

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
ALBUQUERQUE DIVISION

MICHAEL BRUCE ZELLER, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

MANNATECH, INC., SAMUEL L. CASTER,  
STEPHEN D. FENSTERMACHER and  
TERRY L. PERSINGER,

Defendants.

Civil Action No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiff makes the following allegations, except as to allegations specifically pertaining to Plaintiff and Plaintiff's counsel, based upon the investigation undertaken by Plaintiff's counsel, which investigation included analysis of news articles and reports, public filings, press releases and other matters of public record.

**NATURE OF THE COMPLAINT**

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the publicly traded securities of ("Mannatech" or the "Company") during the period of August 10, 2004, through May 9, 2005, inclusive, (the "Class Period") under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and the regulations promulgated thereunder by the SEC, including Rule 10b-5.

2. As discussed in more detail below, Defendants issued, or caused to be issued, false and misleading statements during the Class Period to artificially inflate the value of Mannatech stock.

3. Mannatech develops nutritional supplements, skin-care, and weight management products. During the Class Period, defendants repeatedly assured investors that the Company was on track to meet its financial goals and touted the success of its “network-marketing” program as an effective method to increase sales. Defendants also made glowing statements about Mannatech’s products, touting the products as miracle cures for weight loss and serious illnesses, such as a pill that could “work wonders” on cancer. As a result, Mannatech stock reached over \$26 a share during the Class Period.

4. On May 9, 2005, *Barron’s* published an article exposing improper practices prevalent at Mannatech. The article questioned the legitimacy of the Company’s business practices, and noted that despite the Company’s “surface flash, eye-popping financials and grand plans, Mannatech’s allure steadily dims the more intensely one scrutinizes its provenance and how it makes its living.” Specifically, the article pointed to a complaint filed in Los Angeles Superior Court which charged the Company with negligent misrepresentations and conspiracy to commit fraud, as well as a host of complaints from the Texas Attorney General’s office questioning the background of Mannatech’s CEO, Samuel Caster. The article also questioned the validity of the Company’s therapeutic claims for certain nutritional supplements and cited millions of dollars worth of suspiciously timed sales by Company insiders.

5. In response to the facts contained in the article which questioned the legitimacy of the Company’s statements and business practices, the stock fell to \$12.11 on May 10, 2005, having lost more than 50% of its value during the Class Period.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1337. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and the rules

and regulations promulgated thereunder by the SEC, including Rule 10b-5 (17 C.F.R. §240.10b-5).

7. Venue is proper in this district pursuant to Section 27 of the Exchange Act (28 U.S.C. §1391(b)). Many of the acts and transactions giving rise to the violations of law complained of herein, including the dissemination to the investing public of false and misleading information, occurred in this district.

8. In connection with the acts, conduct and other wrongs complained of herein, Defendants used the means and instrumentalities of interstate commerce, including the mails, telephone and the facilities of national securities exchanges.

### **THE PARTIES**

#### **A. Plaintiff**

9. Plaintiff purchased Mannatech common stock during the Class Period, as evidenced by his certification attached hereto.

#### **B. Corporate Defendant**

10. Defendant Mannatech's principal offices are located at 600 South Royal Lane, Suite 200, Coppell, Texas. The Company offers the following description on its website:

Mannatech, Incorporated develops nutritional supplements, topical products, and weight-management products. Its products are designed to support cell-to-cell communication, the immune system, the endocrine system, skin, and health, as well as nutritional support during weight loss. The company provides various nutritional supplements for overall health and wellness; wellness management products to support and maintain specific areas of the body; lifestyle solutions to further support specific physiological functions that need additional nutritional support; sports performance nutrition products that provide nutrition to support physical performance and maintain muscle mass; a body system that focuses on various aspects of nutrition and weight management; skin care solutions, which are designed to strengthen the skin's own natural texture, softness, and elasticity, as well as to deliver vital antioxidants to the skin; and children's growth

essentials for their overall health and wellness. Mannatech also offers sales aids for its associates, which include enrollment and renewal packs, orientation and training programs, brochures, audio and videotapes, Web-based data management tools, and personalized Web site development. The company primarily sells its products, as well as its starter and renewal packs through a network-marketing system in the United States, Canada, Australia, the United Kingdom, Japan, New Zealand, and the Republic of Korea. Mannatech was incorporated in 1993 and is headquartered in Coppell, Texas.

**C. Individual Defendants**

11. The Individual Defendants, at all times relevant to this action, served in the capacities listed below and received substantial compensation:

<u>Name</u>	<u>Position</u>
Samuel L. Caster	Chairman of the Board, President and Chief Executive Officer (principal executive officer)
Stephen D. Fenstermacher	Senior Vice President of Accounting, and Chief Financial Officer (principal accounting officer)
Terry L. Persinger	President, Chief Operating Officer and Director

**CLASS ACTION ALLEGATIONS**

12. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the “Class”) consisting of all persons who purchased the publicly traded securities of Mannatech between August 10, 2004, and May 9, 2005, inclusive. Excluded from the Class are the Defendants herein, members of each Individual Defendant’s immediate family, any entity in which any Defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party.

13. Because Mannatech has millions of shares of common stock outstanding, and because the Company’s common stock was actively traded on NASDAQ under the symbol

“MTEX” throughout the Class Period, members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at this time and can only be determined by appropriate discovery, Plaintiff believes that Class members number at least in the thousands and that they are geographically dispersed.

14. Plaintiff’s claims are typical of the claims of the members of the Class, because Plaintiff and all of the Class members sustained damages arising out of Defendants’ wrongful conduct complained of herein.

15. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced and competent in class and securities litigation. Plaintiff has no interests that are contrary to or in conflict with the other members of the Class Plaintiff seeks to represent.

16. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation makes it impossible for the members of the Class individually to redress the wrongs suffered. There will be no difficulty in the management of this action as a class action.

17. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members in that Defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

a. whether the federal securities laws were violated by Defendants’ acts as alleged herein;

- b. whether the Company's publicly disseminated releases and statements during the Class Period omitted and/or misrepresented material facts and whether Defendants breached any duty to convey material facts or to correct material facts previously disseminated;
- c. whether Defendants participated in and pursued the fraudulent scheme or course of business complained of;
- d. whether Defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts;
- e. whether the market prices of Mannatech common stock during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and
- f. whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. The Class Period Begins**

18. The Class Period begins on August 10, 2004. On that date, Mannatech issued a press release announcing its results for the second quarter of 2004 and the filing of its Form 10-Q for the same period. The press release stated:

Mannatech, Incorporated today announced record sales and net income for its second quarter ended June 30, 2004. For the three months ended June 30, 2004, net sales reached \$74.3 million, which was an increase of 59.8% from \$46.5 million for the same period in 2003 and net income increased by 376.1% to \$5.6 million or \$0.20 earnings per share (diluted), as compared to \$1.2 million or \$0.04 earnings per share (diluted) for the same period in 2003. For the first six months of 2004, net sales increased by 52.5% to reach \$132.7 million and net income increased to \$8.7 million, or \$0.32 earnings per share (diluted), compared to sales of \$87.0 million and net income of \$2.6 million, or \$0.10 earnings per share (diluted) for the same period in 2003.

Commenting on the results, Mannatech Chairman and CEO Sam Caster said, "Our record performance, with sales growth of 59.8% and net income increasing

376.1%, is a testament to Mannatech's products, our Associates and the future of the Company. Along with this tremendous growth in our current markets, we are excited about introducing Mannatech products to South Korea when we plan to open for business in September 2004. another sign of our strong trend is our increase in pack sales, which increased by 101.8% in the second quarter of 2004 as compared to 2003. Pack sales, which are regarded as a leading indicator for Mannatech, include signups, renewals, and upgrades, and our higher priced pack choices include various product selection s as well as sales materials. New Associates are joining our company at a record rate, and we look forward to adding South Korea to our family of markets.”

19. On November 9, 2004, defendants issued a press release announcing “record” quarterly sales and earnings. The press release stated:

Mannatech, Incorporated (Nasdaq:MTEX) today announced record sales and earnings for its third quarter ended September 30, 2004 as compared to the same period in 2003. For the three month period ended September 30, 2004, sales reached \$77.6 million, a new quarterly sales record for Mannatech, which was an increase of \$27.8 million, or 56.1%, as compared to the prior year. Net income rose to \$6.8 million, which more than doubled versus the same period in 2003. Net income as a percentage of net sales increased to 8.8% of net sales as compared to 5.8% for the same period in 2003. Earnings per share (diluted) for the third quarter of 2004 increased to \$0.25 per share, which was an increase of 127.3% as compared to the prior year.

Sales for the nine months ended September 30, 2004 were \$210.2 million, up 53.8% versus 2003. Net Income reached \$15.5 million, which was an increase of \$10.0 million or 183.4% over last year, while earnings per share (diluted) for the nine months ended September 30, 2004 was \$0.57, again of 171.4% as compared to the same period in 2003.

The third quarter results represented a new quarterly record and marks Mannatech's eighth consecutive quarter of successive sales increases, during which time sales have more than doubled. Net sales by country for the three months ended September 30, 2004, in millions, and as a percentage of total net sales, as well as the number of new and continuing Mannatech independent Associates and Members who purchased Mannatech's products within the last 12 months were as follows:

Three months ended September 30								
	United States	Canada	Australia	United Kingdom	Japan	New Zealand	South Korea	Total
2004	\$51.30	\$5.60	\$8.00	\$2.60	\$6.50	\$3.40	\$0.20	\$77.60
	66.10%	7.20%	10.30%	3.30%	8.40%	4.40%	0.30%	100.00%
2003	\$33.40	\$4.10	\$4.20	\$1.30	\$4.90	\$1.80	----	\$49.70
	67.20%	8.20%	8.50%	2.60%	9.90%	3.60%	----	100.00%

For the twelve months ended										
Associates & Members	September 30, 2003		December 31, 2003		March 31, 2004		June 30, 2004		September 30, 2004	
	New	125,000	51.4%	134,000	50.8%	141,000	49.1%	150,000	47.8%	162,000
Continuing	118,000	48.6%	130,000	49.2%	146,000	50.9%	164,000	52.2%	180,000	52.7%
Total	243,000	100.0%	264,000	100.0%	287,000	100.0%	314,000	100.0%	342,000	100.0%

Sam Caster, Chairman and CEO of Mannatech, commented on the records setting results. "We have seen our business grow rapidly and successfully for the past eight quarters, through the tremendous labors of our Associates around the world in concert with the highly focused and motivated activities of our corporate staff. We have also seen our sales double since the string of successive quarterly increases began in the fourth quarter of 2002. This strong trend is rewarding to us, and yet we believe that we have just begun to realize the potential of the products Mannatech brings to the world. We intend to continue our growth into new markets around the globe, and we welcome into the Mannatech family the Associates in our newest market in South Korea, which opened in September, 2004."

20. On March 31, 2005, defendants filed a Form 10-K for the year ended December 31, 2004. The 10-K was signed by defendants Caster and Fenstermacher. The 10-K included certifications from both defendants attesting to the accuracy of the Company's internal controls, stating:

**Certification of  
Chief Financial Officer  
of Mannatech, Incorporated**

This certification is provided pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, and accompanies the annual report on Form 10-K for the year ended December 31, 2004 of Mannatech, Incorporated.

I, Stephen D. Fenstermacher, the Chief Financial Officer of the registrant, certify that:

1. I have reviewed this annual report on Form 10-K of Mannatech, Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects



the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15(e), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

21. The 10-K also touted the success of the Company's sales program and the efficacy of its products stating:

**Business Strategy**

Mannatech's goals for its future include the following:

1. ***Continuing to Strengthen its Financial Results and Returning Value to its Shareholders and Independent Associates.*** Mannatech reported a significant increase in its financial results in 2004. Mannatech hopes to continue this trend and to continue to declare cash dividends for its shareholders in the future. Mannatech plans to improve its financial results by continuing to focus on ways to increase revenues in both its domestic and foreign operations, continuing to control costs, and by expanding operations into Taiwan. In addition, Mannatech plans to begin registering its products in Germany and Denmark in mid 2005. Mannatech believes that its future product sales will improve as a result of its continued success in attracting and retaining its independent associates. During 2004, the number of current independent associates and members who purchased packs and products from Mannatech increased by 39.8% to approximately 369,000 as of December 31, 2004 as compared to 264,000 a year ago. Further, the number of independent associates and members increased by 32.05% to 264,000 for the year ended 2003 as compared to 200,000 for the year 2002.
2. ***Developing New Products and Enhancing Existing Products.*** Mannatech continues to focus on new areas for future product development and will continue to evaluate various skin care products and other nutritional products for future product development. In addition, Mannatech strives to ensure that its products are made from high-quality, effective ingredients and contain one or more of its proprietary compounds, which it believes helps in its pursuit of being a cutting-edge industry leader. Mannatech expects that any future products it develops will complement and enhance its existing products. Through on-going research and established relationships with suppliers and manufacturers, Mannatech continues to identify alternative ingredients to improve the efficacy of its products and to achieve certain economies of scale. In March 2005, Mannatech introduced a more concentrated formula of its proprietary product Ambrotose® called, Advanced Ambrotose®.
3. ***Attracting and Retaining New independent Associates.*** Mannatech strives to financially reward its independent associates for their business successes, loyalty, and on-going achievements. As a result, Mannatech continually examines its global associate career and compensation plan and periodically introduces new incentives, such as its travel incentives, to attract and retain independent associates. Mannatech believes its global associate career and compensation plan encourages greater associate retention, motivation, and productivity. No single

independent associate has ever accounted for more than 10% of Mannatech's consolidated net sales.

22. The 10-K also emphasized that the Company closely monitored its sales associates stating:

***Management of Independent Associates.*** Mannatech takes an active role in the oversight of its independent associates. Mannatech tries to ensure that its independent associates' conduct complies with applicable laws and regulations governing the sale of its products and the promotion of its business opportunities by contractually binding its independent associates to abide by Mannatech's policies and procedures for its independent associates and members. Mannatech provides each independent associate with a copy of its policies and procedures upon signing up as an independent associate and uses various media formats to distribute changes to its policies and procedures that must be followed in order to remain compliant with respect to Mannatech's policies and procedures, including publishing the changes in a newsletter, posting the changes on its corporate website, and announcing the changes at various educational meetings, seminars, and webcasts. Furthermore, Mannatech's legal/compliance department periodically monitors its independent associates' websites for content. In an effort to decrease the number of independent websites owned by its independent associates and to preserve and protect its trademarks, Mannatech offers Mannapages™. Mannapages™ is a standardized personal Internet website program created to help its independent associates with their sales efforts, provide consistent standardized information and education, and assist Mannatech in monitoring websites of its independent associates.

23. The statements detailed above in the Company's SEC filings and press releases were materially false and misleading because defendants misrepresented the efficacy of Mannatech's products. In addition, defendants failed to disclose that the Company's internal controls were inadequate and failed in several key aspects, resulting in inadequate monitoring and supervision of the Company's associates.

#### **B. The Truth Emerges**

24. The façade of growing strength in the Company's operations which artificially inflated the value of Mannatech stock occurred at just the perfect time for insiders to sell millions of dollars' worth of Mannatech stock, as detailed in the *Barron's* article.

25. On March 9, 2005, defendants issued a press release reporting “Another Record-Breaking Year of Annual Sales & Profit.” The press release stated:

Mannatech, Incorporated today announced the achievement of new annual sales and profit records for 2004. Consolidated net sales reached a new high of \$294.5 million, an increase of \$103.5 million, or 54.2%, as compared to 2003. Mannatech’s net income of \$19.6 million more than doubled as compared to the prior year with an increase of \$10.8 million, or 122.4%, and earnings per share of \$0.71 (diluted) increased 108.8% as compared to 2003. Annual historical sales by market are shown in the table below.

	2002		2003		2004	
<b>United States</b>	\$105.0	74.5%	\$127.8	67.0%	\$192.5	65.4%
<b>Canada</b>	\$16.4	11.6%	\$16.7	8.7%	\$22.2	7.5%
<b>Australia</b>	\$6.6	4.7%	\$15.6	8.2%	\$30.6	10.4%
<b>United Kingdom</b>	\$1.6	1.1%	\$5.0	2.6%	\$10.5	3.6%
<b>Japan</b>	\$9.0	6.4%	\$18.6	9.7%	\$24.5	8.3%
<b>New Zealand</b>	\$2.3	1.7%	\$7.3	3.8%	\$12.9	4.4%
<b>South Korea</b>	\$0.0	0.0%	\$0.0	0.0%	\$1.3	0.4%
<b>Total</b>	\$140.9	100.0%	\$191.0	100.0%	\$294.5	100.0%

Fourth quarter results also included a new consolidated net sales record of \$84.2 million for Mannatech, which was an increase of \$29.9 million, or 55.1%, as compared to the same period in 2003. Fourth quarter net income was \$4.0 million, or \$0.15 earnings per share (diluted), which was an increase of 21.9 % over the fourth quarter of 2003.

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
<b>United States</b>	\$36.8	63.0%	\$49.5	66.6%	\$51.3	66.1%	\$54.8	65.2%
<b>Canada</b>	\$4.7	9.0%	\$5.8	7.8%	\$5.6	7.2%	\$6.1	7.2%
<b>Australia</b>	\$6.5	11.1%	\$7.4	10.0%	\$8.0	10.3%	\$8.8	10.4%
<b>United Kingdom</b>	\$2.8	4.7%	\$2.6	3.5%	\$2.6	3.3%	\$2.5	3.0%
<b>Japan</b>	\$5.0	8.6%	\$5.9	7.9%	\$6.5	8.4%	\$7.1	8.4%
<b>New Zealand</b>	\$2.6	4.05%	\$3.1	4.2%	\$3.4	4.4%	\$3.8	4.5%
<b>South Korea</b>	\$0.0	0.0%	\$0.0	0.0%	\$0.2	0.3%	\$1.1	1.3%
<b>Total</b>	\$58.4	100.0%	\$74.3	100.0%	\$77.6	100.0%	\$84.2	100.0%

Mr. Caster commented on the new all time high record sales volumes for the periods, stating, “We are extremely pleased with the financial gains and continued strength shown throughout 2004, and also are delighted with the impressive sales momentum generated by our 369,000 current independent Associates and members around the world. Our groundbreaking glyconutritional technology continues to bring hope, health, and opportunity to people in record numbers and we believe that we are just scratching the surface of the potential of Mannatech.”

The number of current Mannatech independent Associates and member as follows:

<b>For the year ended December 31</b>						
	<b>2002</b>		<b>2003</b>		<b>2004</b>	
<b>New</b>	91,000.0	45.6%	134,000.0	50.8%	178,000.0	48.2%
<b>Continuing</b>	109,000.0	54.4%	130,000.0	49.2%	191,000.0	51.8%
<b>Total</b>	200,000.0	100.0%	264,000.0	100.0%	369,000.0	100.0%

26. On May 9, 2005, the Company issued a press release entitled “Mannatech, Inc. Announces New First Quarter Records: Sales Increase 46%, E.P.S. up 55% records.” The press release stated in part:

Mannatech, Inc. today announced record first quarter financial results. For the three months ended March 31, 2005, consolidated net sales increased 46% as compared to the prior year quarter to reach a new quarterly record of \$85.1 million. In addition current independent Associates and members totaled 401,000 and reached a new record level. Net sales by country for the three months ended March 31, in millions, and as a percentage of net sales are as follows:

<b>Net Sales in Dollars and as a Percentage of Consolidated Net Sales</b>								
(in millions)	<b>United States</b>	<b>Canada</b>	<b>Australia</b>	<b>United Kingdom</b>	<b>Japan</b>	<b>New Zealand</b>	<b>South Korea</b>	<b>Total</b>
2004	\$36.8	\$4.7	\$6.5	\$2.8	\$5.0	\$2.6	----	\$58.4
	63.0%	8.0%	11.1%	4.8%	8.6%	4.5%	----	100.00%
2005	\$56.1	\$6.7	\$8.1	\$2.4	\$7.8	\$3.6	\$0.4	\$85.1
	65.9%	7.9%	9.5%	2.8%	9.2%	4.2%	0.5%	100.00%

(a) South Korea began operations in September 2004.

The strong sales trend for the first quarter of 2005 resulted in record-setting sales and earnings as well as with net income of \$4.7 million up 50% from a year ago and diluted earnings per share of \$0.17, which increased by 55% as compared to \$0.11 per share for the first quarter of 2004.

Sam Caster, Founder, Chairman, and Chief Executive Officer of Mannatech, commented on the quarterly results, saying, “We have now completed ten consecutive quarters of sales increases and during this period our quarterly volume has grown 245% to reach a new quarterly record of \$85.1 million. Our current independent Associate count as of March 31, 2005 grew 210% over the same ten quarters. Our recent new product introduction of Advanced Ambrotose(TM) has become one of our best-sellers, since its introduction in March 2005. Our earnings are growing at an accelerated rate, and we have a new market opening planned in June 2005 with Taiwan and plan to distribute our products in Germany and Denmark later in 2005. We believe, the future has never

looked better for Mannatech, and we intend to continue to build further on the successes of the past ten quarters.”

27. On the same day, *Barron's* published a story on Mannatech which stated in part:

But for all the surface flash, eye-popping financials and grand plans, Mannatech's allure steadily dims the more intensely one scrutinizes its provenance and how it makes its living. More specifically, our skepticism grew as we examined the company's multilevel marketing structure, reviewed some of the extravagant claims of its sales people both here and abroad, and perused the complaints of the Texas attorney general's office about an earlier venture of Mannatech's chief exec, Samuel Caster.

A lot of the concerns sparked by our research into the company and its affairs find dramatic expression in a civil suit, filed in Los Angeles Superior Court, charging Mannatech and Caster with, among other things, “negligent misrepresentation” and “conspiracy to commit fraud.” The company, let us hasten to add, denies all the allegations in that case and avers it deals severely with any misconduct by its sales associates.

Mannatech went public in February 1999 at \$8. In the first days of trading, the stock ran wild, hitting an intraday high of \$44.50. From there on, however, it was virtually all downhill. By May '01, shares were trading under \$1, and for the next two years, they never got above \$4 and change.

From the get-go, Mannatech's strategy has been two-pronged: to develop a proprietary line of supplements and a multilevel marketing organization to sell them. The hallmark of its multilevel marketing is that salespeople, called “associates,” earn money not only by selling supplements, but also by recruiting other associates to sell supplements, who, in turn, are encouraged to recruit still more salespeople. In this fashion, the original associate builds what is called a downline network and, importantly, gets a financial cut from not only his own sales, but the sales of his entire network.

\* \* \*

An upbeat Texan with a bit of drawl, the 54-year-old Caster credits McAnalley and McDaniel with having “pioneered the science of glycomics.”

“Glyco” is the Greek word for sugar, he explains, not the sweet kind, sucrose, but rather sugars that come from plants, like mannose from the aloe vera. With its “significant patents,” Mannatech is on the forefront of a “brand new area of nutrition,” Caster insists. But while Mannatech does have some foreign patents, in the U.S., according to the 10-K, it “continues to face the risk of its patent protection for Ambrotose complex being ultimately denied.”

Unlike Carrington, which wanted to market its products as drugs and suffered devastating rebuffs by the Food and Drug Administration, Mannatech is selling

Ambrotose only as a food supplement and so needs no blessing from regulators. However, the company is strictly prohibited from claiming Ambrotose “treats” or “cures” anything. Moreover, the Federal Trade Commission requires Mannatech to have “adequate substantiation” for its claims, meaning they must be based on “competent and reliable scientific evidence.”

Associates receive clear guidelines about what they can claim, Caster asserts, and the company disciplines or dismisses those who break the rules.

Yet even the most cursory visit to the Websites of Mannatech associates reveals that these sites are replete with the most astonishing of claims. For example, one such Website, with no readily visible disclaimer, tells with graphic visuals and somewhat primitive prose the remarkable story of Jaclyn, a young woman suffering from multiple sclerosis. She is shown first sitting in a wheelchair and then, in a second photo, working out on a treadmill.

The text accompanying those starkly contrasting photos reads: “Shortly after being married, Jaclyn was faced with the greatest challenge of her life. The excitement of being a newlywed was soon drowned out by the confinement to a wheelchair. . . . A friend introduced her to glyconutrients. . . . To everyone’s amazement, Jaclyn became the fastest response to glyconutrients of anyone who has tried them with MS. The restoration of health usually takes several months with such a debilitating condition. For Jaclyn, within two weeks she was walking again.”

Or jump to another Website and learn about Rikkea, born with cerebral palsy. The pitch comes presumably from her parents: “Our six-year-old daughter Rikkea could not walk or speak at the age of two due to brain damage caused by cerebral palsy. . . . She was having seizures, constant drooling from the mouth. . . . We were introduced to and gave her two capsules of glyconutrients a day in December 1998. After only one week, she got up and walked around the house!! She soon began speaking clearly in sentences too!!”

Close inspection of this site turns up a disclaimer, in small print, to the effect that the statements made have not been evaluated by the FDA and that Mannatech products are dietary supplements not intended to treat disease. But perhaps worth noting, this demur comes after pages and pages of testimonials about the remarkable effects of glyconutrients on a vast array of diseases, including arthritis, hepatitis, brain cancer, diabetes, subglottic hemangioma, prostate cancer and toxic-shock syndrome.

Here, as on a good many other associates’ sites, people also can get info on the “amazing opportunity” to sell Mannatech’s supplements. Such sites do double duty, by both selling the products and also recruiting foot soldiers for Mannatech’s sales force.

The promotional spiel on this associate's site begins: "Think about this. If there is a product that could benefit every person on earth, is scientifically validated, is new, is essential like vitamins, is patented, and is only available from ONE company that has an upward business growth compared to that of Microsoft, that equates to a very significant opportunity." Bill Gates, are you listening?

In spite of flagrant flouting of the rules by salespeople, Mannatech maintains that it complies with applicable laws and regulations. Caster makes a sharp distinction between the company and its associates, conceding that from time to time the latter may make improper claims. "We're enforcing our policies," he insists, "but there's only so much we can do."

The seemingly irrepressible inclination of some Mannatech associates to make extraordinary therapeutic claims for the supplements has irked some foreign regulators. In New Zealand, the Medical Devices Safety Authority notified Mannatech that its salespeople were making unwarranted claims after newspaper articles in early 2003 described how Stephen Nugent, a Mannatech employee with Ph.D.s in psychology and "naturopathic medicine," had extolled the virtues of the supplements before packed crowds in several cities.

Speaking to some 500 people in an Auckland ballroom, Nugent is reported to have referred repeatedly to breast and child cancer, cited medical studies supporting the company's theories and implied he could be more specific except for fear of running afoul of the government and its regulatory bodies.

In addition, the New Zealand Press Association reported that Mannatech associates were allegedly claiming the supplements could treat HIV, cancer, cystic fibrosis, arthritis and Down syndrome.

Mannatech addressed the complaints from the New Zealand Medical Devices Safety Authority through its in-house "disciplinary procedure" and, as of last June, according to the 10-K, had satisfied the regulators.

In Australia, the Therapeutic Goods Administration continues to monitor the company and has required Mannatech to provide "compliance training" for associates for the next three years. Symptomatic of what may have prompted such oversight were some dubious practices by a Mannatech associate, whose medical license was cancelled for two years in 2000 by the Australian Health Practitioner's Tribunal. According to the tribunal's report of its disciplinary action, the doctor, Ian Raddatz, who together with his wife had a sideline business selling Mannatech products, had told patients that the supplements could treat infertility, brain damage and cancer; had urged patients to use Mannatech supplements instead of their prescribed medications, and had tried to recruit a cancer patient's daughter as an associate, telling her: "These wonderful pills will . . . work wonders on your mother's cancer."



Even more egregious are the allegations at the heart of a lawsuit filed Nov. 1, 2004, in a Los Angeles Superior Court by Chie Sasaki, mother of a child with Tay-Sachs disease. She accuses a Mannatech associate, Caster and Mannatech itself of, among other things, intentional infliction of emotional distress, negligent misrepresentation and conspiracy to commit fraud.

The charges stem from the alleged actions of a Mannatech associate and Sherman Oaks chiropractor, Victoria Arcadi, who treated Sasaki's son, Yasuhiro, after he was diagnosed with Tay-Sachs, a fatal ailment most common among Ashkenazi Jews. Arcadi has denied all the charges against her.

According to court papers, after an initial chiropractic exam in September 1996, Arcadi recommended that Sasaki's son, then three years and nine months old, be given Mannatech supplements. His mother added them to a complicated diet she was already feeding him based on a high-calorie soy-based formula. By being fed nine times a day, the boy managed to gain several pounds.

His mother subsequently gave Arcadi pictures of the boy to show his weight gain, solely for the purpose of his treatment and expecting them to be kept confidential. Yet without oral or written consent, the complaint continues, in May 1997 Arcadi showed photographs of a naked Yasuhiro to several hundred people at a Mannatech demonstration seminar.

A month later, when Yasuhiro's mother discovered her son's photos were being widely used at Mannatech sales meetings, she fired off a letter of protest directly to Samuel Caster, then Mannatech's president. According to the complaint, Mannatech and Caster denied responsibility.

In July 1997, the complaint continues, Yasuhiro's mother protested, on three separate occasions, to Arcadi, who, promised to protect Yasuhiro's privacy but did not return the photographs as requested.

A month later, Arcadi co-authored an article entitled "Case Study: Tay-Sachs Disease Improvement During Nutritional Supplementation" in the Journal of the American Nutraceutical Association, featuring Yasuhiro Sasaki and describing his dramatic improvement taking Mannatech supplements. Thanks apparently to the supplements, the authors reported, "the child is interacting with his environment and exhibiting physical and vocal communication."

Yet, according to the complaint, when the article was published in August 1997, Yasuhiro Sasaki was already dead.

After his death, his mother again demanded Mannatech, Caster and Arcadi stop using her son's likeness and story in marketing Mannatech products, and, according to the complaint, she was led to believe the objectionable distribution would stop.

But years later – in March 2004, to be precise – she received an e-mail from a woman in Mexico whose nephew was afflicted with Tay-Sachs. The woman had seen photographs depicting Yasuhiro’s purported improvement using Mannatech products on a current Website, “with the clear inference,” according to the complaint, “that Yasuhiro was alive and doing well some seven years after his actual death.”

Caster adamantly denies that he or Mannatech had anything to do with distributing Yasuhiro’s story or his photographs. “As a company, we never used the pictures,” he stresses. But he concedes that some associates might still be using Yasuhiro’s story and photos. “Once they get out there,” he observes, “it’s impossible to get them back.”

So far, anyway, neither regulatory disapproval abroad nor wildly hyperbolic claims by associates on their Websites here have dampened the ardor of Mannatech users and associates (who often overlap) or slowed the company’s vigorous growth.

And shareholders, as noted, have little reason to be displeased. Especially those shareholders who happen to be insiders. In the past 12 months, seven Mannatech insiders have sold more than 900,000 shares worth \$18 million.

Two of the biggest sellers were Eileen Vennum and Bill McAnalley. Specifically, in just the past six months, Vennum sold over 85,000 shares worth more than \$1.8 million; McAnalley sold 259,000 shares worth a cool \$5.5 million.

Vennum is senior vice president of R&D at Mannatech. McAnalley is chief science officer, the company’s R&D honcho. They are, pure and simple, Mannatech’s top scientists, both named as inventors on a U.S. patent that is pending for Ambrotose Complex.

Nothing amiss in their selling stock, of course. But to a cynical eye, that they have sold in such quantity could easily be taken as hedging their bets.

28. On this news, Mannatech’s stock fell to as low as \$11.64 per share on May 10, 2005 before closing at \$12.15 per share on volume of 22 million shares.

29. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and

substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Mannatech and its business practices, their control over and/or receipt of Mannatech's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Mannatech, were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

30. The Individual Defendants engaged in such a scheme to inflate the price of Mannatech securities in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; (ii) enhance the value of their personal holdings of Mannatech securities; (iii) reap enormous profits from the exercise of their stock options and the sale of Mannatech securities; and (iv) allow the Company to complete a necessary and lucrative offering.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:**  
**FRAUD ON THE MARKET DOCTRINE**

31. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

a. Defendants made public misrepresentations or failed to disclose facts during the Class Period;

- b. The omissions and misrepresentations were material;
- c. Mannatech securities traded in an efficient market;
- d. The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- e. Plaintiff and the other members of the Class purchased Mannatech securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

32. At all relevant times, the market for Mannatech securities was an efficient market for the following reasons, among others:

- a. Mannatech securities were listed and actively traded during the Class Period on NASDAQ, an open, highly efficient and automated market.
- b. As a regulated issuer, Mannatech regularly made public filings, including its Forms 10-K, Forms 10-Q and related press releases, with the SEC; and
- c. Mannatech regularly communicated with public investors via established market communication mechanisms, including the Company's website, regular disseminations of press releases on the major news wire services, and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services.

33. As a result, the market for Mannatech securities digested current information regarding the Company from the publicly available sources described above and reflected such information in the prices of Mannatech's securities. As would be expected where a security is traded in an efficient market, material news concerning Mannatech's business had an immediate effect on the market price of Mannatech's securities, as evidenced by the rapid decline in the market price in the immediate aftermath of Mannatech's corrective disclosures as described

herein. Under these circumstances, all purchasers of Mannatech's securities during the Class Period suffered similar injury due to the fact that the price of Mannatech securities was artificially inflated throughout the Class Period. At the times they purchased or otherwise acquired Mannatech's securities, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not reasonably have discovered those facts. As a result, the presumption of reliance applies. Plaintiff will also rely, in part, upon the presumption of reliance established by a material omission.

### **COUNT I**

#### **FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGAGED THEREUNDER AGAINST ALL DEFENDANTS.**

34. Plaintiff repeats the allegations set forth in the above paragraphs as though fully set forth herein. This claim is asserted against Mannatech and the Individual Defendants.

35. During the Class Period, Defendants, carried out a plan, scheme and course of conduct which was intended to, and did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Mannatech common stock; and (iii) cause Plaintiff and other members of the Class to purchase Mannatech stock at artificially inflated prices during the Class Period. In furtherance of this unlawful scheme, plan and course of conduct, Defendants took the actions set forth herein.

36. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Mannatech common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Defendants are sued as primary participants in the

wrongful and illegal conduct charged herein, and as controlling persons of Mannatech, as alleged below.

37. In addition to the duties of full disclosure imposed on Defendants as a result of their affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 *et seq.*) and S-K (17 C.F.R. § 229.10 *et seq.*) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly-traded securities would be based on truthful, complete and accurate information.

38. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future prospects of Mannatech as specified herein. These Defendants employed devices, schemes and artifices to defraud, while in possession of material, adverse, non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Mannatech's value and performance and substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Mannatech and its business, operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business

which operated as a fraud and deceit upon the purchasers of Mannatech securities during the Class Period.

39. Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) Individual Defendants were all high-level executives and/or directors at the Company during the Class Period; (ii) each of these Defendants, by virtue of his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and (iv) these Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

40. Defendants had actual knowledge of the severe misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Mannatech's operating condition, business practices and future business prospects from the investing public and supporting the artificially inflated price of its stock. As demonstrated by their overstatements and misstatements of the Company's financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by

deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

41. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Mannatech's common stock was artificially inflated during the Class Period. Unaware of the fact that the market price of Mannatech's shares was artificially inflated, and relying (directly or indirectly) on Defendants' false and misleading statements, or on the integrity of the market in which the securities are traded, and/or on the absence of material, adverse information known to or recklessly disregarded by Defendants (but not disclosed to the public) during the Class Period, Plaintiff and the other members of the Class acquired Mannatech common stock during the Class Period at artificially high prices and were damaged thereby.

42. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were unaware of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known of the true performance, business practices, future prospects and true value of Mannatech, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have acquired their Mannatech securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

43. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

44. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their acquisition of the Company's securities during the Class Period.



**COUNT II**

**FOR VIOLATIONS OF SECTION 20(A) OF THE EXCHANGE ACT  
AGAINST INDIVIDUAL DEFENDANTS**

45. Plaintiff repeats the allegations set forth in the above paragraphs as if set forth fully herein. This claim is asserted against the Individual Defendants.

46. Individual Defendants were, and acted as, controlling persons of Mannatech within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, these Defendants had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in the dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be false and misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

47. In addition, Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

48. As set forth above, Individual Defendants violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and other members of the

Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for judgment as follows:

- a. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;
- b. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;
- c. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- d. Such other relief as this Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: September \_\_\_\_, 2005

**SCOTT & KIENZLE, P.A.**

---

Paul M. Kienzle  
201 Third Street NW, Suite 1570  
Albuquerque, NM 87103  
Tel: (505) 246-8600  
Fax: (505) 246-8682

**Local Counsel for Plaintiff**

**MILBERG WEISS BERSHAD & SCHULMAN  
LLP**  
Maya Saxena  
Joseph E. White III  
5200 Town Center Circle, Suite 600  
Boca Raton, FL 33486

Tel: (561) 361-5000  
Fax: (561) 367-8400

**LAW OFFICES OF CHARLES J. PIVEN, P.A.**

Charles J. Piven  
401 East Pratt Street, Suite 2525  
Baltimore, MD 21202  
Tel: (410) 332-0030  
Tel: (410) 685-1300

**Counsel for Plaintiff**