Defending Liberty
Pursuing Justice

William H. Neukom
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, Illinois 60610-4714
(312) 988-5109
FAX: (312) 988-5100
E-mail: abapresident@abanet.org

August 5, 2008

Mr. Robert H. Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Sir David Tweedy
Chairman
International Accounting Standards Board
30 Cannon Street
London EC4M 6XH
United Kingdom

RE: Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements 5 and 141(R); File Reference 1600-100

Gentlemen:

On behalf of the American Bar Association (ABA) and its more than 400,000 members, I am pleased to present our enclosed Comments on the Financial Accounting Standards Board (FASB) exposure draft titled "Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements 5 and 141(R)" (Exposure Draft). The ABA's Comments were prepared, with input from a broad range of in-house and outside lawyers, by several leading members and advisors of our Task Force on Attorney-Client Privilege, including Task Force Chair and former ABA President Bill Ide of McKenna, Long & Aldridge LLP in Atlanta; Stanley Keller of Edwards Angell Palmer & Dodge LLP in Boston; Lewis H. Ferguson of Gibson, Dunn & Crutcher in Washington, D.C. (the former General Counsel of the Public Company Accounting Oversight Board); and Giovanni Prezioso of Cleary Gottlieb Steen & Hamilton LLP in Washington, D.C. (the former General Counsel of the Securities and Exchange Commission).

As explained more fully in the enclosed Comments, although the ABA shares FASB's goal of providing investors with meaningful current information regarding contingent liabilities, we have a number of serious concerns regarding the Exposure Draft's approach to disclosure of non-financial liabilities, particularly those involving litigation. Therefore, we urge the Board not to adopt the proposed amendment to FASB Statements 5 and 141(R). In addition, the ABA respectfully requests the opportunity to present its views on this matter before the Board, including at an upcoming public roundtable meeting.

Thank you for considering our views on this critical subject. If you have any questions or need additional information, please contact ABA Task Force Chair Bill Ide at 404-527-4650.

Sincerely,

William H. Neukom

Enclosure

cc: R. William Ide III, Past President, American Bar Association and current Chair, ABA Task Force on Attorney-Client Privilege
Thomas M. Susman, Director, ABA Governmental Affairs Office
R. Larson Frisby, Senior Legislative Counsel, ABA Governmental Affairs Office

COMMENTS OF THE AMERICAN BAR ASSOCIATION

ON THE

FINANCIAL ACCOUNTING STANDARDS BOARD EXPOSURE DRAFT TITLED "DISCLOSURE OF CERTAIN LOSS CONTINGENCIES: AN AMENDMENT OF FASB STATEMENTS 5 AND 141(R)"

August 5, 2008

The American Bar Association ("ABA") is submitting these comments on the exposure draft released by the Financial Accounting Standards Board ("FASB" or the "Board") on the Disclosure of Certain Loss Contingencies: An Amendment of FASB Statements No. 5 and 141(R) ("Exposure Draft"). We will confine our comments to those aspects of the Exposure Draft that raise problems when dealing with loss contingencies involving litigation.[1] For the reasons outlined below, the ABA urges the Board not to adopt the amendments as proposed because we believe that these amendments will have a number of harmful unintended consequences, including further erosion of the protections of the attorney-client privilege and the work product doctrine during the audit process.[2]

The Exposure Draft explains that the amendments are intended to respond to concerns that "disclosures about loss contingencies under existing guidance in FASB Statement No. 5, *Accounting for Contingencies,* do not provide adequate information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies." (Exposure Draft at v). As discussed below, we are not aware of persuasive evidence establishing that these concerns are well-founded or, even if there is a basis for them, that they justify the changes proposed in the Exposure Draft given the serious problems those changes would create.

The Present Disclosure System for Contingent Liabilities

Currently, under SFAS 5, a liability must be accrued for a loss contingency when a loss is probable and can be estimated and disclosure, but not a liability accrual, must be made when there is:

[1] We focus our comments on SFAS 5 and do not address SFAS 141(R) as currently adopted and proposed to go into effect for fiscal years beginning after December 15, 2008. Some of the concerns identified in these comments apply to SFAS 141(R).

[2] In August 2006, the ABA adopted Resolution 302A that calls for the preservation of the attorney-client privilege and work product doctrine in connection with audits of company financial statements and urges the Securities and Exchange Commission, the Public Company Accounting Oversight Board, and other relevant organizations to adopt standards and take other steps to ensure that these fundamental rights are preserved throughout the audit process. See ABA Resolution 302A and the related background report at http://www.abanet.org/poladv/documents/report302A.pdf.

> at least a reasonable possibility that a loss or an additional loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. (SFAS 5, paragraph 10)

According to the Exposure Draft, the proposed amendment will (a) expand the population of loss contingencies that are required to be disclosed, (b) require disclosure of specific quantitative and qualitative information about those loss contingencies, (c) require a tabular reconciliation of changes in recognized loss contingencies, (d) require disclosure of available insurance and indemnification and (e) provide an exemption for disclosures of certain required information that would be prejudicial to an entity's position in a dispute if disclosed.

The Exposure Draft would require disclosures of all loss contingencies within its scope, except for those that are remote and unasserted claims that either will probably not be asserted or where, if asserted, the likelihood of loss is remote (Exposure Draft, paragraph 5). The Exposure Draft would also require disclosure of even remote contingencies that are likely to be resolved in the near term (defined as the next twelve months in AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*) and could have a severe impact, defined as significantly financially disruptive, on the normal functioning of the entity. (Exposure Draft, paragraph 6). The requirement to disclose even remote contingencies in these circumstances is a change from present standards and goes further than the corresponding provision in International Accounting Standards No. 37, *Provisions, Contingent Liabilities and Contingent Assets*, that only requires disclosure of contingencies that are more than remote.

Under the Exposure Draft, both quantitative and qualitative disclosures of contingent exposures would be required. Entities would be required to disclose the claim amount or, in the absence of a claim amount, an estimate of the maximum potential exposure to loss. (Exposure Draft, paragraph 7(a)). The reporting entity could also provide a supplemental disclosure of its best estimate of the possible range of loss if it believes that the claim or maximum exposure amount is not indicative of the actual exposure. In addition to the quantitative disclosure, the entity must disclose information to help the reader understand the facts surrounding the contingency and the risks it poses to the entity. Such disclosures would have to include, "at a minimum": (1) a description of how the claim arose; (2) its legal or contractual basis; (3) its current status; (4) the anticipated timing of its resolution; (5) a description of the factors that are likely to affect the ultimate outcome of the contingency, (6) the entity's qualitative assessment of the most likely outcome of the contingency, and (7) any assumptions made by the entity in estimating the amount of the most likely outcome. (Exposure Draft, paragraph 7(b)). Finally, a qualitative and quantitative description of the terms of relevant insurance or indemnification arrangements covering the possible loss, including caps, limitations and deductibles, would be required. (Exposure Draft, paragraph 7(c)).

For certain contingencies, such as pending or threatened litigation, where disclosure of certain information about the contingency required under the Exposure Draft would be prejudicial to an entity's position, disclosures could be aggregated at a higher level or, in "rare" circumstances, the reporting entity's qualitative assessment of the likely outcome of the contingency and its assumptions used to estimate that outcome could be omitted altogether. In such cases, the entity must disclose "the fact that, and the reason why, the information has not been disclosed." (Exposure Draft, paragraph 11).

The Exposure Draft changes both the basic disclosure threshold in SFAS 5, namely that a possible loss is reasonably possible (i.e., more than remote), and the content of the required disclosures. It also appears to eliminate the option for a reporting entity to conclude that the magnitude of the contingent loss, whatever its likelihood of occurrence, cannot be estimated currently. In essence, compliance with the Exposure Draft will require entities to value all material contingencies in order to provide the detailed information required.

Concerns about the Exposure Draft.

We support the Board's goal of improving the transparency, timeliness and usefulness of financial information that is disclosed to investors and other users of financial statements. We also understand that some commentators, including members of the Board and the International Accounting Standards Board, have been concerned that, under SFAS 5, disclosure of loss contingencies takes places too long after a claim is made or a lawsuit is commenced and that some users of financial statements are seeking greater quantification of non-financial contingent liabilities. We are also aware of efforts towards international convergence of accounting standards and the general trend in financial accounting (as evidenced recently by the adoption of SFAS 157, *Fair Value Measurements* (September 2006) and SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (February 2007), among other things) to require more robust disclosure and current fair valuation of most assets and liabilities that are recorded in the financial statements or disclosed in notes to them. We are not aware, however, of empirical data that suggests that the current standards of SFAS 5 and the reporting practices that have developed under it are inadequate in addressing the tension between the search for transparency, while avoiding unreliable and misleading information, and recognizing the interest of a reporting entity and its shareholders in appropriately protecting the entity's legal position and maintaining the protection for privileged or confidential information about litigation and regulatory and enforcement matters.

The Exposure Draft, particularly as applied to contingencies arising from pending and threatened legal claims, raises a number of problems and will likely have unintended but seriously adverse consequences for reporting entities. We are particularly concerned with its requirements to provide current quantitative disclosures of estimates of possible losses and qualitative disclosures about the likely future course of events in pending claims without regard to whether a reasonable basis exists for making such estimates and predictions. The Exposure Draft fails to take into account certain basic aspects of the adversarial system of justice in the United States and threatens to put reporting entities at

a serious disadvantage in that process. This is one of those unusual situations where the potential harm to reporting entities and their shareholders from the required disclosures outweighs the potential benefits to investors and other users of financial reports. Moreover, much of the newly required information would be either highly speculative leading to misleading disclosures or prejudicial without adequate protection against such prejudice. For reasons that are discussed below, we do not believe that the Exposure Draft's proposed solution, aggregation at a higher level or omission of certain information in rare circumstances, will solve the problem. There are many reasons for our concern.

1. The Exposure Draft does not adequately take into account the unique nature of the United States legal system.

The United States employs an adversarial system of justice and has a uniquely active litigation and regulatory environment and plaintiffs' bar that make prediction about the outcome of a pending or threatened claim, particularly early in the proceeding, very difficult. In this environment, claims are often filed making demands that far exceed the amount of real harm suffered by plaintiffs and the amounts, if any, that will ultimately be paid in settlement or judgment. Litigation in the United States is more prolific than in most of the rest of the developed world, with many more large, complex cases, class actions, derivative suits, and claims for punitive and treble damages. Also, in the United States, many complaints do not state a specific amount of recovery the plaintiff is seeking, beyond any jurisdictional threshold for the specific court. Indeed, in some jurisdictions, it is impermissible to state an amount of damages in the complaint.[3] In many significant cases, the plaintiff may not indicate with any precision what relief it is seeking until the proceedings are well underway, for example, in response to defendant's damages interrogatories. These attributes of the United States litigation environment should be compared to the judicial systems in other countries—in Europe and in Asia—with well-developed sophisticated economies. For example, it is noteworthy that in Europe and Asia, unlike the United States, commercial cases are rarely decided by juries. Given the inherent unpredictability of juries, the risk of attempting to estimate litigation outcomes in jury cases is greater than in cases tried to a court or administrative tribunal. Moreover, the United States has far more liberal discovery rules than any other country that will permit plaintiffs to inquire into the facts underlying the disclosures and, likely, lead to claims in many cases that applicable privileges have been waived by the reporting entity. To the extent that the proposed new standard leads to findings that companies have waived applicable privileges by disclosing confidential communications with counsel in their quantitative and qualitative assessments of litigation (see below), the proposed new disclosure standards threaten to subject companies and their counsel to broad-ranging discovery by adversaries regarding the disclosures.

[3] Thirty states impose prohibitions on stating claim amounts in at least some types of cases such as those involving unliquidated damages, punitive damages, personal injury claims, tort claims, or claims in excess of a certain threshold. Two states, Colorado and Missouri, prohibit the statement of claim amounts in all cases. See Colo. R. Civ. P. 8(a)(2008) and Mo. Rev. Stat. Section 509.050 (2008).

Sometimes cases are brought for reasons having nothing to do with economic harm and are subsequently dropped or dismissed. Sometimes verdicts and judgments are much larger than could reasonably have been expected at the outset of a case. Commonly, the real exposure posed by a lawsuit can only be determined as the action progresses through discovery and decisions are made about matters such as venue, forum, choice of law, class certification, the survival of claims, admissibility of evidence, and a host of similar matters, often a lengthy and very unpredictable process. Likewise, examinations and investigations by civil regulators and law enforcement authorities often begin with a long period of factual investigation followed by lengthy and sometimes contentious negotiations with each side taking strong opposing positions that work themselves out over time. The entire process is surrounded by protections, some among the most ancient in origin, such as the attorney-client privilege and work product doctrine that allow parties to communicate candidly with their expert advisors, those most able to assess the real exposure of a claim, without the contents of those communications being discoverable publicly. Where both sides seek every advantage in the proceeding, even-handed implementation of our adversary system depends on parties being able to maintain their own counsel as to their intentions, assessments and strategies rather than provide them to their adversaries.

Viewed against that background, the Exposure Draft raises several serious problems.

A. *The quantitative and qualitative disclosure requirements of the Exposure Draft are unrealistic and the disclosures would be extremely difficult to prepare*.

Under the Exposure Draft, a company would be required to disclose the amount of the plaintiff's damage claim, if known. If there is no amount claimed, the company is required to disclose its "best estimate of the maximum exposure to loss." If the company believes, however, that either the amount claimed by the plaintiff or the maximum exposure is not representative of its actual exposure, the company would also be permitted to disclose its "best estimate of the possible loss or range of loss." Compliance with these quantitative disclosure standards is more difficult than might appear.

Where a complaint actually states the amount of damages sought, disclosing that amount might seem a straightforward exercise, but it can result in information that is out of context and misleading.[4] Amounts initially sought by plaintiffs are often highly inflated and do not necessarily reflect the company's true exposure. Just mentioning an unrealistic inflated amount, even with ameliorating language, can have an adverse

[4] To illustrate the problematic nature of the proposed requirement, assume a claim against a bank for improperly honoring a $100 check, with the claimant asserting emotional distress, consequential damages and punitive damages totaling $100,000,000. Assume further that the bank determines that it could be required to pay up to $100,000 of damages, even though it believes it should only have to pay $100. If the disclosure thresholds are met, the bank would have to disclose the $100,000,000 claim, regardless of its unreality. Presumably, it might seek to mitigate that disclosure by indicating its best estimate of the possible range of loss (assuming it were able to make that determination). The disclosure of the $100,000 possibility would be beneficial to the claimant and prejudicial to the bank, which still believes its real exposure should be $100.

impact. That is especially the case when the amount is claimed by a regulatory or enforcement agency and therefore is susceptible to being afforded disproportionate credibility. It is far better to allow reporting entities, as they do now, to make materiality judgments regarding disclosure based on all the particular facts and circumstances. In addition, while the Exposure Draft would allow a company faced with such a demand to disclose its "best estimate of the possible loss or range of loss," this is likely to be a highly problematic, if not wholly illusory, alternative. For one thing, it is often difficult for a company and its counsel to formulate such a "best estimate" – particularly in the early stages of a litigation or enforcement proceeding before factual investigation of the basis for a claim has been completed. The reporting entity generally will (and should) be reluctant to provide a "best estimate of loss" where it lacks a reasonable basis to do so because it risks exposing itself to future litigation if the "best estimate" ultimately proves to be incorrect even if it was reasonable when made.

In many cases, the plaintiffs' complaint does not contain a demand for a specific amount of damages. In such cases, the Exposure Draft would require the reporting entity to disclose its "best estimate of the maximum exposure to loss," and, if it believes the maximum exposure is not representative of its actual exposure, the company may also disclose its "best estimate of the possible loss or range of loss." In this circumstance, too, reporting entities may thus be required to disclose damage estimates that are wholly speculative because, at the early stages of the proceeding, the reporting entity lacks sufficient information to make a reasonable estimate of either its "maximum exposure to loss" or even the "possible loss or range of loss."[5]

The Exposure Draft also would require companies to disclose qualitative information about their litigation contingencies, including a "description of the factors that are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome," "a qualitative assessment of the most likely outcome", and the "significant assumptions" underlying these assessments. These mandatory qualitative disclosures would likewise be difficult for companies to make, particularly when they come early in the litigation process.

For example, unless damages have been specified by the plaintiff or there has been discovery, it would be pure guesswork to estimate the plaintiff's damages (except perhaps in infrequent circumstances, such as where a contract that allegedly has been breached has a liquidated damages provision, the law caps damages, or the facts and information needed to estimate damages are entirely in the possession of the defendant). How could a reporting entity reliably estimate the plaintiff's economic loss (such as lost profits), the potential governmental fines and penalties, or punitive damages? How could it reliably estimate damages or determine the most likely outcome where relevant facts

[5] Using the bank scenario in note 4 above, assume the bank receives a claim for wrongfully dishonoring a $100 check with a statement that the claimant will seek substantial damages for emotional distress, consequential damages and punitive damages but without specification of amount. Assume further that the bank believes a $100 loss is probable, a $100,000 loss is reasonably possible and there is a remote chance of a $10,000,000 loss (of course these determinations can themselves be highly uncertain and speculative). The Exposure Draft would seem to require the bank to disclose a loss exposure of $10,000,000.

are in the plaintiff's possession and there has been no opportunity for discovery? Even in the rare case where the facts are entirely in the reporting entity's possession and it has enough information to estimate damages, how can it determine the "most likely outcome" before there has been an opportunity to interview witnesses, review and analyze documents (which, in this era of electronic discovery, can include millions of e-mails) or do a thorough analysis of the legal defenses available? How can a reporting entity determine the "most likely outcome" before there have been judicial rulings on potentially dispositive legal issues, that could result in the case being narrowed or dismissed altogether? In such situations, any estimate or prediction by the reporting entity is likely to be pure guesswork based on incomplete facts and without the ability for meaningful analysis.[6]

The Exposure Draft does not indicate what standard is to be applied to determining maximum exposure – is it the most likely amount, the reasonably possible amount or the highest possible amount even if considered remote? The Exposure Draft also does not suggest how to evaluate lawsuits seeking injunctive or other forms of non-monetary relief. The determination of the possible exposure to a reporting entity of an injunction would generally require making assumptions not only about the nature of the relief finally awarded but also about future business opportunities in the absence of an injunction and the value of those that would be lost as a result of its issuance.

B. *The Exposure Draft, in requiring expanded quantitative and qualitative disclosure, would seriously disadvantage reporting entities and their shareholders in the proceeding itself without providing sufficient offsetting benefits to users of the financial statements*.

The requirement in the Exposure Draft that the reporting entity reveal its own estimates of its exposure if the plaintiff does not state a claim amount alone may have a significant impact on the outcome of the matter and make the contingency more probable. The estimate itself, for example, will tip the reporting entity's hand in a case where the plaintiff itself may not have been able to estimate the potential outcome. A high estimate may alert a plaintiff to facts, known by the reporting entity, of which the plaintiff was unaware but that will shape the course of discovery in the matter. In the early stages of evaluating a claim or the facts revealed by an investigation, even if a reporting entity concludes that exposure is more than remote (but not probable), it may have no idea what the likely range of outcomes would be. Under those circumstances it would presumably have to disclose a range so wide as to be meaningless. But, since it is the reporting entity's own assessment, the high end of the range would have an implied credibility that could be deleterious to it and its shareholders. The disclosure itself may create evidence that will be used in the proceeding by the plaintiff as an admission against interest by the reporting entity or as a source for discovery, and it will almost certainly distort the course

[6] To take just one example, a reporting entity sued for patent infringement can only guess at how a jury will find on several critical variables, such as the scope of the patent's claims, the period over which damages will be assessed, the revenues included in infringing sales, and the royalty rate that will be found to apply. There is the further uncertainty that the reporting entity could be found to have "willfully" infringed and that a court will impose treble damages.

of possible settlement or resolution by putting a floor under the amount that will be required to resolve the matter. Indeed, the mere requirement to value and make extensive quantitative and qualitative disclosures may force settlements in cases that otherwise would await resolution in the normal course of the proceeding. Finally, to the extent that disclosures and estimates turn out to be wrong as a result of changes that occur in the course of the proceeding, those disclosures themselves may be sources of additional exposure to the reporting entity and its management.

Plaintiffs may use the Exposure Draft's disclosure requirements for tactical advantage. Thus, a plaintiff might use the risk to the reporting entity from the disclosure requirements to coerce quick and costly settlements. For example, very high demands by plaintiffs that must be disclosed pose their own risks to reporting entities—including reputational risk, market overreaction, and the like—particularly where the demand is out of proportion to a realistic result. In these cases, reporting entities may feel under pressure to resolve the matter prior to the first required disclosure of the demand at a significantly higher cost than would occur in the absence of the required disclosure. Alternatively, a plaintiff might seek to gain an advantage by refraining from specifying a claim amount in order to force the reporting entity to be the first party to place a value on the case, and thereafter see that value fluctuate up and down on a quarterly basis as the reporting entity revisits its assessment with each periodic report.

These expanded disclosure requirements could interfere with the ability of reporting entities to complete and issue their financial statements on a timely basis when, for example, claims are made towards the end of accounting periods or shortly before the financial statements are issued. Such delays would deprive the markets of important financial disclosures unrelated to the speculative impact of the claims. Furthermore, such timing issues would present undesirable opportunities for gamesmanship by claimants. In addition to the difficulty of handling claims made towards the end of a reporting period, even in cases where there is a reasonable basis for making an exposure estimate, it may take several months or longer to complete a review of the underlying facts sufficient to form any estimate of the possible exposure. The difficulty in complying with SEC disclosure deadlines thus will often be present even when a lawsuit is commenced well before a required filing date. In some cases, it may take substantially more than an entire quarter to complete such an analysis at a level sufficient to support public disclosure.

In some cases, multiple defendants potentially share joint and several liability, which will present the risk to each defendant of responsibility for the whole exposure, and thus would require disclosure of that amount, even where the likelihood is that the parties will share on some basis whatever liability is ultimately found. Disclosure of potential exposure, the most likely outcome and the reporting entity's underlying assumptions is also prejudicial in multi-defendant cases where a plaintiff seeks to impose joint and several liability on all defendants. The defendant whose disclosure suggests the highest risk will raise the cost of resolution for all other defendants. Similarly, in situations where a defendant faces lawsuits from multiple plaintiffs based on related legal theories or facts, disclosure pertaining to the possible exposure in one case could have an

adverse impact on the result in the other cases. This would particularly be a risk if the defendant's disclosure had the effect of providing information regarding its settlement proposals in one of the cases.

C. *The Exposure Draft significantly increases the risks of waiver of long established protective privileges and disclosure of the reporting entity's theories of defense*.

Civil litigation in the United States is predicated on the adversary system, whereby the responsibility for initiating the suit, shaping the issues and producing the evidence rests almost entirely upon the parties to the controversy. Fundamental to the adversary system are privileges and immunities, the attorney-client privilege and the work product doctrine, that strike a balance between the information that must be disclosed and the information that may be withheld from one's litigation adversaries. The Exposure Draft threatens to upset this balance by making it more likely that reporting entities will be forced to disclose publicly both the advice received from their counsel with respect to litigation and counsel's assessment of the strengths and weaknesses of their clients' litigation positions in order to comply with the new disclosure requirements.

To report the "factors that are likely to affect the ultimate outcome of the [litigation] contingency along with their potential effect on the outcome" and the company's "qualitative assessment of the most likely outcome," reporting entities are likely to have to seek the assistance of the counsel handling the matter. The resulting disclosures will trigger discovery by plaintiffs of the source of and bases for the disclosures, which, if they have been based on conversations with counsel, will put in jeopardy the privilege protections and create the risk of the reporting entity having to reveal protected communications. The standard for determining privilege waivers is not well defined, and varies among jurisdictions and from court to court, but there is a real risk that once a privileged communication has been found to have been disclosed, a much broader range of communications relating to the same subject matter will be found to have lost their confidentiality privileges. Even if disclosures can be crafted that preserve the privileges in most cases, two consequences of the Exposure Draft are foreseeable: (i) there will be a substantial increase in litigation over privilege matters and communications between reporting entities and their counsel relating to these disclosures and (ii) reporting entities may feel inhibited in their ability to communicate freely with counsel about these disclosures fearing that such communication may lead to loss of privilege. Neither of these would be a desirable result. As discussed below, the need of the reporting entity's independent auditor to audit the disclosures will create another source of potential waiver of privileges since communications to auditors may be treated as disclosures to third parties.

D. *The disclosures required by the Exposure Draft, in addition to being costly and time consuming, would be subject to substantial risk of error and consequently could be misleading to investors*.

Most items involving contingencies that are reported on in financial statements are subject to a limited number of valuation factors such as interest rates, credit risk, volatility, market conditions and prices for similar items and other identifiable factors that are known or knowable. Litigation, on the other hand, is subject to an almost infinite number of subjective and non-economic factors, many of which may not even be known, but that can affect its outcome, timing and financial impact. Case law, statutes and regulations, venue, prior history of similar or analogous cases, the judge involved, the strength of legal theories, factual discovery, litigation costs and many other factors must be weighed when a lawsuit is assessed. Measuring these subjective and non-economic factors can be a difficult, unreliable, costly and time consuming process. Even after the cost and effort has been incurred to assess the litigation, particularly at an early stage, the resulting assessments and analyses are likely in at least some relevant respects to be inaccurate particularly when measured against the ultimate outcome. It seems highly questionable to require reporting entities to incur these costs to produce information of dubious value.

The quantitative and qualitative disclosures called for by the Exposure Draft would inevitably require reporting entities to turn to their lawyers for information if they are to act responsibly, but the kind of speculation and estimation contemplated by the Exposure Draft goes beyond what lawyers can do in a professionally responsible way even if they are willing to risk the possibility of privilege waivers by advising on the disclosure process. As a result, reporting entities often would be left to engage in their own speculation and estimating with the attendant uncertainties and potential exposure to additional liability.

Unreliable information presents numerous problems. Such information can be disadvantageous to investors because they may make investment decisions without fully appreciating the information's unreliability and thus the disclosures can be misleading. It can be harmful to companies and their shareholders because that information, especially when it overstates the potential exposure, can adversely impact the company's share value. The predictive information often will turn out to be incorrect because of the uncertainties inherent in litigation. This inevitably will increase the exposure of companies and their management to further litigation, including litigation of a type that Congress has sought to discourage in the Private Securities Litigation Reform Act as burdensome and abusive.

2. In many cases, the Exposure Draft's solution to prejudicial disclosures, aggregation at a higher level or omission of certain information in "rare" circumstances, will not solve the problem.

There are at least two problems with aggregation as a solution. First, for many entities, either a single claim or a group of claims (such as a group of mass tort claims or

a major shareholder's class action suit) will constitute a disproportionate part of the total exposure from such matters with the consequence that aggregation may not provide a meaningful shield for the information. Typically, large claims are known publicly and anyone evaluating the aggregate disclosure is likely to know that the great bulk of the exposure comes from a particular claim or group of claims. Second, if a new, large claim is filed that significantly changes the aggregate exposure, a mere comparison of reported amounts among periods will alert careful readers to that claim and prompt further inquiries. In addition, to the extent that all estimates of claims are uncertain, aggregation may merely compound the possibility of error that is inherent in each individual evaluation, leading to a composite disclosure that is so prone to error as to be nearly meaningless.

The additional exception permitting omissions in "rare" circumstances when aggregation is not a solution does not adequately mitigate the prejudice because the minimum required disclosure will frequently still contain prejudicial information of the types described above. Moreover, the standard provides no guidance as to who will ultimately determine whether a particular case presents the "rare" circumstance justifying omission of the information, but concern about getting that judgment wrong and about the consequences of doing so will surely limit its use.

3. The proposed standard would result in disclosures that are very difficult to audit and would increase potential erosion of critical attorney-client privilege and work product protections.

Unlike disclosures under Items 103 ("Legal Proceedings") and 303 ("Management's Discussion and Analysis of Financial Condition and Results of Operations") of Regulation S-K that relate to material litigation and disclosures of loss contingencies, but do not have to be audited, disclosures of estimates of litigation contingencies that appear either in reserves in the financial statements or in notes to them will be subject to audit by a reporting entity's independent auditor. Because of the numerous subjective factors that go into an assessment of a lawsuit, as well as the possibility of critical factors that are not presently known, auditing quantitative disclosures about litigation will be very challenging. To the extent that the reporting entity's judgments and estimates are based on privileged communications between a disclosing entity and its counsel, auditors may feel obliged to seek privileged information from counsel or the company in order to test the disclosures. Even where the reporting entity has not relied on its counsel for the estimates, counsel representing the entity in the matter is likely to be a useful source of information to test those assertions. In either case, disclosure of privileged information to an independent auditor could lead to loss of the privilege. At the least, the need for the auditor to audit the information is likely to put strains on the "Treaty" between the American Bar Association and the AICPA that has governed lawyers' responses to auditors' inquiries since the 1970s.[7] The Treaty was

[7] The "Treaty" is comprised of two documents: the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted by the ABA Board of Governors in 1975, and the AICPA Statement on Auditing Standards No. 12, adopted in 1976. Statement on Auditing Standards No. 12 has been adopted as an interim auditing standard for public companies by the Public Company

designed to ensure preservation of the attorney-client privilege and work product protections that are cornerstones of our adversarial system of justice. The inevitable increase in pressure on auditors as a result of these new disclosure requirements will risk erosion of those fundamental protections.

Enabling auditors to meet their audit requirements under the Exposure Draft standards will frequently require companies to disclose to their auditors details regarding their analyses of the law and facts surrounding their litigation. Many courts have held that providing documents to an accounting firm acting as a public auditor waives whatever work product protection would otherwise attach to such document. *See, e.g., In re Diasonics Secs. Litig.*, 1986 U.S. Dist. LEXIS 24177, at *3-4 (N.D. Cal. June 15, 1986). Some courts have also held that the inclusion of attorney work product in publicly available securities law filings gives rise to a waiver of work product protection. *See, e.g., In re Royal Ahold N.V. Sec. & ERISA Litig.*, 230 F.R.D. 433, 436-37 (D. Md. 2005). As the United States Supreme Court said in *Upjohn Co. v. United States* 449 U.S. 383, 393 (1981) "an uncertain privilege…… is little better than no privilege at all".

The loss of the protections of the attorney-client privilege and work product doctrine for this type of detailed analysis will often be extraordinarily detrimental. Once the privilege is lost, the subject of the once privileged communication becomes fair game for discovery in the litigation. The reporting entity's adversaries will be given a potential roadmap to victory since the privileged information will reveal counsel's assessment of the strengths and weaknesses of the reporting entity's litigation position.

4. <u>The existing standard of SFAS 5 works reasonably well and strikes the right balance between competing interests</u>.

Even today, if a matter is material and is deemed to be probable and capable of being estimated (the latter being a fairly low standard),[8] it is difficult to meet disclosure obligations and protect the issuer's legal position. Current SFAS 5 strikes the right balance, i.e., requiring reporting entities to reveal highly sensitive information in material situations where loss is probable and estimable, but giving them the ability to protect their shareholders in situations where the exposure is less certain and/or unlikely to be material. Under SFAS 5 today, a contingency must be disclosed when its occurrence is "reasonably possible", but it only needs to be valued if it is capable of being valued. The "reasonably possible" standard is being applied consistently and effectively today. It is our experience that affected constituents understand current disclosure practices as they relate to legal matters and understand that detailed descriptions and predictions about such matters would not only be imprecise and potentially wrong, but could prejudice the reporting entity. Users recognize the inherent uncertainties of litigation and often do their own analysis, sometimes using their own professional resources to assist in that

---

Accounting Oversight Board. The ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information and the related background report is available at http://www.abanet.org/buslaw/attorneyclient/policies/aicpa.pdf.

[8] The meaning of estimable has been amplified in FIN 14 and its principles should continue to govern.

assessment. The current standard has the advantages of ease of application, cost effectiveness, auditability, and protecting the legal rights and strategies of the disclosing entity. The Exposure Draft falls short under each of these measures and is inconsistent with reliability and consistency of financial reporting and avoidance of unnecessary volatility.

Unlike the prescriptive approach of the Exposure Draft, current SFAS 5 is principles based. A principles based approach is preferable in an area like litigation involving so much uncertainty, judgment and potential prejudice to reporting entities. To illustrate the current operation of SFAS 5 and the problems of the Exposure Draft, we have included as Appendix A a chronology of an actual lawsuit and the reporting defendant's related disclosures. It illustrates how the nature of disclosure evolves as a lawsuit progresses.

Both under the SEC's current MD&A reporting rules and under SFAS 5, specific disclosure of the risks related to and reserves taken with respect to litigation are required if "material." This sets a higher threshold for disclosure than that imposed by the Exposure Draft, but does address those situations likely to be of the most interest to investors. Indeed, in 2000, the SEC proposed expanded financial disclosure of litigation reserves that met with strong opposition for many of the reasons set forth in this letter.[9] As a result, the SEC did not pursue that proposal.

5. Requiring even limited disclosures of remote contingencies may change existing and well established definitions of materiality.

In *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), the United States Supreme Court defined materiality for purposes of the federal securities, saying:

> The general standard of materiality that we think best comports with the policies of Rule 14a-9 is as follows: an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Id. at 449.

In requiring the disclosure and discussion of remote contingencies (whether asserted or probable of assertion) that are likely to be resolved in the near term and having a severe financial impact, the Exposure Draft seems to circumscribe significantly the reporting entity's judgment in assessing materiality under the Supreme Court standard. Many reporting entities and securities practitioners have long believed that if an event is remote, even if it could have a major impact, it would not be material to a reasonable shareholder. This view finds support in the Supreme Court's decision in *Basic v. Levinson*, 485 U.S. 224 (1988), in which the Court described "materiality" as involving a two-fold test of likelihood of an event's occurrence and its significance if it did occur. The Supreme Court has also cautioned about the mischievous effects of setting materiality thresholds too low, saying in *TSC Industries, Inc. v. Northway, Inc.:*

[9] See SEC Release No. 33-7793 (January 21, 2000).

> We are aware, however, that the disclosure policy embodied in the proxy regulations is not without limit. (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 at 384 (1970)). Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good. The potential liability for a Rule 14a-9 violation can be great indeed, and if the standard of materiality is unnecessarily low, not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information --- a result that is hardly conducive to informed decision making. Id. at 448-449.

We are concerned that the Exposure Draft's requirement to disclose certain remote contingencies changes the accepted principles of materiality under *Basic v. Levinson* and *TSC Industries, Inc. v. Northway* and will provoke a flood of frivolous cases. Requiring disclosure of remote, unasserted contingencies that could have a near term severe effect compounds the problem. The existing disclosure system works reasonably well and we have seen no persuasive evidence (and FASB has provided none beyond the anecdotal complaints of certain investors) that it requires overhaul. The present disclosure regime for contingent losses is both well understood and protects important interests under our legal system. The quantification and qualitative disclosure requirements in the Exposure Draft will cause serious prejudice to reporting entities and will result in disclosures that may be so error prone as to be misleading rather than informative and thus be in conflict with the objectives of existing law to provide full and fair disclosure.

6. Specific Comments.

A. The requirement for quarterly reporting of changes in loss contingencies is likely to lead to disclosures that are volatile and misleading, as well as prejudicial.

The Exposure Draft requires the inclusion of a tabular reconciliation in both annual and interim reports of changes in "recognized" loss contingencies. In addition, quantification of loss exposures will be required in the notes to financial statements for other material loss contingencies including litigation. Both types of disclosures will have to be updated quarterly under the Exposure Draft. Because complex litigation and regulatory matters can involve so many interim outcomes that can increase or reduce possible exposures at a point in time before final resolution, disclosures about the financial impact of such litigation, under the approach in the Exposure Draft, would have to be re-evaluated quarterly and would likely change, potentially numerous times before a final outcome is reached. Reporting entities would be required to change their estimates of exposures based on what may prove to be transient events in the litigation. Although

current disclosure as circumstances change may usually be desirable, when litigation is involved temporary vicissitudes in a proceeding, viewed at a moment in time, can give a very misleading view of the likely ultimate outcome of the matter. Litigation is an inherently unpredictable endeavor and, if it runs full course, often leads to an all or nothing outcome. In any case, short term valuation exercises are likely to yield erroneous and misleading results.

B. The requirement for insurance and indemnity disclosure can be prejudicial and unreliable.

Requiring disclosure of potential insurance and indemnity recoveries could be prejudicial to reporting entities and raise the cost of settlements. Such potential recoveries are excludable under the rules of evidence for the very reason that they can be prejudicial. They can, for example, raise the cost of resolution if a plaintiff believes that the defendant will not bear the full cost of the settlement or judgment. Moreover, insurance and indemnity rights can themselves be fraught with uncertainty, and requiring their disclosure would compound the speculative and possibly misleading nature of the disclosures. We believe it is better to allow reporting entities to decide on the appropriateness or need for disclosure of potential sources of recovery based upon prevailing materiality standards.

Conclusion and Recommendations.

In summary, we are concerned that the Exposure Draft's approach to disclosure of non-financial liabilities, particularly those involving litigation, would be cumbersome and expensive to apply, could be prejudicial to reporting entities, would be subject to error, could lead to meaningless volatility in financial disclosures, would undermine fundamental attorney-client privilege and work product protections, would spawn further litigation, and would in fact be a backward step in the journey toward achieving more transparent, timely and useful financial reports. That said, we are sympathetic to the Board's goal to give investors meaningful current information regarding contingent liabilities. We do believe that SFAS 5 represents a good, long tested, and well understood balance between an appropriate protection of a reporting entity's legal rights and interests and the needs of investors for current, informative financial information. If there is empirical data indicating that there are disclosure problems under the existing SFAS 5 structure, we suggest that the problem lies with the implementation of SFAS 5, not with the approach that it takes. We are not aware of such data, but would be willing to work the FASB on ways to improve disclosure under SFAS 5. We would also be willing to assist in a study of the relevant information, if such a study is needed.

We recommend that the Exposure Draft, as proposed, not be adopted, but if FASB determines to go forward with revisions to SFAS 5, we have a number of specific recommendations.

- FASB should undertake a systematic study of existing disclosure practices under SFAS 5 as it exists today to determine whether disclosures about loss

contingencies are in fact adequate to give users of financial statements sufficient information to evaluate those contingencies. We would be pleased to participate in such a study.

- FASB should also consider whether any disclosure problems found to exist stem from improper or inadequate implementation of the existing requirements of SFAS 5, as amplified by FIN 14, or from inherent weaknesses in the standard itself. As part of this analysis, FASB should consider whether any existing problems could be ameliorated by further guidance under SFAS 5 or FIN 14.

- FASB should coordinate its efforts in this regard with the Securities and Exchange Commission since the Commission mandates disclosures concerning both material litigation and loss contingencies under Items 103 and 303 of Regulation S-K. Particular consideration should be given to the consequences resulting from the fact that the forward looking statements required to be disclosed under the Exposure Draft, unlike disclosures under Regulation S-K, would not enjoy the protections of the safe harbor of Section 27A of the Securities Exchange Act of 1934. In addition, the fact that disclosures under the Exposure Draft will be subject to audit, while those under Regulation S-K are not, should be considered.

- Because the disclosures required by the Exposure Draft will need to be audited, FASB should coordinate with the Public Company Accounting Oversight Board and the American Institute of Certified Public Accountants to insure that appropriate auditing standards exist to guide auditors in auditing the new disclosures.

- Finally, we suggest that any revision to SFAS 5 be undertaken only in connection with the resolution of the issue of convergence between generally accepted accounting principles and international accounting standards. It makes little sense to impose the costs and difficulties that the Exposure Draft will inevitably impose on reporting entities only to find that the standard changes again in the reasonably near future if and when convergence is mandated.

We appreciate this opportunity to present our views and would be happy to discuss them with the Board or its staff or to provide additional information that might be useful as you consider this important subject. In addition, we confirm our request to present our views on this matter before the Board at an upcoming public roundtable meeting.

Summary of JDS Uniphase Federal Securities Class Action Litigation

Beginning on March 27, 2002, numerous federal securities class actions were filed in the U.S. District Court for the Northern District of California against JDS Uniphase Corp. ("JDSU") and several current and former officers and directors on behalf of a class of purchasers of JDSU's common stock during the period July 22, 1999 through July 26, 2001, as well as subclasses consisting of shareholders who acquired JDSU common stock through several merger transactions. The suits alleged that the defendants made material misstatements and omissions concerning demand for JDSU's products and JDSU's expected financial performance. The suits also claimed that JDSU improperly recognized revenue and failed to write off goodwill and inventory timely, and that the individual defendants sold stock based on material adverse non-public information.

Typical of this type of suit, the action sought unspecified damages. Plaintiffs did not disclose any damages estimate until nearly five years later, as part of expert discovery. Plaintiffs' estimates ranged from $10 billion to $26 billion and changed numerous times up to and through trial. At trial, plaintiffs' expert testified that his preferred method for calculating damages would result in total damages of approximately $20 billion.

After a jury trial in the Fall of 2007, the jury rendered a verdict in favor of defendants, awarding no damages to the plaintiffs.

During the over five years that the cases were pending, the court ordered mediation, which was unsuccessful. JDSU did not accrue any reserves for losses under FIN 14.

In our view, it would have been materially misleading to shareholders and/or prejudicial to the company to quantify a possible range of loss or estimate the outcome of the litigation. Plaintiffs themselves did not estimate any damages until several months before trial. At earlier stages, JDSU could only speculate about possible damages estimates that plaintiffs would ultimately offer, which were dependent on numerous complex variables. Estimating the outcome of the litigation would have revealed the most basic type of attorney work product, to the detriment of defendants in any attempt to negotiate a settlement. It would also have misled shareholders, as estimating the outcome of any particular litigation matter is notoriously difficult.

A chronology of events in the federal securities litigation and accompanying disclosures in JDSU's SEC filings follows.

DATE	LITIGATION EVENT	DISCLOSURE
3/27/02	First Class Action Complaint filed in the Northern District of California.	
5/14/2002		Legal Proceedings from Form 10-Q: On March 27, 2002, a purported securities class action captioned *Pipefitters Local 522 & 633 Pension Trust Fund v. JDS Uniphase Corp., et al.*, Civil Action No. C-02-1486-CW was filed in the United States District Court for the Northern District of California against the Company, one of its stockholders, and several of its current and former officers and directors. Additional purported securities class actions containing similar allegations have since been filed in the Northern District. These complaints allege violations of the federal securities laws, specifically Section 10(b), Rule 10b-5, and Section 20(a) of the Securities Exchange Act of 1934, and seek unspecified damages on behalf of a purported class of purchasers of the Company's common stock during the period from July 27, 1999 through July 26, 2001. The various actions have not yet been consolidated and no trial date has been scheduled. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including several securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity, or results of operations and seriously harm our financial condition. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions recently filed in late March, April and May, could be quite significant. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
8/7/2002	Court grants motion to consolidate related actions and appoints Plaintiff Connecticut Retirement Plans and Trust Funds (Connecticut) as Lead Plaintiff	

DATE	LITIGATION EVENT	DISCLOSURE
9/17/2002		Legal Proceedings from Form 10-K: Beginning on March 27, 2002, twenty-six securities class actions were filed in the United States District Court for the Northern District of California against us and several of our current and former officers and directors by stockholders purporting to represent a class of purchasers of our common stock during the period from July 27, 1999 through July 26, 2001. Some of these lawsuits also named one of our stockholders as a defendant. On April 23, 2002, a similar lawsuit was filed in the District Court for the Southern District of New York. That lawsuit also named our independent auditors, Ernst & Young LLP, as a defendant. It was transferred to the Northern District of California on June 25, 2002. The lawsuits described above seek unspecified damages and allege various violations of the federal securities laws, specifically Sections 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 and Sections 11 and 15 of the Securities Act of 1933. On July 26, 2002, the Northern District of California consolidated all the actions under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. A consolidated complaint is due to be filed on October 7, 2002. No trial date has been set. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including several securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity or results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, could be quite significant and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
10/11/2002	First Amended Consolidated Complaint filed in the Northern District of California.	

DATE	LITIGATION EVENT	DISCLOSURE
11/12/2002		Legal Proceedings from Form 10-Q: Beginning on March 27, 2002, the first of numerous federal securities class actions was filed against the Company and several of its current and former officers and directors. On July 26, 2002, the Northern District of California consolidated all the actions filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. An amended consolidated complaint was filed on October 11, 2002. It purports to be brought on behalf of a class consisting of those who acquired the Company's securities from July 27, 1999 through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a) and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. It also names one of its stockholders as a defendant. The Company's motion to dismiss the amended consolidated complaint is due to be filed on December 13, 2002 and to be heard on March 14, 2003. No trial date has been set. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including several securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity or results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, has been costly, will continue to be costly, and could be quite significant and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
12/13/2002	Defendants file motion to dismiss First Amended Consolidated Complaint	

DATE	LITIGATION EVENT	DISCLOSURE
2/11/2003		Legal Proceedings from Form 10-Q: Beginning on March 27, 2002, the first of numerous federal securities class actions was filed against the Company and several of its current and former officers and directors. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. An amended consolidated complaint was filed on October 11, 2002. It purports to be brought on behalf of a class consisting of those who acquired the Company's securities from July 27, 1999 through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a) and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. It also names one of its stockholders as a defendant. On December 13, 2002, the Company moved to dismiss the amended consolidated complaint. On January 23, 2003, plaintiffs filed an opposition. The Company's reply brief is due on February 24, 2003, and a hearing is scheduled for March 14, 2003. No trial date has been set. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
3/14/2003	Court grants motion to dismiss First Amended Consolidated Complaint	

DATE	LITIGATION EVENT	DISCLOSURE
	with leave to amend	
5/13/2003		Legal Proceedings from Form 10-Q: Beginning on March 27, 2002, the first of numerous federal securities class actions was filed against the Company and several of its current and former officers and directors. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as lead plaintiff. An amended consolidated complaint was filed on October 11, 2002. It purports to be brought on behalf of a class consisting of those who acquired the Company's common stock from July 27, 1999 through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a) and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In addition, it named one of the Company's stockholders as a defendant. On December 13, 2002, the Company moved to dismiss the amended consolidated complaint. On March 14, 2003, the court dismissed the complaint with leave to amend and set a schedule for the filing of an amended complaint. No trial date has been set. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.

DATE	LITIGATION EVENT	DISCLOSURE
9/24/2003		Legal Proceedings from Form 10-K: Beginning on March 27, 2002, the first of numerous federal securities class actions was filed against us and several of our current and former officers and directors. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. An amended consolidated complaint was filed on October 11, 2002. It purports to be brought on behalf of a class consisting of those who acquired our securities from July 27, 1999 through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired our common stock pursuant to our acquisitions of OCLI, E-TEK and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a) and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. It also names one of our stockholders as a defendant. On December 13, 2002, we moved to dismiss the amended consolidated complaint. On March 14, 2003, the court dismissed the complaint with leave to amend. No trial date has been set. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
11/3/2003	Court grants in part and denies in part Defendants' motion to dismiss First Amended Consolidated Complaint	

DATE	LITIGATION EVENT	DISCLOSURE
11/12/2003		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On March 14, 2003, the court entered a minute order dismissing the complaint in *In re JDS Uniphase Securities Litigation*, Master File Co. C-02-1486 CW (N.D. Cal.), with leave to amend. On November 3, 2003, the court issued an opinion confirming the dismissal, with leave to amend, of the claims under the Securities Exchange Act of 1934. The November 3, 2003 opinion denied the motion to dismiss the claims under the Securities Act of 1933, however. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
1/9/2004	Second Amended Consolidated Complaint filed in the Northern District of California	
2/17/2004		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On January 9, 2004, plaintiffs filed a second amended complaint. It purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. Defendants plan to move to dismiss the

DATE	LITIGATION EVENT	DISCLOSURE
		complaint on February 23, 2004, and a hearing on that motion is set for May 7, 2004. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
3/9/2004	Defendants file motion to dismiss Second Amended Consolidated Complaint	
5/13/2004		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On March 9, 2004, Defendants moved to dismiss the second amended complaint in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.). Briefing on the motion will continue through April and May. A hearing on the motion and a case management conference is set for June 4, 2004. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these

DATE	LITIGATION EVENT	DISCLOSURE
		lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
6/4/2004	Court conducts hearing regarding Defendants' motions to dismiss Second Amended Consolidated Complaint	
9/16/2004		Legal Proceedings from Form 10-K: As discussed in our previous SEC filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On June 4, 2004, the court heard Defendants' motions to dismiss the second amended complaint in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.). The court has not issued a ruling on the motions yet. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from

DATE	LITIGATION EVENT	DISCLOSURE
		business operations, which could harm our business.
11/10/2004		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. No activity has occurred in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), since our last filing. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
1/6/2005	Court grants in part and denies in part Defendants' motion to dismiss Second Amended Consolidated Complaint	
2/10/2005		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On January 6, 2005, the Court issued rulings on Defendants' motions to dismiss Plaintiffs' Second Amended Complaint in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.). The Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants' answers to the complaint are due

DATE	LITIGATION EVENT	DISCLOSURE
		by February 25, 2005. A case management conference is scheduled for April 29, 2005. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
2/28/2005	Defendants file answer to Second Amended Consolidated Complaint	
5/12/2005		Legal Proceedings from Form 10-Q: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On February 28, 2005, Defendants in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), answered the Second Amended Complaint. Both Lead Plaintiff and JDSU have propounded discovery. JDSU has served written responses and has begun document production. The parties also have served initial disclosures pursuant to Rule 26(a) (1) of the Federal Rules of Civil Procedure and have produced some documents in connection with their disclosures. A case management conference is scheduled for June 24, 2005. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims as noted in Part II of this filing, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages

DATE	LITIGATION EVENT	DISCLOSURE
		that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
7/15/2005	Court conducts hearing regarding Lead Plaintiffs' motion to strike certain averments of Defendants' answers and Defendants' motion for partial judgment on the pleadings; Court orders parties to mediate	
7/21/2005	Court denies Lead Plaintiff's motion to strike certain averments In Defendant's answers and denies Defendants' motion for partial judgment on the pleadings	
8/12/2005	Lead Plaintiffs file motion for class certification	
9/30/2005		Legal Proceedings from Form 10-K: As discussed in our previous filings, litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. The complaint *in re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), purports to be brought on behalf of a class consisting of those who acquired our securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the our common stock pursuant to our acquisitions of OCLI, E-TEK, and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. On July 15, 2005, the Court denied Lead Plaintiff's motion to strike parts of our answer to the complaint and also denied our motion for partial judgment on the pleadings. The Court also held a case management conference on

DATE	LITIGATION EVENT	DISCLOSURE
		July 15, 2005. At that conference, the Court ordered the parties to mediate, but declined to set a discovery cut-off or trial date. On July 22, 2005, the Oklahoma Firefighters Pension and Retirement System moved to intervene, seeking to represent the purported subclass of plaintiffs who exchanged shares of OCLI stock for shares of JDSU stock in connection with the merger. No hearing on that motion has been set. On August 12, 2005, Lead Plaintiff moved for class certification. That motion will be heard on November 18, 2005. A further case management conference is also scheduled for November 18, 2005. Document discovery is ongoing. Each party has noticed depositions of both party and non-party witnesses. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims as noted in Part II of this filing, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
11/15/2005		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. The complaint *in re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. On July 15, 2005, the Court denied Lead Plaintiff's

DATE	LITIGATION EVENT	DISCLOSURE
		motion to strike parts of JDSU's answer to the complaint and also denied JDSU's motion for partial judgment on the pleadings. The Court also held a case management conference on July 15, 2005. At that conference, the Court ordered the parties to mediate, but declined to set a discovery cut-off or trial date. Pursuant to the Court's order, the parties have agreed to appear at a mediation session before the Hon. Daniel Weinstein (Ret.) on November 29, 2005. On July 22, 2005, the Oklahoma Firefighters Pension and Retirement System moved to intervene, seeking to represent the purported subclass of plaintiffs who exchanged shares of OCLI stock for shares of JDSU stock in connection with the merger. On October 12, 2005, the Court granted that motion. On August 12, 2005, Lead Plaintiff moved for class certification. That motion will be heard on November 18, 2005. A further case management conference is also scheduled for November 18, 2005. Document discovery is ongoing. Each party has noticed depositions of both party and non-party witnesses. Risk Factors .... <u>We face certain litigation risks that could harm our business:</u> We have had numerous lawsuits filed against us asserting various claims as noted in Part II of this filing, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management’s time and attention away from business operations, which could harm our business.
11/18/2005	Court conducts hearing regarding Lead Plaintiffs’ class certification motion	

DATE	LITIGATION EVENT	DISCLOSURE
11/29/2005	Mediation before the Hon. Daniel Weinstein (Ret.) and Catherine Yanni	
12/21/2005	Court grants motion to appoint Lead Plaintiff and Lead Counsel and grants Lead Plaintiff's motion to certify class	
1/23/2006	Lead Plaintiffs move for an order approving the proposed notice of class certification	
2/8/2006		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. The complaint in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. At a case management conference on July 15, 2005, the Court ordered the parties to mediate. Pursuant to the Court's order, the parties appeared at a mediation session on November 29, 2005, before the Hon. Daniel Weinstein (Ret.) and Catherine Yanni, but did not succeed in resolving their differences. Another session is scheduled for March 28 and 29, 2006. On November 18, 2005, the Court held a case management conference. At that conference the Court ordered that fact discovery be completed by September 29, 2006, and that expert discovery be completed by January 29, 2007. The Court also set a trial date of August 13, 2007. On December 21, 2005, the Court granted Lead Plaintiff's motion for class certification. On January 6, 2006, Defendants petitioned the Ninth Circuit Court of Appeals for permission to appeal the Court's class certification order. The Ninth Circuit has not ruled on Defendants' petition as of the date of this filing. Meanwhile, on January 23, 2006, Lead Plaintiff moved in the trial court for approval of its proposed plan for providing notice of class certification to members of the Plaintiff class. A hearing on that motion is scheduled for March 3, 2006. The next case management conference is scheduled for May 4, 2007. Document discovery is ongoing. Each party has noticed and taken depositions of both party and non-party witnesses. Risk Factors

DATE	LITIGATION EVENT	DISCLOSURE
		.... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims as noted in Part II of this filing, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
3/28/2006	Mediation held before the Hon. Daniel Weinstein (Ret.) and Catherine Yanni	
4/6/2006	Court grants Lead Plaintiff's motion for approval of its proposed notice of class certification	
5/9/2006		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff or Connecticut's Treasurer's Office or CTO. The complaint in *In re JDS Uniphase Corporation Securities Litigation*, C-02-1486 (N.D. Cal.), purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that defendants made material misstatements and omissions concerning demand for the company's products, improperly recognized revenue, overstated the value of inventory, and failed

DATE	LITIGATION EVENT	DISCLOSURE
		to timely write down goodwill. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. At a case management conference on July 15, 2005, the Court ordered the parties to mediate. Pursuant to the Court's order, the parties appeared at mediation sessions on November 29, 2005, and March 28, 2006, before the Hon. Daniel Weinstein (Ret.) and Catherine Yanni, but did not succeed in resolving their differences. On November 18, 2005, the Court held a case management conference. At that conference the Court ordered the fact discovery be completed by September 29, 2006, and that expert discovery be completed by January 29, 2007. On December 21, 2005, the Court granted CTO's motion for class certification. On January 23, 2006, CTO moved for approval of its proposed plan for providing notice of class certification to members of the Plaintiff class. On April 6, 2006, the Court granted CTO motion for approval of its proposed plan for providing notice of class certification to members of the Plaintiff class. Discovery is ongoing. The next case management conference is scheduled for May 4, 2007, and trial is set to begin on August 13, 2007. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.

DATE	LITIGATION EVENT	DISCLOSURE
9/14/2006		Legal Proceedings from Form 10-K: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification. On April 6, 2006, the Court granted Plaintiffs' motion for approval of its proposed plan for providing notice of class certification to members of the Plaintiff class. Discovery in *In re JDS Uniphase Corporation Securities Litigation* is ongoing. Each party has noticed and taken depositions of both party and non-party witnesses. The deadline for fact discovery, except for depositions and discovery arising from new information obtained at depositions, is September 29, 2006. The closing date for completion of depositions and discovery arising from new information obtained at depositions is December 1, 2006. The closing date for expert discovery is March 19, 2007. The next case management conference is scheduled for May 4, 2007, and trial is scheduled for October 1, 2007. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these

DATE	LITIGATION EVENT	DISCLOSURE
		lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
11/9/2006		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the Company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification. Discovery in *In re JDS Uniphase Corporation Securities Litigation* is ongoing. Each party has noticed and taken depositions of both party and non-party witnesses. The deadline for fact discovery, except for depositions and discovery arising from new information obtained at depositions, was September 29, 2006. The closing date for completion of depositions and discovery arising from new information obtained at depositions is December 1, 2006. The closing date for expert discovery is March 19, 2007. The next case management conference is scheduled for May 4, 2007, and trial is set to begin on October 1, 2007.

DATE	LITIGATION EVENT	DISCLOSURE
		Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
2/6/2007		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the Company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification.

DATE	LITIGATION EVENT	DISCLOSURE
		Fact discovery in *In re JDS Uniphase Corporation Securities Litigation* is substantially complete. Each party has noticed and taken depositions of both party and non-party witnesses. The closing date for expert discovery is March 23, 2007. The next case management conference is scheduled for June 22, 2007, and trial is set to begin on October 1, 2007. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
4/26/2007	Defendants file motions for summary judgment	
5/9/2007		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the Company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write

DATE	LITIGATION EVENT	DISCLOSURE
		down goodwill. The complaint seeks unspecified damages and alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification. Fact and expert discovery in *In re JDS Uniphase Corporation Securities Litigation* is substantially complete. Each party has noticed and taken depositions of experts and both party and non-party witnesses. On April 26, 2007, Defendants moved for summary judgment on all claims against them. Those motions are scheduled to be heard on July 26, 2007. The next case management conference is also scheduled for July 26, 2007, and trial is set to begin on October 1, 2007. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial position, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation can be costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
7/26/2007	Court conducts hearing on parties' summary judgment motions	
8/24/2007	Court grants in part and denies in part motions for summary judgment and defers Lead Plaintiff's motion for	

DATE	LITIGATION EVENT	DISCLOSURE
	partial summary judgment	
8/29/2007		Legal Proceedings from Form 10-K: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. Although the complaint does not specify the amount of damages sought, Plaintiffs stated in recent court filings that they seek more than $20 billion in alleged damages. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification. Fact and expert discovery in *In re JDS Uniphase Corporation Securities Litigation* is complete. Each party has noticed and taken depositions of experts and both party and non-party witnesses. On August 24, 2007, the Court granted in part and denied in part Defendants' motions for summary judgment and deferred ruling on Plaintiffs' motion for partial summary judgment. Trial is set to begin on October 22, 2007. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to

DATE	LITIGATION EVENT	DISCLOSURE
		substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial condition, liquidity and results of operations. In particular, the securities class actions discussed in Item 3, "Legal Proceedings," contained in Part I of this report, claim damages that exceed the total current assets of the Company and thus an unfavorable outcome or settlement of one or more of these securities class action lawsuits could have a substantial material adverse effect on our financial condition, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation is costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
9/25/2007	Court denies Lead Plaintiff's cross-motion for partial summary judgment	
10/23/2007	Trial begins	
11/7/2007		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification.

DATE	LITIGATION EVENT	DISCLOSURE
		Fact and expert discovery in *In re JDS Uniphase Corporation Securities Litigation* is complete. Each party has noticed and taken depositions of experts and both party and non-party witnesses. On August 24, 2007, the Court granted in part and denied in part Defendants' motions for summary judgment. On September 25, 2007, the Court denied Plaintiffs' motion for partial summary judgment. A jury trial began on October 23, 2007. The trial is currently scheduled to last for nineteen Court days. Although the complaint does not specify the precise amount of damages sought, Plaintiffs have stated in recent court filings that they intend to seek a verdict of more than $20 billion in alleged damages. Plaintiffs' expert witness on damages has generally testified to that effect in the pending jury trial. While there are many potential outcomes of the pending trial, in the event of a final, non-appealable and enforceable judgment against the Company that is in an amount commensurate with the Plaintiffs' maximum theory of damages, it would not have sufficient assets to pay such a judgment. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial condition, liquidity and results of operations. In particular, the securities class actions discussed in Item 1, "Legal Proceedings," contained in Part II of this report, claim damages that exceed the total current assets of the Company and thus an unfavorable outcome or settlement of one or more of these securities class action lawsuits (such as, for example an adverse judgment in the *In re JDS Uniphase Corporation Securities Litigation* trial which commenced on October 23, 2007) could have a substantial material adverse effect on our financial condition, liquidity and results of operations, credit ratings, and ability to access capital markets and comply with existing debt obligations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation is costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.

DATE	LITIGATION EVENT	DISCLOSURE
11/27/2007	Court enters jury verdict in favor of the defense on all counts; no financial damages awarded	
11/28/2007		Press Release: JDSU Wins Class Action Jury Verdict
2/7/2008		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purports to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs allege that Defendants made material misstatements and omissions concerning demand for the Company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint alleges various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. In January 2005, the Court denied the motion to dismiss claims against the Company, Jozef Straus, Anthony R. Muller, and Charles Abbe, and granted in part and denied in part the motion to dismiss claims against Kevin Kalkhoven. Defendants subsequently filed answers denying liability for the claims asserted against them. On December 21, 2005, the Court granted Plaintiffs' motion for class certification. A jury trial began on October 23, 2007. At trial, plaintiffs sought more than $20 billion in alleged damages. On November 27, 2007, the jury returned a unanimous verdict in favor of Defendants. The deadline for Plaintiffs to appeal will begin to run once the Court enters judgment. An unfavorable outcome on appeal, if any, could result in a new trial seeking damages that exceed the Company's assets. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. The results of complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these

DATE	LITIGATION EVENT	DISCLOSURE
		lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial condition, liquidity and results of operations. In particular, the plaintiffs in *In re JDS Uniphase Corporation Securities Litigation* claim damages that exceed the total current assets of the Company. A jury rendered a unanimous verdict in favor of the Company and the other defendants in that case on November 27, 2007, though the plaintiffs have the right to appeal the verdict. An unfavorable outcome of an appeal, if any, could have a substantial material adverse effect on the Company's financial condition, liquidity and results of operations, credit ratings, and ability to access capital markets and comply with existing debt obligations. Even if this and other lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation is costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.
3/21/2008	Court enters judgment	
3/28/2008	Court enters corrected final judgment	
5/6/08		Legal Proceedings from Form 10-Q: Litigation under the federal securities laws has been pending against the Company and certain former and current officers and directors since March 27, 2002. On July 26, 2002, the Northern District of California consolidated all the securities actions then filed in or transferred to that court under the title *In re JDS Uniphase Corporation Securities Litigation*, Master File No. C-02-1486 CW, and appointed the Connecticut Retirement Plans and Trust Funds as Lead Plaintiff. The complaint in *In re JDS Uniphase Corporation Securities Litigation* purported to be brought on behalf of a class consisting of those who acquired the Company's securities from October 28, 1999, through July 26, 2001, as well as on behalf of subclasses consisting of those who acquired the Company's common stock pursuant to its acquisitions of OCLI, E-TEK, and SDL. Plaintiffs alleged that Defendants made material misstatements and omissions concerning demand for the Company's products, improperly recognized revenue, overstated the value of inventory, and failed to timely write down goodwill. The complaint alleged various violations of the federal securities laws, specifically Sections 10(b), 14(a), 20(a), and 20A of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. On December 21, 2005, the Court granted Plaintiffs' motion for class certification.

DATE	LITIGATION EVENT	DISCLOSURE
		A jury trial in *In re JDS Uniphase Corporation Securities Litigation* began on October 23, 2007. At trial, plaintiffs sought more than $20 billion in alleged damages. On November 27, 2007, the jury returned a unanimous verdict in favor of Defendants. On March 28, 2008, the Court entered a corrected final judgment in favor of Defendants. The judgment ordered that Plaintiffs recover no damages or any other form of relief, that the action was dismissed on the merits, and that Defendants were entitled to recover their costs. On the same date, the Court approved a stipulation and proposed order in which all parties agreed to not appeal the judgment or any other issue and Defendants agreed to not seek their recoverable costs from Plaintiffs. Risk Factors .... We face certain litigation risks that could harm our business: We have had numerous lawsuits filed against us asserting various claims, including securities and ERISA class actions and stockholder derivative actions. For example, although all claims in *In re JDS Uniphase Corporation Securities Litigation* have been dismissed pursuant to the Court's final judgment and the plaintiffs in that action have agreed to not appeal the judgment, several lawsuits against the Company based on the same facts alleged in *In re JDS Uniphase Corporation Securities Litigation* remain unresolved. The results of those and other complex legal proceedings are difficult to predict. Moreover, many of the complaints filed against us do not specify the amount of damages that plaintiffs seek, and we therefore are unable to estimate the possible range of damages that might be incurred should these lawsuits be resolved against us. While we are unable to estimate the potential damages arising from such lawsuits, certain of them assert types of claims that, if resolved against us, could give rise to substantial damages. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our financial condition, liquidity and results of operations. Even if these lawsuits are not resolved against us, the uncertainty and expense associated with unresolved lawsuits could seriously harm our business, financial condition and reputation. Litigation is costly, time-consuming and disruptive to normal business operations. The costs of defending these lawsuits, particularly the securities class actions and stockholder derivative actions, have been significant, will continue to be costly and may not be covered by our insurance policies. The defense of these lawsuits could also result in continued diversion of our management's time and attention away from business operations, which could harm our business.