

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----:
WAYNE E. MEYER, Individually and On Behalf of : **Case No.**
All Others Similarly Situated, :
 :
 :
 Plaintiff, : **CLASS ACTION**
 : **COMPLAINT FOR**
 - against - : **VIOLATION OF THE**
 : **FEDERAL SECURITIES**
 : **LAW**
LUCENT TECHNOLOGIES, INC., RICHARD A. :
MCGINN, and DONALD K. PETERSON, :
 Defendants. : **Jury Trial Demanded**
-----:

Plaintiff individually and on behalf of all others similarly situated, by his undersigned attorneys, for their Class Action Complaint, allege upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through their attorneys, which investigation included, among other things, a review of the public documents and new releases of Lucent Technologies, Inc. (“Lucent” or the “Company”)

NATURE OF THE ACTION

1. This is a class action on behalf of all purchasers of the common stock of Lucent Technologies, Inc. (“Lucent” or the “Company”) who purchased or otherwise acquired such stock between July 20, 2000 and December 20, 2000, inclusive (“the Class Period”), to recover for injuries suffered from defendants’ violations of the federal securities laws. During the Class Period, defendants issued to the investigating public materially false and misleading financial information concerning the Company’s publicly reported revenues and earnings.
2. During the Class Period, Lucent improperly recognized approximately \$679 million in revenue and announced that it would restate its fiscal fourth quarter financial statements for a second time. During the Class Period, the Company improperly recognized

revenue based upon misleading documentation and by prematurely recognizing revenue on several sales in violation of Generally Accepted Accounting Principals (“GAAP”). Furthermore, defendant Richard A. McGinn (“McGinn”), Lucent’s former Chairman of the Board, President and Chief Executive Officer, sold 111,342 shares of Lucent for proceeds of over \$4.74 million on September 1, 2000. McGinn was fired on October 23, 2000.

3. As a result of the news, Lucent closed at \$14 3/16 on December 21, 2000, far from the class period high of \$54 3/16 per share.

JURISDICTION AND VENUE

4. This action arises under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a); and Rule 10b-5 promulgated pursuant to section 10(b) by the SEC, 17 C.F.R. § 240.10b-5. The jurisdiction of this Court is based on section 27 of the Exchange Act, 15 U.S.C. § 78aa; and on sections 1331 and 1337(a) of the Judicial Code, 28 U.S.C. §§ 1331, 1337(a).

5. Venue is proper in this District under section 27 of the Exchange Act, 15 U.S.C. § 78(aa), and section 1391(b) of the Judicial Code, 28 U.S.C. § 1391(b). The corporate headquarters of Lucent are located in this district and many of the acts complained of occurred in this district.

6. In connection with the acts and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and the facilities of the national securities exchanges.

PARTIES

7. Plaintiff, Wayne E. Meyer, purchased Lucent stock at artificially inflated prices

during the Class Period, and was injured thereby. Plaintiff's certification is filed herewith.

8. Defendant Lucent is a Delaware corporation with its headquarters at 600 Mountain Ave., Murray Hill, NJ 07947. Lucent is a leading designer and manufacturer of a wide range of public and private networks, communications systems and software, data networking systems, business telephone systems, and microelectronic components.

9. Defendant Richard A. McGinn was, at all relevant times until October 23, 2000, the Chairman of the Board, President and Chief Executive Officer of Lucent.

10. Defendant Donald K. Peterson was, at all relevant times, the Executive Vice President and Chief Financial Officer of Lucent.

11. By reason of their positions with the Company, the Individual Defendants had access to internal Company documents, reports and other information, including adverse non-public information concerning the Company's services, financial condition, and future prospects, and attended management and/or board of director meetings. As a result of the foregoing, they were responsible for the truthfulness and accuracy of the Company's public reports and releases described herein.

12. Lucent and the Individual Defendants, as officers and directors of a publicly held company, had a duty to promptly disseminate truthful and accurate information with respect to Lucent and to promptly correct any public statements issued by or on behalf of the Company which had become false and misleading.

13. Each defendant knew or recklessly disregarded that the misleading statements and omissions complained of herein would adversely affect the integrity of the market for the Company's stock and would cause the price of the Company's stock to become artificially

inflated. Each of the defendants acted knowingly or in such a reckless manner as to constitute a fraud and deceit upon plaintiff and the other members of the Class.

14. Defendants are liable, jointly and severally, as direct participants in and co-conspirators of, the wrongs complained of herein.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all persons who purchased or otherwise acquired shares of Lucent common stock between July 20, 2000 and December 20, 2000 inclusive. Excluded from the Class are defendants; members of the immediate families of the Individual Defendants; any entity in which any defendant has or had a controlling interest; and the legal representatives, heirs, successors, or assigns of any defendant.

16. Some 3.1 billion shares of common stock of Lucent are outstanding in an actively-traded and efficient market in which millions of shares were traded during the Class Period. Lucent common stock is traded on the New York Stock Exchange under the symbol "LU." The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff, and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the Class. Record owners and members of the Class may be identified from records maintained by Lucent or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

17. Plaintiff's claims are typical of the claims of the members of the Class in that plaintiff and each Class member purchased common stock of Lucent during the Class Period and sustained injury as a result.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

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

20. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class:

- a) Whether the federal securities laws were violated by defendants' acts as alleged herein;
- b) Whether defendants acted willfully or recklessly in omitting to state and misrepresenting material facts; and
- c) Whether the members of the Class have sustained damages, and if so, what is the proper measure of damages.

DEFENDANTS' MATERIAL MISSTATEMENTS AND OMISSIONS

21. On July 20, 2000, in conjunction with third quarter fiscal results ending June 30, 2000, defendants issued a press release over the *Business Wire*, the Company reported:

Pro forma earnings per share from continuing operations (1) rose 30 percent to 30 cents a share, or \$1.007 billion, for its third fiscal quarter ended June 30, 2000. This compares with 23 cents a share, or \$732 million, in the year-ago quarter. Pro forma revenues from continuing operations increased 20 percent to \$8.713 billion, versus \$7.245 billion a year ago.

On an as reported basis, revenue from continuing operations increased about 18 percent to \$8.713 billion this quarter compared to \$7.403 billion in the year-ago quarter.

Defendant McGinn stated:

We've completed the quarter with strong growth in our data networking, wireless, professional services, optoelectronics and optical fiber businesses. With today's announcement of our spinoff of the microelectronics business, we will create two vibrant new companies positioned to lead in the Internet infrastructure and communications semiconductor markets. The fact is, we are dividing Lucent in order to accelerate growth.

Under the section entitled "Sets Expectations for Fourth Fiscal Quarter 2000 and Fiscal 2001," McGinn went on to state that:

Lucent expects that pro forma revenues from continuing operations will grow about 15 percent for the fourth fiscal quarter of 2000, which ends Sept. 30, and pro forma earnings per share from continuing operations will be roughly in line with revenue growth. For fiscal year 2001, the company said it expects to return to 20 percent revenue growth and 20 percent growth in pro forma earnings per share.

22. On October 10, 2000, after the markets closed, the Company issued a press release over the *Business Wire* that fourth quarter revenues would be less than defendants had led the market to believe. The Company stated, in relevant part:

[B]ased on preliminary estimates, it expects earnings for its fourth fiscal quarter of 2000 to be lower than the company's previously announced guidance. The company expects pro forma earnings per share from continuing operations (1) for the quarter, which ended September 30, 2000, to be in the range of 17 cents to 18 cents per share compared to 24 cents for the year-ago quarter. The company expects to report pro forma revenues from continuing operations in the range of \$9.3 billion to \$9.4 billion for the quarter, a 14 percent to 15 percent increase over the prior year period.

In July, the company said it expected that pro forma revenues from continuing operations would grow about 15 percent for the fourth fiscal quarter of 2000 and pro forma earnings per share from continuing operations would be roughly in line with revenue growth. The company said the lower-than-expected earnings for the quarter could be almost equally attributed to three factors:

- Less than expected revenues and gross margins in the company's optical systems business;
- Credit concerns in the emerging service provider market that led to increasing reserves for bad debt;
- Greater than anticipated decline in circuit switching sales and margins.
- The company indicated that gross margin this quarter would be in the range of 39 percent to 40 percent.

23. On October 23, 2000, Lucent issued a press release regarding its fourth quarter earnings over the *PR Newswire* which stated that earnings beat analysts expectations by a penny. The release stated, in relevant part:

Lucent Technologies today said that pro forma revenues from continuing operations (1) increased 14.6 percent to \$9.4 billion for its fourth fiscal quarter ended Sept. 30, 2000, versus \$8.2 billion in the year-ago quarter.

Pro forma earnings per share from continuing operations for the quarter were 18 cents a share, or \$600 million, down from 24 cents a share, or \$768 million, a year ago. These results are in line with the announcement the company made on Oct. 10, saying that it expected its fourth fiscal quarter earnings to be lower than its previously announced guidance.

For the fiscal year ended Sept. 30, 2000, pro forma revenues from continuing operations rose 14.5 percent over fiscal year 1999 to \$34.3 billion. Pro forma earnings per share from continuing operations declined 9.8 percent.

24. Furthermore, on October 23, 2000, Lucent issued a press release announcing that defendant McGinn had been fired.

25. On November 21, 2000, Lucent announced that they had improperly recorded revenue for the fourth quarter and that as a result would have to restate previously reported quarterly earnings. The Company issued a *PR Newswire* release that stated, in relevant part:

Lucent Technologies today said that it has identified a revenue recognition issue impacting approximately \$125 million of revenue in its fourth fiscal quarter ended Sept. 30, 2000. The company estimates that the reduction in revenue could have an approximately 2 cent impact on earnings per share for the quarter and the year. The company previously reported \$9.4 billion in revenues and 18 cents a share on continuing operations for the quarter.

26. The investing community reacted swiftly to the news. The Company's shares plunged 16%, down more than 75% from its 52 week high reached on December 9, 1999.

27. The information stated in paragraphs 21 to 26 above was materially false and misleading and omitted facts when made in that the Defendants knew or recklessly disregarded that the Company's reported revenue and earnings were attributable to the improper recognition of revenue in violation of Generally Accepted Accounting Principals ("GAAP") and SEC rules. During the class period, the Company had knowledge that these statements were false and misleading because the Company lacked a system of internal controls with which to properly ensure that the revenue, earnings, and net income reported were materially correct. Furthermore, the Company materially overstated revenue by \$679 million.

THE TRUTH EMERGES

28. On December 21, 2000, *Bloomberg News* reported that Lucent announced an increase in first quarter losses and that fiscal fourth-quarter revenues will be restated for a second time. *Bloomberg* reported, in relevant part:

The biggest maker of phone equipment expects first-quarter revenue to fall 20 percent from a year ago. That's more than double the 7 percent decline it was expecting until it pulled the forecast a month ago.

Lucent said bad communication and accounting for some equipment it sold and was never used forced the company to reduce fourth-quarter revenue by \$679 million, or about 7 percent.

Restatement

Lucent restated fiscal fourth-quarter revenue, reducing it by \$679 million to \$8.7 billion. The company also said it earned 10 cents a share from continuing operations in the fourth quarter. That's less than the previously reported profit of 18 cents a share.

Lucent cited several reasons for the change in revenue. It reduced revenue by \$452 million because Lucent took back equipment that it sold but was never used, the company said. An additional \$125 million was eliminated due to misleading documentation and communications between a sales team and the financial department about an offer of a customer credit for a software license, Lucent said. Two other cases involving sales teams' customer credit offers in the quarter led [to] a \$74 [million] reduction in sales. Lucent said another \$28 million in sales was eliminated because it previously had recognized revenue from the sale of a system that had been incompletely shipped.

(emphasis added).

29. As a result of this report, Lucent's shares fell to \$14 1/16 at midday trading on December 21, 2000, far from the class period high of \$54 3/16 per share.

VIOLATIONS OF GAAP

30. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

31. The Individual Defendants caused Lucent to falsify its reported financial results through its improper revenue recognition where Lucent prematurely booked revenues on certain contracts.

32. GAAP, as set forth in FASB Statement of Concepts No. 5, provides the basic requirements for revenue to be recognizable: (1) revenue must have been earned; and (2) revenue must be realizable (collectible). *See* Concepts No. 5, ¶83.

33. Contrary to these representations and contrary to GAAP and SEC rules, during the Class Period, Lucent improperly recognized revenue, according to the information Lucent had at the time the revenue was recognized, the Company had not earned. Due to these accounting improprieties, the Company presented its financial results and statements in a manner that violated GAAP, including the following fundamental accounting principles:

- (a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);
- (b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);
- (c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);
- (d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);
- (e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);
- (f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);
- (g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and
- (h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

34. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

SCIENTER

35. Defendants McGinn and Peterson caused Lucent to engage in irregular accounting practices, and in turn caused Lucent to report artificially inflated financial results. The Individual Defendants knowingly, or with deliberate recklessness for the truth, caused Lucent to engage in accounting irregularities.

36. Lucent, acting through its officers McGinn and Peterson knowingly or with deliberate recklessness for the truth issued to the investigating public financial statements that contained materially false and misleading statements and artificially inflated earnings and assets. Each Individual Defendant had knowledge of Lucent's problems and was motivated to conceal such problems. Each Individual Defendant sought to demonstrate that they could lead the Company successfully and generate the growth expected by the market.

37. Furthermore, on September 1, 2000, defendant McGinn sold 111,342 shares of Lucent for proceeds of over \$4.74 million on September 1, 2000. McGinn has no history of selling Lucent shares prior to this sale. McGinn was fired on October 23, 2000.

COUNT I

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 OF THE SECURITIES AND EXCHANGE COMMISSION

38. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

39. The reported financial results of Lucent were materially false and misleading, and Defendants knew or were reckless in not knowing they were so.

40. Defendants employed devices, schemes, and artifices to defraud and engaged in acts, practices, and a course of conduct in an effort to maintain artificially high market prices for Lucent common stock in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5.

41. As a result of the dissemination of the aforesaid false and misleading reports and releases, the market price of the common stock of Lucent throughout the Class Period was higher than it would have been had the true facts concerning the Company's financial condition been known by the market.

42. In ignorance of the artificially high market prices of Lucent's publicly traded common stock, and relying upon the integrity of the market in which that stock was traded—the New York Stock Exchange—plaintiff and the other members of the Class acquired Lucent common stock during the Class Period at artificially inflated prices and were damaged thereby.

43. Had the market known of the true financial condition of Lucent, which was falsely represented by defendants, plaintiff and the other members of the Class would not have purchased or otherwise acquired their Lucent common stock during the Class Period at artificially inflated prices at which they did. Hence, plaintiff and the other members of the Class were damaged by defendants' violations of Section 10(b) and Rule 10b-5.

COUNT II
VIOLATIO OF SECTION 20(a)
OF THE EXCHANGE ACT

44. Plaintiff incorporates by reference the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

45. This claim is asserted against defendants and is based on section 20(a) of the Exchange Act. Defendants acted as controlling persons of Lucent within the meaning of section 20(a) of the Exchange Act.

46. By reason of their positions as officers and directors of Lucent and ownership of Lucent stock, defendants had the power and authority to cause or to prevent the wrongful conduct of herein and did exercise such power and authority.

47. By reason of the conduct alleged in Count I of the Complaint, Individual Defendants are liable for the aforesaid wrongful conduct, and are liable to Plaintiffs and to the other members of the Class for the substantial damages which they suffered in connection with their purchases of Lucent common stock during the class period.

PRAYER FOR RELIEF

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

A. Declaring this action to be a proper plaintiff class action maintainable pursuant to rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff to be a proper representative of the Class.

B. Awarding Plaintiff and all of the other members of the Class damages in an amount to be proven at trial, together with prejudgment interest thereon;

C. Awarding Plaintiff the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

D. Granting Plaintiff and the other members of the Class such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: December 28, 2000

KAPLAN, KILSHEIMER & FOX

William J. Pinilis
237 South Street
Morristown, NJ 07962
(973) 656-0222

BERMAN DEVALERIO & PEASE LLP

Jeffrey C. Block
Michael G. Lange
N. Nancy Ghabai
One Liberty Square
Boston, MA 02109
(617) 542-8300

LAW OFFICES OF CHARLES J. PIVEN

Charles J. Piven
The World Trade Center
401 East Pratt Street, Suite 2525
Baltimore, MD 21202
(410) 332-0030

bdp/p/lucent_complaint_meyer