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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – COUNTY OF HUDSON
Docket No.

ANNE MILGRAM, ATTORNEY GENERAL OF NEW JERSEY, on behalf of her office and the STATE OF NEW JERSEY,

Plaintiffs,

v.

THE TRUSTEES OF THE STEVENS INSTITUTE OF TECHNOLOGY, a New Jersey nonprofit corporation, HAROLD J. RAVECHE, LAWRENCE T. BABBIO, JOHN AND JANE DOES 1-10, individually and as trustees, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of any other defendant or nominal party, and XYZ ENTITIES 1-10, individually and as subsidiaries, parents, and/or affiliates of any other defendant and nominal party,

Defendants.

Civil Action

COMPLAINT

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Plaintiffs, Anne Milgram, Attorney General of New Jersey, on behalf of her office and the State of New Jersey (acting as parens patriae) allege that:

PARTIES

I. Plaintiffs

1. Plaintiffs, Anne Milgram, Attorney General of New Jersey ("Attorney General"), and the State of New Jersey ("New Jersey") (acting as parens patriae) are the guardians of public charitable trusts and nonprofit corporations. Plaintiffs have common law powers to protect the common and general interest in charitable trusts and nonprofit corporations.

2. The Attorney General has statutory powers, including those under the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq. (the "Act"), and the Uniform Management of Institutional Funds Act, N.J.S.A. 15:18-1 et seq. ("UMIFA").

II. Defendants[4]

A. The Trustees of the Stevens Institute of Technology

3. Defendant The Trustees of the Stevens Institute of Technology ("Stevens" or the "Institute") was incorporated on February 15, 1870 by the New Jersey state legislature through the "Act to incorporate the Stevens Institute of Technology." That February 15, 1870 Act is Stevens' certificate of incorporation ("Stevens' Charter").

4. Stevens is a New Jersey nonprofit corporation with a principal place at Castle Point on Hudson, Hoboken, New Jersey 07030.

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[4] Throughout this Complaint, "Defendants" means The Trustees of the Stevens Institute of Technology, Defendant Harold J. Raveche, and Defendant Lawrence T. Babbio.

5. Stevens is the trustee of various charitable trusts, including the gift of Edwin A. Stevens from 1870.

6. As alleged in this Complaint, Stevens, through the other defendants, Board of Trustees ("Board"), and Stevens Administration[5], breached its duties as trustees of various charitable trusts. In addition, Stevens is a victim of the other defendants' misconduct.

B. Insider Defendants[6]

1. Defendant Harold J. Raveche

7. Defendant Harold J. Raveche ("Defendant Raveche" or "Raveche") resides at Hoxie House, Castle Point on Hudson, Hoboken, New Jersey 07030. Defendant Raveche was hired by Stevens in 1988 to serve as its President.

8. After Raveche was hired, Stevens' bylaws were amended to expand his power. Under Stevens' bylaws, Defendant Raveche, as president, is not only a voting trustee of the Board, but also Chief Executive Officer of Stevens and thus one of the Officers of the Corporation. In addition, Defendant Raveche has been, at all relevant times, an ex officio member of various principal committees, including the Executive, Audit, and Investment Committee.

9. Under Stevens' bylaws, Defendant Raveche exercised control over the Board and certain subcommittees. With the substantial assistance of Defendant Lawrence T. Babbio, Defendant Raveche also exercised control over committees that he was not a member of, including the committees that determined employee compensation.

[5] Throughout this Complaint, "Stevens Administration" means Stevens' President, Defendant Harold J. Raveche, and Treasurer, Secretary, Vice Presidents, and other employees. Unless expressly stated otherwise, Defendant Harold J. Raveche participated in all alleged conduct of the Stevens Administration in this Complaint.

[6] Throughout this Complaint, "Insider Defendants" means Defendant Harold J. Raveche and Defendant Lawrence T. Babbio.

10. As President and Chief Executive Officer, Defendant Raveche possessed and exercised control over the other members of the Stevens Administration, including Stevens' Treasurer, Secretary, and Vice Presidents. Under Stevens' bylaws, Defendant Raveche's broad powers include "the administration of the Institute and the direction of its faculty." At all relevant times, Defendant Raveche directly or indirectly, through his control of the Stevens Administration and the Board as alleged herein, controlled the hiring and compensation terms of Stevens' officers and key employees. Defendant Raveche engaged in or caused, through his control, all misconduct of the Stevens Administration and Stevens alleged in this Complaint.

2. Defendant Lawrence T. Babbio

11. Defendant Lawrence T. Babbio ("Trustee-Defendant Babbio") has been the Chairman of the Board and a member of the Board's Executive Committee since at least 1999. Trustee-Defendant Babbio was a member of the Compensation Committee from 2000 to 2005. Trustee-Defendant Babbio has been a member of the Audit Committee from 1999 to the present, and a member of the Human Resource and Finance and Investment Committees from 2005 to the present. Trustee-Defendant Babbio was the chair of the foregoing committees and subcommittees.

12. As the Chairman, Trustee-Defendant Babbio controlled the Board and committees and subcommittees on which he served. Trustee-Defendant Babbio engaged in, caused, was aware, or should have been aware of the misconduct of the Board and its committees and subcommittees alleged in this Complaint.

13. As alleged above, Insider Defendants engaged in joint misconduct, often through an Executive Committee, which they used to control the Board and Stevens. Insider Defendants hid and failed to adequately inform the Board of their and the Executive

Committee's actions. In the instances when either Insider Defendant acted alone, the other Insider Defendant was aware or should have been aware of such misconduct.

C. Fictitious Defendants

14. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the trustees, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Stevens and/or any of its subsidiaries or affiliates who were involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

15. Upon information and belief, XYZ Entities 1 through 10 are fictitious corporations meant to represent any additional entities that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

III. Relevant Non-Parties

A. Vice-Chairpersons of the Board

16. Steven Shulman ("Trustee-Shulman") has been a trustee on the Board since 1999, and is currently a Vice-Chairman of the Board. Trustee-Shulman has been a member of the Board's Executive Committee since at least 1999. Trustee-Shulman was a member of the Compensation Committee from 2000 to 2005. Trustee-Shulman has been a member of the Human Resource Committee from 2005 to the present.

17. Kenneth DeBaun ("Trustee-DeBaun") has been a trustee on the Board since 1999, and is currently a Vice-Chairman of the Board. Trustee-DeBaun has been a member of the Board's Executive Committee since at least 1999. Trustee-DeBaun was a member of the

Compensation Committee from 2000 to 2005. Trustee-DeBaun was a member of the Audit Committee from 1999 to the present, and a member of the Human Resources Committee from 2005 to the present. Trustee-DeBaun also served on other committees, including the Budget Committee.

B. Independent Auditors of Stevens

18. PricewaterHouseCoopers LLP ("PWC") operates at 1301 Avenue of the Americas, New York, New York 10019-6013. PWC served as Stevens' independent accountant and auditor during periods relevant to this Complaint, including 2000 to 2005. PWC audited Stevens' Consolidated Financial Statements for Fiscal Years ("FY") 2000 to 2004, and during those years issued internal control letters relating to Stevens' financial management practices, including those relating to internal control and accounting practices.

19. Grant Thornton LLP ("Grant Thornton") operates at 666 Third Avenue, New York, New York 10017. Grant Thornton has served as Stevens' independent accountant and auditor since 2005. Grant Thornton audited Stevens' Consolidated Financial Statements for FY2005 to FY2008, and during those years issued internal control letters relating to Stevens' financial management practices, including those relating to internal control and accounting practices.

INTRODUCTION

20. Stevens, through the misconduct of other defendants, the Board, and Stevens Administration, breached its fiduciary duties as trustee of various charitable trusts. Stevens, as alleged herein, is also a victim of others' misconduct, including Defendant Raveche and Trustee-Defendant Babbio.

21. As background, in his will of 1867, Edwin A. Stevens bequeathed land located in Hoboken, New Jersey for "use as an institution of learning" and "for the benefit, tuition, and advancement in learning of the youth residing . . .within the state of New Jersey." Stevens was incorporated on February 15, 1870.

22. In addition to land, Edwin A. Stevens bequeathed funds to Stevens for its general charitable purposes. Since 1870, others have given assets to Stevens for its general use and for more specific uses. Under New Jersey law, Mr. Stevens and others' gifts are charitable trusts for which Stevens serves as the trustee. Stevens' endowment ("Endowment") refers to those charitable trusts, as well as other assets.

23. As the trustee, Stevens must perform certain duties in the public interest, including the proper administration of those charitable trusts. The generally-accepted accounting principles ("GAAP") applicable to Stevens provides specific methods for reporting the assets of the Endowment, including the charitable trusts, which, under GAAP, are "endowment fund[s]," meaning "fund[s] of cash, securities, or other assets to provide income for maintenance of a not-for-profit organization."[7] Under GAAP, assets of the Endowment are reported as either:

a. "permanently restricted assets," meaning assets with donor-imposed restrictions requiring that the assets be maintained permanently, but permitting the nonprofit entity to use or spend part or all of the income and/or appreciation derived from the assets;

[7] GAAP applicable to Stevens is derived from standards of private and public entities, including the Financial Accounting Standards Board ("FASB"), Government Accounting Standards Board, Committee of Sponsoring Organizations ("COSO"), and American Institute of Certified Public Accountants ("AICP"). See STATEMENT OF FINANCIAL ACCOUNTING STANDARDS ("FAS") No. 117, Financial Accounting Standards Board.

b. "temporarily restricted assets," meaning assets with donor-imposed restrictions that either expire by the passage of time or due to certain pre-determined events or actions;

c. "unrestricted assets," meaning assets without permanent or temporary restrictions; or

d. "quasi-endowment funds," meaning unrestricted assets on which a non-profit board imposed restrictions.

24. At all relevant times, the Endowment included different permanently restricted assets with varying donor-imposed restrictions, temporarily restricted and unrestricted assets, and quasi-endowment funds.

25. Under New Jersey law, Stevens, through the Board, must, among other things: ensure that Stevens does not spend or invest the Endowment's assets in violation of donors' restrictions; establish a "prudent" spending rate that preserves the Endowment's value for future beneficiaries; and monitor and diversify the Endowment investment portfolio in accordance with fiduciary duties of care, skill, and caution.

26. Under New Jersey law, the Board must oversee the Stevens Administration and ensure that Stevens fulfills its mission. Under Stevens' Charter, the trustees of Stevens are vested with control of "the entire management of the affairs and concerns of [Stevens]." In connection with all of its responsibilities, the Board has common law and statutory fiduciary duties of care, candor, loyalty, good faith, and obedience. N.J.S.A. 15A:6-14. The Act also includes numerous requirements relating to the operation of the Board and Stevens. For instance, Stevens must maintain "books and records of account and minutes of the proceedings of its members and board and executive committee." N.J.S.A. 15A:5-24.

27. The Stevens Administration must operate Stevens in accordance with their common law and statutory fiduciary duties of care, candor, loyalty, good faith, and obedience. N.J.S.A. 15A:6-14. For instance, the officers must abide by the Board's corporate governance and operational policies and provide complete and accurate information to the Board. N.J.S.A. 15A:3-2; N.J.S.A. 15A:6-15.

28. Neither the officers nor trustees on the Board may engage in activities outside the scope of their or Stevens' powers. Such activities are ultra vires and are generally subject to enjoinment or, if they already occurred, voidable. N.J.S.A. 15A:3-2.

29. The key facts of this case begin in 1999 when Insider Defendants and others established a plan to aggressively expand and modify, among other things, Stevens' research activities, curricula, student body, faculty, program, and infrastructure. In 2004, this plan was characterized as part of a "Growth Plan." The Growth Plan also involves Stevens' creation of for-profit subsidiaries ("Technogenesis startups") to commercialize Stevens-generated technology.

30. As alleged herein, since at least 1999, Insider Defendants have breached their fiduciary duties to Stevens through their implementation of the Growth Plan. Their spending and borrowing practices include grossly-negligent, imprudent, and ultra vires transactions that often violated donors or the Board's spending restrictions.

31. Defendant Raveche and the Stevens Administration also operated Stevens with grossly-negligent internal controls[8] and accounting practices that caused Stevens' independent auditor to conclude in 2004: on an "overall basis . . . [the] internal controls at Stevens Institute are below acceptable levels throughout the organization" and Stevens lacks

[8] COSO defines "internal control as a process, effected by an entity's board of directors, management and other personnel . . . designed to provide reasonable assurance regarding the achievement of objectives in effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations."

"attention to controls in virtually every area . . . reviewed." The independent auditor's other alarming conclusions are alleged below.

32. Insider Defendants regularly misrepresented and inadequately disclosed information to the Board regarding their spending and borrowing practices and financial mismanagement. For instance, as alleged in detail below, Insider Defendants and the Stevens Administration misrepresented Stevens' operating results to the Board, and PWC's alarming conclusions in 2004 and 2005 were not adequately disclosed to the Board. Such misrepresentations and non-disclosures caused one ex-trustee of the Board to conclude that the "Board of Trustees is a Mushroom patch and always has been from my experience."

33. Since the Growth Plan's implementation in 1999, the Board has failed to perform its oversight function for a variety reasons, including the misleading and incomplete information it received from Insider Defendants and the Stevens Administration.

34. But the Board's oversight failures also stem from poor corporate governance practices and policies.

35. Under the bylaws in effect from 1999 to 2005 ("1999 Bylaws"), the Board and its committees were controlled by a minority of the Board comprised of Insider Defendants and Trustees Shulman and DeBaun, the Vice-Chairpersons. Together, these four dictated the composition of most committees of the Board.

36. Trustee-Defendant Babbio and Trustees Shulman and Babbio also controlled Defendant Raveche's compensation through a Compensation Committee, which, as alleged below, was created in an unlawful manner. All three also served on either the Audit or Investment Committees from 1999 to 2005.

37. From 1999 to 2005, due to the control of Insider Defendants and Trustees Shulman and DeBaun, most committees, including the Executive Committee, failed to inform the full Board of their actions. Committees failed to maintain adequate minutes and provide minutes to the full Board. As a consequence, in 2003, Stevens' independent auditor concluded that "[f]ormal minutes were not prepared for certain committee meetings."

38. The committees of the Board also withheld material information from the full Board. For instance, the Audit Committee regularly failed to provide the Board with the internal control letters of the independent auditors, the Compensation Committee failed to disclose Defendant Raveche's compensation, and other committees failed to report the Stevens Administration's mismanagement and misappropriation of charitable trusts.

39. As a specific example, at a January 2005 joint meeting of the Budget and Investment Committees several trustees learned of the Stevens Administration's misconduct and its effect on Stevens' finances. Those trustees, however, failed to alert the full Board. In fact, when modest corporate governance changes were proposed in 2005, the stated bases for these changes was a shift in the regulatory landscape, not the Stevens Administration's misconduct or weak financial condition of Stevens.

40. Similarly, in mid-2005, the Compensation Committee buried an independent compensation consultant's analysis demonstrating that Defendant Raveche's total compensation was excessive.

41. In addition to oversight failures, since 1999, the Board committees regularly acted outside of their authority and in violation of the 1999 Bylaws and New Jersey law. For instance, the Compensation Committee provided Defendant Raveche with unlawful,

ultra vires loans, while other committees permitted Stevens to engage in long-term indebtedness without the full Board's approval as required by Stevens' bylaws.

42. In late-2005, Stevens amended its bylaws and reformed some other corporate governance practices. But, as alleged herein, the problems continue because the trustees on the Board and key members of the Stevens Administration remain and act the same. Defendant Raveche remains President. Trustee-Defendant Babbio remains Chairperson and Trustees Shulman and DeBaun remain Vice-Chairpersons, all of whom have been on the Board since at least 1995.

43. Of the twenty-one voting trustees, eleven have served since 1999.

44. As a consequence, the full Board remains inadequately informed of the actions of the committees, which continue to act outside of their authority. For instance, in January 2009, one committee of the Board passed a resolution that altered the spending, investing, and accounting practices for a charitable trust that constitutes approximately 30% of the Endowment. The resolution — which, as alleged herein, the committee lacked the power to pass and violates the terms and restrictions of the charitable trusts — was not disclosed to the full Board, despite its significance.

45. The Board's dysfunction has permitted the ongoing misconduct of Defendant Raveche and the Stevens Administration. In December 2008, Stevens' current independent auditor concluded that Stevens' internal controls and financial management practices include several "material weaknesses," meaning a "significant [control] deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected."[9]

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[9] See STATEMENT ON AUDITING STANDARDS ("SAS") No. 112, "Communicating Internal Control Related Matters Identified in an Audit," ¶ .06 (defining material weakness as quoted above).

46. Due to the Stevens Administration's financial mismanagement, Stevens' financial disclosures remain inaccurate and unreliable. For fiscal year FY2008, Stevens' current independent auditor issued restatements for material portions of FYs 2006 and 2007, including net asset amounts. The restatements in 2008 followed restatements in 2007 for FYs 2005 and 2006.

47. The Stevens Administration's financial mismanagement and other misconduct alleged in this Complaint caused inaccuracies in Stevens' Form 990s, some of which are alleged below.

48. Due to, among other things, the Stevens Administration's financial mismanagement and other misconduct alleged in this Complaint, the Internal Revenue Service ("IRS") has been auditing Stevens.

49. The Stevens Administration's financial mismanagement also causes waste. For instance, in 2008, Stevens paid the IRS $750,000.00 in penalties and unpaid taxes of subsidiaries.

50. In 2000, the Endowment was worth approximately $157 million. Today, the Endowment is worth less than $115 million.

51. Credit rating agencies have downgraded Stevens due to its financial and economic problems. In March 2004, Moody's Investors Service ("Moody's) downgraded Stevens' credit rating to Baa2 based Stevens' "deterioration in operating performance." In June 2007, Moody's affirmed its Baa2 rating, and concluded that Stevens' "[p]oor operating performance continue[ed] . . . [and] budgeting miscues demonstrate that continued work . . . needs to be accomplished to improve the Institute's financial management practices and systems and the overall operations of the organization."

52. In January 2009, Moody's affirmed its Baa2 rating based on its concerns about Stevens' illiquidity and excess debt under private lines of credit.

53. From 1999 to the present — while Stevens' credit rating and Endowment plummeted — Trustee-Defendants Babbio and others increased Defendant Raveche's compensation through inadequate procedures that avoided the Board's oversight. His compensation remains excessive, and includes the forgiveness of unlawful and ultra vires loans.

54. For example, in FY2007, Defendant Raveche's salary and bonus exceeded $770,000.00. The $770,000.00 excludes Defendant Raveche's other excessive compensation and benefits, including the ultra vires loans with below-market interest rates, retirement benefits, housing benefit worth approximately $54,000.00 per year, a tuition subsidy of at least $24,000.00, an automobile subsidy of at least $14,110.00, and other benefits. In addition, during FY2007, Stevens reimbursed Defendant Raveche more than $100,000 for "expenses."

55. As a point of comparison, for FY2007, the Massachusetts Institute of Technology ("MIT") president's salary and bonus was $635,294.00. For FY2007, MIT's operating expenses exceeded $2.3 billion, while Stevens' was less than $158 million.

56. For FY2008, Defendant Raveche's salary and bonus exceeded $1 million. In addition, over and above the $1 million dollars, Stevens paid Raveche a housing subsidy of at least $54,000.00, a tuition subsidy of least $24,000.00, and an automobile subsidy of at least $14,110.00

57. Through this action, Plaintiffs seek: (1) compensatory damages for harm caused to Stevens due to Insider Defendants' breach of their fiduciary duties and ultra vires transactions; (2) to compel Defendants to account for certain charitable trusts, restricted assets, and harmed caused to the Endowment; (3) rescissory damages and injunctive relief for

Defendant Raveche's receipt of excessive and unlawful compensation and <u>ultra vires</u> loans; (4) declaratory judgment regarding the donors' restrictions applicable to a charitable trust of the Endowment; (5) the removal of Insider Defendants as trustees; and (6) other relief as requested herein.

<u>COMMON ALLEGATIONS</u>

I. DEFENDANT RAVECHE AND THE STEVENS ADMINISTRATION BREACHED THEIR FIDUCIARY DUTIES THROUGH GROSSLY-NEGLIGENT AND <u>ULTRA VIRES</u> SPENDING AND BORROWING PRACTICES.

58. Since 1999, Insider Defendants and the Stevens Administration have, as alleged herein, spent and borrowed to fund the Growth Plan in an excessive and grossly-negligent manner. Stevens' operating budget has rapidly grown as follows:

a. For FY1999, Stevens' operating budget was approximately $60 million.

b. For FY2000, Stevens' general operating budget increased to approximately $68 million.

c. For FY2002, Stevens' general operating budget increased to approximately $85 million.

d. For FY2004, Stevens' general operating budget increased to approximately $101 million.

e. By 2008, Stevens' operating budget was $133 million.

59. To cover operating shortfalls created by the Growth Plan, the Stevens Administration:

a. spent more of the Endowment than the Board-approved spending rates;

b. spent quasi-endowment funds in violation of Board-imposed restrictions;

c. excessively borrowed from the Endowment and imprudently appropriated gifts;

d. excessively borrowed from private lenders through ultra vires transactions; and

e. collateralized charitable trusts and restricted assets of the Endowment in violation of donor-imposed restrictions.

60. Defendant Raveche and the Stevens Administration's spending and borrowing practices, which in the aggregate were grossly negligent, imprudent, and constituted repeated breaches of Insider Defendants' fiduciary duties, constituted ultra vires transactions, violated donors' restrictions, caused Stevens to breach its duties as trustee of certain charitable trusts, and otherwise violated New Jersey law as alleged herein.

A. Defendant Raveche and the Stevens Administration Disregarded the Board-Approved "Spending Rate" to Fund the Growth Plan.

61. Under UMIFA and its fiduciary duties, the Board must establish a "prudent" spending rate that preserves the Endowment's value for future beneficiaries, while satisfying current obligations.

62. Under Stevens' bylaws, the Board establishes the spending rate for the Endowment and, in effect, delegates to Defendant Raveche the power to spend the distribution.

63. Stevens' FY2000 and FY2008 Consolidated Financial Statements state that the "Board of Trustees has authorized a [spending] policy designed to preserve the value of [the Endowment] in real terms (after inflation) and provide a predictable flow of funds to support operations."

64. From 2000 to 2006, the Board set Stevens' spending rate at 5.4%.

65. For 2007, the Board set Stevens' spending rate at 5.3%.

66. For 2008, the Board set Stevens' spending rate at 5.2%.

67. The spending rate applied to the entire Endowment, except certain charitable trusts and restricted assets with unique spending- and investment-related restrictions. N.J.S.A. 15:18-17.

68. Based on Stevens' financial disclosures and Board materials, Defendant Raveche and the Stevens Administration spent far more than the Board-approved spending rate.

69. In FYs 2000 and 2001, due to the Stevens Administration, Stevens' actual spending rates were approximately 9.94%.and 9.59%, respectively.

70. In FYs 2003 and 2004, Stevens' actual spending rates were approximately 7.35% and 7.79%, respectively.

71. In FY2008, Stevens' actual spending rate was more than 5.4%.

72. Defendant Raveche and the Stevens Administration engaged in ultra vires transactions by spending more than the spending rate, which harmed Stevens and the Endowment.

B. Defendant Raveche and the Stevens Administration Spent Quasi-Endowment Funds to Fund the Growth Plan without Board Approval.

73. The Board designated the Endowment's investment gains above the spending rate as quasi-endowment funds.

74. The Stevens Administration may not spend quasi-endowment funds without Board approval.

75. Beginning in December 2003, the Stevens Administration began spending investment gains, which were quasi-endowment funds, held in a Stevens' checking accounts.

76. By 2005, the Stevens Administration had spent approximately $5.5 million of quasi-endowment funds without Board approval.

77. After the Investment Committee learned of the Stevens Administration's spending of the approximately $5.5 million of quasi-endowment funds, the Stevens Administration promised that Stevens would repay the Endowment "in the near future."

78. In late-2004 and early-2005, Stevens' poor operating results precluded repayment of the $5.5 million from operating revenue, and Stevens' poor financial health precluded it from obtaining additional debt through the issuance of new bonds or from lines of credit.

79. The Stevens Administration informed the Investment Committee that Stevens could not repay the approximately $5.5 million in the near future.

80. In response, the Investment Committee requested that Stevens repay the Endowment the approximately $5.5 million over a longer period of time with market-interest rates.

81. The Investment Committee and Stevens Administration disagreed on the appropriate interest rate for the $5.5 million loan from the Endowment.

82. As a consequence, in January 2005, the Investment and Budget Committees held a joint meeting to "determine the status of the short term loan that was originated on December 22, 2003, and is now in the amount of $5.5 million dollars that could not be repaid to the endowment from operations."

83. In 2005, the Investment Committee and Stevens Administration agreed that the $5.5 million would be deemed a ten-year loan with an annual interest rate of 4.75%.

84. As alleged herein, the trustees of the Board who were aware of the Stevens Administration's spending of quasi-endowment funds failed to adequately inform the full Board of such misconduct.

85. The Stevens Administration's <u>ultra</u> <u>vires</u> spending of quasi-endowment funds diminished the total Endowment, reduced assets available for investment, and increased the amount Stevens borrowed under lines of credit to pay operating expenses.

C. Defendant Raveche and the Stevens Administration Engaged in Ultra Vires Transactions by Collateralizing Charitable Trusts and Restricted Assets to Borrow Under Lines of Credit.

86. Under Stevens' bylaws in effect from 1999 to 2005, only the entire Board could, among other things, approve the "incurring [of] long-term corporate indebtedness" and "transfers and spending rates from endowment and similar funds."

87. As of June 2001, Stevens had two lines of credit with two financial institutions totaling $8 million. No outstanding loans existed under those lines of credit as of June 2001.

88. During the period of 2001 to the present, to fund the Growth Plan and Stevens' operations, the Stevens Administration excessively borrowed under Stevens' lines of credit.

89. From 2002 to the present, the Stevens Administration borrowed approximately $16 million under its lines of credit.

90. For FY2004 and FY2005, Stevens borrowed $4,205,107.00 and $3,199,281.00 under its lines of credit, respectively.

91. As of June 2008, Stevens' outstanding balance under its lines of credit was approximately $12.5 million.

92. Stevens' borrowing under the private lines of credit, which constitutes long-term indebtedness, was not properly authorized by the entire Board, as required by the 1999 Bylaws. Such borrowing constituted ultra vires transactions.

93. In 2003 and 2004, Stevens violated certain covenants under lines of credit, which required Stevens to maintain its debt below a certain level.

94. Stevens violated those covenants due to, among other things, the Stevens Administration's spending and borrowing during the period of 1999 to 2004.

95. To avoid being deemed in default under its lines of credit, in or about December 2003, the Stevens Administration collateralized $11 million of the Endowment.

96. Later, in or about July 2004, in order to borrow under its line of credit, the Stevens Administration collateralized an additional $2 million of the Endowment's investments.

97. The Stevens Administration's collateralization of the Endowment was not properly authorized by the entire Board as required by Stevens' bylaws, and was therefore an ultra vires transaction.

98. Some of the collateralized assets were charitable trusts accounted for as permanently restricted assets.

99. Stevens' collateralization of certain charitable trusts violated donor-imposed restrictions.

100. PWC concluded, in December 2004, that some of the "security's pledged may have been from endowments whose purpose are restricted to use and for which the corpus cannot be used to secure financing."

101. Due to Insider Defendants and certain trustees who were aware of PWC's conclusions, the entire Board was not adequately advised of PWC's conclusions regarding the collateralized charitable trusts and permanently restricted assets.

102. From December 2003 to September 2006, Defendants' unlawful and ultra vires collateralizing damaged the Endowment portfolio because the Board was unable to execute certain trades without Stevens' creditor's approval.

D. Defendant Raveche and the Stevens Administration Misuse Charitable Trusts to Fund the Growth Plan.

103. Since 1999, Defendant Raveche and the Stevens Administration have misused charitable trusts to fund the Growth Plan.

104. For instance, from 1999 to 2005, the Stevens Administration misappropriated approximately $2 million of charitable trusts and permanently restricted assets designated as support for certain department chairs.

105. The Stevens Administration misused some of the approximately $2 million for the general operating budget.

106. During the same period, the Stevens Administration distributed more than the Board-approved spending rate from certain endowment funds supporting chairs.

E. Defendant Raveche and the Stevens Administration's Grossly-Negligent and Ultra Vires Spending and Borrowing Practices Harmed Stevens and the Endowment.

107. As alleged above, Defendant Raveche and the Stevens Administration spent more than the Board-approved spending rates, raided quasi-endowment funds and gifts, unlawfully collateralized assets of the Endowment, and excessively borrowed through lines of credit.

108. In addition, the Stevens Administration misappropriated charitable trusts and restricted assets of the Endowment and imprudently spent gifts to pay general operating expenses.

109. As alleged below, Defendant Raveche and the Stevens Administration misrepresented and failed to adequately disclose their spending and borrowing practices. In the instances when the full Board approved those practices, it did so based on its misunderstanding of Stevens' financial and economic health, which Insider Defendants' misconduct caused, as alleged herein.

110. As a consequence of the spending abuses alleged above and other misconduct alleged herein, the Endowment's "real dollar" value has been drastically reduced, as the following chart demonstrates:

Date/Year	Total Endowment Value	Endowment Loans & Bequests For Operations	Lines of Credit
6/30/99	$142,838,380.00		
6/30/00	$157,545,684.00	$1,500,000.00	
6/30/01	$135,548,408.00	$1,500,000.00	
6/30/02	$114,218,919.00	$5,500,000.00	$1,200,000.00
6/30/03	$115,240,250.00	$8,500,000.00	$4,000,000.00
6/30/04	$121,706,190.00	$2,600,000.00	$4,205,107.00
6/30/05	$130,159,592.00	$800,000.00	$3,199,281.00
6/30/06	$140,456,966.00	$250,000.00	
6/30/07	$158,773,299.00		$3,414,792.00
6/30/08	$150,179,317.00		

111. As of April 2009, Stevens valued the Endowment at less than $120 million.

112. Stevens' credit rating has been downgraded since 2001 due to Defendants' misconduct.

113. In 2002, Stevens enjoyed an A credit rating from Standard & Poor's Rating Services ("S&P").

114. After its 2004 review of Stevens' finances, S&P drastically downgraded Stevens' credit rating to BBB+ (three notches above junk-bond status) noting:

> the institute's history of negative operating performance since 1996 . . .; further increases in debt, which although anticipated not large, exceeds the university's debt capacity at the prior rating level; and long term trend of sharply declining liquidity.

115. In March 2004, Moody's downgraded Stevens' credit rating to Baa2 based Stevens' deterioration in operating performance.

116. Recently, in January 2009, Moody's affirmed its Baa2 rating based on its concerns about Stevens' illiquidity and excess debt under private lines of credit.

II. INSIDER DEFENDANTS MISREPRESENTED INFORMATION TO THE BOARD REGARDING THEIR SPENDING AND BORROWING PRACTICES.

117. From 1999 to the present, Insider Defendants were members of the Executive Committee, which regularly determined Stevens' spending and borrowing practices alleged herein. Insider Defendants failed to inform the entire Board of the Executive Committee's actions, as required by New Jersey law, including N.J.S.A. 15A:6-9.

118. Trustee-Defendant Babbio was aware of all of the Stevens Administration's spending and borrowing practices alleged herein, but misrepresented and failed to adequately disclose those practices and their effects to the Board.

119. Several former trustees conclude that Insider Defendants hid and failed to adequately inform the Board about Stevens' finances.

120. One former trustee ("Trustee-A") concluded that, due to the Stevens Administration:

a. The "Board of Trustees is a Mushroom patch and always has been from my experience."

b. He could "almost guarantee . . . that the Trustees did not know about . . . the actual performance of SIT."

121. In 2005, another Trustee ("Trustee-B") stated that the Board was never provided with final budgets or a report reconciling proposed and actual budgets.

122. In Trustee-B's opinion, as of 2005, the Board was unaware whether "research, auxiliary services, the schools, and individual programs operated at a loss or gain."

123. Another ex-Trustee ("Trustee-C") concluded that during his years of service as a Board member from 1996 to 2005 there "was never a report on the state of any of the endowments."

124. Another ex-Trustee ("Trustee-D") explained that the Board was not provided with key financial information and documents, and when he asked specific questions "[t]he President, Chairman of the Board obfuscated the results so you could not tell what happened."

125. Trustee-C also explained that the Board was provided with incomplete and inaccurate information, and could not determine whether Stevens operated at a yearly loss.

126. During several years of Stevens' aggressive growth, Insider Defendants did not provide the entire Board with key financial documents, including Stevens' Form 990s, Consolidated Financial Statements, and internal control letters from independent auditors.

127. Like the ex-Trustees, Stevens' independent auditors conclude that the Stevens Administration and Board committees failed to adequately disclose information to the Board.

128. In an internal control letter, dated October 4, 2003, PWC stated that "[f]ormal minutes were not prepared for certain committee meeting . . . [and that] [m]inutes of such committees serve an important function in that they document certain decisions and discussions . . . ."

129. In December 2004, PWC concluded that the Stevens Administration was not adequately monitoring and informing the Board of key financial issues. For instance, PWC concluded that the Stevens administration lacked "processes to provide detailed analyses and reconciliations of key balance sheet accounts" and "to track performance of [Stevens'] aggressive Growth Plan."

130. Stevens' Consolidated Financial Statements and Annual Reports confirm that the Stevens Administration misrepresented Stevens' operating results.

131. Stevens operated at a significant deficit for most years since 1999.

132. The Stevens Administration misstated Stevens' operating results in the Annual Reports from 1999 to 2005. The Annual Report and Audit Financial Statements include the following discrepancies regarding Stevens' Operating Results:

Fiscal Year	Annual Report	Audited Financial Statements
1999	($2,591,255)	($3,010,640)
2000	$8,432,329	$8,034,670
2001	$719,632	($6,061,669)
2002	$3,702,095	$1,025,411
2003	$464,123	($8,503,914)
2004	$3,314,893	($3,595,133)
2005	(no contemporaneous annual report)	($4,976,889)

133. The Insider Defendants also withheld material details regarding Stevens' operating results.

134. For instance, for FY2004, Stevens' operating deficit improved to approximately $3.5 million from approximately $8.5 million in 2003, but those results stem from the allocation of an $8.5 million bequest directly to the operating budget, rather than to the Endowment.

135. Insider Defendants failed to disclose to the Board that without the allocation of that bequest, as alleged in the foregoing paragraph, Stevens' operating deficit for 2004 would have been approximately $12.1 million.

136. In addition, in the Annual Reports from 2001 to 2004, the Stevens Administration did not disclose the results of non-operating activity, such as Stevens':

a. $18 million decline in net assets in 2001;

b. $13 million decline in net assets in 2002; and

c. $11 million decline in net assets in 2003.

137. The Stevens Administration's practice of misstating operating results in the Annual Report continued until at least 2005, which is when one trustee on the Audit Committee reviewed the FY2004 Consolidated Financial Statements and stated to Stevens' Treasurer that "going forward the numbers published in the annual report will be consistent to the audited financial statements."

III. DURING THE GROWTH PLAN DEFENDANT RAVECHE AND THE STEVENS ADMINISTRATION'S FINANCIAL MANAGEMENT HAS BEEN GROSSLY-NEGLIGENT.

138. Since 1999, the Growth Plan significantly increased Stevens' operations and budgets relating to, among other things:

a. research activities, which requires Stevens to, among other things, account for direct and indirect research costs;

b. internal development of the Technogenesis program, including curricula, infrastructure, and supportive departments; and

c. Technogenesis startups, which involves Stevens' funding and control of such entities.

139. On July 29, 2005, PWC, Stevens' independent auditor at the time, issued an internal control letter concluding that:

> Stevens Institute of Technology is undergoing a phase of extremely rapid growth in its research activities that is unique in the 140+ years of its existence. <u>The existing finance and research administration infrastructures, and related policies and procedures, have proven inadequate to the demands posed by this unprecedented growth</u> . . . .

140. PWC's July 2005 internal control letter followed PWC's December 2004, "Assessment of Regulatory and Financial Internal Controls" (the "PWC 2004 Report").

141. Due to the problems PWC uncovered, Stevens had to pay approximately $1.5 million for PWC to finish the PWC 2004 Report and its FY2004 audit.

142. The PWC 2004 Report concluded that on an "overall basis . . . [the] internal controls at Stevens Institute are below acceptable levels throughout the organization."

143. The PWC 2004 Report concluded that Stevens' staff did "not possess the requisite skill sets to process, account for and manage financial information."

144. Weak "tone at the top" and "a lack of accountability and ownership for financial activity/transactions" was the cause of Stevens' internal control and accounting deficiencies, in PWC's opinion.

145. The PWC 2004 Report further concluded that Stevens lacked:

a. "[A]ttention to controls in virtually every area . . .reviewed";

b. Any "strategy for maximizing revenues and containing costs through day-to-day management of operations";

c. "[A]ny documented consideration of business risk or the cost/benefit of instituting internal controls";

d. "[M]anagement attention to risk and internal controls";

e. "[P]rocesses to provide detailed analyses and reconciliations of key balance sheet accounts"; and

f. "[F]inancial monitoring mechanisms to track performance of [Stevens'] aggressive Growth Plan."

146. The PWC 2004 Report recommended that Stevens adopt basic financial management practices, like "procedures for handling cash receipts and making deposits on a timely basis (e.g., deposits should be made within 24 hours)."

147. The PWC 2004 Report concluded that Stevens lacked adequate research-related internal controls and accounting policies critical to the Growth Plan.

148. For instance, the PWC Report concluded that Stevens had "weak management of sponsored research area," inadequate monitoring of research accounts, and "virtually no management reports . . . to monitor the critical financial areas," including research.

149. PWC found $3.2 million of unapplied funds from grants and contracts and $6.1 million of "reported over-expended grant accounts."

150. In 2004, PWC instructed Stevens to substantially improve its research-related internal controls and accounting policies, including the following:

a. "Develop and implement written policies and procedures that address the key areas of pre-award administration, including search for sponsored funding, preparation of proposals . . . and setting up sponsored awards in the accounting system."

b. "Provide guidance and training on development of proposal budgets."

c. "Update and expand existing policies for managing sponsored grants and contracts including monitoring expenditures, financial reporting and aware close out."

d. "Institute a process . . . to ensure that expenditures are accurate and that awards do not go into a deficit position."

e. "Develop and implement written policies and procedures that address the key aspects of [cost accounting standards]."

f. "Implement a review process for research proposals that includes verification that costs are properly classified as direct or indirect . . . ."

g. "Develop and implement policies and procedures that provide direction on the proper accounting and documentation requirements for cost sharing . . . ."

A. Insider Defendants and Others Hid PWC's Conclusions and its Decision to Fire Stevens as a Client from the Full Board.

151. PWC's July 2005 internal control letter and 2004 Report included information material to the Board's decisions and oversight function.

152. The Board was not provided with the complete PWC 2004 Report.

153. The Board was not adequately advised of the PWC 2004 Report's key conclusions.

154. The Board was not provided with PWC's July 2005 internal control letter.

155. The Board was not adequately advised of PWC's July 2005 internal control letter's key conclusions.

156. In 2005, PWC fired Stevens as a client due to the risks it posed to PWC.

157. At the January 7, 2005 Audit Committee meeting, weeks after PWC issued its 2004 Report, PWC informed the Committee that:

> PWC annually assesses the relationships with all their clients and performs a risk assessment . . . Stevens has been identified as a high risk client. [PWC] put Stevens on notice that there was a possibility PWC would not continue its relationship with Stevens.

158. The Board was misinformed that PWC was "unable to continue as external auditors to Stevens, due to costs inefficiency of not having dedicated work force for non-profit organizations."

159. Insider Defendants and the Stevens Administration failed to adequately disclose the independent auditor's conclusions to the Board, and hid the fact that the independent auditor fired Stevens as a client.

B. Defendant Raveche and the Stevens Administration's Grossly-Negligent Financial-Management Practices Continue to Harm Stevens and the Endowment.

160. As alleged above, in 2004 and 2005, PWC instructed Stevens to substantially improve its internal control and accounting practices, including those related to tuition billing, research revenues, and gift accounting.

161. Grant Thornton's 2008 conclusions demonstrate Stevens' ongoing internal control failures.

162. For instance, in December 2008, Grant Thornton concluded that Stevens' internal control and accounting practices relating to deferred tuition revenues constituted a "material weakness."

163. Grant Thornton concluded that Stevens had overstated its deferred tuition review for FY2007 by approximately $1.5 million.

164. In 2008, Grant Thornton found that Stevens' internal control and accounting practices relating to certain research revenue included "significant deficiencies."

165. Like PWC in 2004 and 2005, Grant Thornton, in December 2008, instructed Stevens to "develop, implement and monitor policies and procedures relating to fixed price contracts to ensure that deferred research revenue is properly recorded."

166. Grant Thornton reviewed Stevens' "affiliated entities (subsidiaries) and determined that certain tax returns for its fiscal years 2004 and 2007 had not been prepared and filed in a timely basis."

167. Technogenesis startups were among the subsidiaries for which Stevens did not file tax returns.

168. The IRS penalized Stevens for failing to file its subsidiaries' tax returns.

169. In total, during 2008, Stevens paid the IRS $750,000.00 for penalties and unpaid taxes of subsidiaries.

170. Additionally, in 2008, Grant Thornton also "discovered that certain intercompany transactions, principally cash advances and disbursements of expenses on behalf of its subsidiaries, which also affected tax returns, had not been recorded properly within the [general ledger]."

171. In total, in 2008, Grant Thornton uncovered approximately $665,000.00 of "unrecorded subsidiary transactions."

172. In addition to the above, in December 2008, Grant Thornton uncovered numerous other internal control deficiencies relating to, among other things: gift accounting practices; tuition revenue and receivables; cash receipt for contributions and bequests; and security for computer access to the general ledger and student system.

173. Stevens' credit rating was downgraded and has not recently improved due to, in part, Defendant Raveche and the Stevens Administration's financial mismanagement, which Trustee-Defendant Babbio was aware of, but failed to adequately disclose to the Board.

174. In June 2007, Moody's affirmed its Baa2 rating, and concluded that Stevens' "[p]oor operating performance continue[ed] . . . [and] budgeting miscues demonstrate that continued work . . . needs to be accomplished to improve the Institute's financial management practices and systems and the overall operations of the organization."

175. Due to Insider Defendants' misconduct, Stevens' financial statements and Form 990s are inaccurate and unreliable.

176. For instance, Grant Thornton "significantly" restated Stevens 2006 and 2007 Financial Statements.

177. Stevens also restated its FY2006 Financial Statement in 2007.

178. Together, the 2007 and 2008 restatements demonstrate the unreliability of Stevens' Financial Statements:

Year/Statement	2006 /Original	2006/Restatment in 2007	2006/Restatement in 2008	2007/Original	2007/Restatement in 2008
Net Asset Value	$187,790,653	$185,415,419	$182,276,842	$209,462,529	$203,769,618
Unrestricted Net Assets	$73,298,931	$70,923,697	$67,785,120	$91,468,176	$85,775,265
Temporarily Restricted	$13,829,680	$13,829,680	$13,177,195	$13,330,650	$12,678,165
Permanently Restricted	$100,662,042	$100,662,042	$101,314,527	$104,663,703	$105,316,188

179. Stevens' unreliable financial disclosures have also exposed it to an ongoing audit by the IRS. The IRS' audit is expansive and includes issues pertaining to Defendant Raveche's compensation, as alleged below.

IV. DEFENDANT RAVECHE AND THE STEVENS ADMINISTRATION MISMANAGE CHARITABLE TRUSTS AND RESTRICTED ASSETS OF THE ENDOWMENT.

180. Stevens' independent auditors consistently conclude that Stevens' gift accounting practices are inadequate.

181. In 2004, PWC concluded that Stevens' policies failed to "ensure that expenditures charged to restricted gift accounts are made in accordance with the donor's intent," and instructed Stevens to:

> Define Institute policy that outlines the accounting procedures related to endowment funds, unexpended income from endowments, and expenditures from current use accounts.
>
> . . .
>
> Implement a central control to ensure that expenditures charged to restricted gift accounts are made in accordance with the donor's intent.

182. In December 2008, Grant Thornton instructed Stevens to implement procedures "to ensure the classification of gifts is consistent with donor intent."

183. Grant Thornton's instruction in the immediately-preceding paragraph stemmed from Stevens' mismanagement of approximately $650,000.00 of permanently restricted assets in 2008.

184. Stevens' gift accounting practices remain inadequate, and cause numerous misappropriations of permanently restricted assets and gifts in violation of donors' intent.

185. In October 2005, the Finance Subcommittee determined that Stevens mismanaged and misused several permanently restricted assets supporting department chairs.

186. The Finance Subcommittee concluded that Stevens had "accounting problems" relating to its chairs, and lacked a "formal policy on appointing, distributing, and developing" chairs.

187. The Finance Subcommittee concluded that for several years Stevens distributed funds "from vacant chairs . . . to fund other chair payments."

188. In October 2005, the Finance Subcommittee concluded that Stevens misappropriated approximately $2 million of various permanently restricted assets relating to chairs.

189. In addition, during October 2005, the Audit Committee discovered that Stevens had distributed more than the Board-approved spending rate from certain endowment funds supporting chairs.

190. In October 2005, the Audit Committee noted that Stevens should establish a plan to repay the endowment funds supporting chairs with interest, and Stevens' CFO at the

time recommended that Stevens hire an accounting firm to evaluate the impact of Stevens' mismanagement and misuse of its endowment funds supporting chairs.

191. Upon information and belief, Stevens failed to hire an accounting firm for the purposes stated in the immediately-preceding paragraph.

192. The following are two specific examples of Stevens' mismanagement and misuse of the Endowment's assets.

A. Stevens Mismanaged the Alexander Crombie Humphreys Endowment.

193. Alexander Crombie Humphreys graduated from Stevens in 1881 and was its President from 1902 to 1927, when he established the Department of Management Science. In 1929, to further Dr. Humphreys' vision, the Alexander C. Humphreys Chair of Economics and Engineering (the "ACH Chair") was created. Various alumni and associates of Dr. Humphrey anticipated an endowment of $250,000.00, and contributed the initial $50,000.00.

194. In 1950, alumni of Stevens incorporated the Alexander C. Humphreys Foundation (the "ACH Foundation") to "perpetuate the memory of Alexander C. Humphreys, the second president of Stevens Institute of Technology, by endowing a chair in the Department of Economics of Engineering."

195. In February 1952, to raise the remaining $200,000.00 needed to fully endow the ACH Chair, the ACH Foundation transferred all of its funds to Stevens, rather than waiting until it was fully funded. The ACH Foundation Board adopted a resolution providing that all contributions should be turned over to Stevens "under the conditions that they be credited to the endowment fund of the Chair of Economics of Engineering and that annual interest of at least 2% on these contributions also be credited to this endowment fund until it is completed."

196. In 1985, Professor Donald Merino, Head of the Department of Management Science requested information on the size of the ACH Endowment, the yearly income provided, and how Stevens accounted for ACH Endowment funds.

197. Stevens informed Professor Merino that, as of 1984, the ACH Endowment was worth approximately $1.3 million, and that it had produced approximately $102,000.00 for the 1983 school year.

198. Stevens admitted that the income was transferred to Stevens' general operating budget.

199. Upon information and belief, by 1995 the ACH Endowment was worth approximately $2 million.

200. Stevens pooled the ACH Endowment income into its general operating budget, and treated the ACH Chair as indistinguishable from any other professor at Stevens.

201. In June 2005, Professor Merino, the current ACH Chair holder, again sought information regarding the finances of the ACH Endowment from Stevens. Stevens failed to provide the required information.

202. On or about July 22, 2005, Professor Merino formally sought the financial information regarding the ACH Endowment from Trustee-Defendant Babbio.

203. In response, on December 1, 2005, Stevens CFO and Internal Auditor at the time presented information on the ACH Endowment to Professor Merino.

204. Stevens CFO argued on December 1, 2005 that Stevens was permitted to and did pool the ACH Endowment income with the general operating budget.

205. Stevens CFO admitted on December 1, 2005 that:

a. The ACH Endowment monies had not been segregated in a separate account;

b. The ACH Endowment did not pay for Professor Merino's salary or any other person's salary or any other expense and that Professor Merino's salary and benefits were paid from the Department budget; and

c. The Dean of Engineering, the Department Chair and the ACH Chair were not informed of the ACH Endowment corpus, income or distribution.

206. After the December 2005 meeting, Stevens CFO agreed that Stevens should segregate the ACH Endowment income in order to monitor how its funds are expended.

207. On January 27, 2006 the Stevens Internal Auditor sent a memo to Professor Merino admitting that "the ACHE is part of the general endowment pool."

208. Because the ACH Endowment was $1.3 million in 1985 and only $1.77 million in 2005, the purchasing power of this endowment has significantly eroded.

B. Stevens Mismanaged the Clement M. Bonnell, Jr. 1919 Memorial Scholarship Fund.

209. In or about June 1986, Clement M. Bonnell, III established the Clement M. Bonnell, Jr. 1919 Memorial Scholarship Fund in honor of his father's commitment to Stevens.

210. Clement M. Bonnell stated in a letter dated December 20, 2000 that the recipient of the award ("Bonnell Award") was to be "a senior, majoring in Mechanical Engineering, who has excelled in the Humanities courses."

211. The Bonnell Award was intended to be an award "to students over and above any aid package to the student."

212. The annual amount of the Bonnell Award was to be determined by the Endowment spending rate to ensure that the principal would remain intact and continue to grow.

213. Clement M. Bonnell made contributions to the fund starting in 1986, but stipulated that no awards were to be given until the fund reached $120,000.00.

214. When Stevens distributed funds for the Bonnell Scholarship, it did so in violation of Mr. Bonnell's restrictions.

215. The first award was made during the 2000-2001 academic year.

216. In response to questions raised by Mr. Bonnell's son in 2004, the Stevens administration admitted that the 2001 distribution for the Bonnell Award had occurred "prior to maturity of the fund" in violation of Mr. Bonnell's intent.

217. In addition, the first recipient of the Bonnell Scholarship, in 2000-2001, was a freshman majoring in computer engineering, not a senior majoring in mechanical engineering as Clement M. Bonnell intended.

218. For the 2001-2002 academic year Stevens again ignored Clement M. Bonnell's instructions by awarding the Scholarship to a freshman majoring in Business and Technology.

219. According to Stevens' records, the recipients in 2002-2003 and 2003-2004 academic years were seniors majoring in Mechanical Engineering.

220. In the 2002-2003 and 2003-2004 academic years, however, Stevens treated the Bonnell Award funds as part of the overall aid package to the recipients.

221. Mr. Bonnell's son complained to Stevens that "the endowment established by his father envisioned scholarship awards to students over and above any aid package to the student, whereas Stevens [had] been treating it as part of the overall aid package."

222. Mr. Bonell's son further complained to Stevens that "the supposed amounts [distributed as part of the Bonnell Award] were credited to awards funds already

received by the students, so that, in effect, these students received no additional monetary award at all."

223. As a consequence, one of the recipients of the Bonnell Award did not even know she had received it.

224. Defendant Raveche failed to respond, so Mr. Bonnell sent him a second letter on December 18, 2004 asking for a "prompt response to this matter."

225. On December 21, 2004, Mr. Bonnell's son received a response from Stevens stating that Stevens was "disappointed" to learn of the "early inadequacies" that plagued the Bonnell Award.

226. In the December 21, 2004 letter, Stevens further acknowledged that notwithstanding Clement M. Bonnell's instructions, recipients of the Bonnell Award "did not receive additional money when named the Bonnell Scholar."

227. In late-2005, Stevens contacted Mr. Bonnell's son and "offered to change the treatment" of the Bonnell Award.

228. Mr. Bonnell's refused to allow Stevens to disregard his father's intent.

229. Finally, rather than comply with the donor's intent, Stevens simply returned the funds.

V. STEVENS' VIOLATION OF THE DONOR'S INTENT AND MISTREATEMENT OF THE TAYLOR TRUST.

230. Two trusts bequeathed to Stevens by Robert P.A. Taylor ("Taylor Trust") currently constitute approximately 30% of the Endowment. The Taylor Trust is governed by two agreements: (a) 1953 Trust Indenture; and (b) a 1974 Trust Agreement (collectively, "Taylor Trust Agreements").

231. The Taylor Trust Agreements include donor-imposed restrictions applicable to the Trust.

232. The Taylor Trust is charitable trust for which Stevens is the trustee.

233. As a purpose-based restriction, the Taylor Trust Agreements state that the portion of the Taylor Trust that may spent on an annual basis must be devoted:

> in the following order of priority to the following charitable purposes: (a) maintenance of the F.W. Taylor Memorial Room and the R.P.A. Taylor Library and files of corporate information, both of which are presently established at said Stevens Institute, together with continued additions thereto; (b) training of engineers, with particular emphasis on courses aiming at increasing the productivity of society – in furtherance of F.W. Taylor's philosophy of scientific management; and (c) construction and maintenance of buildings and laboratories appropriate for carrying out the above purposes, each such building or laboratory to be marked 'F.W. Taylor Memorial' building . . . .

234. As a spending restriction, the Taylor Trust Agreements expressly restrict Stevens to spending only "income" in the trusts-and-estates meaning — i.e., interest, rents, royalties, and dividends — and prohibit Stevens from spending capital appreciation.

235. Although it may only spend income derived from the Taylor Trust's assets, Stevens, through a proper resolution of its Board, may determine the percentage of expendable income.

236. The Taylor Trust must be maintained as a "permanent fund," meaning, among other things, that the principal of the Trust may never be spent and should serve as a perpetual source of income.

237. Under the Taylor Trust Agreements, the principal of the Taylor Trust increases each year due to the appreciation of the Taylor Trust assets. Stevens may also increase the principal of the Taylor Trust by "accumulate[ing] and annually add[ing] to the principal [of the Taylor Trust]" a "portion" of its income. Thus, under the Taylor Trust Agreements, the

principal of the "permanent fund" increases each year due to appreciation of the Taylor Trust's assets, and the amount of unexpended income that Stevens elects to accumulate as principal.

238. Under GAAP, the appreciation of the Taylor Trust, which must be added to the principal of the "permanent fund" under the Taylor Trust Agreements, must be accounted for as a permanently restricted asset.[16] In addition, the amount of unexpended income that Stevens adds to the principal must also be accounted for as a permanently restricted asset.[17]

239. As an additional donor-imposed restriction, to allow scrutiny of Stevens' management of the Taylor Trust, the Taylor Trust Agreements requires Stevens to publish, on March 20th of every year, "a complete accounting of the fund in some newspaper in each of the cities of Philadelphia, Boston and New York."

A. In 1991, the Board Accepted the Terms of the Taylor Trust Agreements.

240. On December 6, 1991, the full Board passed a resolution accepting the Taylor Trust under the terms of the Taylor Trust Agreements.

241. The full Board's resolution of December 6, 1991 ("Dec. 1991 Resolution") demonstrated Stevens' understanding and acceptance that the Taylor Trust Agreements restrict Stevens to spending "income" in the trusts-and-estates meaning — i.e., interest, rents, royalties, and dividends — and prohibits Stevens from spending capital appreciation.

242. The Dec. 1991 Resolution accepts the Taylor Trust by stating:

> WHEREAS, the Trustees have determined that the Institute can abide by the terms and conditions of the [Taylor Trust Agreements] and have determined that the Institute should accept the gifts under those documents.

[16] FAS No. 117, ¶¶ 13-16; FAS No. 116, "Accounting for Contributions Received and Contributions Made," ¶ 14.
[17] FAS No. 117, ¶ 22; FAS No. 116, ¶ 14; FAS No. 124, "Accounting for Certain Investments Held by Not-for-Profit Organizations," ¶¶ 9, 11.

> WHEREAS, the Trustees have considered the . . . proper use of the income of the funds received pursuant to the gifts. . . .
>
> WHEREAS, the Trustees considered (a) Robert P.A. Taylor's investment philosophy favoring common stock, (b) the permanent nature of the fund, (c) Mr. Taylor's wish that a certain amount of the income be reinvested on an ongoing basis and (d) their own fiduciary obligations in determining an investment philosophy for the Taylor Funds. . .
>
> NOW, THEREFORE, it is . . . RESOLVED, that the Institute hereby accepts [the Taylor Trust] . . . upon the following terms and conditions . . . [1] The assets received by the Institute must be held as a permanent fund. . . . [2] The income of the fund, to the extent available, must be used [for the purposes stated in the Taylor Trust Agreements].
>
> RESOLVED, that . . . for the current fiscal year, and until such time thereafter as the Board of Trustees may otherwise determine, the Institute shall expend only twenty percent (20%) of the income of those funds and reinvest the balance thereof . . .

243. The Board passed the above resolution based on the legal opinion of its counsel.

1. Since 1991, Stevens Purportedly Only Spent Twenty Percent of the Taylor Trust's Income and Added Unexpended Income and Appreciation to Principal.

244. Based on published accountings of the Taylor Trust and Board materials, Stevens purportedly only spent twenty percent of the Taylor Trust's income, and purportedly did not spend appreciation.

245. The published accountings of the Taylor Trust distinguished between income and principal, the former being distinguished from appreciation. The published accountings also represented to the public that each year "income [was] transferred to principal."

246. Thus, the published accounts of the Taylor Trust also represented to the public that from 1991 to the present the principal of the Taylor Trust increased from appreciation and due to Stevens' accumulation and addition of income to the principal.

247. As demonstrated by the following chart, which is based on Stevens' Consolidated Financial Statements and the published accountings of the Taylor Trust, the Taylor Trust's principal has increased both in value and as a percentage of the Endowment and permanently restricted assets:

Year	Total Endowment Value	Value of Permanently Restricted Assets	Principal of Taylor Trust	Taylor Trust % of Permanently Restricted Assets
FY2002	$114,218,919.00	$80,568,852.00	$26,839,362.00	33.31%
FY2003	$115,240,250.00	$81,092,271.00	$27,065,730.00	33.38%
FY2004	$121,706,190.00	$84,990,392.00	$32,262,154.00	37.96%
FY2005	$130,159,592.00	$95,535,117.00	$35,469,919.00	37.13%
FY2006	$140,456,966.00	$100,662,042.00	$38,499,771.00	38.25%
FY2007	$158,773,299.00	$105,316,188.00	$44,834,084.00	42.57%
FY2008	$150,179,317.00	$106,007,156.00	$46,109,256.00	43.50%

B. In January 2009, A Board Committee Unlawfully Passed a Resolution That Purports to Authorize Stevens to Spend Appreciation in Violation of the Taylor Trust Agreements.

248. On January 27, 2009, the Finance and Investment Committees incorrectly concluded that that the "current restrictions that distinguish the Taylor assets from other unrestricted endowment assets are solely discretionary." The Finance and Investment Committees further concluded that the "assets of said Taylor trusts . . . are unrestricted . . . ."

249. Without reviewing any the Taylor Trust Agreements, Stevens' counsel's November 1991 opinion letter, or any other documents, the Finance and Investment Committees passed a resolution ("Jan. 2009 Resolution") providing, among other things, that:

> WHEREAS, the Taylor Trust matured in 1991 and the assets became a part of the Institute's pooled endowment. Since that time the Taylor assets have been separately invested and accounted for distinct from all other pooled endowment assets. . . .The Taylor Assets grew from its initial value of approximately $10 million (total for two trusts) to approximately $46 million at the end of the previous fiscal year on June 30, 2008.

> WHEREAS . . . a simpler way to account for the Institute's pooled endowment assets is to apply the same spending rate for entire endowment (5.1% for fiscal 2009) and then roll back the equivalent difference between the two spending rates as increased principal for the Taylor assets. Such a measure will align the asset allocation automatically for all pooled endowment assets . . . .
>
> Now therefore be it RESOLVED that the values distinguishing the Taylor assets from all other pooled endowment assets be that of those audited values determined on June 30, 2009 for the Taylor Assets, AND that going forward the Taylor Assets will increase or decrease as a prorate portion of the total endowment pool. . . . .

1. The Finance and Investment Committees Lacked Power to Approve the Jan. 2009 Resolution.

250. The Jan. 2009 Resolution amended and supplanted the full Board's resolution accepting the Taylor Trust from December 1991.

251. Under N.J.S.A. 15A:6-9, no committees may have the authority to "[a]mend or repeal any resolution previously adopted by the board."

252. Under N.J.S.A. 15A:6-9, the Jan. 2009 Resolution was an ultra vires act.

253. As a separate matter, the charters of the Finance and Investment Committees do not include the power to approve resolutions such as the Jan. 2009 Resolution. Accordingly, if the Board had the power to approve the Jan. 2009 Resolution, which it does not as alleged herein, it never delegated the power to the Finance and Investment Committee.

254. The full Board never attempted to ratify the Jan. 2009 Resolution, which it would lack the power to do.

2. The Finance and Investment Committees Failed to Inform the Full Board of the Jan. 2009 Resolution.

255. Under N.J.S.A. 15A:6-9, "[a]ctions taken at a meeting of any committee shall be reported to the board at its next meeting the following the committee meeting."

256. Under common law, all Board members must report material information to the full Board.

257. The Finance and Investment Committees members failed to inform the full Board of the Jan. 2009 Resolution at the next meeting of the full Board in February 2009.

258. In fact, the Jan. 2009 Resolution has not been the subject of discussion, approval, or ratification at any Board or subcommittee meetings since January 2009, except in connection with discussions relating to this litigation.

C. Now, Stevens Maintains That the Taylor Trust Agreements' Restrictions Are Non-Binding.

259. The Jan. 2009 Resolution provides that Stevens will "apply the same spending rate for the entire endowment" to the Taylor Trust, and that "going forward the Taylor Assets will increase/decrease as a prorate portion of the total endowment pool."

260. As alleged in detail above, the Taylor Trust Agreements restrict Stevens to spending income meaning — i.e., interest, rents, royalties, and dividends — and prohibit Stevens from spending capital appreciation. Stevens' counsel made that clear to the Board before it accepted the Taylor Trust.

261. Stevens now maintains that the Taylor Trust Agreements' spending restrictions are precatory and non-binding, meaning Stevens can spend both income and appreciation. In a letter dated August 29, 2009, Stevens further maintained that: "Stevens states that, as a matter policy, it has not chosen and does not presently choose to expend appreciation in the Taylor Trusts' assets. However this is a policy decision and not a requirement deriving from the language of the Taylor Trust documents or applicable law."

262. Stevens maintains that the Taylor Trust Agreements do not require the addition of appreciation to the principal of the Taylor Trust, or prohibit spending appreciation. In a letter dated August 29, 2009, Stevens maintained that:

> In speaking of 'permanent fund,' the Trust instruments clearly refer to the initial amount being transferred to Stevens. There is absolutely no mention in the Taylor Trust instruments of appreciation, much less a directive that appreciation be maintained and not expended.

263. As alleged in detail above, the Taylor Trust Agreement prohibit Stevens from spending appreciation, and require that appreciation be accumulated as principal.

D. Stevens Violated its Fiduciary Duties By Pooling the Taylor Trust with the Entire Endowment.

264. The Jan. 2009 Resolution provided that "the values distinguishing the Taylor assets from all other pooled endowment assets be that of those audited values determined on June 30, 2008." The Resolution provides that its effect is to "align the asset allocation automatically for all pooled endowment assets."

265. One effect of the Jan. 2009 Resolution is an exchange of assets among the Taylor Trust and the rest of the Endowment. As the Jan. 2009 Resolution states, prior to the January 2009 "the Taylor assets have been separately invested and accounted for distinct from all other pooled endowment assets." Thus, the assets of the Taylor Trust and general Endowment were different.

266. As a consequence of the Jan. 2009 Resolution:

a. the Taylor Trust includes an interest (approximately 30%) in assets that were previously solely assets of the general Endowment; and

b. the general Endowment includes an interest (approximately 70%) in assets that were previously solely part of the Taylor Trust.

267. In pooling the Taylor Trust and general Endowment, neither the Board nor Stevens properly analyzed the value of the assets exchanged. Stevens violated its fiduciary duties by pooling the Taylor Trust and general Endowment without adequate valuations of their respective assets.

268. As alleged below, due to the Investment Committee's failure to diversify the Endowment portfolio a significant portion of its alternative investments are illiquid. Many of those alternative investments are carried at cost. Because there is no market for some alternative investments and others are illiquid, Stevens could not and did not attempt to ascertain their market value.

269. As a consequence of the Jan. 2009 Resolution, the Taylor Trust now includes numerous illiquid assets and assets for which there is no market. When the true losses from these assets are realized, the Taylor Trust would be forced to share those losses due to the Jan. 2009 Resolution.

E. Stevens, through the Board, Breached Its Fiduciary Duties Under UMIFA To the Taylor Trust.

270. As alleged below, Stevens, through the Investment Committee, failed to adequately diversify and monitor the Endowment's investment portfolio, including the assets of the Taylor Trust, and failed to follow Stevens' Investment Policy.

271. With respect to the Taylor Trust, during the period of 2005 to 2007, the Investment Committee also failed to: create analyses of the Endowment's investment portfolio that adequately distinguished the Taylor Trust's investments; and adequately monitor the asset allocation of the Taylor Trust's investments.

272. As of September 2008, less than 5% of the Taylor Trust's investments were fixed income investments, such as bonds.

273. A significant portion of the Taylor Trust's investments during 2007 were not incoming producing.

274. Based on the December 2007 analysis of the Taylor Trust, Stevens' CFO at the time concluded that the "income today from dividends from the Taylor assets is less than when Dr. Taylor was alive."

275. As alleged in greater detail below, the Taylor Trust has been damaged due to the Investment Committee's failure to adequately monitor and diversify the Taylor Trust's investments.

VI. THE BOARD FAILED TO MONITOR AND DIVERSIFY THE ENDOWMENT PORTFOLIO IN VIOLATION OF ITS FIDUCIARY DUTIES AND UMIFA.

276. UMIFA states:

> In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institutional in carrying out [its mission], its present and anticipated financial requirements, expected total return on its investments, price level, and trends and general economic conditions.

N.J.S.A. 15:18-16.

277. UMIFA incorporates the common law's "prudent investor rule," which imposes duties of care, skill, and caution on the Board. The prudent-investor rule requires the Board to exercise reasonable effort and diligence in making and monitoring investments. Trustees without investment experience must exercise the skill of an ordinary person; members with investment experience must employ their enhanced skills.

278. In addition to the duties of care and skill, the prudent-investor rule imposes a duty of caution, which requires the Board to use reasonable care and skill to minimize "diversifiable risks."

279. The starting point for minimizing diversifiable risk is an asset allocation plan based on Stevens' investment policy.

280. After a plan exists, one of the Board's duties is to oversee the Endowment's investment portfolio to maintain the asset allocation plan.

281. As the Commonfund Institute, one of Stevens' investment advisers, explains:

> In time, as markets change, the portfolio's actual asset allocation will deviate from the targets set down in the policy statement. This is a natural consequence of the markets . . . . Therefore, adjustments must be made on a regular basis.
>
> The theory underlying asset allocation strategy prescribes periodic rebalancing to bring the portfolio back into targeted ranges. This means selling some of the appreciated assets and reinvesting the proceeds in asset categories that have decline.

282. During the period of 1999 to the present, the Board delegated investment-related responsibilities to an investment committee ("Investment Committee"),[18] which is "responsible for the investment and reinvestment" of Stevens' securities and financial assets, and for setting "guidelines for the management by the Treasurer."

283. The Investment Committee has "direct responsibility for the oversight and management of the investments" of Stevens.

284. The Investment Committee retained an external adviser to monitor the Endowment's investment portfolio and to provide general advice.

[18] The investment committee under the 1999 Bylaws and investment subcommittee under the 2005 Bylaws are both refereed to as the Investment Committee herein.

285. The investment policy established in March 2005 ("2005 Investment Policy") was to "invest its endowment principal to achieve growth of both principal value and income over time sufficient to preserve and/or increase real (inflation adjusted) purchasing power of the assets."

286. The 2005 Investment Policy also stated: "[c]areful management of the assets is designed to ensure a total return, income plus capital change, necessary to preserve and enhance the real purchasing power of the principal of funds, and at the same time provide a dependable source of income to meet budgeted requirements."

287. The Investment Committee's charter states that: "In recognition of the prudence required of fiduciaries, as well as control of volatility, <u>reasonable diversification will be sought for investment assets</u>."

288. The 2005 Investment Policy included the following Asset Allocation Plan:

Asset Class	Neutral Value/Target
Domestic Large Cap Growth	22.50%
Domestic Large Cap Value	22.50%
Domestic Small Cap Growth	10.00%
Int'l Developed Countries	7.50%
Int'l Emerging Market Countries	2.50%
Non-Traditional (long term private capital)[19]	15.00%
Total Equity	80.00%
Domestic Bonds	12.50%
High-yield Securities	3.75%
Cash or Short Term	3.75%
Total Fixed Income	20.00%

[19] The 2005 Investment Policy expressly authorized investment in "alternatives," including "equity-oriented or market-neutral hedge funds . . . which [could] be both domestic and international market oriented . . . [and] viewed as equity-like or fixed income-liked strategies as defined by their structure and exposures."

During all relevant times, the above Asset Allocation Plan was also the targeted asset allocation for the Endowment's investment portfolio.

289. Both the 2005 Investment Policy and Investment Committee's charter require the Committee to engage in a "rebalancing" review of the Endowment portfolio's asset allocation whenever an asset class is below or above 15% of the neutral value in the Asset Allocation Plan.

290. The purpose of "rebalancing" is to ensure that the Endowment portfolio "maintain[s] the long-term policy asset allocation within the targeted ranges while contributing to controlling portfolio risk."

291. Through the rebalancing process, the Endowment portfolio's "assets [must] be rebalanced within the stated ranges on a uniform basis to reduce portfolio expenses as far as practicable."

A. The Investment Committee Failed to Adequately Monitor and Diversify the Endowment Portfolio.

292. From 2005 to the present, the Investment Committee significantly increased the Endowment portfolio's alternative investments[20] in violation of Stevens' Asset Allocation Plan and investment policies.

293. During the same period, the Investment Committee failed to oversee the Endowment's investment portfolio's asset allocation as required by UMIFA, the 2005 Investment Policy, and the Committee's charter.

294. In December 2004, the Investment Committee replaced its external adviser with an ex-trustee who had stepped down from the Committee.

[20] Alternative investments is defined to include private equity.

295. The Investment Committee retained the external adviser to perform due diligence and provide investment recommendations.

296. The Investment Committee voted on investment decisions during the period of December 2004 to the present.

297. The external adviser provided reports of the Endowment's investment portfolio's investment results to the Investment Committee.

298. The external adviser's reports compared the Endowment's investment portfolio's investment performance to a custom benchmark that hypothecated investments in various indices (e.g., S&P 500, EAFE Index) under the Asset Allocation Plan.

299. During the period of 2005 to 2008, the external adviser failed to provide adequate asset allocation analyses.

300. At most Investment Committee meetings, the Committee or the external adviser noted the need to thoroughly review the Endowment portfolio's asset allocation, but then failed to act.

301. For instance, on December 5, 2006, the chair directed the Investment Committee to "discuss asset allocation on a periodic basis, in order to continue to fulfill one of its key duties," and the CFO recommended that one meeting per year be dedicated to asset allocation.

302. The Investment Committee failed to comply with the chair and CFO's instructions from the December 5, 2006 meeting.

303. The Investment Committee's few discussions regarding asset allocation during the period of 2005 to 2008 demonstrate their misunderstanding of the duty to diversify the Endowment's investment portfolio.

304. For instance, the Investment Committee did not properly consider alternative investments as a separate asset class when analyzing the Endowment portfolio's diversity.

305. The Investment Committee increased the Endowment portfolio's alternative investments, as the following chart demonstrates:

Year	**Alternative Investments/Private Equity Percentage of Endowment Portfolio**
2005	27.09%
2006	36.47%
2007	46.63%
2008	60.14%

306. Under the 2005 Investment Policy, from 2006 to the present, the Investment Committee failed to properly "rebalance."

307. By 2006, alternative investments exceeded 30% of the portfolio, which is more than 15% above the target in the Asset Allocation Plan.

308. Rather than performing a rebalancing in 2006 to "maintain the long-term policy asset allocation within the targeted ranges," as required by the 2005 Investment Policy, the Investment Committee caused the Endowment's portfolio to increase its alternative investments and become less diversified.

309. By mid-2007, the external adviser and certain Investment Committee members recognized their failure to properly oversee the Endowment portfolio's asset allocation.

310. At the June 26, 2007 Investment Committee meeting, the external adviser recommended a "special meeting to review allocations. . . . He noted that equity investments are currently greater than the allocation . . . . [and that] private equity . . . might be on the high side."

311. The Investment Committee did not have the recommended "special meeting" to discuss asset allocation.

312. Later, in October 2007, the Investment Committee chair announced he was "concerned if Stevens is properly diversified and has the right mix of investments."

313. In October 2007, the Investment Committee chair admitted that "**the Committee has been focusing on manager's performance and not on asset percentage.**"

314. By October 2007, approximately 50% of the Endowment portfolio was alternative investments.

315. As a point of comparison, a survey performed by the Commonfund Institute concluded that, on average, university endowments similar in size to the Endowment only invested 21.9% in alternative investments and hedge funds.

316. The Investment Committee diminished the Endowment by failing to diversify.

317. If Stevens' internal valuations are accurate, as of April 20, 2009, the Endowment portfolio was worth less than **$120 million**.

318. In 2000, the Endowment's investment portfolio was worth approximately $158 million.

319. The Endowment's investment portfolio's real fair market value is less than $120 million.

320. For at least $19 million of the alternative investments, Stevens' internal valuation only reflects its capital contributions, and does not reflect the current market value or its actual commitment to the fund.

321. The Investment Committee cannot liquidate most of the Endowment portfolio's current alternative investments due to the terms of the underlying agreements.

322. As a result, based on Stevens' internal valuation of the Endowment portfolio, approximately $38 million of the Endowment portfolio's investments, most of which are alternative investments, will be illiquid until October 2009.

VII. TRUSTEE-DEFENDANT BABBIO AND THE OTHER TRUSTEES EXCESSIVELY COMPENSATED DEFENDANT RAVECHE WITH BONUSES, ULTRA VIRES LOANS, AND BENEFITS.

323. Under N.J.S.A. 15A:6-8(c), the Board may provide the Stevens Administration with "reasonable compensation."

324. Under N.J.S.A. 15A:6-11, the Board is prohibited from loaning funds to a person that is both an officer and a trustee, like Defendant Raveche, because Stevens' "certificate of incorporation or bylaws" do not expressly authorize such loans. Even if Stevens' by-laws authorized such loans, it could only do so if two-thirds of the entire Board voted in favor of the loan.

325. As alleged below, since at least 1999, Trustee-Defendants have awarded Defendant Raveche excessive compensation, including ultra vires loans, through processes that were inadequate.

A. Trustee-Defendant Babbio Hid Defendant Raveche's Compensation from the Board.

326. At all relevant times, Trustee-Defendant Babbio has been a member and/or chair of the committee that determined Defendant Raveche's compensation.

327. The first "Compensation Committee," which functioned from 1999 to 2005, was not created in accordance with Stevens' bylaws or New Jersey law.

328. On May 27, 1999, at a joint meeting of the Executive, Investment, Audit, and Budget Committees, Trustee-Defendant Babbio announced the existence of a "Compensation Committee," which was comprised of him and the Vice Chairmen, Trustees Shulman and DeBaun.

329. Until 2003, the Board did not nominate or vote for the members of the Compensation Committee.

330. The Compensation Committee's actions until October 2005 were ultra vires and are voidable.

331. In October 2005, the Board approved the charter of a "Human Resources Committee" to "establish and administer the overall policies and plans related to compensation and benefits for the Institute." The Human Resources Committee replaced the Compensation Committee.

332. The Board minutes from 1999 to 2005 demonstrate that the Trustee-Defendants and the Compensation Committee[21] failed to adequately disclose information to the Board regarding Defendant Raveche's excessive compensation and ultra vires loans.

333. On or about February 24, 2000, the Compensation Committee retroactively increased Defendant Raveche's 2000 salary to $275,000 and authorized a "performance award" of $75,000.

334. The Committee never reported anything about Defendant Raveche's compensation to the Board at its May 25, 2000 meeting or at any other Board meeting during that year.

[21] "Compensation Committee" means the ad hoc Compensation Committee that existed from 1999 to 2005. The Board established a Human Resources Committee in October 2005.

335. On December 15, 2000, the Compensation Committee increased Defendant Raveche's salary for 2001 from $275,000 to $305,000.00, and awarded Defendant Raveche a $135,000.00 bonus for the prior year.

336. Defendant Raveche's bonus for 2000 was almost twice the amount of the preceding year's bonus.

337. At the next Board meeting on February 9, 2001, the Compensation Committee merely informed the Board that "the committee had reviewed executive compensation," but did not disclose the salary, the amount of the increase, or the bonus.

338. In November 2001, Trustee-Defendant Babbio caused Stevens to provide Defendant Raveche with an unlawful and ultra vires $500,000.00 loan.

339. Trustee-Defendant Babbio sent the following e-mail to a Stevens Administration member on November 27, 2001 under the subject "hal":

> I talked with Steve Shulman and we agreed (Ken was not available, but I'll cover this with him as soon as I can reach him.) to approve the additional mortgage for hal. We'll add the $500,000.00 to the amount owed from Vernon and place the total as a mortgage on the Vermont house. This should bring the total of all mortgage to approximately $1.3 million. Consider this your authorization to provide Hal with funds for the closing which I believe is scheduled for Thursday. Please work the details directly with him.

This e-mail was sent on a Tuesday at 5:57 p.m., and the closing occurred two days later.

340. Neither Trustee-Defendant Babbio nor any Trustee advised the Board of the loan prior to the closing of the mortgage on November 29, 2001.

341. Neither Trustee-Defendant Babbio nor any Trustee advised the Board of the loan prior to the February 8, 2002 Board meeting.

342. At the time the Compensation Committee made the loan, it intended to forgive the loan, which it also failed to disclose to the Board.

343. On December 18, 2001, the Compensation Committee increased Defendant Raveche's salary to $350,000 and awarded him a $200,000 bonus.

344. At the next Board meeting on February 8, 2002, the Compensation Committee merely informed the Board that "President Raveche's proposals were all in line with performances last year" and that "[b]onuses and increases for the year were given out."

345. On December 19, 2002, the Compensation Committee met and agreed to increase Defendant Raveche's salary to $375,000 and to award him a $220,000 bonus.

346. At the next Board meeting on February 7, 2003, the Committee did not report anything about executive compensation to the Board.

347. Likewise, the May 22, 2003 and October 10, 2003 Board meeting minutes reflect that the Compensation Committee did not make a report to the Board.

348. On January 7, 2004, the Compensation Committee met and increased President Raveche's salary to $450,000 and his bonus for the prior year to $330,000.

349. The Compensation Committee did not report these amounts or the increases to the Board at any of the 2004 Board meetings.

350. On November 23, 2004, the Compensation Committee met and increased Defendant Raveche's salary from $450,000 to $485,000 and awarded him a bonus of $310,000 for 2003.

351. The Compensation Committee did not report these increases to the Board, except that on May 26, 2005, Defendant Babbio reported that "an Executive Session discussion on Compensation resulted in no change."

352. The Compensation Committee failed to disclose its activities to the Board during most years between 2000 and 2005.

353. Trustee-A "can almost guarantee . . . that the Trustees did not know about the salary increases and the actual performance of SIT."

354. After Trustee-A learned of Defendant Raveche's 2003 cash compensation for the first time from the November 2004 article in The Chronicles of Higher Education, he concluded in an e-mail to a Stevens professor that:

> The key figure in all this is Larry Babbio who . . . is the one who organizes the compensation committee and OKs these salaries and perks. The Board never saw the details of any of the deals during my time. If you asked you got some but not all the details. It is a complicated web and needs to be audited in detail.

355. When Trustee-C learned of Defendant Raveche's cash compensation from the November 2004 article in The Chronicles of Higher Education, he stated the information was "news to me."

356. Trustee-D stated that, from 1999 to 2005, the Board never voted on, approved, or was shown comparability analyses relating to Defendant Raveche's compensation.

357. Stevens failed to adequately disclose Defendant Raveche's compensation on its Form 990s.

358. For example, during one year, between 2000 and 2005, Stevens' Form 990 understated Defendant Raveche's compensation by more than $100,000 and in its 2003 Form 990 Stevens failed to disclose the amount of the loan it had made to Defendant Raveche.

359. For FY2002 through FY2005, Stevens falsely reported that Raveche had no expense account or other allowances.

B. Insider Defendants Misrepresented and Omitted Information regarding their Procurement of Adequate Executive Compensation Comparability Analyses.

360. At the same time the Compensation Committee was hiding Defendant Raveche's total compensation from the Board, it was misrepresenting information to the Board regarding its executive-compensation comparability analyses.

361. During the period from 1999 to 2005, the Compensation Committee failed to procure executive-compensation comparability analyses.

362. In 1999, Trustee-Defendant Babbio falsely represented that the Compensation Committee had procured a report concluding that "the President's compensation . . . was in line with those of comparable schools" through a process that "resolved the categorization of expenses, including Institute-funded and imputed."

363. In 2001, the Compensation Committee set Defendant Raveche's salary without any analysis or benchmarking of his salary in comparison with other schools. The Committee considered only Defendant Raveche's own submission describing his "accomplishments."

364. At the February 8, 2002 Board meeting, when a trustee inquired about Stevens' executive-compensation comparability analyses Defendant Raveche misrepresented to the Board that benchmarking "was done last year and will be done next year."

365. In fact, on December 19, 2002, the Compensation Committee increased Defendant Raveche's salary to $375,000, with a $220,000 bonus, without any benchmarking or analysis of comparability beyond Raveche's own submissions describing his "accomplishments."

366. Until 2003, the Compensation Committee had not even retained an executive compensation consultant.

367. The consultant retained in 2003 provided limited advice and counsel, and never performed adequate executive-compensation comparability analyses.

368. The consultant merely communicated with Raveche's counsel on behalf of the Compensation Committee and made a several specific recommendations to the Committee regarding Raveche's requests, including advising the Committee to treat a request for an additional ultra vires loan as part of Raveche's bonus in order to avoid "revisit[ing] the loan issue again."

369. Even after retaining the compensation consultant, in January 2004 the Compensation Committee met and again failed to engage in a comparability analysis, beyond noting that Defendant Raveche had provided a news article regarding the compensation of the President of Rensselaer Polytechnic and engaging in a cursory discussion which concluded, without any analysis or reasoning, that Stevens' "comparative group was not smaller schools but larger prestigious institutions."

370. The compensation consultant was present at the January 2004 meeting but provided no further information, data or analysis to support the Compensation Committee's conclusion about Stevens' comparative group and provided no other information about how Defendant Raveche's salary compared to that of other university presidents.

371. On November 23, 2004, the Compensation Committee increased Defendant Raveche's salary from $450,000 to $485,000 and awarded him a bonus of $310,000. The Committee did not rely on a comparability analysis in making this determination beyond the conclusory assertion that the Committee "considered competitive benchmarks in the industry."

1. Insider Defendants Failed to Disclose an Independent Compensation Consultant's Unfavorable Conclusions.

372. In April 2005, for the first time, the Compensation Committee attempted to procure an adequate executive-compensation comparability analyses from Towers Perrin HR Services ("Towers Perrin").

373. Between April and May 2005, while Towers Perrin was conducting its analysis, Trustee-Defendant Babbio and certain Stevens officers attempted to influence Towers Perrin.

374. Certain Stevens officers attempted to persuade Towers Perrin to expand Stevens' peer-group to include universities with larger budgets and student bodies.

375. For instance, in one e-mail exchange during April 28, 2005 and April 29, 2005, Stevens CFO at the time urged Towers Perrin to include Carnegie Mellon, MIT, California Technical Institute, and others in Stevens' peer-group.

376. Towers Perrin was also asked to include Case Western.

377. In response, Towers Perrin explained that those universities were not in Stevens' peer group:

> Size-based criteria, and particularly revenue operating budget, typically best predict compensation levels and are therefore most important to consider when evaluating organizations for a peer group. . . . . That explains why Carnegie Mellon, MIT and CalTech are not appropriate schools to include in the peer group.

378. Towers Perrin's internal e-mails demonstrate that the consultants felt that Stevens' involvement was problematic.

379. Towers Perrin's internal e-mails show that the consultants suspected that Stevens' officers were attempting to manipulate the analyses to protect their compensation.

380. Towers Perrin concluded that:

a. "[C]ash compensation levels (base salary and bonus) for virtually all the executives fall above the 90th percentile."

b. "[B]onuses provided to executives at Stevens are not typical market practices among academic institutions. . . In addition, the level of bonus opportunity is above competitive practice where bonus programs are in place."

381. Towers Perrin's report concluded that, for 2005, Raveche's salary fell above the 90th percentile of the selected peer group based, in part, on the information in the following chart:

Institution	Operating Expenses	Total Number of Students	President's Total Cash Compensation
Rochester Institute of Technology	$436.7	15,000	$341,903
Rensselaer Polytechnic	$331.0	7,500	$898.490
Drexel	$378.3	12,600	$889,477
Lehigh University	$285.3	6,600	$511,711
Illinois Institute of Technology	$190.1	6,400	$335,216
Worcester Polytechnic Institute	$154.2	3,200	$394,050
Polytechnic University	$104.8	2,800	$550,932
Stevens	**$123.2**	**4,000**	**$813,000**

382. In reviewing Stevens' practice of loaning funds to Raveche, the Towers Perrin Report concluded that "this is no longer allowed under Sarbanes-Oxley regulations and while Stevens is an exempt organization, many similar organizations are choosing to adhere to these stricter guidelines."

383. On the issue of Stevens forgiving Raveche's debt, the Towers Perrin Report was unequivocal: "The forgiveness of mortgage loans falls ***considerably*** above market practice."

384. After the May 25, 2005 Compensation Committee meeting, Trustee-Defendant Babbio dismissed Towers Perrin's report, which was never provided to the Board.

385. The Board was not even informed that Towers Perrin was retained.

2. Defendants Procured an Inadequate Executive Compensation Comparability Analysis.

386. In July 2005, the Trustee-Defendant Babbio retained another compensation consultant, Hewitt Associates LLC ("Hewitt").

387. Upon information and belief, Trustee-Defendants retained Hewitt because Towers Perrin's conclusions demonstrated that the Compensation Committee had excessively compensated Defendant Raveche.

388. On November 14, 2005, Hewitt met with the Human Resources Committee, to present a "preliminary report" entitled "Competitive Market Analysis for Executive Positions."

389. Hewitt's preliminary report included three peer groups: (a) universities "with market positions having similar scope and responsibility" including "doctorial institutions"; (b) "universities with budgets greater than $50 million"; and (c) a "select group of Elite Universities."

390. Unlike Towers Perrin's report, Hewitt's preliminary report only analyzed total cash compensation (i.e., bonus and salary).

391. Hewitt has not analyzed Defendant Raveche's loans, loan forgiveness, housing, tuition, travel expenses, retirement benefits, and other expenses.

392. Hewitt's preliminary report concluded that Defendant Raveche's total cash compensation of $795,000.00 for 2004 was 62% above 75% of the peer group.

393. Hewitt's preliminary report explained that "total compensation for an incumbent is considered market if it is +/-15% of market data," which meant that Defendant Raveche's total compensation was far above market.

394. Defendant Raveche attended the November 14, 2005 Human Resources Committee meeting with Hewitt.

395. At the November 14, 2005 Human Resources Committee meeting, Defendant Raveche instructed Hewitt to modify the Stevens' peer group to include "RPI, Drexel, Case, CMU, and John Hopkins."

396. Months earlier, Towers Perrin had concluded that some of those universities were not in Stevens' peer group.

397. After the November 14, 2005 Human Resources Committee meeting, Hewitt followed Defendant Raveche's instructions and modified Stevens' peer group.

398. On November 22, 2009, Hewitt presented a "Report on Compensation Strategy and Competitive Market Analysis for Executive Positions" ("Hewitt 2005 Report") to the Compensation Committee.

399. Hewitt 2005 Report's peer group for Defendant Raveche was improper.

400. Hewitt 2005 Report's peer group for Defendant Raveche included a peer-group category called "Relevant Others," which included only three members.

401. Hewitt 2005 Report's failed to disclose the identity of the members of the "Relevant Others" peer group.

402. Upon information and belief, the three "Relevant Others" were RPI, Drexel, and John Hopkins.

403. The Hewitt 2005 Report's averaging formula for the total cash compensation of the peer groups differed from the formula in the preliminary report.

404. Rather than adding the peer groups together and dividing by the number of peer groups, as in the preliminary report, Hewitt excluded the lowest of the four peer groups in its 2005 Report.

405. The following chart compares the formulas and peer groups in Hewitt's preliminary and 2005 reports:

Peer-Group Source	**Hewitt Preliminary Report**	**Hewitt 2005 Report**
CUPA-A	$367,900.00	$367,900.00[22]
GSNP	$508,000.00	$610,000.00
"13 Elite Schools"	$592,900.00	$592,900.00
"Relevant Others"	n/a	$650,300.00
Total Avg. Compensation (75%)	**$489,700.00**	**$617,000.00**

406. As a result, the Hewitt 2005 Report concludes that Defendant Raveche's total compensation was 29% above the 75th percentile, rather than 62% above as in the preliminary report.

407. The Board was never provided with the Hewitt 2005 Report or the preliminary report.

408. The Board was only told of the Hewitt 2005 Report on a December 9, 2005 teleconference.

409. Trustee-Defendant Babbio provided few and inadequate details to the Board regarding the Hewitt 2005 Report.

[22] Hewitt did not include this figure when averaging the total average cash compensation of Defendant Raveche's supposed peers. If Hewitt had included this figure, the total average cash compensation (75%) would have been less than $555,000.00.

410. On the issues of bonuses, the Board was misinformed regarding Hewitt's conclusions.

411. During the December 9, 2005 teleconference, the Board was told that "Hewitt's results found that bonuses, while not common in higher education, were becoming more popular as a component of compensation plans."

412. In truth, Hewitt's 2005 Report concluded that "Stevens' bonuses [were] well above market values, for most roles."

413. During the November 28, 2005 Human Resources Committee meeting, Hewitt explained that "most of the industry does not pay bonuses."

B. Defendants Falsely Informed the Board that Stevens Had Adequate Executive Compensation Policies for Defendant Raveche.

414. From 1999 to the present, the Compensation and then Human Resources Committees regularly promised the Board that it would establish executive compensation policies and performance metrics.

415. In 1999, Trustee-Defendant Babbio falsely represented that the Compensation Committee had created "[c]ompensation standards for the President and senior staff."

416. In 1999, Trustee-Defendant Babbio falsely stated to the Board that Stevens' compensation practices were "in accord with IRS regulations."

417. On October 7, 2005, the Human Resources Committee acknowledged that it needed to develop criteria for compensation decisions and stated that it would do so in 2006.

418. At that same meeting, Trustee Shulman agreed that a executive compensation philosophy was necessary, and "stated that bonus awards must require

extraordinary performance. The approach to the business of the Institute has changed. All Board members must understand the financial status of the Institute."

419. In November 2005, the Human Resources Committee admitted that it had not established executive compensation policies and performance metrics.

420. In November 2005, Hewitt instructed the "Board, and management [to] reach a formal agreement on the [executive compensation policy] and conduct regular, periodic reviews . . . every 2-3 years."

421. Hewitt provided a suggested executive compensation policy to the Human Resources Committee.

422. On November 28, 2005, Trustee-Defendant Babbio concluded "that the final compensation philosophy needs to be published in the annual report and other documents."

423. In December 2005, the Human Resources Committee promised the Board that executive compensation policies would be established that included "fiscal requirements and financial controls [as] key priorities."

424. The Human Resources Committee also promised the Board in December 2005 that "[m]etrics and measurable actions will be set in advance for the year-end 2006 assessment and will be reviewed by Hewitt."

425. At the February 2006 Human Resources Committee meeting, copies of Hewitt's proposed executive compensation policy were circulated and members were instructed to provide comments to Stevens' secretary.

426. Since February 2006, the Human Resources Committee members raised the need to adopt executive compensation policies and guidelines.

427. Neither the Human Resources Committee nor the Board has established executive compensation policies or performance metrics.

428. Defendant Raveche's June 2007 Employment Agreement notes the absence of executive compensation policies and performance metrics.

429. In October 2007, the Human Resources Committee acknowledged that it needed "additional details and metrics" before an Executive Performance Bonus Plan could be adopted.

430. In February 2008, Hewitt noted Stevens' lack of executive compensation policies and performance metrics in a reasonableness analysis under Section 4941 and 4958 of the IRC. Hewitt's letter concluded that:

> **[W]e believe that the Committee needs to fully discuss, agree upon and articulate an Executive Compensation Philosophy and Strategy, which goes further than [a] general standard.** This action will formalize and document Compensation Committee's intentions and standards for executive compensation.

431. Hewitt's February 2008 letter did not opine on whether total cash compensation was reasonable under Sections 4941 and 4958 because Stevens lacked adequate executive compensation policies and performance metrics.

432. Less than one week after its initial February 2008 letter, Hewitt sent a revised letter to the Compensation Committee stating that:

> [W]e believe that the Committee has fully discussed, agreed upon and articulated an Executive Compensation Philosophy and Strategy in 2005. This process formalized and documented the Compensation Committee's intention and standards for executive compensation . . . [which] are to: 1) offer base salary levels that approximate the 50^{th} percentile of the defined market place, which include 'elite colleges and universities', and 2) through performance based cash bonuses, target the 75^{th} percentile of cash compensation for the defined market.

Hewitt then concluded that "total cash compensation is assessed to be 'reasonable' under Internal Revenue Service Code Sections 4941 and 4958."

433. But the Human Resources Committee never adopted an "Executive Compensation Philosophy and Strategy" in 2005.

434. In 2006 and 2007, the Human Resources Committee repeatedly acknowledged the need to adopt such a policy but never did so and has never voted on that or any other document regarding a comprehensive compensation philosophy and strategy.

C. Defendant Raveche Has Been Excessively Compensated.

435. On November 18, 2005, the Chronicles of Higher Education published a compensation survey concluding that, for FY2004, Defendant Raveche was the eighth highest paid president of all Doctoral/Research Universities, with $858,774.00 in cash compensation.

436. For FY2003, Defendant Raveche's total cash compensation of $696,965.00 made him the tenth highest paid college president in the United States.

437. For FY2003, Stevens' operating budget was approximately $123 million.

438. Eight of the nine college president with higher total cash compensation for FY2003 served at schools with operating budgets exceeding $1 billion.

439. Defendant Raveche's total cash compensation has more than doubled since 2000, as the following chart demonstrates.

	Salary and Bonus
FY1999	$362,458.00
FY2000	$447,606.00
FY2001	$489,987.00
FY2002	$478,743.00
FY2003	$678,965.00
FY2004	$837,075.00
FY2005	$896,326.00
FY2006	$791,620.00
FY2007	$770,645.00
FY2008	$1,089,780.00

440. Further, each year since at least 2000, Stevens provided Defendant Raveche with a $54,000.00 housing allowing, a $24,000.00 tuition allowance, and a $12,777.00 auto allowance. In 2003, Stevens increased Raveche's annual automobile allowance to $14,110.00.

441. Stevens also contributed to Defendant Raveche's retirement benefit plan on an annual basis. In 2008, that contribution reached $29,905.00.

442. In addition to total cash compensation, since 1995 Trustee-Defendants have provided Defendant Raveche with more than $1.8 million in <u>ultra</u> <u>vires</u> loans.

443. The loans to Defendant Raveche are at below-market interest rates, typically 2%. In 2002, for example, the loans cost Stevens $52,476.24. In 2003 and 2004, the loans cost Stevens $24,000 per annum

444. The low interest loans and excessive salary awarded to Raveche do not comply with federal law, including the IRS' guidelines.

445. Under <u>N.J.S.A.</u> 15A:6-11, all of the loans to Defendant Raveche constitute <u>ultra</u> <u>vires</u> transactions.

446. Defendant Raveche's 2007 Employment Agreement forgives approximately $928, 313.99 of his outstanding ultra vires loans.

447. The provision forgiving loans in Defendant Raveche's 2007 Employment is ultra vires and unlawful.

CONCLUSION

448. On August 12, 2009, the Attorney General sent a letter to the Board explaining the results of the Attorney General's investigation, and requesting a meeting on August 20, 2009 with the disinterested members of the Board. Despite the Attorney General's willingness to meet with the Board to explain the results of this office's investigation, the Board members' inability or unwillingness to attend a meeting on August 20, 2009 delayed the Attorney General's meeting with the Board until September 2, 2009.

449. At the September 2, 2009 meeting with the Board, the Attorney General provided a detailed summary of the results of this office's investigation and the allegations and causes of action in this Complaint. On that date, the Attorney General advised the Board that if the dispute was not settled within two weeks a complaint would be filed.

450. On September 2, 2009, the Board established a Special Committee.

451. The Special Committee was not properly constituted or given adequate authority.

452. The Special Committee was made up of a majority of potentially conflicted and interested Board members, who had participated in and were aware of various instances of misconduct. For instance, Trustee Shulman was the chair of the Special Committee.

453. The Special Committee was not delegated authority to establish Stevens' settlement or litigation position or otherwise act independently on behalf of Stevens. Rather, the Special Committee was only given an advisory role.

454. On September 10, 2009, this office provided the Special Committee members and counsel with access to a sixty-page and 372 paragraph "Schedule of Allegations," which includes some of the allegations in this Complaint, and provided a copy of an "Assurance of Voluntary Compliance," which proposed settlement terms.

455. On September 15, 2009, this office extended the settlement period to September 23, 2009, and again invited counsel of Stevens to discuss settlement.

456. On September 16, 2009, despite this office's September 15 letter, Stevens filed a baseless complaint against this office, which attempted to, among other things, immediately seal this case from the public.

457. The Court denied Stevens' request for temporary restraints seeking the relief in the foregoing paragraph.

458. At no time did the Special Committee or the Board propose a settlement counter-offer or attempt to engage in substantive settlement discussions with this office. In fact, even after the hearing on September 16, 2009, Stevens did not attempt to contact this office.

459. The Board's response to this office's settlement efforts is emblematic and a product of some of the Board's failure since 1999 that are alleged in this Complaint.

[25] The above facts are alleged in support of all causes of action, and are incorporated into each cause of action as if fully alleged therein.

CAUSES OF ACTION[25]

COUNT I – FAILURE TO MAINTAIN BOOKS, RECORDS, AND ACCOUNTS
(As to Defendants)

460. As trustees and officers of Stevens, under the Act and common law, Insider Defendants must, among other things:

a. must "discharge their duties in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions." N.J.S.A. 15A:6-14; and

b. operate and oversee Stevens in accordance with their fiduciary duties of care, candor, loyalty, good faith and obedience. N.J.S.A. 15A:6-14.

461. As trustee of the charitable trust in the Endowment, Stevens must manage the charitable trusts in accordance with its fiduciary duties under common law, the Act, and UMIFA.

462. Under common law, the Act, and UMIFA, Defendants must maintain books, records, and account in accordance with their fiduciary duties to Stevens and the charitable trusts in the Endowment. Stevens' "books and records of account and minutes of the proceedings of its members and board and executive committee." N.J.S.A. 15A:5-24.

463. Defendants must implement adequate internal control and accounting policies to monitor and record the various charitable trusts and permanently restricted assets of the Endowment.

464. Defendants' financial management must ensure the Board's receipt of "written reports setting forth financial data concerning the corporation and . . . books of account or reports of the corporation." N.J.S.A. 15A:6-14.

465. Defendants breached their fiduciary duties through their grossly-negligent internal control and accounting practices and policies, and failure to remedy them after multiple instructions from Stevens' independent auditors.

466. Defendants breached their fiduciary duties through their mismanagement of permanently restricted assets, as alleged herein.

467. Due to Defendants' breach of their fiduciary duties Stevens' financial disclosures are inaccurate and unreliable.

468. Due to Defendants' breach of their fiduciary duties, Stevens and the public lacks accurate and reliable records of Stevens' management of the Endowment, including the charitable trusts.

469. Due to Defendants' breach of their fiduciary duties, Stevens and the public lacks accurate and reliable records for 2000 to the present for the following:

a. the Endowment's permanently restricted, quasi-endowment, temporarily restricted, and unrestricted assets, and their respective donor-imposed and/or Board-imposed restrictions;

b. appropriations, disbursements, and expenditures from the Endowment, including its permanently restricted, quasi-endowment, temporarily restricted, and unrestricted assets, and their respective donor-imposed and/or Board-imposed restrictions;

c. the actual spending rate for the Endowment and its various permanently restricted, quasi-endowment, temporarily restricted, and unrestricted assets;

d. all loans from the Endowment and its various permanently restricted, quasi-endowment, temporarily restricted, and unrestricted assets, and the purposes of the loans, repayment terms, Board-approval processes, and repayment history;

e. all instances when the Endowment, restricted assets, and charitable trusts were pledged or collateralized;

f. the effect of the Endowment loans and collateralizations on the Endowment's investments;

g. all inter-company transfers among Stevens and any of its affiliates and subsidiaries;

h. all penalties paid by Stevens to the IRS or any other governmental entity;

i. the value of the assets exchanged among the Taylor Trust and Endowment under the Jan. 2009 Resolution, and any attendant harm to the Taylor Trust or other charitable trusts of the Endowment due to the Jan. 2009 Resolution;

j. waste and other harm caused by the financial mismanagement alleged herein; and

k. harm caused to the Taylor Trust and other assets of the Endowment due to violations of UMIFA.

470. The Attorney General and New Jersey are entitled to a judgment directing Defendants to account for the foregoing.

COUNT II – GROSSLY-NEGLIGENT SPENDING AND BORROWING
(As to Defendant Raveche)

471. As an officer of Stevens, under the Act and common law, Defendant Raveche must, among other things:

a. must "discharge their duties in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions." N.J.S.A. 15A:6-14; and

b. operate and oversee Stevens in accordance with their fiduciary duties of care, candor, loyalty, good faith and obedience. N.J.S.A. 15A:6-14.

472. Defendant Raveche's powers are limited to those "provided in the bylaws, or [as] determined by resolution of the board not inconsistent with the bylaws." N.J.S.A. 15A:6-15.

473. Defendant Raveche and the Stevens Administration excessively spent and borrowed to fund the Growth Plan, as alleged herein.

474. Defendant Raveche and the Stevens Administration spent more than the Board-approved spending rates, imprudently appropriated gifts and bequests to pay operating expenses, unlawfully invaded permanently restricted assets, unlawfully collateralized the Endowment, and excessively borrowed through lines of credit.

475. Insider Defendants acted in bad faith through the misconduct alleged herein.

476. Defendant Raveche and the Stevens Administration spending and borrowing included unlawful ultra vires transactions, under N.J.S.A. 15A:3-2, beyond the scope of the powers delegated to them by the bylaws or board resolution. N.J.S.A. 15A:6-15.

477. Insider Defendants and the Stevens Administration breached their fiduciary duties of candor, loyalty, and good faith by misrepresenting and failing to adequately disclose financial information to the Board, including their spending and borrowing practices and Stevens' operating results.

478. Defendant Raveche and the Stevens Administration's excessive spending and borrowing breached their fiduciary duty of care under N.J.S.A. 15A:6-14 and common law, and damaged Stevens and assets of the Endowment.

479. The Attorney General and New Jersey are entitled to a judgment directing Defendant Raveche to repay Stevens and the Endowment for damage, including waste, caused by his misconduct.

COUNT III – GROSSLY-NEGLIGENT FINANCIAL MANAGEMENT OF STEVENS
(As to Defendant Raveche)

480. Under the Act and common law, Defendants must operate and oversee Stevens in accordance with their fiduciary duties of care, candor, loyalty, good faith and obedience. N.J.S.A. 15A:6-14.

481. Defendant Raveche breached his fiduciary duties, including those under N.J.S.A. 15A:6-14, through negligent internal control and accounting practices, and failing to remedy them after multiple instructions from Stevens' independent auditors.

482. Defendant Raveche breached his fiduciary duties of candor, loyalty, and good faith by failing to adequately disclose the independent auditor's conclusions to the Board.

483. Defendant Raveche's financial mismanagement damaged Stevens.

484. The Attorney General and New Jersey are entitled to a judgment directing Defendant Raveche to repay Stevens and the Endowment for damage, including waste, caused by his misconduct.

COUNT IV – MISMANAGEMENT OF CHARITABLE TRUSTS AND RESTRICTED ASSETS
(As to Defendant Raveche and Stevens)

485. Defendant Raveche and Stevens must manage, account for, invest, and spend the Endowment in accordance with their common law and statutory fiduciary duties of care, candor, loyalty, good faith and obedience. N.J.S.A. 15A:6-14.

486. Defendant Raveche and Stevens breached their fiduciary duties, including those under N.J.S.A. 15A:6-14, through their negligent internal control and accounting practices relating to charitable trusts, gifts, and restricted assets of the Endowment, and by failing to remedy them after multiple instructions from Stevens' independent auditors.

487. Defendant Raveche and Stevens breached their fiduciary duties of candor, loyalty, and good faith by failing to adequately disclose the independent auditor's conclusions to the Board regarding Stevens' internal control and accounting practices relating to gifts and restricted assets of the Endowment.

488. Defendant Raveche and the Stevens Administration caused damage, including waste, to gifts, charitable trusts, and permanently restricted assets of the Endowment.

489. The Attorney General and New Jersey are entitled to a judgment directing Defendants to account for and repay the Endowment for the damage caused by their misconduct.

COUNT V – MISUSE OF CHARITABLE TRUSTS AND RESTRICTED ASSETS
(As to Defendant Raveche and Stevens)

490. Under the Act and common law, Defendants are prohibited from spending, investing, restricted assets of the Endowment in violation of donor- and Board-imposed restrictions. N.J.S.A. 15A:3-2; N.J.S.A. 15A:6-12.

491. Defendants spent, managed, invested, and collateralized certain restricted and quasi-endowment assets of the Endowment in violation of donor- and Board-imposed restrictions.

492. Defendants breached their fiduciary duties, including those under N.J.S.A. 15A:6-14, and engaged in unlawful ultra vires transactions under N.J.S.A. 15A:3-2, through such misconduct.

493. Defendants' misconduct harmed Stevens and restricted assets of the Endowment.

494. The Attorney General and New Jersey are entitled to a judgment directing Defendants to repay for damage, including waste and diversions, caused by their misconduct.

COUNT VI – MISUSE OF ENDOWMENT ASSETS UNDER N.J.S.A. 15A:6-12
(As to Trustee-Defendant Babbio)

495. Under N.J.S.A. 15A:6-12 of the Act, trustees that vote for, or concur in connection with any of the following corporate actions are liable:

> The distribution or disposition of any asset in violation of [the Act], the certificate of incorporation, the bylaws, or the terms, conditions, or restrictions, expressed or implied, imposed upon the corporation upon the acceptance of the asset by the corporation[.]

496. Defendants spent, managed, invested, and collateralized certain restricted and quasi-endowment assets of the Endowment in violation of donor- and Board-imposed restrictions.

497. Upon information and belief, Trustee-Defendant Babbio voted for or concurred to certain instances of the Stevens Administration's misconduct.

498. Trustee-Defendant Babbio was aware of the allegations in this Complaint, including those relating to Defendant Raveche and the Stevens Administration's financial mismanagement, and were aware of the harm caused to Stevens and the Endowment.

499. Trustee-Defendant Babbio acted in bad-faith by failing to disclose such misconduct, and consciously disregarding his duty to advise the Board of such misconduct and the resulting harm.

500. Trustee-Defendant Babbio did not act in "good faith" in reliance on appropriate representations, opinions, and documents, as contemplated under N.J.S.A. 15A:6-14.

501. Defendants' misconduct harmed Stevens and gifts, trusts, and restricted assets of the Endowment.

502. The Attorney General and New Jersey are entitled to a judgment directing the Trustee-Defendant Babbio to repay Stevens for damage, including waste, caused by their misconduct.

COUNT VII – BREACH OF FIDUCIARY DUTY OF OBEDIENCE
(As to all Defendants)

503. Defendants have a common law fiduciary duty of obedience that obligates them to, among other things: strictly abide by donor- and Board-imposed restrictions on restricted assets of the Endowment; operate Stevens in accordance with its charter, bylaws, and charitable purpose through their best judgment; and protect Stevens and the assets of the Endowment from misuse and mismanagement.

504. Insider Defendants breached their fiduciary duty of obedience by spending, managing, investing, and collateralizing certain restricted and quasi-endowment assets of the Endowment in violation of donor- and Board-imposed restrictions.

505. Trustee-Defendant Babbio breached his fiduciary duty of obedience by voting for, participating in, and failing to stop such misconduct.

506. Defendants' misconduct harmed Stevens and restricted assets of the Endowment.

507. The Attorney General and New Jersey are entitled to a judgment directing Defendants to repay for the damage, including waste and diversions, caused by their misconduct.

COUNT VIII –BREACH OF DUTY OF CANDOR, LOYALTY, AND GOOD FAITH
(As to Insider Defendants)

508. Insider Defendants breached their common law and statutory fiduciary duties of candor, loyalty, and good faith, including those under N.J.S.A. 15A:6-14, by misrepresenting and failing to adequately disclose information to the Board regarding the misconduct alleged herein, including the excessive spending and borrowing, financial mismanagement, misuse of Endowment assets, and operating results of Stevens.

509. In certain instances, as alleged herein, Insider Defendants' misconduct mislead the Board and limited the Board's access to material information rendering it unable to properly perform its oversight function.

510. Insider Defendants' breach of their fiduciary duties of candor, loyalty, and good faith permitted Defendants' misconduct to occur, which damaged Stevens and the Endowment.

511. The Attorney General and New Jersey are entitled to a judgment directing Insider Defendants to repay Stevens and the Endowment for damage, including waste and diversions, caused by their misconduct.

COUNT IX –FAILURE TO MONITOR
(As to Trustee-Defendant Babbio)

512. Trustee-Defendant Babbio must oversee Stevens and the Endowment in accordance with his common law and statutory fiduciary duties of care, loyalty, and good faith, including those under N.J.S.A. 15A:6-14.

513. Trustee-Defendant Babbio was aware of the Defendant Raveche and the Stevens Administration's misconduct and consciously disregarded his duty to advise the Board.

514. Trustee-Defendant Babbio was aware that Stevens' internal control and accounting practices were grossly-negligent, and rendered Stevens' financial disclosures inaccurate and unreliable.

515. Trustee-Defendant Babbio's failure to act and monitor damaged Stevens and the Endowment.

516. The Attorney General and New Jersey are entitled to a judgment directing Trustee-Defendant Babbio to repay Stevens for damage, including waste and diversions, caused by his misconduct.

COUNT X – BREACH OF FIDUCIARY DUTIES UNDER UMIFA
(As to Stevens)

517. UMIFA states:

> In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care ad prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institutional in carrying out [its mission], its present and anticipated financial requirements, expected total return on its investments, price level, and trends and general economic conditions.

N.J.S.A. 15:18-16.

518. UMIFA required the Investment Committee to monitor and diversify the Endowment investment portfolio.

519. Stevens, through the Investment Committee, breached its fiduciary duties under UMIFA through the misconduct alleged herein, including by investing up to 50% of the Endowment portfolio in alternative investments, failing to diversify the Endowment portfolio,

and failing to engage in a rebalancing as required by Stevens' investment policy and the Committee's charter.

520. Stevens, through the Investment Committee, also breached its fiduciary duties under UMIFA to the Taylor Trust.

521. The Attorney General and New Jersey are entitled to a judgment directing Stevens to account and repay for damage caused to the assets of the Endowment.

COUNT XI – BREACH OF FIDUCIARY DUTIES FOR AWARDING EXCESSIVE COMPENSATION
(As to Trustee-Defendant Babbio)

522. Under N.J.S.A. 15A:6-8(c), the Board is empowered to provide Defendant Raveche was "reasonable compensation."

523. Trustee-Defendant Babbio was a member of the Compensation Committee and Human Resource Committee from 1999 to the present.

524. The Compensation and Human Resource Committees provided Defendant Raveche with excessive compensation, which was more than "reasonable" and therefore an ultra vires transaction.

525. Trustee-Defendant Babbio failed to advise the Board of Defendant Raveche's total compensation and misrepresented information to the Board regarding the processes employed to establish the compensation.

526. Defendant Raveche's compensation was established without the use of adequate executive compensation policies, performance metrics, and comparability analyses.

527. Trustee-Defendant Babbio breached his common law and statutory fiduciary duties of care and good faith, including those under N.J.S.A. 15A:6-14, by awarding Defendant Raveche excessive and unreasonable compensation.

528. Trustee-Defendant Babbio engaged in a ultra vires transaction in violation of N.J.S.A. 15A:3-2 and N.J.S.A. 15A:16-12 by awarding Defendant Raveche excessive and unreasonable compensation.

529. The Attorney General and New Jersey are entitled to a judgment directing Trustee-Defendant Babbio to repay Stevens for all ultra vires, unreasonable, and improper payments of compensation and benefits to Defendant Raveche.

COUNT XII – AWARDING ULTRA VIRES LOANS UNDER N.J.S.A. 15A:16-12
(As to Trustee-Defendant Babbio)

530. Under N.J.S.A. 15A:16-12, any trustee that votes or concurs in connection with the "making of any loan to an officer, trustee or employee of the corporation contrary to [the Act] . . . shall be jointly and severally liable to the corporation for the benefit of the corporation and its creditors, members or other interested persons to the extent of any injury suffered by those persons, respectively, as a result of the action."

531. Under N.J.S.A. 15A:6-11, Stevens may not loan Defendant Raveche funds.

532. Trustee-Defendant Babbio engaged in ultra vires transactions in violation of N.J.S.A. 15A:3-2 and N.J.S.A. 15A:16-12 by causing Stevens to loan Defendant Raveche funds.

533. The Attorney General and New Jersey are entitled to a judgment directing Trustee-Defendant Babbio to repay Stevens for all ultra vires loans and unreasonable and improper payments of compensation and benefits to Defendant Raveche.

COUNT XIII – ENJOINMENT OF FORGIVENESS OF ULTRA VIRES LOANS
(As to Stevens)

534. Under N.J.S.A. 15A:6-11, Stevens may not loan Defendant Raveche funds.

535. Trustee-Defendant Babbio engaged in ultra vires transactions in violation of N.J.S.A. 15A:3-2 and N.J.S.A. 15A:16-12 by causing Stevens to loan Defendant Raveche funds.

536. The Attorney General and New Jersey are entitled to a judgment enjoining Stevens from forgiving any ultra vires loans Defendant Raveche.

COUNT XIV – BREACH OF FIDUCIARY DUTIES FOR RECEIPT OF EXCESSIVE AND UNLAWFUL COMPENSATION
(As to Defendant Raveche)

537. Defendant Raveche received unreasonable and excessive compensation and benefits that were unlawful and ultra vires.

538. As the President and trustee, Defendant Raveche owed Stevens a fiduciary duty of loyalty.

539. By accepting and receiving unlawful and ultra vires compensation and benefits, Defendant Raveche breached his fiduciary duty of loyalty.

540. By accepting and receiving unlawful and ultra vires compensation and benefits, Defendant Raveche was unjustly enriched and, under equitable principles, cannot retain such payments.

541. The Court should impose a constructive trust for the benefit of Stevens on all unreasonable and ultra vires compensation and benefits received by Defendant Raveche, and order Defendant Raveche to pay restitution to Stevens in the amount of all funds subject to the constructive trust.

COUNT XV – DECLARATORY JUDGMENT REGARDING TAYLOR TRUST

(As to Stevens)

542. Under N.J.S.A. 2A:16-53: "A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

543. Plaintiffs are the protectors of the public interest in charitable trusts.

544. Stevens is the trustee of the Taylor Trust, which is a charitable trust.

545. Stevens and Plaintiffs dispute the terms of the Taylor Trust Agreements, including the definition of "income," "permanent fund," and "principal" under those Agreements.

546. Stevens passed the unlawful and ultra vires Jan. 2009 Resolution, which reflects Stevens' interpretation of the Taylor Trust Agreements.

547. There is an actual and bona fide controversy between the parties regarding the restrictions applicable to the Taylor Trust under the Taylor Trust Agreements.

548. The Court should declare that the Taylor Trust Agreements include the spending and restrictions alleged herein.

COUNT XVI – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

(As to Insider Defendants)

549. Insider Defendants knowingly participated in the misconduct of each other and the misconduct of the Stevens Administration.

550. Insider Defendants and the Stevens Administration breached their fiduciary duties to Stevens.

551. Stevens, through the actions of Insider Defendants and the Stevens Administration, breached its fiduciary duties to certain charitable trusts.

552. Stevens and certain charitable trusts were damaged as alleged herein.

553. Defendants are jointly and severally liable for the damage caused by the misconduct of others that they aided and abetted.

554. Plaintiffs are entitled to a judgment against Defendants for damage caused to Stevens and the Endowment, including charitable assets.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for a final judgment:

(a) Finding that Defendants engaged in the misconduct alleged above;

(b) Finding that such misconduct violated Defendants' fiduciary duties and constituted ultra vires transactions;

(c) Compelling Defendants to provide an accounting as stated in Count I;

(d) Ordering Insider Defendants to pay Stevens for the damages caused by their misconduct in the amount determined by the accounting and at trial;

(e) Ordering repayment for damage caused to the Endowment, including charitable trusts and restricted assets;

(f) Imposing a constructive trust on and order Defendant Raveche to pay restitution for all unreasonable, unlawful, and ultra vires compensation, benefits, and loans;

(g) Ordering Stevens to reform its internal controls and accounting practices;

(h) Removing the Insider Defendants from the Board;

(i) Declaring that the donor-imposed restrictions, as alleged above, are applicable to the Taylor Trust under the terms of the Taylor Trust Agreement;

(j) Finding that Insider Defendants are jointly and severally liable as alleged above; and

(k) Affording Plaintiffs the other relief requested herein, and any additional relief that the Court deems just and equitable.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
Affirmative Litigation Section
Attorney for Plaintiffs

By: ______________________
Megan Lewis
Section Chief, Deputy Attorney General
Samuel Scott Cornish
Deputy Attorney General

Dated: September 17, 2009

RULE 4:5-1 CERTIFICATION

I certify that Plaintiffs have not initiated any other civil action in any court of this State against Defendants. Stevens has filed a civil suit in the Superior Court, Hudson County, Chancery Division, which asserts allegations relating to this litigation. Plaintiffs are not now engaged in any arbitration proceeding against Defendants. I certify that, at this time, Plaintiffs are unaware of any other party that must be joined in this action, but reserves the right to do so.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: ______________________
Megan Lewis
Deputy Attorney General

Dated: September 17, 2009

DESIGNATION OF TRIAL COUNSEL

Deputy Attorneys General Megan Lewis and Samuel Scott Cornish are hereby designated as trial counsel for this matter.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: ______________________
Megan Lewis
Deputy Attorney General

Dated: September 17, 2009