

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT  
Civil Action No:

KATHY ADAMS, Derivatively on behalf of )  
Nominal Defendant Perini Corporation, )

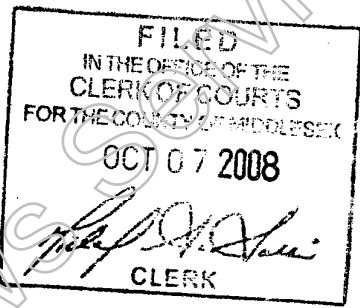
08-3740

Plaintiff, )

JURY TRIAL DEMANDED CIVIL 240.00  
0738A000010/07/08SURCHARGE 15.00  
0738A000010/07/08SECC 20.00

vs. )

RONALD N. TUTOR, WILLARD W. BRITTAIN )  
JR., MICHAEL KLEIN, ROBERT A. KENNEDY, )  
RAYMOND R. ONEGLIA, ROBERT L. MILLER, )  
PETER ARKLEY, ROBERT BAND and C. L. )  
MAX NIKIAS, )



Defendants, )

And )

PERINI CORPORATION, )

Nominal Defendant. )

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Perini Corp. ("Perini" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### NATURE OF THE ACTION

1. This is a shareholder derivative action brought by Plaintiff for the benefit of Nominal Defendant Perini against the Individual Defendants (defined *infra*) for breaches of their fiduciary duties owed to Perini during the period November 2, 2006 through the present (the “Relevant Period”).

### VENUE

2. Venue is proper in this Court because Nominal Defendant is located within this county. Further, one or more Defendant has received substantial compensation in this county by engaging in numerous activities and conducting business in this district.

### PARTIES

3. Plaintiff Kathy Adams, as set forth in the accompanying Verification, is and was during relevant times, a shareholder of Perini. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation. Plaintiff is resident of the State of Minnesota.

4. Defendant Perini and its subsidiaries offer general contracting, construction management, and design-build services to private clients and public agencies worldwide. Perini touts itself as a “leading construction services company...offering diversified general contracting, construction management and design-build services to private clients and public agencies throughout the world.” The Company’s business is conducted through three segments: building, civil, and management services. The Company’s building segment focuses on large, complex projects in the hospitality and gaming, sports and entertainment, educational, transportation, corrections, healthcare, biotech, pharmaceutical and high-tech markets. The Company’s civil segment specializes in public works construction, primarily in the northeastern

and mid-Atlantic United States, including the repair, replacement and reconstruction of the public infrastructure such as highways, bridges, mass transit systems and wastewater treatment facilities. The Company's management services segment provides diversified construction, design-build and maintenance services to the U.S. military and government agencies, as well as to surety companies and multi-national corporations in the United States and overseas.

5. Defendant Ronald N. Tutor ("Tutor") is, and was during the Relevant Period, the Chairman and Chief Executive Officer ("CEO") of Perini. Based on material, non-public information, Tutor sold 3,169,129 shares of Perini stock for proceeds of \$140,683,878 during the Relevant Period before the truth was revealed regarding the Company's business conditions. Tutor is a resident of the State of California.

6. Defendant Robert Band ("Band") is, and was during the Relevant Period, President and Chief Operating Officer of Perini. Based on material, non-public information, Band sold 88,300 shares of Perini stock for proceeds of \$4,902,214 during the Relevant Period before the truth was revealed regarding the Company's business conditions. Band is a resident of the State of Massachusetts.

7. Defendant Willard W. Brittain Jr. ("Brittain") is, and was during the Relevant Period, a director and Chairman of the Company's Audit Committee. Based on material, non-public information, Brittain sold 4,800 shares of Perini stock for proceeds of \$244,875 during the Relevant Period before the truth was revealed regarding the Company's business conditions. Brittain is a resident of the State of New Jersey.

8. Defendant Michael R. Klein ("Klein") is, and was during the Relevant Period, a director and member of the Company's Audit Committee and Chairman of the Compensation and Corporate Governance and Nominating Committee. Klein also serves as Vice Chairman of

the Board. Klein joined the Company as part of the 1997 bailout orchestrated by Tutor. Klein is a resident of the District of Columbia.

9. Defendant Robert A. Kennedy (“Kennedy”) is, and was during the Relevant Period, a director and member of the Company’s Audit Committee. Based on material, non-public information, Kennedy sold 4,000 shares of Perini stock for proceeds of \$165,474 during the Relevant Period before the truth was revealed regarding the Company’s business conditions. Kennedy is a resident of the District of Columbia.

10. Defendant Raymond R. Oneglia (“Oneglia”) is, and was during the Relevant Period, a director and member of the Company’s Audit and Corporate Governance and Nominating Committees and Chairman of the Compensation Committee. Based on material, non-public information, Oneglia sold 984, 241 shares of Perini stock for proceeds of \$47,416,314 during the Relevant Period before the truth was revealed regarding the Company’s business conditions. Oneglia is a resident of the State of Connecticut.

11. Defendant Robert L. Miller (“Miller”) is, and was during the Relevant Period, a director and member of the Company’s Compensation Committee. Miller is a resident of the State of California.

12. Defendant Peter Arkley (“Arkley”) is, and was during the Relevant Period, a director and member of the Company’s Corporate Governance and Nominating Committee. Arkley is a resident of the State of California.

13. Defendant C. L. Max Nikias (“Nikias”) is a director of the Company who was hand-picked by Tutor to the Board on September 8, 2008 pursuant to the Shareholders Agreement dated April 2, 2008 entered into between Tutor and the Company. Nikias is also a member of the Corporate Governance and Nominating Committee. Nikias is a resident of the

State of California.

14. Defendants Tutor, Band, Arkley, Brittain, Kennedy, Klein, Miller, Oneglia, Nikias and are collectively referred to herein as the "Individual Defendants."

**DUTIES OF THE INDIVIDUAL DEFENDANTS**

15. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due care, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefit. Each director and officer of the Company owes to the Company and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligation of fair dealing.

16. The Individual Defendants, because of their positions of control and authority as directors and/or officers of the Company, were able to, and did, directly and/or indirectly, exercise control over and had constructive, if not actual notice of, the wrongful acts complained herein.

17. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies and practices and controls of the Company. By virtue of such duties the Individual Defendants were required to, *inter alia*:

- a. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state

laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

- b. Exercise good faith in taking action to correct any misconduct and prevent its recurrence when placed on notice of improper or imprudent conduct by the Company and/or its employees.

18. The Individual Defendants, particularly the Officers and members of the Board of Directors and Audit Committee, were responsible for maintaining and establishing adequate internal accounting controls for the Company and to ensure that the Company's financial statements were based on accurate financial information. Further, the Audit Committee was responsible for evaluating the independence and performance of and making recommendations to the Board with respect to the appointment of the Company's independent accountants, evaluating the independence and performance of such accountants, reviewing the scope of the annual audit, and reviewing and discussing with management and the independent accountants the audited financial statements and accounting principles.

#### **SUBSTANTIVE ALLEGATIONS**

19. On November 2, 2006, Perini issued a press release announcing its financial results for the third quarter of 2006, the period ended September 30, 2006. For the quarter, the Company reported net income of \$9.6 million, diluted earnings per common share of \$0.36 and revenues from construction operations of \$773.3 million. Defendant Band, commenting on the results, stated, in relevant part, as follows:

We are pleased to report a profitable performance for the third quarter of 2006. Our backlog is converting to revenue as expected. In addition, we have added new work to our backlog during 2006 at a faster pace than our revenue burn-off, resulting in a backlog of \$9.0 billion at September 30, 2006. Given the visibility provided from this backlog, we look forward to what we anticipate will be a record year in 2007 for revenues and earnings per share.

20. Upon this news, shares of the Company's stock rose \$4.16 per share, or 17%, to

close at \$28.36 per share, on heavy trading volume.

21. On February 15, 2007, after the markets closed, Perini issued a press release announcing its financial results for the fourth quarter and year end of 2006, the period ended December 31, 2006. For the quarter, the Company reported net income of \$19.3 million, diluted earnings per common share of \$0.72, revenues from construction operations of \$944.3 million and a backlog of uncompleted construction work of \$8.5 billion. Defendant Band commented on the results stating in relevant part:

We are pleased to report a record pretax profit for 2006, led by our building and our management services segments. Our strong backlog of \$7.9 billion entering 2006 converted to revenue as expected during the year. In addition, we have added new work to our backlog during 2006 at a faster pace than our revenue burn-off, resulting in an increased backlog of \$8.5 billion at December 31, 2006. Given the visibility provided from this backlog, we look forward to what we anticipate will be a record year in 2007 for revenues and earnings per share.

With regard to the Company's outlook, the press release stated in relevant part:

Looking ahead to 2007, led by continued growth in its building segment and strong profit contributions from all of its operating segments, the Company affirms its initial guidance for 2007 revenues in the range of \$3.8 to \$4.0 billion and diluted earnings per share ranging from \$2.00 to \$2.20.

22. In response to the Company's earnings announcement and guidance for 2007, on February 16, 2007, the price of Perini common stock rose \$6.04, or approximately 20%, to close at \$36.41 per share, on heavy trading volume.

23. On May 8, 2007, Perini issued a press release announcing its financial results for the first quarter of 2007, the period ended March 31, 2007. For the quarter, the Company reported revenues from construction operations of \$987.4 million, net income of \$22.7 million, diluted earnings per common share of \$0.84 and a backlog of uncompleted construction work of \$8.6 billion. Defendant Band commented on the results stating in relevant part:

We are pleased to report a strong performance for the first quarter of 2007, led by

our building and management services segments. The increase in our revenues and profit primarily reflects the conversion of our substantial building segment backlog into revenues and profit as anticipated, and an exceptionally strong management services segment performance resulting in a significant contribution to our first quarter operating results. In addition, our backlog of \$8.6 billion remains near its all-time record level. Given the visibility provided from this backlog, we continue to look forward to what we anticipate will be a record year in 2007 for revenues and earnings per share.

With regard to the Company's outlook, the press release stated in relevant part:

Based on the strong first quarter performance, the Company increases its guidance for 2007 revenues from a range of \$3.8 to \$4.0 billion to a range of \$4.0 to \$4.2 billion, and diluted earnings per share from a range of \$2.00 to \$2.20 to a range of \$2.40 to \$2.60.

24. In response to the Company's earnings announcement and increased guidance for 2007, on May 9, 2007, the price of Perini common stock rose \$4.50, or approximately 10%, to close at \$50.42 per share, on heavy trading volume.

25. On August 7, 2007, the Company issued a press release announcing its financial results for the second quarter of 2007, the period ended June 30, 2007. For the quarter, the Company reported revenues from construction operations of \$1.15 billion, net income of \$27.6 million, diluted earnings per common share of \$1.01 and a backlog of uncompleted construction work of \$8.7 billion. Defendant Band commented on the results stating in relevant part:

We are pleased to report the largest quarter for revenues and net income in the 113- year history of the Company, led again by our building and management services segments. The increase in our revenues and profit continues to primarily reflect the conversion of our substantial building segment backlog into revenues and profit as anticipated. In addition, our backlog of \$8.7 billion remains near its all-time record level. Given the visibility provided from this backlog, we continue to look forward to what we anticipate will be a record year in 2007 for revenues and earnings per share.

With regard to the Company's outlook, the press release stated in relevant part:

As a result of the strong performance in the first six months by the building and management services segments, the Company is increasing its guidance for 2007 revenues from a range of \$4.0 to \$4.2 billion to a range of \$4.1 to \$4.3 billion, and

diluted earnings per share from a range of \$2.40 to \$2.60 to a range of \$2.80 to \$3.00.

26. On November 8, 2007, Perini issued a press release announcing its financial results for the third quarter of 2007, the period ended September 30, 2007. For the quarter, the Company reported revenues from construction operations of \$1.24 billion, net income of \$24.0 million, diluted earnings per common share of \$0.87 and a backlog of uncompleted construction work of \$7.8 billion. Defendant Band commented on the results stating in relevant part:

We are pleased to again report, for the eighth consecutive quarter, the largest quarter for revenues, and for nine months the largest net income in the 113-year history of the Company, led again by our building and management services segments. The increase in our revenues and profit continues to primarily reflect the conversion of our substantial building segment backlog into revenues and profit as anticipated. In addition, our management services segment continues to deliver outstanding results.

With regard to the Company's outlook, the press release stated, in relevant part, as follows

As a result of the strong performance in the first nine months by the building and management services segments, the Company is increasing guidance for 2007 revenues from a range of \$4.1 to \$4.3 billion to a range of \$4.4 to \$4.6 billion, and diluted earnings per share from a range of \$2.80 to \$3.00 to a range of \$3.30 to \$3.45.

Based on the current backlog revenues and profitability and the strength of our position in the marketplace, the Company is providing initial guidance for 2008 revenues in the range of \$5.0 to \$5.4 billion, and diluted earnings per share ranging from \$3.50 to \$3.75.

27. Following the press release, the Individual Defendants held a conference call with analysts and investors. With regard to the CityCenter Project, Defendant Band stated in relevant part:

Over the last several months the residential construction market has slowed and the credit market environment has fueled concerns over the health of the economy. But at this point we have not seen an impact on the office building -- on the hospitality and gaming and other building projects currently under construction in our backlog. In fact there is strong and active -- there is a strong and active pipeline of new work prospects available, not only in Las Vegas but

also in California, the Northeast and in Florida.

Perini is known for our ability to deliver complex large-scale projects on time and on budget. During the quarter, our Building segment continued its track record of consistent and steady execution on each of our major projects. Work on each of the main structures at the 66-acre site of our largest project -- the \$5.3 billion MGM project CityCenter in Las Vegas -- is moving forward on schedule. We have poured the 28th floor of the 61-story resort Casino. We are up to the 28th floor on the VDara condo hotel and the 15th floor of the Mandarin Tower.

We are currently working on foundations of both Twin Veer Towers and the Harmon Hotel and structural steel erection continues at the retail and entertainment center.

Work at the \$1.8 billion Cosmopolitan Resort and Casino in Las Vegas is also on track. We continue with structural steel erection and have completed all footings and foundations. Within the next month we will begin forming and placing concrete in both Towers. This project is on track for completion at the end of 2009.

28. In response to the Company's earnings announcement and increased guidance for 2007 and initial guidance for 2008, the price of the Company's stock rose on \$2.87 per share, or over 5%, to close at \$57.86 per share, on heavy trading volume.

29. The statements referenced above were materially false and misleading when made because they misrepresented and failed to disclose:

a. that the developer was experiencing financial problems because it failed to secure financing for the entire project and was dependent upon raising the remainder of the financing from the expected sale of residential units. However, the proceeds from the residential unit sales were based on unrealistic and aggressive prices at a time when the condo market in Las Vegas, Nevada was extremely weak;

b. that the Company's Las Vegas projects were being delayed, and could possibly be halted;

c. that the developer of Perini's Las Vegas, Nevada projects, including the

CityCenter Project, was in risk of defaulting on its construction loan;

d. that the Company's future revenue and profit was dependent upon the Las Vegas projects since the projects consisted of approximately 20% of its backlog; and

e. as a result of the forgoing, the Company's ability to maintain their profit margins were in serious doubt.

30. Then, on January 17, 2008, the Company issued a press release announcing that Deutsche Bank "delivered a notice of loan default to the developer of the Cosmopolitan Resort and Casino project under construction in Las Vegas, Nevada." The press release continued, in relevant part, as follows:

Perini Building Company, Inc., a wholly-owned subsidiary of Perini Corporation, is the general contractor for the project which is scheduled for completion in December of 2009. Currently, Perini is in discussions with the developer and lender to facilitate an orderly continuation of construction of the project. Pending the outcome of these discussions, the Company is unable to determine the financial impact, if any, at this time. At this time, construction work continues and all current amounts due to Perini have been paid pursuant to the terms of the construction contract. As of December 31, 2007, work remaining to be performed under the construction contract totaled approximately \$1.4 billion.

31. In response to this announcement, shares of the Company's common stock fell \$10.05 per share, or 27%, to close at \$27.65 per share, on heavy trading volume.

32. During the Relevant Period, Defendants materially misled the investing public, thereby inflating the price of Perini's common stock by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

**DEFENDANTS' ILLEGAL INSIDER SALES**

33. While in a position to understand the above alarming trends, Defendants were further motivated to continue to engage in this course of conduct in order to sell more than approximately 4.2 million shares of their personally-held Perini common stock for gross proceeds in excess of approximately \$193 million. The insider shares sold during the Relevant Period are set forth more fully in the following chart:

<u>DEFENDANT</u>	<u>DATE</u>	<u>SHARES</u>	<u>PRICE RANGE</u>	<u>PROCEEDS</u>
<b>BAND</b>	3/15/2007	1,100	\$34.89-\$34.92	\$38,392
	4/16/2007	12,400	\$39.31-\$39.90	\$490,483
	5/15/2007	12,500	\$49.83-\$50.45	\$625,795
	6/15/2007	12,300	\$60.70-\$61.77	\$754,795
	7/16/2007	12,500	\$71.30-\$73.49	\$905,526
	8/15/2007	12,500	\$50.45-\$54.96	\$661,438
	9/17/2007	12,500	\$51.04-\$54.19	\$650,785
	10/15/2007	12,500	\$62.00	\$775,000
	<b>TOTAL:</b>	<b>88,300</b>		<b>\$4,902,214</b>
<b>BRITAIN</b>	5/23/2007	4,800	\$51.00-\$51.03	\$244,875
		<b>TOTAL:</b>	<b>4,800</b>	<b>\$244,875</b>
<b>KENNEDY</b>	3/14/2007	3,000	\$35.03-\$35.11	\$105,164
	6/20/2007	1,000	\$60.31	\$60,310
		<b>TOTAL:</b>	<b>4,000</b>	<b>\$165,474</b>
<b>ONEGLIA</b>	3/12/2007	29,400	\$36.00-\$36.53	\$1,064,626
	/13/2007	26,000	\$35.05-\$39.95	\$922,407
	3/14/2007	600	\$35.29-\$35.34	\$21,186
	3/15/2007	52,000	\$35.00-\$35.16	\$1,822,160
	3/16/2007	141,900	\$35.00-\$35.37	\$4,983,647
	3/19/2007	16,400	\$35.00-\$35.14	\$574,759
	5/11/2007	127,100	\$51.21-\$51.78	\$6,548,205
	5/14/2007	109,700	\$50.00-\$51.50	\$5,559,564

	5/15/2007	63,200	\$50.00-\$50.30	\$3,164,814
	5/18/2007	26,800	\$50.00-\$50.18	\$1,340,286
	5/21/2007	89,941	\$50.00-\$50.24	\$4,502,072
	5/22/2007	1,200	\$50.10	\$60,120
	5/30/2007	51,700	\$54.00-\$54.37	\$2,796,752
	5/31/2007	48,300	\$54.00-\$54.75	\$2,621,442
	6/4/2007	100,000	\$57.04-\$57.30	\$5,423,663
	6/13/2007	15,300	\$60.00-\$60.20	\$918,890
	6/14/2007	73,700	\$60.00-\$60.05	\$4,422,041
	6/15/2007	11,000	\$60.88	\$669,680
	<b>TOTAL:</b>	<b>984,241</b>		<b>\$47,416,314</b>
<b>TUTOR</b>	3/13/2007	300,000	\$34.09	\$10,227,000
	3/19/2007	400,000	\$33.91	\$13,564.00
	5/14/2007	400,000	\$49.05	\$19,620,000
	5/16/2007	500,000	\$49.38	\$24,690,000
	6/19/2007	187,500	\$61.50-\$63.35	\$11,623,348
	6/20/2007	212,500	\$60.25-\$63.26	\$13,018,379
	9/13/2007	9,000	\$54.00-\$54.58	\$488,369
	9/14/2007	25,878	\$54.00-\$54.21	\$1,399,096
	9/17/2007	422,560	\$51.92-\$54.35	\$21,990,309
	9/18/2007	39,262	\$52.09-\$52.42	\$2,052,086
	9/19/2007	53,300	\$51.91-\$52.86	\$2,717,133
	11/14/2007	35,229	\$56.50-\$57.57	\$2,007,974
	11/15/2007	1585	\$56.00-\$56.04	\$88,796
	11/27/2007	60,000	\$50.90-\$51.72	\$3,074,222
	11/28/2007	149,900	\$51.75-\$53.98	\$7,952,742
	11/29/2007	76,800	\$53.00-\$54.16	\$3,927,840
	11/30/2007	63,200	\$53.41-\$54.50	\$3,105,044
	12/3/2007	147,900	\$53.00-\$54.92	\$8,008,287
	12/4/2007	84,515	\$55.00-\$56.23	\$4,679,689
	<b>TOTAL:</b>	<b>3,169,129</b>		<b>\$140,683,878</b>
	<b>GRAND TOTAL:</b>	<b>4,250,470</b>		<b>\$193,412,755</b>

## DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

34. Plaintiff brings this action derivatively in the right and for the benefit of Perini to redress injuries suffered and to be suffered by Perini as a result of the breaches of fiduciary duty by the Individual Defendants. This is not a collusive action to confer jurisdiction on this Court which it would not otherwise have.

35. Plaintiff is an owner of Perini common stock and was an owner of Perini common stock during the time period in which the Individual Defendants' wrongful course of conduct alleged herein was occurring through the present.

36. Plaintiff will adequately and fairly represent the interests of Perini and its shareholders in enforcing and prosecuting its rights.

37. The Board of Perini at the time of the filing of the original complaint consisted of the following eleven (11) directors: Defendants Alexander, Arkley, Band, Brittain, Kennedy, Klein, Miller, Oneglia, Snyder, Tutor and Nikias. As detailed below, each of the directors face a sufficiently substantial likelihood of liability on the derivative claims alleged herein and is therefore in no position to render a disinterested judgment as to whether the Company should bring such claims, and/or lacks sufficient independence with which to render a disinterested decision on whether to pursue the derivative claims against the Individual Defendants.

### **Likelihood of Substantial Liability of the Audit Committee**

38. According to Perini's Proxy Statements filed with the SEC on or about August 6, 2008, April 17, 2007, and April 17, 2006, Defendants Klein, Oneglia, Brittain and Kennedy were, during the Relevant Period, members of the Audit Committee. The Audit Committee's charter provides that the Audit Committee is responsible for reviewing the Company's quarterly earnings releases, financial information, and earnings guidance provided to analysts and rating

agencies. Thus, the Audit Committee was responsible for the integrity of the Company's internal controls, financial systems, financial statements, accounting policies, disclosure controls, compliance with legal and regulatory requirements, monitoring the Company's external auditors and monitoring the Company's internal audit. Specifically, with regard to the Company's annual audited and quarterly unedited financial statements and other published information, the Audit Committee was required to: (i) review with senior management and the external auditors significant financial reporting judgments made in connection with the preparation of the Company's financial statements; (ii) review with senior management and the external auditors any major issues regarding accounting principles or policies; (iii) review the Company's assessments of the effectiveness of its internal controls; (iv) discuss with senior management and the external auditors the presentation of information provided in the Company's earnings announcements and earnings guidance.

39. Furthermore, the Audit Committee was responsible for overseeing and directly participating in the dissemination of Perini's earnings press releases. Nevertheless, armed with undisclosed material adverse information regarding the fact that: (i) the developer of Perini's Las Vegas, Nevada projects was in risk of defaulting on its construction loan; (ii) Perini's Las Vegas Projects were being delayed and could possibly be halted; (iii) as a result of the foregoing, Perini's common stock traded at artificially inflated levels throughout the Relevant Period, reaching as high as \$73.89 per share on July 23, 2007 and then collapsed when Deutsche Bank's letter of default was sent to Perini's developer. When the disclosures were finally forced into the open, Perini's stock immediately dropped \$10.05 per share, or approximately 27%. The stock has continued its descent falling \$46.40 per share from its inflated high, or approximately 63%, as of September 23, 2008.

40. Accordingly, Defendants Klein, Oneglia, Brittain and Kennedy breached their fiduciary duties of due care, loyalty, and good faith because the Audit Committee participated in the preparation of improper statements and earnings press releases that failed to disclose the precarious financial situation surrounding Perini's Las Vegas projects. Particularly, these Defendants reviewed and failed to correct Perini's improper earnings press releases and earnings guidance provided to analysts described above. The Audit Committee failed, among other things, to correct Perini's improper earnings press releases and earnings guidance provided to analysts. Furthermore, the Audit Committee failed to ensure that the Company had in place the requisite internal controls over its financial reporting and earnings guidance public statements to prevent the Company from making inaccurate disclosures and ensure that Perini's share price was based on accurate information. Thus, Klein, Oneglia, Brittain and Kennedy face a sufficiently substantial likelihood of liability for their breach of fiduciary duties so any demand upon them would have been futile.

#### **Tutor's Domination Over the Board**

41. Defendant Director Tutor has served as a member of the Board of Directors since January 1997. He served as Vice Chairman of Perini from January 1, 1998 to July 1999. He was acting Chief Operating Officer from January 17, 1997 until March 2000. He currently serves as the Chief Executive Officer of Perini and has been since March 29, 2000. His principal occupation is his employment with Perini. Because of his employment as an officer of Perini, Tutor lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

42. Defendant Director Tutor owns beneficially 45% of the Company's outstanding stock. As such, Ronald Tutor completely controls and dominates the Board of the Company. In

addition, Perini and Tutor entered into a Shareholder Agreement that names Tutor as the shareholder representative, thereby giving Tutor even more control and dominance over the Board. This agreement gives Tutor the right to designate two members of the Board of Directors. He has already taken advantage of this right by appointing Nikias to the Board. Thus, because Tutor controls and dominates the Company and its Board and the other directors are beholden to Tutor, demand on the Board to bring legal action against Tutor would be futile.

43. Indeed, the recent merger agreement between Tutor-Saliba and Perini displays the extent of the control and domination of Tutor (owning 45% of Perini's stock) over the Board. The Board participated in and approved the decisions to purchase Tutor-Saliba at an inflated cost for the purpose of keeping Tutor as CEO of the corporation. Tutor added approximately \$900,000,000 to his personal wealth in cash, stocks, and real estate. Thus, the Board did not act in a good faith and honest belief that these actions were in the best interests of the Company and its shareholders.

44. Knowing that there was no contingency plan for his replacement if he went through with his resignation as CEO, that the Company had not taken out personnel replacement insurance for his position and that the Board was heavily reliant on his influence, Tutor leveraged his influence to add great personal wealth and control of the Company to himself at the detriment of the Company and its shareholders. Tutor began the process by selling all of the Perini stock owned by him and by his closely held corporation, Tutor-Saliba. After selling his stock, Tutor then announced that he would be resigning as CEO of Perini in order to take Tutor-Saliba public. In the month following Tutor's announcement, Perini's stock tumbled by approximately 13%. Tutor's scheme worked out perfectly as the Perini Board offered to purchase Tutor-Saliba and give Tutor 45% of the merged corporation even though Tutor-Saliba

would only be contributing 24% of the revenue and 15% of the backlog to the combined company. The deal also allowed Tutor-Saliba to pay \$120,000,000 in cash to its shareholders and divest to those shareholders non-core assets such as a property valued at \$3,500,000 near Sun Valley, Idaho, and an office building valued at \$21,300,000 in San Pedro, California. As Tutor owned 96% of Tutor-Saliba, almost all of the cash and divested property went to benefit him personally. Thus, by capitulating to the mechanizations of Tutor, the Board acted not with the best interests of the Company in mind, but was controlled and influenced by Tutor who leveraged them into a deal that greatly benefited him personally while causing detriment to the Company and its shareholders. The MotleyFool recognized Tutor's scheme and reported on July 30, 2008, calling Tutor's windfall a "sweetheart deal" stating that "even folks who aren't financial wizards can see that offer is absurd." Because of Tutor's control and influence over the board, Directors Arkley, Band, Brittain, Kennedy, Klein, Miller, Nikias and Oneglia are not disinterested. As such, demand upon the Board to take action against itself would have been futile.

#### **Defendants' Illegal Insider Sales**

45. Defendant Director Oneglia sold 1,202,941 shares of personally held Perini stock during the Relevant Period while in possession of material non-public information. The total market value of the shares sold by Oneglia was \$54,606,953, netting Defendant Oneglia a windfall of riches. Because he received a huge personal financial benefit from these insider trading transactions, Oneglia lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Also, Oneglia faces a substantial threat of liability for breach of his fiduciary duty for insider selling. Since he has breached his fiduciary duty and is interested, any demand upon

Oneglia would be futile.

46. Defendant Director Kennedy sold 4,000 shares of personally held Perini stock during the Relevant Period while in possession of material non-public information. The total market value of the shares sold by Kennedy was \$165,474. Because he received a personal financial benefit from these insider trading transactions, Kennedy lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Also, Kennedy faces a substantial threat of liability for breach of his fiduciary duty for insider selling. Since he has breached his fiduciary duty and is interested, any demand upon Kennedy would be futile.

47. Defendant Director Tutor sold 3,533,300 shares of personally held Perini stock and 1,500,000 shares of Perini stock held by Tutor-Saliba, Corp during the Relevant Period while in possession of material non-public information. At the time of the stock dispositions, Tutor owned 96% of Tutor-Saliba, Corp., a closely held company. The total market value of the shares sold by Tutor was \$215,219,525. Because he received a personal financial benefit from these insider trading transactions, Tutor lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Also, Tutor faces a substantial threat of liability for breach of his fiduciary duty for insider selling. Since he has breached his fiduciary duty and is interested, any demand upon Tutor would be futile.

48. Defendant Director Band sold 402,394 shares of personally held Perini stock during the Relevant Period while in possession of material non-public information. The total market value of the shares sold by Brittain was \$11,995,302. Because he received a personal financial benefit from these insider trading transactions, Band lacks the sufficient independence

with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Also, Band faces a substantial threat of liability for breach of his fiduciary duty for insider selling. Since he has breached his fiduciary duty and is interested, any demand upon Band would be futile.

49. Defendant Director Brittain sold 4,800 shares of personally held Perini stock during the Relevant Period while in possession of material non-public information. The total market value of the shares sold by Brittain was \$244,875. Because he received a personal financial benefit from these insider trading transactions, Brittain lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants. Also, Brittain faces a substantial threat of liability for breach of his fiduciary duty for insider selling. Since he has breached his fiduciary duty and is interested, any demand upon Brittain would be futile.

**The Members of the Board of Directors Lack Independence**

50. The entire Board faces a substantial likelihood of liability in this action because of their failure, as directors, to assure that a reliable system of financial controls were in place and functioning effectively. The dramatic breakdowns and gaps in those controls were so widespread and systematic that the entire board faces substantial exposure to liability, for their total abrogation of their duty of oversight. These Directors either knew or should have known their public statements in press releases and SEC filings were materially false and misleading as alleged above; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents. These directors either knew or should have known that violations of law were occurring and took no steps in a good faith effort to prevent or

remedy that situation.

51. Defendant Director Oneglia is the Vice Chairman of the Board of O&G Industries, Inc. He is also a principal stockholder. O&G Industries and Perini frequently participate in construction joint ventures together including the design and manufacture of gantry cranes and the rehabilitation of the Bronx-Whitestone Bridge in New York City among others. Because of his entangling business and professional relationships with Perini and O&G Industries, Defendant Oneglia lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

52. Defendant Brittain serves on the board of the National Urban League. Perini is a major sponsor of the National Urban League's Las Vegas-Clark County branch. Because of his entangling business and professional relationships with Perini and the National Urban League, Defendant Brittain will not take the action requested by the Plaintiff herein against the remainder of the Individual Defendants.

53. Defendant Director Band has served as a member of the Board of Directors since May 1999. He previously served as Chief Executive Officer from May 1999 until March 2000. He was the Executive Vice President and Chief Financial Officer from December 1997 until May 1999. He has been President of Perini Management Services, Inc., a fully owned subsidiary of Perini, Corp., since January 1996. His employment with Perini is his principal occupation. Because of his employment as an officer of Perini, Band lacks the sufficient independence with which to render a disinterested decision on whether to pursue the Derivative Claims against the Individual Defendants.

54. Defendant Director Tutor and Director Nikias are longtime associates through the

University of Southern California. Nikias serves as Provost and Senior Vice President for Academic Affairs. Tutor is a Trustee of the University. In addition, Tutor's support of the University is well documented, including a \$30,000,000 gift to fund the construction of the Ronald Tutor Campus Center on the University's campus. At the time of the gift, Nikias was quoted as saying, "This new campus center is the realization of a dream for those of us who have lived and worked at USC."<sup>1</sup> In addition, Nikias owes his position on the Board to Tutor who hand selected him to take the place on the Board designated by the Shareholder Agreement between Tutor and Perini. Because of their longstanding and entangling business and professional relationships, neither Defendant Tutor nor Nikias will take the action requested by the Plaintiff herein against another or the remainder of the Individual Defendants.

55. Defendant Director Arkley serves as a Director for ValleyCrest Companies. ValleyCrest Companies were hired by Perini in May 2008 to complete a \$12,000,000 landscaping project at the Gaylord National Resort and Convention Center. Because of his entangling business and professional relationships with Perini and ValleyCrest Companies, Defendant Arkley will not take the action requested by the Plaintiff herein against the remainder of the Individual Defendants.

56. Defendant Directors Kennedy and Klein are longtime business associates. Defendant Kennedy served as Vice President of Special Projects of The Union Labor Life Insurance Company from 2001 to 2003. He served in various capacities for The Union Labor Life Insurance Company from 1993 to 2001. Defendant Klein was a Partner at Wilmer, Cutler & Pickering for over 25 years. In December 1996, The Union Labor Life Insurance Company entered into a shareholders agreement with PB Capital Partners, L.P., for the purpose of

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<sup>1</sup> California Chronicle, *Tutor Donates \$30 Million to USC Campus Center* (Oct. 28, 2007), available at <http://www.californiachronicle.com/articles/41395>.

purchasing shares of Series B Cumulative Convertible Preferred Stock issued by Perini. Defendant Klein represented PB Capital Partners in the transaction. Because of their longstanding and entangling business and professional relationships, neither Defendant Kennedy nor Defendant Klein will take the action requested by the Plaintiff herein against another or the remainder of the Individual Defendants.

57. Defendant Director Alexander served as an executive for Walt Disney World Resort in Florida from 1992-2000. During her tenure there, Walt Disney World Resort in Florida awarded a contract to Perini for construction of the General Motors Pavilion located at Epcot Center. Because of her longstanding and entangling business and professional relationships with Perini, Defendant Alexander will not take the action requested by the Plaintiff herein against another or the remainder of the Individual Defendants.

58. In addition, demand would be a futile and useless for the additional following reasons:

- a. The Directors, because of their inter-related business, professional and personal relationships, have developed debilitating conflicts of interest that prevent the Board members of the Company from taking the necessary and proper action on behalf of the Company as requested herein;
- b. The Directors of Perini, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from Perini's stockholders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties. Each of the Directors exhibited a sustained and systemic failure to fulfill their fiduciary duties, which could not have been an exercise of good faith business judgment and amounted to gross negligence and extreme recklessness;
- c. In order to bring this suit, a majority of the Directors of Perini would be forced to sue themselves and persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing demand;

- d. The acts complained of constitute violations of the fiduciary duties owed by Perini's officers and directors and these acts are incapable of ratification; and
- e. Perini has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Individual Defendants and the Directors have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Perini any part of the damages Perini suffered and will suffer thereby.

59. Plaintiff has not made any demand on the shareholders of Perini to institute this action since demand would be a futile and useless act for the following reasons:

- a. Perini is a publicly held company with approximately 50.3 million shares outstanding, and thousands of shareholders;
- b. Making demand on such a number of shareholders would be impossible for Plaintiff, who has no way of finding out the names, addresses or phone numbers of all the shareholders; and
- c. Making demand on all shareholders would force Plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

60. Perini has expended and will continue to expend significant sums of money as a result of the illegal and improper actions described above. Such expenditures will include, but are not limited to:

- a. Costs incurred to carry out internal investigations, including legal fees paid to outside counsel and experts;
- b. Costs incurred by the delays in construction on the company's Las Vegas projects.
- c. Costs incurred by vastly overpaying for Tutor-Saliba with undervalued stock.

### **FIRST CAUSE OF ACTION**

#### **Against Individual Defendants for Breach of Fiduciary Duty**

61. Plaintiff incorporates by reference and realleges each and every allegation set

forth above as if set forth full herein.

62. The Individual Defendants owed and owe Perini fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe Perini the highest obligation of good faith, fair dealing, loyalty and due care.

63. The Individual Defendants, each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

64. The Individual Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the financial condition and business prospects of the Company and failed to correct the Company's publicly reported financial results and guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

65. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, Perini has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

66. Plaintiff, on behalf of Perini, has no adequate remedy at law.

### **SECOND CAUSE OF ACTION**

#### **Against The Individual Defendants for Abuse of Control**

67. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if set forth fully herein.

68. The Individual Defendants' misconduct alleged herein constituted an abuse of their ability of control and influence Perini, for which they are legally responsible.

69. As a direct and proximate result of the Individual Defendants' abuse of control, Perini has sustained significant damages.

70. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

71. Plaintiff, on behalf of Perini has no adequate remedy at law.

**THIRD CAUSE OF ACTION**

**Against the Individual Defendants  
for Gross Mismanagement**

72. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if set forth fully herein.

73. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Perini in a manner consistent with the operations of a publicly held corporation.

74. As direct and proximate result of the Individual Defendants' gross mismanagement and breaches of duty alleged herein, Perini has sustained significant damages in excess of millions of dollars.

75. Plaintiff, on behalf of Perini, has no adequate remedy at law.

**FOURTH CAUSE OF ACTION**

**Against the Individual Defendants  
for Waste of Corporate Assets**

76. Plaintiff incorporates by references and realleges each and every allegation set forth above as if set forth fully herein.

77. As result of the Individual Defendants' improper conduct and by failing to properly consider the interests of the Company and its public shareholders by failing to conduct proper supervision, Individual Defendants have caused Perini to waste valuable corporate assets

by paying bonuses to certain of its executive officers and incur potentially millions of dollars of legal liability and/or legal costs to defend the Individual Defendants' unlawful actions.

78. As a result of the waste of corporate assets, Individual Defendants are liable to the Company.

79. Plaintiff, on behalf of Perini, has no adequate remedy at law.

#### **FIFTH CAUSE OF ACTION**

#### **Against the Individual Defendants for Unjust Enrichment**

80. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if set forth fully herein.

81. By his wrongful acts and omission, the Individual Director Defendant was unjustly enriched at the expense of and to the detriment of Perini.

82. Plaintiff, as shareholder and representative of Perini, seeks restitution from the Individual Defendant, and seeks an order from this Court disgorging all profits, benefits and other compensation obtained by the Individual Defendant, from his wrongful conduct and fiduciary breaches.

#### **SIXTH CAUSE OF ACTION**

#### **Against the Individual Defendants Bend, Brittain, Kennedy, Oneglia and Tutor for Insider Selling**

83. Plaintiff incorporates by reference and realleges each and every allegation set forth above as if set forth fully herein.

84. At the time of Defendants' stock sales set forth herein, Defendants Band, Brittain, Kennedy, Oneglia and Tutor knew the information described above and sold Perini common stock on the basis of such information.

85. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold Perini common stock.

86. Defendants' sale of Perini common stock, while in possession and control of this material adverse non-public information was a breach of their fiduciary duty of loyalty and good faith.

87. Since they used the Company's proprietary information for their own gain, this constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits Defendants obtained thereby.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Against the Individual and Director Defendants in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment;

B. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of the Individual Defendants' trading activities or their other assets so as to ensure that Plaintiff has an effective remedy;

C. Awarding to Perini restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by these Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorney's fees, accountants' and experts' fees, costs, and expenses; and

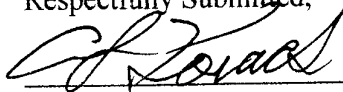
E. Granting such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Date: October 7, 2008

Respectfully Submitted,



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