

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INFORMATION  
 :  
 -v- : 07 Cr.  
 THOMAS GOUGHERTY, :  
 Defendant. :  
 :  
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COUNT ONE

**(Conspiracy To Commit Securities Fraud, Make False  
Statements In SEC Filings, Make False Entries In Books And  
Records, And Bank Fraud)**

The United States Attorney charges:

Background

1. At all times relevant to this Information, Collins & Aikman ("C&A") provided to businesses around the world a broad range of automotive supply parts, including, among other things, instrument panels and almost all other parts of an automobile interior, carpets, acoustics, fabrics, and convertible tops. C&A owned and operated factories in North America, South America, and Europe, and supplied parts to both domestic and foreign auto manufacturers, such as Ford Motor Company, General Motors, DaimlerChrysler, Nissan, and others.

2. At all times relevant to this Information, C&A had an agreement with General Electric Capital Corporation ("GECC") which allowed C&A to borrow against the outstanding balance in C&A's accounts receivable, referred to as an accounts receivable

securitization facility. Under C&A's agreement with GECC, only certain receivables could be included in the calculation of the pool of eligible receivables, or borrowing base. Among other requirements, in order to constitute an "eligible receivable," C&A had to be entitled to payment from the customer once C&A generated an invoice and sent it to the customer.

3. At all times relevant to this Information, THOMAS GOUGHERTY was employed by C&A. From 2003 to the Fall of 2004, GOUGHERTY was the controller for the international plastics group. In the Fall of 2004, GOUGHERTY became the chief financial officer of the entire plastics division.

#### **The Rebate Scheme**

4. Beginning in or about 2004, GOUGHERTY joined in an illegal scheme to defraud C&A's investors, auditors, and others, concerning C&A's true operating performance and financial results. For the purpose of disguising C&A's true operating performance and financial results, GOUGHERTY and his co-conspirators caused C&A's reported figures for EBITDA, operating income, and other financial metrics to be falsely and fraudulently inflated by improperly recognizing cost reductions related to supplier rebates. As GOUGHERTY and his co-conspirators knew, the aggregate effect of these supplier rebate transactions, which involved immediate recognition of cost reductions resulting from up-front payments received in exchange

for promises of future business, was to present a materially false and misleading picture of C&A's true operating performance and financial results.

5. In negotiating long-term supply agreements with its suppliers, C&A would sometimes demand price reductions in the form of an upfront lump sum payment, referred to as a "rebate" or "slotting fee." Knowing that the facts and circumstances of the arrangements with suppliers would not have permitted immediate recognition of these cost reductions under generally accepted accounting principles, GOUGHERTY joined in a scheme to obtain letters or separate documents that falsely attributed the supplier rebate to past purchases. C&A used the false documents to justify immediate recognition of the supplier rebates in its books and records and in its financial reports filed with the SEC.

6. In furtherance of the scheme, GOUGHERTY worked with other C&A employees to book entries that improperly reflected the rebates as reductions to material costs, thereby increasing income, solely in an effort to inflate C&A's publicly reported EBITDA and net income.

7. GOUGHERTY was also involved with the expansion of the rebate scheme to target suppliers of capital equipment and advised other employees to obtain false documentation in connection with these rebates. Because GOUGHERTY knew that

rebates on the purchase of capital equipment could not properly be recognized as a reduction in expense, which had the effect of raising reported income, GOUGHERTY was aware of a scheme to obtain letters from suppliers of capital equipment which falsely attributed the rebates to items which appeared to justify an increase in income.

### **The Scheme To Defraud GECC**

8. From at least in or about early January 2005, GOUGHERTY and other employees knew that C&A faced a liquidity crisis. In or about early January 2005, GOUGHERTY knew that C&A's liquidity crisis was exacerbated by a problem connected with the accounts receivable facility. In response to this crisis, C&A employees began trying to find receivables that could be invoiced, and thus, used to increase the level of the borrowing base.

9. GOUGHERTY participated in this invoicing effort and understood that millions of dollars worth of goods were invoiced for the purpose of increasing the borrowing base on the GECC facility. GOUGHERTY also knew, however, that C&A did not yet have customer agreement to pay these invoices and that they were therefore ineligible receivables for the GECC facility.

### **The Conspiracy**

10. From in or about 2003 through in or about May 2005, in the Southern District of New York and elsewhere, THOMAS

GOUGHERTY, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, namely: (a) to commit fraud in connection with the purchase and sale of securities issued by C&A, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) to make and cause to be made false and misleading statements of material fact in applications, reports, and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Sections 78m(a) and 78ff; (c) to falsify books, records, and accounts of C&A, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1; and (d) to commit bank fraud, in violation of Title 18, United States Code, Section 1344.

#### **Securities Fraud**

11. It was a part and an object of the conspiracy that THOMAS GOUGHERTY, the defendant, and others known and unknown, unlawfully, willfully, and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices

and contrivances in connection with the purchase and sale of securities issued by C&A, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making and causing C&A to make untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon the purchasers and sellers of C&A securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

#### **False Filings**

12. It was further a part and an object of the conspiracy that THOMAS GOUGHERTY, the defendant, and others known and unknown, unlawfully, willfully, and knowingly, in applications, reports, and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, would and did make and cause to be made statements that were false and misleading with respect to material facts, in violation of Title 15, United States Code, Sections 78m(a) and 78ff.

#### **False Books And Records**

13. It was further a part and an object of the conspiracy that THOMAS GOUGHERTY, the defendant, and others known

and unknown, unlawfully, willfully, and knowingly would and did, directly and indirectly, falsify and cause to be falsified books, records, and accounts subject to Section 13(b) (2) of the Securities Exchange Act of 1934, namely books, records, and accounts of C&A, an issuer with a class of securities registered pursuant to the Securities Exchange Act of 1934, which C&A was required to make and keep, accurately and fairly reflecting, in reasonable detail, the transactions and dispositions of the assets of C&A, in violation of Title 15, United States Code, Sections 78m(b) (2) (A), 78m(b) (5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1.

#### **Bank Fraud**

14. It was a part and an object of the conspiracy that THOMAS GOUGHERTY, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would and did execute and attempt to execute a scheme and artifice to defraud financial institutions, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of said financial institutions, by means of, false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

**Overt Acts**

15. In furtherance of the conspiracy and to effect its illegal objects, THOMAS GOUGHERTY and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about 2004, GOUGHERTY approved of a false letter as part of a rebate transaction.

b. In or about January 2005, GOUGHERTY helped to create invoices which C&A's customers had not yet agreed to pay. At the time, GOUGHERTY understood that these invoices would be improperly borrowed against as part of the GECC accounts receivable securitization facility.

(Title 18, United States Code, Section 371.)

**COUNT TWO**

**(Securities Fraud)**

The United States Attorney further charges:

16. From in or about 2003 up to and including in or about May 2005, in the Southern District of New York and elsewhere, THOMAS GOUGHERTY, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, used and employed manipulative and deceptive devices and contrivances in violation

of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of C&A common stock.

(Title 15, United States Code, Sections 78j(b) and 78ff;  
Title 17, Code of Federal Regulations, Section 240.10b-5;  
Title 18, United States Code, Section 2.)

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MICHAEL J. GARCIA  
United States Attorney