were complete and up to date, or that no material adverse event had occurred the disclosure of which was required to make such

statements not false and materially misleading when Williams had failed to disclose that, as a result of the impaired operational and financial condition of WCG that Williams had substantial and undisclosed risk of loss which Williams had neither properly reserved for nor adequately disclosed;

(iii) that all of Williams SEC documents had been prepared and filed in conformity with Generally Accepted Accounting Principles, when Williams' failure to either disclose the true risk of loss associated with its \$2.5 billion in loan guarantees to WCG or to properly reserve for these potential and probable losses; and

127. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

128. On July 30, 2001, Williams issued a release published on *PR Newswire* which purported to announce results for 2Q:00, the period ended June 30, 2001, which stated the following:

Led by improved refining volumes and margins, higher natural gas production prices and a gain on the sale of convenience stores, Williams today reported unaudited second-quarter income from continuing operations of \$339.5 million, or 69 cents per share on a diluted basis. This compares with \$286.4 million, or 63 cents per share on a diluted basis, during the same period a year ago.

* * *

As a result of current performance and outlook for the remainder of the year, Bailey said he now is comfortable with increasing previous earnings guidance for the full year to approach the current Wall Street consensus estimate of \$2.32 per share.

129. As a result of the substantial risk of default to which WCG had now become susceptible, Williams was obligated to make certain reserves on its financial statement and balance sheet to account for its \$2.5 billion in loan guarantees to WCG. Williams' failure to make any adjustment to Williams' financial statements or balance sheet rendered its financial statements unreliable and presented the financial condition of Williams in a manner which did not present investors, including employee investors, with a fair and accurate portrayal of

Williams' finances or operations. As such, Williams' financial statements for the 3Q:01 were not prepared in accordance with GAAP. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

130. Desperate to mask that WCG was floundering so soon after it was spun-off, on August 1, 2001, when Williams announced results for 2Q:01 it took drastic measures to insure that it beat Wall Street's expectations by drastically cutting costs by over \$1 billion, despite the long-term adverse effects these capital expenditure spending reductions would have on WCG's ability to generate revenues and profits going forward. Thus, according to WCG's release published that day on *PR Newswire*: ***Having completed a mid-year review of capital expenditure requirements, WCG is updating guidance to reflect a reduction in projected capital spending for the 2001-2002 period, from \$3.2 billion to \$2.0 billion.*** The reduced capital requirements reflect: 1) the redeployment of warehouse equipment, 2) availability of better-than-expected equipment pricing, and 3) greater capacity realization from deployed technology. . . In addition to the foregoing, at this time ***WCG also reduced projected Network revenues for 2001 by at least \$90 million, to \$1.1-\$1.2 billion, down from pre-spin-off estimates of as much as \$1.4 billion.*** Since June 2000, the time when the spin-off was first announced, WCG had lowered 2001 sales forecasts at least two times. The reduction of capital expenses and the reduction of WCG's revenue forecasts acted as a partial admission that Williams lacked any reasonable basis to state, previously, that WCG was on track to meet financial forecasts for 2001. By radically reducing capital expenditures in 2001, as Williams knew WCG would be forced to do as a result of the impaired operational capacity of WCG following the spin-off, Williams also knew that it would be impossible to obtain targeted revenue and earnings forecasts for the year. In fact, it was only as a result of WCG's massive cap-ex reductions that Williams could claim that it was fully funded going forward. However, ***this statement failed to reveal that WCG had now sacrificed its earnings potential merely to stay in business.***

131. On August 2, 2001, Williams announced that it had completed the acquisition of Barrett pursuant to the terms previously announced and pursuant to the Agreement and Plan of Merger dated May 7, 2001.

132. On August 29, 2001, the *Associated Press* news wire service reported that shares of WCG again plunged after analysts stated that WCG was facing debt problems and would not be able to meet certain imminent debt covenants. Immediately following this decline, *AP* reported the reaction of Steven Remchuk, regional investment executive in Tulsa for Banc One Investment Advisors, who stated, "***The market is telling you there is a high probability that they are going to have difficulty surviving in their current form.***" *AP* also quoted after Peter Cohan, a Massachusetts financial analyst and author, who stated "***I think WCG could be another of those companies who won't make it.***" Based on the price of shares and possibility that WCG won't be able to meet a September 30 financial obligation, Cohan said WCG finds itself in a "bad financial situation."

133. On August 30, 2001, according to *Tulsa World*, WCG denied reports that it would default on any of its covenants related to its September 30, 2001, deadline to raise \$700 million from the sale of Solutions and that it would be able to issue \$150 million in equity by year end.

134. On September 17, 2001, WCG issued a release published on *PR Newswire* which announced that WCG had completed the lease-back of One Technology Center, WCG's recently acquired Tulsa headquarters, to Williams in exchange for \$276 million in cash. This news, however, further depressed WCG shares, which closed the day's trading at \$1.41 per share, down \$0.07 per share. Based on this share price, the 24.3 million shares of stock traded to Williams in exchange for One Technology Center and Williams' \$950 million promissory note was now worth \$36 million. At no time did Williams even attempt to explain the business judgment which propelled Williams to enter into this transaction.

135. The materially false and misleading statements issued by Williams had their intended effect. As evidence of this, on September 26, 2001, Credit Lyonnais analyst Gordon

Howald issued a report on Williams, reiterating an "ADD" recommendation and a \$34 price target, as follows:

* Based on a worst-case scenario in which Williams Communications Group (WCG) files for bankruptcy protection, which we believe is unlikely, Williams has a maximum liability exposure of \$2.4 billion, including secured and non-secured debts.

* Relative to earnings, we estimate a WCG bankruptcy protection filing would have a negative impact of \$0.12 per share on 2002 earnings due to share dilution.

* * *

WCG Bankruptcy Scenario-Unlikely

As the telecommunications sector continues to deteriorate, there has been concern over Williams's exposure to WCG. WCG was spun off from Williams on a tax-free basis on April 23, 2001. While WCG and Williams operate as separate companies, Williams has approximately \$2.4 billion of maximum potential liability in the event of a WCG bankruptcy. This worst-case scenario assumes that WCG's assets become totally worthless, and that the value of its debt declines to zero. However, we believe a bankruptcy filing by WCG is unlikely for several reasons.

(1) WCG is funded through 2003. Williams reported cash on hand at the end of 1Q01 of about \$236 million and raised \$1.4 billion from the issuance of a structured note, increased its credit facility by \$450 million and completed certain asset sales for \$264 million. The Company also expects to raise incremental funds through additional asset sales and other activities that could approach \$900 million or more – this includes the recently closed sale/leaseback of WCG's corporate headquarters in Tulsa, Oklahoma to Williams Companies. The combined proceeds from all of these transactions, including cash from operations, is expected to fund WCG through 2003, at which point Williams is expected to turn cash flow positive...

(2) WCG has stated publicly that it has no intention of filing for bankruptcy protection and has no reason to file. It has taken a very strong stance. We believe that if WCG suddenly changes its stance, its damage to shareholder credibility would exclude it from having any meaningful, future relationship with the investor community.

It is obvious from the foregoing that the analysts at Credit Lyonnais had fully relied on Williams' misleading statements to reach its conclusion that WCG was well-funded, given the fact that it

relied on the same false premise that WCG was funded through 2003, without taking into account the effects of WCG's massive cap-ex reductions and revenue forecast revisions and given the fact that the analysts based its opinion on the basis of WCG's denials that it would need credit support.

136. On September 28, 2001, investors began to run scared as WCG failed to issue any statement regarding its ability to raise the full \$700 million pursuant to its loan covenants, the last \$200 million of which was purportedly to come from accounts receivable collections. ***On September 28, 2001, shares of WCG closed at \$1.18 per share***, near the bottom of the stock's 52-week range of \$1.12 to \$21.13. Despite the fact that WCG had apparently scraped the remainder of the money together at the last minute, with no explanation as to where the remainder of the money WCG needed to meet its obligations came from, on October 1, 2001, WCG simply issued a release published on *PR Newswire* which stated that it had met all covenant requirements under its bank credit facility and publicly traded bonds for 3Q:01.

137. Investors, however, were not impressed by WCG's purported last-minute satisfaction of its debt covenants, and shares of WCG stock traded down to close at \$1.14 per share on October 1, 2001.

138. On October 25, 2001, *Bloomberg* reported that Williams had announced that its 3Q:01 profits had surged 83%, in significant part due to its acquisition of Barrett, as follows:

Barrett Pays Off

Williams' earnings from trading were \$357.2 million while profit from producing gas more than tripled to \$56.9 million. . .

With Barrett, Williams has hedged about 80 percent of production for the next three years at more than \$4 per million British thermal units. . . This is well above the current price on the New York Mercantile Exchange of about \$2.90.

"The Barrett acquisition just really improved their earnings," said Edward Jones analyst Zach Wagner, who doesn't own Williams shares.

* * *

Williams boosted its forecast for full-year earnings to \$2.40 a share, from \$2.30 and \$2.35. Williams expects earnings to rise 15 percent a year.

Third-quarter profit was reduced \$105.5 million by writedowns and other unspecified costs, Williams said. Williams had a \$71 million writedown for a drop in value of its 4% stake in Williams Communications Group, Inc., whose shares have plunged 93% in the past year.

Excluding the items, Williams said it earned \$326.8 million, or 65 cents per share.

Williams was expected to make 53 cents a share on that basis, the average estimate of analysts surveyed by Thompson Financial/First Call. Forecasts ranged from 48 cents to 66 cents.

Included in the writedown was \$70 million attributed to the diminution in value of Williams' investment in WCG, of which Williams still maintained approximately 20 million shares. Based on this devaluation, had Williams not foisted WCG onto its shareholders in April, 2001, Williams would now be faced with a massive writedown in excess of over 2.23 billion in addition to the credit guarantees which it would likely still have been required to provide.

139. On November 1, 2001, *Bloomberg* reported that WCG had announced that it had met analysts' 3Q:01 loss projections despite larger than expected expenses related to depreciation and amortization expenses, which nearly tripled compared to 3Q:00. These results did little to restore investor confidence in WCG and its shares traded down \$0.11 to close at \$1.56 per share. The continuing depressed price of WCG shares made it impossible for the company to sell the required \$125 million in equity by December 31, 2001, without substantially diluting the company's existing shareholders and without further jeopardizing the company's ability to retain its share listing on a national exchange. Thus, on November 1, 2001, WCG also announced that it had altered its bank credit facility covenant which required the company to raise additional capital by the end of 2001. With the change, WCG said the date by which it had to raise additional funds has been extended to July 1, 2003.

140. Then, on January 29, 2002, Williams shocked the market by announcing that it would be delaying the release of its 2001 earnings "pending an internal assessment of William's

contingent obligations to Williams Communications." According to the press release, Williams "expects to be able to estimate the financial effect, if any, regarding its ultimate obligation related to WCG's \$1.4 billion debt and network lease agreement covering assets that cost \$750 million."

141. In response to Williams' shocking announcement, the price of Williams common stock declined sharply falling from approximately \$24 per share to as low as \$18.70 per share and WCG common stock declined to as low as \$1.30 per share.

142. Williams failed to disclose the following:

(a) that Williams was carrying on its financial statements receivables from WCG that were impaired, uncollectible, and should have been written-off in whole or in substantial part. Rather than writing off these impaired assets, which amounted to tens of millions of dollars, Williams agreed to extend up to \$100 million of WCG's receivables with an outstanding balance due on March 31, 2001, to March 15, 2002; and

(b) that the sale and leaseback of WCG's office properties in or about September 2001 was a non-arm's-length transaction at an inflated value for the properties whose motive and intent was to funnel monies to WCG and avoid forcing Williams to perform its guarantees and thereby adversely affect its results and debt ratings.

143. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 73.

144. On June 10, 2002, Williams announced in a press release that it was sharply reducing its 2002 forecast, predicting that annual recurring earnings, adjusted for one-time charges, would be \$1.32 to \$1.70 a share; earlier Williams had forecast \$2.15 to \$2.30 a share.

145. On July 22, 2002, Williams announced in a press release that it expected a second quarter loss instead of an expected profit and cut its stock dividend by 95 percent. The announcement sent shares tumbling below \$1, plunging by 61%.

146. In a press release dated July 29, 2002, Williams reported a hefty second quarter loss, stating that it lost \$349.1 million, or 68 cents per share, compared with earnings of \$339.5 million, or 69 cents per share, in the year-earlier quarter.

147. On August 16, 2002, Williams admitted that the SEC has asked in June, 2002, for information about round-trip energy trades and reserves associated with Williams' energy trading business. Specifically, the SEC asked for information about the size of reserves Williams set aside at its energy-trading business and the methods it used to determine those reserves. Additionally, the SEC also asked for Williams' trading volumes, revenue figures, and earnings from energy trading in Western Markets, including California.

148. On October 24, 2002, Williams announced that it would postpone reporting its third-quarter results because they could be affected by planned asset sales.

149. On October 25, 2002, Williams announced that a few of its energy traders gave false information about natural gas transactions to a publisher of natural-gas price indexes. By providing inaccurate information for indexes, there is the possibility that traders could manipulate market prices and artificially inflate the value of Williams' portfolio.

150. In a press release dated November 14, 2002, Williams reported a third quarter net loss of \$294.1 million, or 58 cents per share, compared with restated net income of \$221.3 million, or 44 cents per share, for the same period last year. Williams stated that "the significant factor in the current-period results was a \$387.6 million segment loss in the energy marketing and risk management business."

2. False and Misleading Representations and Omissions Related to Williams' Energy Marketing & Trading Unit.¹

(a) Energy Market and Trading Unit's Tolling Agreements.

151. Beginning in Williams' second quarter ended June 30, 2000, it began to report dramatically increased revenue, profit and assets growth as compared to prior years. This increase was driven largely by the suddenly better performance of its Energy Marketing and Trading Unit (["EM&T Unit"](#)).

¹ The allegations in this section pertaining to Williams' EM&T Unit are, to the extent not based on published sources, made on information and belief based upon information contained in the Consolidated Amended Complaint filed in the related securities fraud class action against Williams and others.

152. For example, between June 30, 1999, and June 30, 2000, Williams' total assets went from \$20.013 billion to \$28.397 billion, and to \$33.626 billion at June 30, 2001. The vast majority of these increases resulted from increases at the EM&T Unit, whose assets between June 30, 1999, and June 30, 2000 went from \$2.661 billion to \$6.206 billion, and up to \$13.542 billion at June 30, 2001 (all as reported in Williams' public filings with the SEC). There were similarly large increases in the segment profit reported by the EM&T Unit (e.g., while EM&T Unit segment profit was reported at \$15.5 million for the quarter ended June 30, 1999, for the quarter ended June 30, 2000 it was reported at \$268.8 million).

153. As illustrated in the following paragraphs, however, the steep rise in the EM&T Unit's reported revenue, profit and assets through 2000 and 2001 was a veritable house of cards.

154. As part of its energy marketing and trading operations, Williams entered into contracts with various energy producers under which Williams acquired the right to call for the production of the electrical power from specified generating facilities. For its part, Williams would agree to provide the natural gas utilized by the generating facilities (as well as pay for the power ultimately produced). These contracts were called "tolling agreements," and were often many years in length.

155. For example, in 1998, Williams entered into an 18-year tolling agreement with AES Corporation, under which Williams acquired the right to call for the production of electric power from three AES power facilities in Southern California. Indeed, as of June 30, 2000 Williams had entered into long-term (i.e., 15-20 year) tolling agreements with the following power generators: AES Southland (18 year tolling agreement); AES Ironwood (20-year tolling agreement); CLECO (15-year tolling agreement); Tenaska (15 year tolling agreement); AES Red Oak (20-year tolling agreement).

156. In exchange for the long-term "call rights," Williams was obligated to pay the power generators fixed amounts over the life of the tolling contracts. As of June 30, 2000, the amount of fixed payments was approximately \$7 billion over 22 years. In 2001, the amount of

fixed payments rose to approximately \$8 billion over the same 22 year period as a result of a 17-year tolling agreement (designated “Kinder Morgan”) in February 2001.

157. On the other side of the equation, with long-term tolling agreements in place Williams would then enter into contracts of varying durations to provide power to utilities or other power marketers. Thus, when power generating facilities under contract became operational, Williams would physically direct the transportation of natural gas to the power generators for conversion into electrical power, and then direct the transmission of electric power to the utilities or others with which Williams had contracted.

158. Williams profited from the tolling agreements to the extent that its EM&T Unit could sell the power it obtained at prices above what Williams was obligated to pay for its call rights for the power. Thus, the projected revenue from the sale of power rights over the life of the contract, discounted to present value, was included in the EM&T Unit’s assets as reported in Williams’ Forms 10-Qs and Forms 10-K, recorded as revenue and assets on Williams’ financial statements.

159. Indeed, “sales” of electric power or other energy products could occur, and the resulting revenue recorded, even if the power generation facilities contracted to produce such power had not yet been built. Furthermore, even if no firm sales of energy were made, under GAAP Williams was nevertheless obligated to project future revenue from the tolling agreements (discounted to net present value) and record the associated revenue and asset value on its financial statements. This process is referred to as “mark-to-market accounting.”

(b) Valuation Of Tolling Agreements.

160. While the payments Williams was to make to the various power generators under its tolling agreements were fixed at between \$7 billion and \$8 billion over 22 years, the revenue projected from the sale of this power was not fixed. Thus, Williams was required to ascribe valuations as to the projected revenues from the tolling agreements. To do this, Williams used its own internal models to value its energy contracts as of the date the agreement was executed.

161. The models used by Williams required that the projected cost of producing electricity be subtracted from the projected price of electricity. Thus, in the model, the valuation of the EM&T Unit's assets had two critical components: (1) the projection of future revenue from the sale of electricity, and (2) the discount rate applied to the projection of future revenue. Both steps presented enormous opportunity for artificial manipulation.

162. The projection of future revenue turned on projections for prices of electricity and natural gas (used to produce electric power) as much as 22 years in the future. Independent market prices for electricity, however, went no farther out than five years in the future; for natural gas, independent market prices do not go out farther than twelve years. As to the discount rate applied to the projection of future revenue to determine its present value, even a slight adjustment in the discount rate used could impact the value assigned to a tolling asset by hundreds of millions of dollars.

163. As a result of mark-to-market accounting rules, the EM&T Unit's assets and revenues from the tolling agreements were calculated at the time that the long term energy contracts were executed with utilities and other energy marketers. Indeed, a mark-to-market valuation of long term energy contracts occurred even before Williams entered into the contracts, in order to evaluate whether the contract would be profitable. After execution, the value of every energy contract in the EM&T Unit's portfolio was marked-to-market at the close of business every day.

164. The requirement to mark-to-market every long term energy contract meant that quantitative analysis projections were of critical importance to Williams and its EM&T Unit because the projections determined the principal components of the EM&T Unit's financial results: assets and revenue. The quantitative analysis projections were additionally important because they also factored heavily in the bonus determinations for the EM&T Unit.

165. The EM&T Unit utilized proprietary quantitative models to value and manage its portfolio of long-term energy contracts. These quantitative models were complex statistical formulas that included a number of variables relevant to each type of energy contract, and which

predicted how the variables would interact over a period of time in the future. The models, of course, were highly dependent on the values of the various variables utilized.

166. Such variables included, among others, “forward curves” of future electricity prices, volatility and capacity. Since industry forward curves for such things as electricity prices went no further out than five years, the EM&T Unit calculated its own forward price curves for periods beyond five years. As detailed elsewhere herein, the forward curves were determined by a non-independent committee in the EM&T Unit, and were intentionally manipulated in order to inflate the results reported by the EM&T Unit segment.

167. Similarly, certain parameters of the quantitative valuation models were likewise intentionally manipulated in order to increase the results reported by the EM&T Unit segment. For example, Williams inflated its EM&T Unit assets, revenue and profits by using an inappropriate discount rate in its calculation of net present value.

168. GAAP requires that the rate used in discounting future cash flows be “commensurate with the risks involved.” In the context of Williams receiving revenue from long-term energy contracts, there were a number of risks, including: the risk that the power generator would not generate the power called for under the contract; the risk that customers and trading parties would fail to pay Williams for the power provided; and the risk that Williams would be unable to pay the fixed costs owed to power generators.

169. Thus, in calculating present value of cash flows coming into Williams, Williams should have used its cost of capital as the discount rate. By way of example, Williams’ 2000 Form 10-K indicated that Williams’ cost of capital or interest rate on most of its long term debt was between 8.5% and 9.2%. In 2001, Williams’ cost of capital for the majority of its long term debt was between 7.2% and 7.6%. These rates were all well above the Treasury rate.

170. Through the end of the third quarter of 2001, however, the EM&T Unit used the Treasury rate as the present value discount rate in all of its mark-to-market valuations. Since the Treasury rate represents a “risk free rate,” it was improper for the EM&T Unit to use the rate in its present value calculations. Moreover, because the EM&T Unit’s tolling agreements were

long-term contracts ranging between 17 and 22 years, the problem caused by using the improper discount rate was greatly exacerbated. Thus, as a result of using the improper, risk-free discount rate for present value calculations, the financial results and asset balance figures reported by Williams during the class period were inflated by hundreds of millions of dollars.

(c) Purported Oversight by the Risk Control Group.

171. In its public filings, Williams assured investors that it provided checks on internally-calculated valuations through the use of an independent “Risk Control Group.” For example, in its 1999 10-K filed March 28, 2000 (at F-21), Williams stated the following:

Energy Marketing & Trading continues to manage market risk on a portfolio basis subject to the parameters established in its trading policy. A risk control group, independent of the trading operations, monitors compliance with the established trading policy and measures the risk associated with the trading portfolio.

172. A similarly-worded assurance was contained in Williams’ 2000 10-K filed March 12, 2001 (at 59).

173. Specifically, according to Williams’ public filings, the Risk Control Group acted as an independent check on the valuations of long term contracts by the EM&T Unit’s Origination and Structure Groups. Origination was responsible for originating and consummating tolling agreements and other contracts. In order to price the contracts correctly, Origination relied on the analysis of the Structure Group. The Structure Group, among other tasks, would obtain market and other relevant data and calculate two things: the price range within which the proposed deal should close, and the immediate mark-to-market profit recognized if the deal closed within the price range. The Risk Control Group was to act as an independent check on the mark-to-market valuations arrived at by the Structure and Origination Groups.

174. In truth, the Risk Control Group was not independent and did not provide a check against unreasonable or manipulated valuations by the Structure and Origination Groups of the EM&T Unit. One reason was that the persons who comprised the Risk Control Group were part

of the larger EM&T Unit, and drew from the same bonus pool as the other members of the EM&T Unit. Thus, the Risk Control Group was not independent from the others who made up the EM&T Unit, such as the Origination and Structure Groups.

175. Additionally, all parts of the EM&T Unit, including the Risk Control Group, were required to utilize the same “forward curves” for such things as capacity and energy prices in their mark-to-market valuation models. Since these forward curves, which were directly related to the results produced by the valuation models, were set by a non-independent committee in the EM&T Unit, any possible independent oversight by the Risk Control Group was necessarily subverted.

176. Even worse than the lack of independence, however, according to some sources, the forward curves created were intentionally manipulated in order to inflate the results reported by the EM&T Unit segment. As detailed above, the parameters of certain quantitative models were likewise intentionally manipulated in order to skew the results reported by the EM&T Unit segment.

(d) False and Misleading Statements Related to the Financial Results of Williams in Connection with its EM&T Unit.

177. Because of the lack of independence of the Risk Control Group, as well as the intentional manipulation of forward curves and various quantitative models associated with the mark-to-market activity, all as detailed above, a number of the public statements made by Williams during the class period were false or misleading. For example, on July 28, 2000 Williams issued a press release entitled “Williams 2Q Earnings Soar on Strength of Energy Performance,” focusing on EM&T’s “contract origination revenue” and “forward power market prices”:

“We believe 2000 will be a landmark year for our energy businesses, said Keith E. Bailey, chairman, president and chief executive officers. The second-quarter energy results, led by a major series of successes in our energy marketing and trading area, were even better than those reported for the first quarter, which was a record for us.”

* * *

Each business unit reported increased quarter-over-quarter segment profit. Energy Services' nearly 300 percent improvement for the quarter was led by a \$256 million increase in segment profit from the energy marketing and trading business, resulting primarily from significantly higher electric power services margins from increased contract origination revenues, changes in forward power market prices and increased power trading volumes.

178. The Benefits and Investment Committee Defendants were obligated (i) to review and evaluate, among other things, information concerning the Company's performance and prospects, including information made public by the Company and by analysts and rating agencies, as well as information learned by or available to them in their high-level positions within Williams, and (ii) to provide complete and accurate information to participants and beneficiaries of the Plan. The Board of Directors had a duty to monitor these Defendants and ensure that they were properly performing their fiduciary functions. Had any of these Defendants fulfilled their fiduciary obligations, they would have discovered the misinformation in the public concerning Williams stock and taken appropriate action, including one or more of the following: (i) eliminating Williams stock as an investment option under the Plan; (ii) adopting an appropriate divestment policy with respect to Williams stock in the Plan; (iii) appointing an independent fiduciary to evaluate whether Williams stock should remain an investment option under the Plan and/or determine an appropriate strategy for divestment; (iv) adopting a policy for limiting the amount of Williams stock that could be held in the Plan; (v) correcting the misinformation or omissions concerning the value of Williams stock and/or (vi) notifying the Secretary of Labor and/or the SEC of the situation. However, Defendants failed to discharge their fiduciary obligations and instead (i) the Benefits and Investment Committee Defendants continued to manage, direct and approve investment of assets of the Plan in Williams stock and maintained the Williams Stock Fund as an Investment Fund, and (ii) the Board of Directors failed to properly appoint the Benefits Committee.

179. On or about August 11, 2000, Williams filed with the SEC its June 30, 2000 10-Q, which reflected that the EM&T Unit's total assets increased 93%, from \$3.209 billion as of

December 31, 1999, to \$6.2 billion as of June 30, 2000. The 10-Q stated that “the increase in EM&T assets [i.e., to \$6.2 billion] is due primarily to increased commodity prices within the trading portfolios.”

180. The statements of EM&T’s asset value of \$6.2 billion and that the increase was due to increased commodity prices were materially misleading. These asset values were, in fact, artificially inflated, as set forth above. In addition, the June 30, 2000 Form 10-Q also indicated that the Risk Control Group was independent of trading and monitoring trading. This assertion too was materially false and misleading for the reasons set forth above. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

181. Also, the June 30, 2000 Form 10-Q incorporated by reference the accounting policies set forth in Williams’ 1999 Annual Report, dated on or about February 17, 2000. In that Annual Report, Williams stated that it reported its energy contracts at “Fair Value” using management estimates which reflect the “best information available in the circumstances,” including “other comparable contracts.”

182. These statements were materially false and misleading because Williams did not record EM&T Unit assets at “fair value,” nor did it rely on the “best information available in the circumstances.” With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

183. On or about October 26, 2000, Williams issued a press release titled, “Robust Energy Performance Drives Williams’ 3Q Results of 27 Cents Per Share.” Defendant Bailey stated in the press release:

This excellent performance represents the fourth successive quarter of year-over-year earnings improvement reflecting growth within our energy businesses, . . . The earnings growth is being driven largely by our electric power marketing and trading business, the benefit of higher energy commodity prices and greater productive capacity fueled by the continuing investment in the growth of our company.

184. On or about November 14, 2000, Williams filed its Form 10-Q for the quarter ended September 30, 2000. The Form 10-Q reported EM&T Unit segment profit of \$143.5

million (which constituted over 40% of Williams' total operating income before general expenses of \$352.5 million for the quarter) and that the EM&T Unit's total assets were \$6.602 billion as of September 30, 2000. These representations were false and misleading as a result of the asset and revenue inflation set forth above. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

185. Williams' 2000 Annual Report contained a "Letter To Our Shareholders" from Defendant Bailey dated February 28, 2001. Defendant Bailey pointed to the EM&T Unit's performance as a significant financial highlight for the year, indicating that it had achieved "critical mass" with "five times the earning capacity" of prior years:

Among the highlights, and there were many, the energy marketing and trading unit achieved a critical mass, demonstrating its base earnings capacity is now some five times the previous high and giving a preview of results that are possible when good business decisions meet favorable market conditions.

186. In the 2000 Annual Report itself, Williams focused on its capability of converting "asset power" to profitability through the EM&T Unit:

Power. Williams has the power to generate profitability that surpasses industry norms. No idle promises. Our commitments are backed by a powerhouse of assets. Touching the most prolific producing areas. Delivering energy in megawatts, cubic feet and barrels to fuel the needs of our customers. Our commitment to shareholders is to deliver year-over-year, 15 percent to 25 percent compound increases in segment profit through our energy services operations. Aggressive, yes. But we have a proven track record of amassing a strong core of assets positioned to compete for an increasing share of growth markets and leveraging these assets through our marketing and trading activities.

187. The Annual Report stated that Williams was "resetting the bar for profitability" with the EM&T Unit as an "engine for growth" using "sophisticated risk management tools":

We are resetting the bar for profitability . . . Our operations . . . Our energy marketing and trading activities provide Williams an engine for growth at rates substantially beyond increased demand for energy. . . Utilizing sophisticated risk-management tools, we have pioneered structured solutions such as long-term tolling arrangements and full-requirements

transactions that capitalize on our commodities risk-management and trading expertise.

* * *

A view of success. . . We've reset the bar for profitability through our energy services operations. Half or better of our segment profit will typically come from marketing and trading activities.

188. The foregoing statements in the Annual Report asserting that the EM&T Unit assets had reached “critical mass”, that Williams had a “powerhouse of assets” and that EM&T had demonstrated the ability to generate enormous profitability now and in the future were materially false and misleading because EM&T materially and artificially inflated its assets and profits, as set forth above. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

189. Williams' 2000 Form 10-K reported that EM&T assets as of December 31, 2000 were valued at \$14.609 billion. This reported asset figure was materially inflated by, inter alia, the use of an improper discount rate as well as by inflated installed capacity valuations. In addition, the reported EM&T Unit segment profit of \$1.007 billion was artificially inflated through the manipulation of the forward curves and by the artificial inflation of installed capacity revenue.

190. The 2000 Form 10-K also referred to the Risk Control Group and Trading Policies as acting to control Williams' “risk”:

Energy Marketing & Trading continues to manage market risk on a portfolio basis subject to the parameters established in its trading policy. A risk control group, independent of the trading operations, monitors compliance with the established trading policy and measures the risk associated with the trading portfolio. [At 59; emphasis added.]

191. This statement was materially false and misleading because the Risk Control Group was not independent, as set forth above.

192. The 2000 Form 10-K also included statements that Williams reported its energy contracts at “fair value” using management estimates that reflected the “best information available,” including “other comparable contracts.” Such statements were materially false and

misleading because Williams and its EM&T Unit's assets were materially and artificially inflated, as set forth above. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

193. On or about May 15, 2001, Williams filed its Form 10-Q for the quarter ended March 31, 2001. It reported that the EM&T Unit had an operating income before general expenses of \$484.5 million, or almost 60% of Williams' total operating income before general expenses of \$809.3 million. EM&T Unit total assets were reported to have increased from \$14.61 billion as of December 31, 2000, to \$16.61 billion as of March 31, 2001. The Form 10-Q asserted that "the increase in EM&T assets . . . is due primarily to increased commodity prices within the trading portfolios."

194. The EM&T Unit asset figure set forth in the March 2001 Form 10-Q, and the representation that the increase in assets was due primarily to increased commodity prices, were materially false and misleading for the reasons set forth above. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

195. On or about April 25, 2002, Williams issued a press release entitled "Williams Announces 1Q '02 Recurring Earnings of 51 Cents per Share." The press release stated:

Williams reported first-quarter 2002 net income of \$107.7 million, compared with \$199.2 million for the same period a year ago. Income from continuing operations includes a \$232 million pre-tax charge to reduce the carrying value of certain receivables from Williams Communications Group (WCGRQ)...

* * *

Energy Marketing & Trading, which provides energy commodities marketing and trading and price-risk management services, reported first-quarter 2002 segment profit of \$281.1 million vs. \$484.5 million for the same period last year.

196. On or about May 9, 2002, Williams filed its Form 10-Q for the quarter ended March 30, 2002. It reported the EM&T Unit's operating income before general expenses as

\$281.1 million (of Williams' total operating income before general expenses of \$706.6 million) and EM&T's assets as \$16.387 billion.

197. The foregoing statements in Williams' April 25, 2002 press release and the March 2002 10-Q concerning Williams' and the EM&T Unit's assets and profits were false and misleading because, among other reasons, the EM&T Unit continued to utilize materially inflated contract values and an inappropriate discount rate to discount that revenue to present value. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

198. On or about May 28, 2002, Williams filed an amended Form 10-K for the year ended December 31, 2001. The amended Form 10-K stated that Williams' revenues for the year were \$11.0347 billion and its net loss was \$477.7 million. EM&T Unit assets were reported as \$15.483 billion, EM&T Unit revenue was reported as \$1.8718 billion and its segment profit before general corporate expenses was reported as \$1.271 billion (or 49.4% of Williams' total operating income before general corporate expenses of \$2.574 billion).

199. The statement of the value of EM&T Unit total assets in the amended 10-K was materially false and misleading because the value was artificially inflated through the use of an improper discount rate and by inflated installed capacity valuations. In addition, the EM&T Unit's "segment profit" of \$1.271 billion was artificially inflated from the manipulation of the forward curves and by the inflation of installed capacity revenue.

200. In its statement of "Critical Accounting Policies and Estimates," the amended 2001 Form 10-K provided that Williams contracts were recorded at "fair value" using the "best information available." These statements were materially false and misleading because the EM&T Unit materially and artificially inflated the value of its assets and did not reflect either "fair value" or use of the "best information available," as set forth in detail elsewhere herein.

201. The 2001 amended Form 10-K also claimed that the EM&T Unit profited by the increased prices in electricity in the first half of 2001, but that the decline in electricity and power prices did not adversely impact its trading portfolio because of risk management

techniques. These representations were false and misleading because Williams, through the EM&T Unit, had materially inflated its forward price curves and its asset values, as set forth above.

202. Also in the amended 2001 Form 10-K, in a section entitled “Controls Around Valuation Estimation Process,” Williams claimed the following:

Information used in determining the significant estimates and assumptions utilized in the determination of fair value of energy-related contracts is derived from market fundamental analysis. ... In estimating fair value, Energy Marketing & Trading considers how we believe others in the market place would interpret this information in order to further validate that the estimates and assumptions used in estimating fair value provides the best estimate of the amount that active market participants would exchange in an arms-length transaction.

* * *

Energy Marketing & Trading maintains a control environment surrounding the operational and valuation processes through its trading policy, credit policy, and general controls involved in the daily operations of the business. These policies provide limits on the types of transactions that can be executed, including term of the contract, the volumetric size of the contract and commodities underlying the contract. The policies also provide limits on the amount of credit extended to a single counterparty, the gross value at risk of the overall portfolio and the maximum daily loss permitted within the portfolio. These policies have been approved by Williams' Board of Directors and are administered through the Williams Risk Management Committee consisting of Energy Marketing & Trading's Risk Control Officer and other members of Williams' senior management. The Risk Control Officer is responsible for Energy Marketing & Trading's Risk Control Group who monitors the compliance with these policies and controls on a daily basis. The Risk Control Group reports instances in which limits are exceeded or other significant exceptions to the policies occur to members of the Risk Management Committee.

Energy Marketing & Trading's Risk Control Group also performs validations of the valuation techniques, models and significant estimates and assumption on a quarterly basis in order to provide additional assurance that the estimates of fair value provide the best determination of how others in the market might value the contracts. Validations include functions such as comparing third party market quotes against estimated prices, comparing contractual terms to those input into the models,

reviewing the market fundamental analysis for reasonableness and recalculating the significant computations. [Form 10-K/A, at 57-58]

203. The foregoing statements concerning the so-called Risk Control Group were materially false and misleading because, *inter alia*, the Risk Control Group, for the reasons stated above, did not serve as a check against inflated valuation. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

204. On or about June 10, 2002, Williams issued a press release entitled “Williams Sets 2nd Quarter '02 Recurring Earnings Guidance,” which stated that Williams “expect[ed] to produce recurring earnings per share in the range of 20 cents to 25 cents for the second quarter of this year.”

205. On or about July 22, 2002, Williams issued a press release entitled “Williams Expects 2Q Results to Be Significantly Reduced by Conditions Affecting Marketing and Risk Management Business.” The press release stated, in part:

Williams announced today it expects to report a recurring loss for the second quarter, largely driven by conditions affecting the company's marketing and risk management business. Also, the company significantly reduced its common stock dividend.

Williams expects a recurring loss from operations of 35 to 40 cents per share. The company's previous guidance for second-quarter recurring earnings was 20 to 25 cents per share.

For its reported results, which include non-recurring items, Williams currently estimates a second-quarter loss of 63 to 73 cents per share. The company will publish a schedule that reconciles reported to recurring results with its earnings report, which is scheduled July 29.

...In its marketing and risk management business, the majority of the expected recurring loss reflects a decline in the forward mark-to-market value of that segment's portfolio.

206. On or about July 29, 2002, Williams issued a press release entitled “Williams Reports Second-Quarter Results in Line With Previous Guidance.” The press release stated:

Williams today announced an unaudited net loss of \$349.1 million, or 68 cents per share, compared with net income of \$339.5 million, or 69 cents per share, for the same period last year. The 2001 results included 2 cents

per share for discontinued operations. The 2002 results are consistent with earnings guidance provided on July 22.

On a recurring basis, Williams realized an unaudited second-quarter recurring loss of 34 cents per share vs. recurring earnings of 57 cents per share during the same period last year.

* * *

Energy Marketing & Trading, which provides energy commodities marketing and trading and price-risk management services, reported second-quarter 2002 segment loss of \$497.5 million vs. a segment profit of \$262.2 million for the same period last year.

207. The statements set forth in the foregoing three paragraphs concerning Williams' and the EM&T Unit's revenues and net loss were materially false and misleading because they still failed to acknowledge that the reported figures were artificially inflated, as detailed elsewhere herein. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

(e) The EM&T Unit's Interest Rate Risk and Credit Default Risk.

208. In each Form 10-Q and Form 10-K filed in 2000 and 2001, Williams purported to disclose its "Market Risks," and stated repeatedly that the EM&T Unit's expertise was in "risk management." As detailed below, these representations were materially false and misleading. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

209. Since billions of dollars of Williams' energy assets were derived from the projection of future revenue from the sale of power under long-term energy contracts, even a slight rise in interest rates could cause a substantial decline in the value of Williams' reported assets. This sort of interest rate risk is not necessarily uncommon.

210. What is uncommon is Williams' refusal to manage interest rate risk through the use of appropriate strategies and financial instruments. Indeed, there are numerous financial products designed to reduce such interest rate exposure, including "interest rate swaps" or

“interest rate option contracts.”² Using these products, Williams could have ensured that, for a modest premium, it would receive payments if interest rates rose in order to offset losses from energy contract positions.

211. Certainly it would be reasonable for investors to assume that a company which touted itself as an expert in “risk management” would at a minimum manage its own, potentially crippling, interest rate risk. But Williams did not use the aforementioned strategies and financial instruments.

212. In fact, at least until November 2001, Williams’ “Trading Policy” and “Risk Control Group” actually forbade the use of interest rate swaps or options to address interest rate risk beyond five years. This was the case even though approximately 85% of Williams’ multi-billion dollar interest rate risk arose from energy contracts with durations exceeding ten years. Other trading instruments which might have been utilized to limit interest rate risk exposure, such as shorting corporate bonds of counterparties, treasury bonds, options on bonds, and swaps, were completely prohibited by the Trading Policy, regardless of duration.

213. During 2000, however, investors were not informed of Williams’ failure to manage the EM&T Unit’s interest rate risk. Indeed, Williams’ failure to manage these risks rendered its stated claims of expertise in risk management materially false and misleading.

214. Moreover, even when Williams filed its 2001 Form 10-K in 2002 and for the first time disclosed there was any interest rate risk arising from the EM&T Unit’s Energy Contracts, investors were still being misled. Although the 2001 Form 10-K stated that the EM&T Unit used interest rate swaps, it did not disclose Williams’ continuing failure to hedge beyond five years, and that 85% of its interest rate risk exposure was on contracts of over ten years in duration. Furthermore, as to the interest rates swaps referenced, Williams failed to disclose that they were

² In an “interest rate option,” Williams would have paid an up-front premium so that if interest rates went up, Williams would receive money, but if they went down, Williams would not have to pay anything. In an “interest rate swap,” Williams would have paid an up-front cost, and would have been protected if interest rates went up, but would have had to pay a fixed amount if interest rates would have been covered by the profits Williams would have made as a result of interest rates going down.

fundamentally flawed because they were cancellable by the counterparty upon any deterioration in Williams' credit. If Williams' credit rating declined these swap options would most likely be exercised, which would have resulted in leaving the energy contract portfolio totally exposed.

215. Moreover, Williams further misled investors by its failure to adequately and fairly disclose the nature and magnitude of its substantial credit default risk. During 2000 and 2001, Williams faced \$3.5 billion in credit risk from three groups: WCG obligations of over \$2.2 billion; power agreements and sales to California utilities of approximately \$591 million; and contracts with other power marketers, including Enron.

216. California enacted deregulation in 1996 as part of its energy policy. California imposed caps on the amount which California utilities could charge its customers for power. These caps were well above the price of power at the time and thus was intended to give utilities a cushion of profitability as the transition to deregulation occurred. By mid-2000, however, electricity prices had surged due to a confluence of (temporary) circumstances, and although utilities in California were forced to pay exorbitant rates for electricity in the unregulated market, they were unable to pass on these exorbitant costs to its customers. In late 2000, therefore, California utilities sought emergency rate hikes, but their requests were denied. As the Chair of PG&E stated in April 2001, in announcing PG&E's bankruptcy, the "heart of the crisis" was the utilities' inability to raise rates, which led to a \$6.6 billion shortfall between outlay for power and rate payer revenue by year end 2000. In turn, this led to credit down-grades and, ultimately, credit default.

217. By June 2000, Williams was owed hundreds of millions of dollars by California utilities who faced bankruptcy because they were blocked from raising rates while being forced to buy power at extremely high prices on the open "spot" market. Despite this enormous credit risk, Williams executed no financial instruments to manage the credit risk arising from these California utilities, and materially failed to disclose this risk to public investors.

218. Indeed, as of June 30, 2000, Williams had well over \$2.4 billion of obligations in connection with WCG liabilities alone: a \$1.4 billion guarantee of WCG debt; \$750 million

guarantee of WCG contractual obligations; approximately \$200 million of accounts receivables from WCG; and \$57 million in performance guarantees.

219. WCG had reported year to year operating losses from 1997 through 1999 of (\$58.1 million) in 1997, (\$193 million) in 1998, (\$318.2 million) in 1999, and (\$459.8 million) in 2000. The predominant source of these losses was WCG's network unit, which constructed and tried to sell use of a nationwide fiberoptic network. Thus, the credit risk to Williams was only made worse by the Internet economy on which WCG had bet so heavily, believing voice use on the Internet would be vastly more significant than proved to be the case. By early 2001, the Internet bubble had burst, and the decline in the stock market was reflected in WCG's common stock price. Although WCG stock, following the IPO, had traded as high as \$31.687 per share, on December 29, 2000, WCG shares traded at \$11.50 per share. By on April 23, 2001, the date of the tax free distribution of Williams' WCG shares to Williams shareholders, WCG's common stock closed at \$4.20 per share.

220. With WCG's stock price declining and the Internet and communications sectors disintegrating, fundamental risk management practices would have called for attempts to mitigate the enormous WCG credit risk by, for example, shorting WCG common stock, buying put options on WCG stock, buying back the Trust Notes at an approximate cost of \$200-\$300 million, or entering into credit default swaps. But Williams, and its EM&T Unit, did nothing in the face of this \$2.5 billion WCG credit exposure. Thus, in March 2002, Williams was ultimately forced to record a \$2.2 billion charge for its WCG obligations.

221. Similarly, in the second half of 2001, Williams faced credit exposure to Enron of approximately \$240 million (less a \$150 million Enron letter of credit which Williams allowed to expire on the day Enron filed bankruptcy). On October 16, 2001, Enron announced a \$618 million third quarter loss and disclosed a \$1.2 billion reduction in shareholder equity related to partnerships run by Enron CFO Andrew Fastow. Enron fired Fastow on October 24, 2001 and the SEC commenced an Enron investigation. On November 8, 2001, Enron announced the restatement of financial results.

222. Under Williams' agreements with Enron, Enron's November 8, 2001 restatement of financial results was considered an "event of default." As of that date, Williams was owed several hundred million dollars by Enron, but also owed Enron payments under other agreements. Although the Enron default arguably permitted Williams to withhold its payments to Enron, the EM&T Unit declined to do so. In addition, Williams held a \$150 million Enron letter of credit, which upon default Williams was entitled to keep until it was paid money due. Williams took no action, however, and the letter of credit expired on the day Enron declared bankruptcy. Even worse, even after Enron's restatement and disclosure of financial fraud and its default under its agreement with Williams, Williams made at least \$300 million in payments to Enron and released all of its Enron collateral. These actions were completely contrary to any notion of "risk management." Importantly, none of this material conduct concerning Enron was, or has been, disclosed by Williams.

223. In November 2001, Williams did engage in some credit default swaps on \$40 million of credit risk, and Williams disclosed that it did credit default swaps in its 2001 Form 10-K. Even this disclosure was materially misleading, however, because the size of these credit default swaps was so small that reference to them led investors to believe, contrary to the truth, that Williams did not have material exposure to credit default risk. Indeed, no default swaps were ever executed against the most rapidly deteriorating counterparty that Williams had: Enron. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

(f) False and Misleading Statements in S.E.C. Filings Related to the EM&T Unit's Interest Rate Risk and Credit Default Risk.

224. Williams' June 30, 2000 Form 10-Q contained a section entitled "Quantitative and Qualitative Disclosures about Market Risks." The section had three subheadings, "Interest Rate Risk," "Foreign Currency Risk" and "Equity Price Risk." The section on "Interest Rate Risk" was limited to the interest rate risk arising from Williams' "short term investments" and Williams' issuance of new debt.

225. The foregoing section of the June 30, 2000 10-Q was materially false and misleading because it failed to disclose (i) Williams' interest rate risk beyond five years on its \$3.5 billion EM&T portfolio; and (ii) that the interest rate risk was not managed beyond five years. The omission of any reference to interest rate risk in the June 30, 2000 10-Q is demonstrated by Williams' own disclosure for the first time in its 2001 Form 10-K. The section also failed to disclose Williams' \$3.5 billion credit risk, which was also not being managed. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

226. The 2001 Form 10-K disclosure defines, in substantial part, the omission in all of Williams' quarterly 10-Q filings in 2000 and 2001 and the 2000 Form 10-K filing, in that what appeared in the 2001 Form 10-K on interest rate risk should have appeared in all of the preceding 10-Q and 10-K filings during the class period. But it was only late in the fourth quarter of 2001 that Williams began "actively managing" interest rate risk, using such instruments as interest rate swaps, as follows:

During 2001, Williams began actively managing this exposure as a component of its targeted levels of fixed to floating obligations. Williams uses both floating to fixed interest rate swaps and other derivative transactions to manage this variable rate exposure.

227. Even so, as described below, the 2001 Form 10-K disclosure was still misleading because Williams' disclosure of interest rate swaps was insufficient because the disclosure did not indicate the enormous interest rate risk exposure on \$3.5 billion of the EM&T Unit's contracts. In addition, there was no disclosure that Williams' interest rate swaps permitted the counterparty to cancel at any downgrade in Williams' credit rating.

228. The 2001 Form 10-K also illustrates the precise type of disclosure that did not exist, but should have, in earlier public filings for Williams. Specifically, the 2001 Form 10-K refers, for the first time, to the existence of "credit risk" from long-term energy contracts, and goes on to state that Williams used "credit default swaps" to "manage" this credit risk:

Risks surrounding counterparty performance and credit could ultimately impact the amount and timing of the cashflows expected to be realized. Energy Marketing & Trading continually assesses this risk and has credit protection within various agreements to call on additional collateral support in the event of changes in the creditworthiness of the counterparty. Additional collateral support could include letters of credit, payment under margin agreements, guarantees of payment by creditworthy parties, or in some instances, transfers of the ownership interest in natural gas reserves or power generation assets. In addition, Energy Marketing & Trading enters into netting agreements to mitigate counterparty performance and credit risk. Credit default swaps may also be used to manage the counterparty credit exposure in the energy risk management and trading portfolio. Under these agreements, Energy Marketing & Trading pays a fixed rate premium for a notional amount of risk coverage associated with certain credit events on a referenced obligation. The covered credit events are bankruptcy, obligation acceleration, failure to pay, and restructuring.

* * *

Energy contracts include forward contracts, futures contracts, option contracts, swap agreements, commodity inventories, short-and long-term purchase and sale commitments, which involve physical delivery of an energy commodity and energy-related contracts, such as transportation, storage, full requirements, load serving and power tolling contracts. In addition, Williams enters into interest rate swap agreements and credit defaults swaps to manage the interest rate and credit risk in its energy trading portfolio.

229. The foregoing disclosure about credit default risk should have appeared in Williams' earlier public filings, but did not because Williams only began to manage credit risk late in the fourth quarter of 2001. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

230. On or about March 21, 2001, Williams filed its Form 10-K for the year ended December 31, 2000, which reiterated the EM&T Unit's purported expertise in risk management:

In addition, EM&T provides and procures risk management and other energy-related services through a variety of financial instruments and structured transactions including exchange-traded futures, as well as over-the-counter forwards, options, swap, tolling, load serving and full requirements agreements and other derivatives related to various energy and energy-related commodities. See Note 19 of Notes to Consolidated financial statements for information on financial instruments and energy trading activities.

231. The foregoing statements were false because, in fact, Williams left unmanaged its interest rate risk beyond five years on \$3.5 billion of its EM&T Unit portfolio, and \$3.5 billion of credit risk, as detailed elsewhere herein. With regard to these matters, Defendants failed to take appropriate steps, including those described in paragraph 178.

BREACHES OF FIDUCIARY DUTY

Count One – Duty To Disclose And Inform-(against the Benefits Committee Defendants and the Investment Committee Defendants)

232. Plaintiffs reallege and incorporate by reference herein the foregoing paragraphs.

233. ERISA § 404(a)(1)(A), (29 U.S.C. § 1104(a)(1)(A)) imposes on a plan fiduciary a duty of loyalty – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and its beneficiaries” Section 404(a)(1)(B), (29 U.S.C. § 1104(a)(1)(B)) also imposes on a plan fiduciary a duty of prudence – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims”

234. A plan fiduciary’s duties of loyalty and prudence include a duty to disclose and inform. This duty entails: (1) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (2) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries. This duty to disclose and inform recognizes the disparity that may exist, and in this case did exist, between the training and knowledge of the Benefits and Investment Committee Defendants, on the one hand, and the participants and beneficiaries, on the other. In a plan with various funds available for investment, this duty to inform and disclose also includes: (1) the duty to impart to plan participants material information of which the fiduciary has knowledge or should have knowledge, in the exercise of statutorily required care, skill, prudence, and diligence, that is

sufficient to apprise the average plan participant of the risks associated with investing in any particular fund, and of such information that can reasonably be expected to have a material impact on the value of such fund; and (2) the duty to correct material misrepresentations made to the market about a plan investment about which the fiduciary knows or should know, in the exercise of statutorily required care, skill, prudence, and diligence. In particular, the duties to disclose and inform by the Benefits Committee Defendants arose out of their authority and responsibility under the governing Plan documents to determine the suitability of each Investment Fund offered by the Plan, including those holding and acquiring Williams and WCG stock, because the decision by the Benefits Committee to offer and continue offering those Funds within the Plan would not be consistent with their fiduciary duties unless participants had access to all accurate and material information bearing on the Plan's investment in Williams and WCG stock. Similarly, the duty to disclose and inform by the Investment Committee members arose out of their authority and responsibility under the governing Plan documents to advise the Benefits Committee of the suitability of each Investment Fund offered by the Plan, including those holding and acquiring Williams and WCG stock, because the decision by the Investment Committee to advise the Benefits Committee to offer and continue offering those Funds within the Plan, or to acquiesce in the decision to offer these Funds, would not be consistent with the Investment Committee's fiduciary duties unless participants and beneficiaries had access to all accurate and material information bearing on the Plan's investment in Williams and WCG stock.

235. By no later than the commencement of the Class Period, the Benefits and Investment Committee Defendants breached their fiduciary duties to disclose and inform with respect to the Plan's use of employer stock as a Plan investment. During the Class Period and before, any investment in employer stock or WCG stock in the Plan was an undiversified investment in a single company's stock. As a result, any such investment carried with it an inherently high degree of risk, and information about such an investment had a disproportionately large impact on the Plan and its participants and beneficiaries. These inherent risks made these Defendants' duty to provide complete and accurate information about investing

in Williams stock and WCG stock even more important than would otherwise be the case. The Benefits and Investment Committee Defendants, however, in breach of the fiduciary duties set forth in this Count knew or should have known and failed to disclose to the Plan's participants and beneficiaries, in the exercise of prudence and loyalty, significant information bearing on Williams and WCG stock held in the Plan including that:

- (a) Beginning on or before July 24, 2000, the prospects for the successful operation of WCG (then a wholly owned subsidiary of Williams) was increasingly doubtful throughout the class period due to an emerging and steadily worsening glut of capacity in the fiber optics network business and increasing costs associated with completing and operating the network, notwithstanding repeated misleading, optimistic, and lulling pronouncements by Williams and its leadership to the market as detailed herein;
- (b) Williams' intention to separate itself from WCG as announced in July of 2000 was motivated by a desire to limit its exposure to the known problems in WCG rather than a good faith belief that WCG would have more ready access to capital as a stand alone entity as detailed herein;
- (c) From the announcement in July of 2000 of the planned separation of Williams from WCG, the planned and actual exposure of Williams to the business and credit problems of WCG following the separation materially exceeded any exposure described by Williams to the marketplace as detailed herein, and the materiality of the actual and disclosed exposure was of far greater significance than it might otherwise have been due to

the aforementioned growing glut in fiber optic capacity and increasing network costs;

- (d) The results of the EM&T portion of Williams’ business were materially overstated by Williams due to the misvaluation of its assets (including contracts for the purchase and sale of energy) by failing to adequately discount for the credit (default), interest rate, and pricing risks inherent in these assets, and by failing to appropriately project the future price of energy in estimating the future cash flow to be generated by its energy assets, as detailed herein; and
- (e) The risks associated with the EM&T business and the credit guarantees given by Williams to WCG were materially understated by Williams due to misleading statements about the risk management practices, hedging practices, and internal controls of Williams, as detailed herein.

236. [Intentionally blank]

237. [Intentionally blank]

238. [Intentionally blank]

239. [Intentionally blank]

240. [Intentionally blank]

241. [Intentionally blank]

Count Two—Intentionally blank

Count Three—Duty to Eliminate Inappropriate Investment Options— (against the Benefits and Investment Committee Defendants)

242. Plaintiffs reallege and incorporate by reference herein the foregoing paragraphs.

243. ERISA § 404(a)(1)(A), (29 U.S.C. § 1104(a)(1)(A)) imposes on a plan fiduciary a duty of loyalty – that is, a duty to “discharge his duties with respect to a plan solely in the

interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and its beneficiaries” Section 404(a)(1)(B), (29 U.S.C. § 1104(a)(1)(B)) also imposes on a plan fiduciary a duty of prudence – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims”

244. Under the terms of the Plan, the Benefits Committee Defendants had the authority to add and eliminate investment alternatives under the Plan with the advice and assistance of the Investment Committee Defendants.

245. The Benefit and Investment Committee Defendants either knew or were in a position to discover the facts relevant to the suitability and fair pricing of Williams stock and WCG stock at all relevant times.

246. A fiduciary’s duties of loyalty and prudence, as set forth above, also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of all the investment alternatives in the Plan, including employer securities, to ensure that each investment is a suitable option for the Plan. The Benefits and Investment Committee Defendants breached this duty of investigation and monitoring with respect to Williams stock, and WCG stock. By no later than the beginning of the Class Period and thereafter during the Class Period, these Defendants could not have reasonably made a determination that Williams stock or WCG stock was a suitable investment for the Plan, either for a participant’s discretionary account or for Williams match. In fact, by the beginning of the Class Period, if not before, Williams stock and WCG stock were plainly unsuitable investment options for the Plan because they were unduly risky, and trading at a price inflated by overly optimistic assessments of the prospects of the network, and thereafter by other false or misleading information provided to the market as previously set forth herein including:

- (a) Beginning on or before July 24, 2000, falsely optimistic assessments of the prospects for the successful operation of WCG (then a wholly owned subsidiary of Williams), even though it was undisclosed that those prospects were increasingly doubtful throughout the class period due to an emerging and steadily worsening glut of capacity in the fiber optics network business and increasing costs associated with completing and operating the network, as detailed herein;
- (b) That Williams' intention to separate itself from WCG as announced in July of 2000 was motivated by a desire to benefit both companies and ensure each better access to the capital markets, as detailed herein;
- (c) From the announcement in July of 2000 of the planned separation of Williams from WCG, an incomplete description of the planned and actual exposure of Williams to the business and credit problems of WCG following the separation, such that the actual exposure materially exceeded any exposure described by Williams to the marketplace as detailed herein;
- (d) The results of the EM&T portion of Williams' business were materially overstated by Williams due to the misvaluation of its assets (including contracts for the purchase and sale of energy) by failing to adequately discount for the credit (default), interest rate, and pricing risks inherent in these assets, and by failing to appropriately project the future price of energy in estimating the future cash flow to be generated by its energy assets, as detailed herein; and

- (e) The risks associated with the EM&T business and the credit guarantees given by Williams to WCG were materially understated by Williams due to misleading statements about the risk management practices, hedging practices, and internal controls of Williams, as detailed herein.

247. A fiduciary may not avoid his fiduciary responsibilities by relying solely on the language of the plan documents. While the basic structure of a plan may be specified, within limits, by the plan sponsor, the fiduciary, including a plan sponsor-fiduciary, may not blindly follow the plan document if to do so leads to an imprudent result. ERISA § 404(a)(1)(D), (29 U.S.C. § 1104(a)(1)(D)).

248. To the extent that these Defendants followed the direction of the Plan documents, for example, in continuing to accept the match in Williams stock and in continuing to maintain Williams stock as an investment alternative in the Plan during the Class Period without insisting on corrective disclosures to the market, beginning no later than the matches of July 24, 2000, they further breached their fiduciary duties.

249. Beginning on the date of the spin-off, and at all relevant times thereafter, the WCG stock held by the Plan no longer constituted qualifying employer securities within the meaning of ERISA Section 407(d)(5) of ERISA; upon information and belief, on May 4, 2001, WCG stock constituted approximately 7.5 - 8% of the total assets of the Plan. By holding this much of the Plan in the stock of a single issuer with the risk and return characteristics of WCG stock, whether those risk and return characteristics were fully understood, were understood as they were by the Investment Committee, which determined that the WCG stock was too risky to be offered for purchase by the Plan's participants, or even as they were understood by market participants with access to only public information, the Benefits and Investment Committee defendants violated the diversification requirements of 404(a)(1) of ERISA, which provides that a fiduciary shall "discharge his duties with respect to a plan...(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly

prudent not to do so,” and the prudence requirements of 404(a)(1)(B) insofar as it requires diversification by failing to divest the Plan of the majority of its holdings in WCG stock.

250. [Intentionally blank]

251. [Intentionally blank]

252. [Intentionally blank]

253. [Intentionally blank]

Count Four—Intentionally blank

Count Five – Duty to Avoid Conflict of Interest (against the Benefits and Investment Committee Defendants)

254. Plaintiffs reallege and incorporate by reference herein the foregoing paragraphs.

255. ERISA § 404(a)(1)(A), (29 U.S.C. § 1104(a)(1)(A)) imposes on a plan fiduciary a duty of loyalty – that is, a duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and its beneficiaries”

256. The fiduciary duty of loyalty also entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

257. The Benefits and Investment Committee Defendants breached their duty to avoid conflicts of interest and to promptly resolve them when they occur by continuing to allow Williams stock and WCG stock as Plan investments during the Class Period, by failing to engage independent fiduciaries and/or advisors who could make independent judgments concerning the Plan’s investment in Williams stock and WCG stock and the information provided to participants and beneficiaries concerning it, and, generally, by failing to take whatever steps were necessary to ensure that the fiduciaries of the Plan did not suffer from a conflict of interest, including the notification of the Department of Labor of the questionable transactions which made employer stock an unsuitable investment for the Plan.

Count Six—Intentionally blank

Count Seven—Intentionally blank

**Count Eight – Breach of Duty to Properly Appoint Members of the Benefits Committee
(against the Board of Directors)**

257. Plaintiffs reallege and incorporate by reference herein the foregoing paragraphs.

258. The Board of Directors were the fiduciaries with the exclusive authority and responsibility under the Plan to appoint members of the Benefits Committee.

259. The Plan provided further that the Benefits Committee shall consist of not less than three (3) members.

260. Beginning at least as early as May 16, 2002, the Benefits Committee did not have three (3) members. While on May 16, 2002, the Board of Directors purported to appoint four (4) members to “the Benefits Committee of the Board of Directors,”— Michael Johnson, Travis Campbell, Marcia MacLeod and J. Douglas Whisenant—Williams has indicated that those four members in fact “did not serve” as members of the Benefits Committee, leaving no members of the Benefits Committee from May 16, 2002 through December 12, 2002.

261. Williams subsequently indicated that although those four members were appointed, two of them—Messrs. Campbell and Whisenant—were never informed of their appointment and never served as members of the Benefits Committee. In addition to those two, one of the alleged “appointees”—Ms. MacLeod—has testified that she likewise was never informed of any appointment to the Benefits Committee and that she was not on the Benefits Committee from May 16, 2002 to December 12, 2002. Contrary to Williams’ indication, Mr. Campbell has represented both that he was and that he was not a member of the Benefits Committee during the time period at issue.

261(a). From at least May 16, 2002 through December 12, 2002, contrary to the Plan, there were not three (3) members of the Benefits Committee and the Benefits Committee was accordingly not properly constituted under the Plan.

261(b). Because the Board of Directors had exclusive fiduciary responsibility to appoint the members of the Benefits Committee, which includes a duty to monitor the

appointees, the Board of Directors breached their fiduciary duties by failing to properly appoint members of the Benefits Committee from at least May 16, 2002 through December 12, 2002, and by failing to monitor the Benefits Committee at all, which would have revealed that it was not properly constituted. During this period, the price of Williams Company stock, which was heavily concentrated in the Plan, went from \$15.71 on May 16, 2002, to \$2.34 on December 12, 2002, and was as high as \$17.71 on May 22, 2002 and as low as .88 cents on July 25, 2002.

261(c). As a result of the breach of fiduciary duties by the Board of Directors described herein, the Plan suffered losses. A properly constituted Benefits Committee acting in the best interests of the Plan could have avoided or mitigated those losses.

Count Nine – Breach of Duty to Prudently Manage Plan Assets (Williams as de facto fiduciary)

261(d). Plaintiffs incorporate by reference herein the allegations of the other paragraphs of this Complaint.

261(e). ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), but also any other persons who in fact perform fiduciary functions. ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i) (stating that a person is a fiduciary “to the extent...he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets ...”). Such individuals are *de facto* fiduciaries.

261(f). For the reasons described below, Williams was a *de facto* fiduciary with respect to the Plan, in that it exercised discretionary authority or discretionary control respecting management of the Plan, and exercised authority or control respecting management or disposition of the Plan’s assets.

261(g). By no later than November, 1999, and throughout the Class Period, Williams, through its Corporate Treasury Department, assumed responsibility for, and exercised discretionary authority with respect to, screening and choosing the Plan’s investment options, as well as monitoring the performance of the options, including WMB and WCG stock. In so

acting, Williams acted as a *de facto fiduciary*. In fact, the Committee Defendants did nothing to monitor the performance of the Plan investment options, or to determine which options to continue to offer, other than rely on the decisions made by their employer, Williams, through its Corporate Treasury Department. These decisions were often communicated at Investment Committee meetings, which Williams, through its Corporate Treasury Department, scheduled, arranged and conducted, and through reports on Plan investment alternatives, which the Corporate Treasury Department prepared and distributed. Williams also communicated to some or all Investment Committee members that the Company had the fiduciary responsibility of monitoring investments. In so acting, Williams acted as a *de facto fiduciary*. In exercising its discretionary authority, Williams made the decision to continue to offer WMB stock as a Plan investment alternative, as well as the decision to continue to hold Plan assets in both WMB and WCG stock, when it was imprudent to do so. In so acting, Williams acted as a *de facto fiduciary*.

261(h). In engaging in the actions described in the foregoing paragraphs, Williams breached its fiduciary duties and caused harm to the Plan.

261(i). The members of the Investment Committee did not perform their duties as members of the Investment Committee by exercising their independent judgment. Instead, they acted at all times on behalf of and at the specific direction of their employer, Williams, and within the course and scope of their employment, carrying out their responsibilities as members of the Investment Committee by following the directions and "recommendations" of their employer, and relying on information provided by their employer. The Investment Committee members performed their duties without exercising independent judgment or performing independent inquiries into the facts underlying the proposed or contemplated actions of the Investment Committee. Because of the effective control that Williams exercised over the conduct of the Investment Committee members acting as such, the fiduciary status of the Investment Committee is attributed to Williams under principles of respondeat superior.

261(j). Williams is also liable as a co-fiduciary under § 405(a), 29 U.S.C. § 1105(a) of ERISA, because, by its actions and inactions described in paragraph 261(g) above, it (i) participated knowingly, through its Corporate Treasury Department and Corporate Benefits Department, in acts or omissions of the Investment Committee and the Benefits Committee, including those described in Counts 3 and 5 of this Complaint; (ii) failed to comply with § 404(a)(1) in the administration of the fiduciary duties that it assumed and therefore enabled the Investment Committee and the Benefits Committee to commit the breaches described in Counts 3 and 5 of this Complaint; and (iii) had knowledge of the breaches by the Investment Committee and the Benefits Committee described in Counts 3 and 5 of this Complaint, and did not make reasonable efforts under the circumstances to remedy the breaches.

Count Ten: Breach of Duty to Disclose and Inform (Williams as de facto fiduciary)

261(k). Plaintiffs incorporate by reference herein the allegations of the other paragraphs of this Complaint.

261(l). During the Class period, Williams, through its Corporate Benefits Department, exercised nearly complete discretion and control over the fiduciary communications with Plan participants. Such communications included material omissions which caused participants to continue to direct the purchase and holding of investments in WMB Stock, and continue to hold investments in WCG Stock, in the Plan. These communications included but were not limited to the Summary Plan Descriptions, email correspondence to all employee participants in the Plan, and quarterly benefits statements sent to all participants (employee and former employee) in the Plan. In exercising control over the fiduciary communications, through its Corporate Benefits Department, Williams acted as a *de facto fiduciary*.

261(m). By no later than November, 1999, Williams, through its Corporate Treasury Department, had concluded that the concentration of Plan holdings in WMB stock was in excess of three times the industry average for 401(k) plan holdings in company stock (77% vs. 22%).

261(n). By no later than November, 1999, while recognizing the serious risks to the Plan participants, Williams, through its Corporate Treasury Department, concluded that it

benefited from the high concentration in WMB stock because the pass-through treatment of dividends provided Williams with a tax deductible expense, and put a large block of WMB stock (about 9% of the total outstanding shares of WMB stock) in friendly hands.

261(o). By no later than November, 1999, Williams, through its Corporate Treasury Department, concluded that Plan participants *do not* properly evaluate the risk of having their assets concentrated in company stock, and in fact they *wrongly interpret* the company's match in employer stock as further reason to invest even more in company stock.

261(p). By no later than November, 1999, Williams, through its Corporate Treasury Department, concluded with respect to the Plan participants' heavy allocation in WMB stock, that the majority of the Plan participants held more WMB stock than is considered prudent by investment professionals. Williams acknowledged internally that linking large portions of participant retirement assets to the performance of company stock left the participants vulnerable in an unfavorable business environment to job loss in combination with a significant decline in their retirement plan assets.

261(q). Beginning at least by December, 2000, Williams, through its Corporate Treasury Department, was aware that *the Company was in a liquidity crisis and bound for trouble*. From at least that time and through the Fall of 2002, Williams became engaged in a process of determining responsive reductions in force, while being fully aware that Plan participants' concentrations of retirement assets in WMB stock made them particularly vulnerable to the double-hit of losing their jobs and losing substantial portions of their retirement savings as a result of the declining price of WMB stock. The number of Williams' employees decreased from 24,100 at year end 2000, to 12,433 at year end 2001 to 9,800 at year end 2002.

261(r). By no later than January, 2002, Williams, through its Corporate Treasury Department, received further confirmation of its own conclusions, this time from The Vanguard Group, that participants in 401(k) plans are not properly educated with respect to, and in fact inappropriately perceive, the risks of investment in company stock. Williams Corporate Treasury Department took no steps to investigate these conclusions by Vanguard.

261(s). By no later than early February, 2002, Williams reaffirmed its internal conclusion that it enjoyed great benefit from the Plan just as it was, because it placed WMB stock in friendly hands and provided Williams with tax benefits. Williams concluded, however, that the disadvantages of the Plan included risk of increased fiduciary liability for Williams and, for the Plan participants, the risk of loss of their savings and the inability to perceive investment risks accurately.

261(t). By no later than March 7, 2002, Williams determined that it was facing significant financial challenges, including losses as a result of its obligations to WCG. Williams management discussed these pressing and urgent problems internally, to decide how best to communicate them to various levels of employees.

261(u). By no later than June 15, 2002, Williams determined that the following 45 days would either make or break the company, and that it was hanging by a thread.

261(v). Despite all of these internal conclusions and acknowledgements by Williams concerning the risks associated with the Plan's heavily concentrated investments in WMB stock, and despite that it exercised discretionary authority over communications with Plan participants, it never adequately communicated these risks to Plan participants, and instead, through its Corporate Benefits Department, it continued to send regular email and written communications to Plan participants emphasizing supposed benefits of the Plan and encouraging even higher participation in the Plan and *even higher* employee contributions to the Plan. Understanding that Plan participants heavily concentrated their Plan investments in WMB stock, and understanding that Plan participants inappropriately evaluated the risks associated therewith, and given the company match in Williams stock, Williams understood that encouraging additional employee contributions to the Plan was encouraging additional investment in WMB stock, from which Williams benefited.

261(w). Many of the communications to Plan participants, over which Williams exercised discretionary authority, were finalized by the Administrative Committee, a named fiduciary under the Plan. Williams, through its Corporate Benefits Department and others, rather

than the Administrative Committee, exercised authority over the substance of the communications, but members of the Administrative Committee, including its Chairman, were at times charged with final approval before the communications were delivered to Plan participants. Under the Plan, Section 9.8, Williams had a duty to provide the Administrative Committee with all information that it needed to discharge its duties under the Plan. Williams failed to provide the members of the Administrative Committee with the information described above, including Williams' awareness of the risks facing Plan participants as a result of their concentrated investment in WMB stock, as well as the severe liquidity crisis facing Williams. Without this information, the Chairman of the Administrative Committee could not properly evaluate the communications prepared by Williams and delivered to Plan participants, and the Administrative Committee could not properly evaluate the adequacy of the information in the Summary Plan Description.

261(x). In engaging in the actions described in the foregoing paragraphs, Williams breached its fiduciary duties and caused harm to the Plan.

261(y). Williams is also liable as a co-fiduciary under § 405(a), 29 U.S.C. § 1105(a) of ERISA, because, by its actions and inactions described in paragraphs 261(l) through 261(w) above, it (i) participated knowingly, through its Corporate Treasury Department and Corporate Benefits Department, in acts or omissions of the Investment Committee and the Benefits Committee, including those described in Counts 1 and 5 of this Complaint; (ii) failed to comply with § 404(a)(1) in the administration of the fiduciary duties that it assumed and therefore enabled the Investment Committee and the Benefits Committee to commit the breaches described in Counts 1 and 5 of this Complaint; and (iii) had knowledge of the breaches by the Investment Committee and the Benefits Committee described in Counts 1 and 5 of this Complaint, and did not make reasonable efforts under the circumstances to remedy the breaches.

CAUSATION

262. Had the Benefits or Investment Committee Defendants fulfilled their fiduciary obligations, they would have discovered the misinformation in the public concerning Williams

and WCG stock and taken appropriate action, including one or more of the following: (i) eliminating Williams stock as an investment option under the Plan; (ii) adopting an appropriate divestment policy with respect to Williams stock in the Plan; (iii) appointing an independent fiduciary to evaluate whether Williams stock should remain an investment option under the Plan and/or determine an appropriate strategy for divestment; (iv) adopting a policy for limiting the amount of Williams stock that could be held in the Plan; (v) correcting the misinformation or omissions concerning the value of Williams and/or WCG stock and/or (vi) notifying the Secretary of Labor and/or the SEC of the situation. However, these Defendants failed to discharge their fiduciary obligations and instead (i) the Benefits and Investment Committee Defendants continued to manage, direct and approve investment of assets of the Plan in Williams and/or WCG stock and maintained the Williams Stock Fund as an Investment Fund, and (ii) the Board of Directors, in violation of their fiduciary duties, failed to properly appoint the Benefits Committee and failed to disclose all material information to the Benefits Committee.

263. The Plan suffered a loss, and Plaintiffs and the other Class members were damaged, because substantial assets in the Plan were invested in Williams stock and WCG stock during the Class Period as a result of Defendants' violations of their fiduciary duties as set forth above.

264. As fiduciaries, Defendants were responsible for the prudence of investments in the Plan during the Class Period unless participants in the Plan themselves exercised effective and informed control over the assets in the Plan in its individual accounts pursuant to ERISA § 404(c) and the regulations promulgated under it. Those provisions were not complied with here; instead of taking the necessary steps to ensure effective participant control by complete and accurate disclosure and regulatory compliance, Defendants did exactly the opposite. As a consequence, participants in the Plan did not control the Plan's assets that were invested in Williams stock, and Defendants remained entirely responsible for ensuring that such investments were and remained prudent. Defendants' liability to the Plan for damages stemming from imprudent Plan investments in Williams stock and WCG stock is therefore established upon

proof that such investments were or became imprudent and resulted in losses in the value of the assets in the Plan during the Class Period, without regard to whether or not the participants relied upon Defendants' statements, acts, or omissions.

265. The Plan also suffered a loss, and Plaintiffs and the other Class members were damaged, by Defendants' above-described conduct during the Class Period because Defendants' conduct resulted in the Plan making and retaining investments in Williams stock, and retaining investments in WCG stock, and because such investments as were made in Williams stock (through employer contributions and through investments directed by participants) were made at prices inflated by misinformation provided by Williams to the market, which the Defendants, by their inaction failed to correct. Where a breach of fiduciary duty results in the failure to correct misrepresentations and omissions made to the market which are material to a decision by a reasonable participant that results in harm to the participant and the Plan, the participant is presumed as a matter of law to have relied upon such misrepresentations and omissions to his or her detriment. Here, Defendants' above-described conduct resulted in the failure to correct misrepresentations and omissions that were material to decisions made by participants in the Plan and which affected the market price at which participants in the Plan acquired Williams stock. In this case, the uncorrected misrepresentations caused the price of Williams and WCG stock to be inflated during the Class Period and allowed Williams to satisfy its obligations to contribute Williams stock to the Plan with shares valued by the market at a price inflated by such misrepresentations. Had Defendants fulfilled their fiduciary duty to correct the misrepresentations detailed herein, or to take steps which would have facilitated such correction by other Defendants, Williams stock contributed to the Plan during the Class Period would have been fairly valued and a greater number of shares would have been contributed by Williams to meet its obligations to the Plan. Plaintiffs and the other Class members are therefore presumed to have relied to their detriment on the uncorrected misrepresentations made to the market.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

266. ERISA § 502(a)(2), (29 U.S.C. § 1132(a)(2)) authorizes a plan participant to bring a civil action for appropriate relief under section 409 (29 U.S.C. § 1109). Section 409 requires “any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan” Section 409 also authorizes “such other equitable or remedial relief as the court may deem appropriate”

267. With respect to the calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the plan would not have made or maintained its investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the plan’s assets to what they would have been if the plan had been properly administered.

268. Plaintiffs and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plan to make good to the Plan the losses to the Plan resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as required by ERISA § 409(a), (29 U.S.C. § 1109(a)); (2) removal of the Benefits Committee Defendants and replacement with independent fiduciaries pursuant to ERISA § 409(a), (29 U.S.C. § 1109); (3) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a)(2)&(3), (29 U.S.C. §§ 1109(a) and 1132(a)(2)&(3)); (4) reasonable attorney fees and expenses as provided by ERISA § 502(g), (29 U.S.C. § 1132(g)), the common fund doctrine, and other applicable law; (5) taxable costs; and (6) interest on some or all of these amounts as provided by law.

PRAYER

269. In view of all of this, Plaintiffs and the Class pray for judgment against Defendants for a monetary payment to the Plan to make the Plan whole for any losses resulting

from their breaches, injunctive and other appropriate relief including disgorgement of any profits made as a result of any violation of ERISA or knowing participation in such violation, and including a declaration that the potential insulation of § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B) is not available to Defendants, reasonable attorney fees and expenses, taxable costs, interest, and any other relief the Court deems just.

DATED this 26th day of April, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing. I further certify that the foregoing instrument was served on all parties listed on the attached Master Service List as of April 19, 2005.

s/William W. O'Connor
William W. O'Connor

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Service List as of April 19, 2005; 11:00 A.M. CST
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