

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

_____	X	
_____, Individually and on Behalf of	:	Civil Action No.
All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	COMPLAINT FOR VIOLATION OF THE
vs.	:	FEDERAL SECURITIES LAWS
	:	
GREAT LAKES DREDGE & DOCK	:	
CORPORATION, JONATHAN W. BERGER,	:	
WILLIAM S. STECKEL and BRUCE J.	:	
BIEMECK,	:	
	:	
Defendants.	:	
_____	X	<u>DEMAND FOR JURY TRIAL</u>

## INTRODUCTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of Great Lakes Dredge & Dock Corporation (“Great Lakes” or the “Company”) between August 7, 2012 and March 14, 2013, inclusive (the “Class Period”), against Great Lakes and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (“1934 Act”).

2. Great Lakes provides dredging services in the United States and internationally. Great Lakes’ demolition segment provides commercial and industrial demolition and remediation services primarily in the Northeast.

3. During the Class Period, defendants issued materially false and misleading statements regarding the Company’s business and financial results in press releases, analyst conference calls, and filings with the Securities and Exchange Commission (“SEC”), specifically with respect to financial statements and the adequacy of its internal controls. As a result of defendants’ false statements, Great Lakes stock traded at artificially inflated prices during the Class Period, reaching a high of \$10.03 per share on February 19, 2013.

4. Then, on March 14, 2013, after the market closed, Great Lakes issued a press release to announce its fourth quarter and year-end financial results for fiscal 2012 and disclosed that it would be restating its financial results for the second and third quarter of fiscal 2012. The press release stated, in part:

### ***Restatement of Second and Third Quarters***

During the preparation of its year-end financial statements, the Company identified instances in its demolition segment where revenue was recognized in a manner not consistent with Great Lakes’ accounting policy. Great Lakes’ policy regarding pending change orders is to immediately recognize the costs but defer the recognition of the related revenue until the recovery is probable and collectability is reasonably assured. Certain pending change orders where client

acceptance has not been finalized were included as revenue. After a review, the Company concluded 2012 second and third quarter demolition segment revenues were overstated by \$3.9 million and \$4.3 million, respectively. The Company believes recognition of a significant portion of these amounts is a timing issue. However, the Company cannot provide assurance the revenue from these pending change orders is certain to be realized.

Restatements of the financial statements to be included in the amended Quarterly Reports on Form 10-Q for the second and third quarters of 2012 will also include adjustments to dredging operating income to record \$1.3 million and \$0.9 million, respectively, of expenses previously capitalized and incurred in the preparation of vessels for the Wheatstone Australia LNG project. These expenses were incurred as a strategic decision to minimize downtime and positively impact the project gross margin while we work in a remote area of Australia in 2013 and 2014.

#### ***Fourth Quarter***

For the fourth quarter, \$5.6 million of demolition revenue originally expected to be realized did not meet the Company's revenue recognition standards. The Company also believes recognition of a significant portion of these amounts is a timing issue. However, the Company cannot provide assurance the revenue from these pending change orders is certain to be realized.

#### ***Executive Departure***

The Company also announced the departure of Bruce J. Biemeck, President and Chief Operating Officer effective March 13, 2013 with recognition of his years of service as an officer and member of the Board of Directors. Mr. Biemeck served as Chief Financial Officer until August 20, 2012.

Please refer to the Form 12b-25 and Form 8-K which will be filed with the SEC later today for additional information.

#### **Commentary**

Jonathan Berger, Chief Executive Officer, said "I am deeply disappointed with the issues in our demolition segment, which contributed to the need to restate our second and third quarter financial results, and deferral of the recognition of revenue and Adjusted EBITDA. We will be focusing on improving controls at our demolition segment and throughout the Company. We at Great Lakes are committed to growing our business and increasing shareholder value. The demolition segment is a key part of our growth strategy, and we are committed to having the right personnel and tools in place to effectively grow the segment while maintaining adequate operational and financial controls.

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"As a result of the matters described in this release, we did not meet one of our financial covenants in our senior revolving credit facility ("Credit Agreement") and our International Letter of Credit Facility at December 31, 2012. Both the Credit Agreement and the International Letter of Credit Facility require us to maintain a minimum fixed charge coverage ratio of 1.25 to 1.0. Our fixed charge

coverage ratio as of December 31, 2012 was 1.12x, resulting in a default under the Credit Agreement and International Letter of Credit Facility, and a potential default due to a change of condition under our bonding agreement. While there can be no guarantees, we expect to receive all necessary waivers from our banks and our surety prior to filing our Form 10-K and we anticipate being in full compliance with all financial covenants in the first quarter of 2013.”

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### **Commentary**

Mr. Steckel said, “While the quarter was strong, with record revenue and Adjusted EBITDA in the dredging segment, it fell short of our expectations. As to the future, we believe we are well positioned to take advantage of key opportunities in our dredging and demolition markets that will, with strong execution, result in revenue growth and improved margins.

“We are focusing on improving our internal controls. We will undergo a thorough retraining of our demolition segment personnel, we will add key personnel where needed and we will strengthen our procedures to ensure our divisions comply with all of our operational and accounting policies. We will be installing new estimating and project management software at the demolition segment.”

5. As a result of this news, Great Lakes’ stock plunged \$1.62 per share to close at \$7.32 per share on March 15, 2013, a one-day decline of nearly 18% on volume of over 8 million shares.

6. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Great Lakes’ demolition segment improperly recognizing revenue client acceptance has not been finalized such that 2012 second and third quarter demolition segment revenues were overstated by \$3.9 million and \$4.3 million, respectively; and

(b) Great Lakes had deficient internal controls and procedures, including, but not limited to, insufficiently trained employees and ineffective estimating and project management software.

7. As a result of defendants’ false statements and omissions, Great Lakes’s common stock traded at artificially inflated prices during the Class Period. However, after the above

revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 27% from their Class Period high.

### **JURISDICTION AND VENUE**

8. The claims asserted herein arise under and pursuant §§10(b) and 20(a) of the 1934 Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder by the SEC.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §27 of the 1934 Act.

10. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b). Great Lakes maintains offices in this District and many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

11. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

12. Plaintiff \_\_\_\_\_ purchased Great Lakes common stock as described in the attached certification and was damaged thereby.

13. Defendant Great Lakes Great Lakes provides dredging services in the United States and internationally. Great Lakes' demolition segment provides commercial and industrial demolition and remediation services primarily in the Northeast.

14. Defendant Jonathan W. Berger, ("Berger") is, and at relevant times was, Chief Executive Officer ("CEO") and Chairman of the Board of Great Lakes.

15. Defendant William S. Steckel (“Steckel”) is, and has been since August 20, 2012, Chief Financial Officer (“CFO”) and Senior Vice President of Great Lakes.

16. Defendant Bruce J. Biemeck (“Biemeck”) was until March 13, 2013, Chief Operating Officer (“COO”) and President and before August 20, 2012 Chief Financial Officer of Great Lakes.

17. Defendants Berger, Steckel and Biemeck (the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of Great Lakes’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. They were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein.

#### **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

18. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about Great Lakes. Defendants’ fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Great Lakes common stock was a success, as it: (i) deceived the investing public regarding Great Lakes’s prospects and business; (ii) artificially inflated the price of Great Lakes common stock; and (iii) caused plaintiff and other members of the Class to purchase Great Lakes common stock at inflated prices.

**DEFENDANTS' FALSE AND MISLEADING  
STATEMENTS ISSUED DURING THE CLASS PERIOD**

19. On August 7, 2012, Great Lakes issued a press release announcing its second quarter 2012 financial results, reporting revenue of \$165.5 million and net income of \$4.4 million.

20. That same day, Great Lakes filed with the SEC its quarterly report on Form 10-Q for the second quarter, repeated the financial statement reported in the August 7, 2012 press release and included the following certificate signed by each of defendants Berger and Biemeck:

1. I have reviewed this quarterly report on Form 10-Q of Great Lakes Dredge & Dock Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such an evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual

report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

21. On August 17, 2012, Great Lakes announced that defendant Steckel had been appointed Senior Vice President and Chief Financial Officer effective Monday August 20, 2012. Defendant Biemeck would remain as President and COO of Great Lakes.

22. On November 6, 2012, Great Lakes issued a press release announcing its third quarter 2012 financial results, reporting revenue of \$166.8 million and a net loss of \$2.1 million.

23. The next day, November 7, 2012, Great Lakes filed with the SEC its quarterly report on Form 10-Q for the second quarter, repeated the financial statements reported in the November 6, 2012 press release and included the following certificate signed by each of defendants Berger and Steckel:

1. I have reviewed this quarterly report on Form 10-Q of Great Lakes Dredge & Dock Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:



- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such an evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

24. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

- (a) Great Lakes' demolition segment improperly recognizing revenue client acceptance has not been finalized such that 2012 second and third quarter demolition segment revenues were overstated by \$3.9 million and \$4.3 million, respectively; and

(b) Great Lakes had deficient internal controls and procedures, including, but not limited to, insufficiently trained employees and ineffective estimating and project management software.

25. On March 14, 2013, after the close of trading, Great Lakes shocked the market when it issued a press release to announce its fourth quarter and year-end financial results for fiscal 2012 and disclosed that it would be restating its financial results for the second and third quarter of fiscal 2012. The press release stated, in part:

***Restatement of Second and Third Quarters***

During the preparation of its year-end financial statements, the Company identified instances in its demolition segment where revenue was recognized in a manner not consistent with Great Lakes' accounting policy. Great Lakes' policy regarding pending change orders is to immediately recognize the costs but defer the recognition of the related revenue until the recovery is probable and collectability is reasonably assured. Certain pending change orders where client acceptance has not been finalized were included as revenue. After a review, the Company concluded 2012 second and third quarter demolition segment revenues were overstated by \$3.9 million and \$4.3 million, respectively. The Company believes recognition of a significant portion of these amounts is a timing issue. However, the Company cannot provide assurance the revenue from these pending change orders is certain to be realized.

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service as an officer and member of the Board of Directors. Mr. Biemeck served as Chief Financial Officer until August 20, 2012.

Please refer to the Form 12b-25 and Form 8-K which will be filed with the SEC later today for additional information.

### **Commentary**

Jonathan Berger, Chief Executive Officer, said “I am deeply disappointed with the issues in our demolition segment, which contributed to the need to restate our second and third quarter financial results, and deferral of the recognition of revenue and Adjusted EBITDA. We will be focusing on improving controls at our demolition segment and throughout the Company. We at Great Lakes are committed to growing our business and increasing shareholder value. The demolition segment is a key part of our growth strategy, and we are committed to having the right personnel and tools in place to effectively grow the segment while maintaining adequate operational and financial controls.

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“As a result of the matters described in this release, we did not meet one of our financial covenants in our senior revolving credit facility (“Credit Agreement”) and our International Letter of Credit Facility at December 31, 2012. Both the Credit Agreement and the International Letter of Credit Facility require us to maintain a minimum fixed charge coverage ratio of 1.25 to 1.0. Our fixed charge coverage ratio as of December 31, 2012 was 1.12x, resulting in a default under the Credit Agreement and International Letter of Credit Facility, and a potential default due to a change of condition under our bonding agreement. While there can be no guarantees, we expect to receive all necessary waivers from our banks and our surety prior to filing our Form 10-K and we anticipate being in full compliance with all financial covenants in the first quarter of 2013.”

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### **Commentary**

Mr. Steckel said, “While the quarter was strong, with record revenue and Adjusted EBITDA in the dredging segment, it fell short of our expectations. As to the future, we believe we are well positioned to take advantage of key opportunities in our dredging and demolition markets that will, with strong execution, result in revenue growth and improved margins.

“We are focusing on improving our internal controls. We will undergo a thorough retraining of our demolition segment personnel, we will add key personnel where needed and we will strengthen our procedures to ensure our divisions comply with all of our operational and accounting policies. We will be installing new estimating and project management software at the demolition segment.”

26. As a result of this news, Great Lakes' stock plunged \$1.62 per share to close at \$7.32 per share on March 15, 2013, a one-day decline of nearly 18% on volume of over 8 million shares..

27. As a result of defendants' false statements and omissions, Great Lakes common stock traded at artificially inflated prices during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 73% from their Class Period high.

### **LOSS CAUSATION/ECONOMIC LOSS**

28. During the Class Period, as detailed herein, defendants made false and misleading statements and engaged in a scheme and course of conduct that artificially inflated the price of Great Lakes common stock and operated as a fraud or deceit on Class Period purchasers of Great Lakes stock by misrepresenting the Company's business and prospects. Later, when the defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of Great Lakes common stock fell precipitously, as the prior artificial inflation came out of the price over time. As a result of their purchases of Great Lakes common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **SAFE HARBOR**

29. Great Lakes's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

30. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Great Lakes who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated

to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

### **CLASS ACTION ALLEGATIONS**

31. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired Great Lakes common stock during the Class Period (the “Class”). Excluded from the Class are defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

32. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Great Lakes has more than 59 million shares of stock outstanding, owned by hundreds if not thousands of persons.

33. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) whether the 1934 Act was violated by defendants;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) whether the price of Great Lakes common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

34. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

35. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

## COUNT I

### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

37. Plaintiff incorporates ¶¶1-36 by reference.

38. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

39. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- (a) employed devices, schemes and artifices to defraud;
- (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Great Lakes common stock during the Class Period.

40. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Great Lakes common stock. Plaintiff and the Class would not have purchased Great Lakes common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## **COUNT II**

### **For Violation of §20(a) of the 1934 Act Against All Defendants**

41. Plaintiff incorporates ¶¶1-40 by reference.

42. The Individual Defendants acted as controlling persons of Great Lakes within the meaning of §20(a) of the 1934 Act. By reason of their positions with the Company, and their ownership of Great Lakes common stock, the Individual Defendants had the power and authority to cause Great Lakes to engage in the wrongful conduct complained of herein. Great Lakes controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding plaintiff and the members of the Class damages, including interest;

- C. Awarding plaintiff's reasonable costs and attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: March \_\_\_\_, 2013

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