

1 Kevin J. Yourman (147159)  
WEISS & YOURMAN  
2 10940 Wilshire Blvd., 24th Floor  
Los Angeles, CA 90024  
3 Telephone: (310) 208-2800

4 Joseph H. Weiss  
Moshe Balsam  
5 WEISS & YOURMAN  
551 Fifth Avenue, Suite 1600  
6 New York, NY 10176  
Telephone (212) 682-3025

7 Attorneys for Plaintiffs  
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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12

13	MORRIS WOLFSON, MYRIAM HERMAN	)	CASE NO. CV-01-0553 BZ
	and JOHN DIERS, On behalf of Themselves	)	
14	and All Others Similarly situated,	)	<u>CLASS ACTION</u>
		)	
15	Plaintiffs,	)	<b>CLASS ACTION COMPLAINT</b>
		)	<b>FOR THE VIOLATION OF</b>
16	vs.	)	<b>FEDERAL SECURITIES LAWS</b>
		)	
17	CRITICAL PATH, INC., DOUGLAS	)	<u>JURY TRIAL DEMANDED</u>
	HICKEY, DAVID C. HAYDEN, DAVID A.	)	
18	THATCHER, JOSEPH DUNCAN and	)	
	WILLIAM H. RINEHART	)	
19		)	
	Defendants.	)	
20		)	

21  
22 Plaintiffs, by their undersigned attorneys, respectfully submit this Class Action Complaint  
23 for violation of the federal securities laws (the "Complaint") against the defendants named herein.  
24 The allegations made in this Complaint are based upon the investigation made by and through  
25 plaintiffs' attorneys, including, but not limited to, a review of press releases, announcements,  
26 filings with the Securities and Exchange Commission ("SEC"), information publicly disseminated  
27 by defendants, news articles, analyst reports and reports in financial publications.

28 **SUMMARY OF ACTION**

1           1.       This is a shareholder class action on behalf of all purchasers (the “Class” or “Class  
2 Members”) of the securities of Critical Path, Inc. (the “Company” or “Critical Path”) including  
3 those individuals who acquired their Critical Path securities in exchange for shares or options in  
4 other companies which were acquired by the Company, between August 8, 2000 and February 1,  
5 2001, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange  
6 Act of 1934 (the “Exchange Act”).

7           2.       As is more fully alleged throughout the Complaint, this action arises from  
8 damages incurred by the Class as a result of a scheme and common course of conduct by  
9 defendants which operated as a massive fraud and deceit on the Class during the Class Period.  
10 Defendants’ scheme included rendering false and misleading statements and/or omissions  
11 concerning the financial condition and business prospects of Critical Path, as well as the financial  
12 benefits that would inure to Critical Path and its shareholders, in filings with the Securities  
13 Exchange Commission, Press Releases, and communications and/or meetings with investment  
14 firms, whose favorable predictions were based upon and ratified by the defendants.

15           3.       After rising to \$119.50 per share in March 2000, Critical Path’s stock price  
16 suffered for the rest of 2000, declining steadily from its high to a low of \$25 on January 18,  
17 2001. Yet it was not until February 1, 2001 that the defendants disclosed the full truth about the  
18 problems facing Critical Path. As a result, NASDAQ halted trading in the stock and the price  
19 collapsed.

20           4.       In August, 2000, defendants embarked on a scheme to defraud investors in order  
21 to artificially boost Critical Path’s stock price, as they realized that a high stock price was  
22 necessary to effect purchases of other Companies and dispose of their shares of the Company  
23 reaping millions of dollars in profits to themselves. By making a series of false and misleading  
24 statements throughout the Class Period and reassuring the public that Critical Path was not facing  
25 material difficulties in its business, defendants were able to artificially inflate the stock price of the  
26 Company.

27           5.       The scheme to defraud began on or about August 8, 2000, when defendants  
28 announced that Critical Path had entered into a definitive agreement to acquire Peer Logic, Inc.,

1 a private, San Francisco-based provider of eBusiness infrastructure software. Among other  
2 things, Critical Path stated in its press release that the “Company expects transaction to be  
3 accretive to 2001 consensus estimates for revenue and earnings per share. Acquisition does not  
4 impact commitment to fourth quarter 2000 profitability.” As set forth below, defendants  
5 continued, right up to the very end of the Class Period on February 1, 2001 to make false and  
6 misleading statements or omissions and failed to correct those statements and omissions at any  
7 time until February 1, 2001. Throughout the Class Period, defendants gave consistently  
8 misleading guidance to the numerous investment firms which it admittedly knew were following  
9 the Company and basing their advice and analysis directly on defendants’ false and misleading  
10 representations.

11 6. At the time defendants made their falsely positive representations to the public  
12 about Critical Path, they knowingly, or with conscious or deliberate recklessness, failed to  
13 disclose adverse material information about the Company to the investing public. Defendants  
14 failed to disclose, among other things, that:

- 15 (a) the revenues announced on January 18, 2001 were, in fact, materially  
16 overstated;
- 17 (b) due to serious problems facing the Company throughout the Class Period,  
18 Critical Path was not “on track” to turn a profit in either the fourth quarter 2000 or for the first  
19 half of 2001;
- 20 (c) that the costs for the acquisition of Peer Logic were significantly higher than  
21 reported by the defendants;
- 22 (d) that Critical Path’s business was declining as a result of “dot com”  
23 customers going out of business throughout the second half of 2000;
- 24 (e) that the Company was improperly recording a significant amount of licensing  
25 revenue as sales revenues;
- 26 (f) that Critical Path had adequate financial controls in place;
- 27 (g) that management had adequate internal controls on revenue recognition; and  
28 (h) the Company had adequate expense controls.

1           7.       On or about January 18, 2001, after the close of trading, Critical Path shocked the  
2 market announcing for the first time that it would post an operating loss for the fourth quarter of  
3 fiscal 2000 of \$11.5 million or 16 cents a share, rather than a profit of 1 cent per share as  
4 defendants had lead investors and investment analysts to believe. In addition, the Company now  
5 stated it expected for 2000 revenues of \$255 to \$260 million, and that instead of already turning  
6 a profit in the fourth quarter 2000 as defendants had stated it would, in fact, it would not become  
7 profitable, at least, until the third quarter of 2001. Based on statements from defendants, analysts  
8 had been forecasting a profit not only for the fourth quarter of 2000, but for each quarter in fiscal  
9 2001, and earnings of 3 cents for the first quarter of 2001. Just one month earlier, Critical Path's  
10 Chief Executive Officer, defendant Douglas Hickey, had reported to analysts that the Company  
11 was on track to turn a profit in the fourth quarter. The company blamed the fourth-quarter  
12 shortfall on higher costs from the acquisition of Peer Logic, dot-com customers going out of  
13 business and an accounting change that required the Company to defer \$7 million in licensing  
14 revenue.

15           8.       As a result of this negative report, the price of Critical Path stock plunged 55% on  
16 January 19, 2001 from approximately \$20 per share to approximately \$9 per share. Significantly,  
17 the price of Critical Path's stock declined on January 18, 2001 prior to the actual announcement  
18 by 20% from approximately \$25 per share to approximately \$20 per share on unusually heavy  
19 volume leading to the reasonable inference that defendants leaked the news to favored investors  
20 and/or analysts even before revealing it to the general investing public.

21           9.       A report carried on CBS Marketwatch on January 30, 2001 discussed the  
22 defendants' wrongdoing and the consequent crash in the price of Critical Path stock as follows:

23                   "I did not have sexual relations with that woman."

24                   Some statements go beyond the realm of believability. This notion  
25                   could be applied to the defensive remarks made by Critical Path  
26                   management, which at best mishandled expectations and made  
27                   poor judgment calls regarding their quarterly results, or at worst,  
28                   omitted material information and misled investors.

27                   For San Francisco-based Critical Path (CPTH: news, chart), which  
28                   provides messaging and e-mail services, the fourth quarter was a  
                      monumental period. It was to be the first time the company would

1 be profitable in its young history. It goes without saying that  
2 milestone was worth achieving at any cost. And that cost was  
3 management's credibility. Goals were missed by a long shot. See  
4 related story.

5 Making matters worse, executives had opportunities to issue a  
6 warning, analysts say.

7 At issue was a controversial \$7 million contract, 12 percent of the  
8 company's quarterly sales, that auditors said couldn't be recognized  
9 in the quarter.

10 As a result, the company missed its top line estimates. Accountants  
11 from PriceWaterhouseCoopers made their final say a day, maybe  
12 two days, before quarterly announcement on Jan. 18, according to  
13 Critical Path. Analysts were baffled that management did not have  
14 tighter internal controls on revenue recognition given the  
15 significance of the deal.

16 What's more, it appears the company lacked expense controls and  
17 was not upfront about it, analysts said. That's because even if the  
18 controversial contract was included, due to increases in operating  
19 expenses, the company would have lost 6 cents on the bottom line,  
20 vs. the expected 1-cent profit.

21 "That's enough to be able to tell investors that it wouldn't have met  
22 its bottom line," said Larry Berlin, an analyst at First Analysis.  
23 When guidance is worthless.... Still, management's decision to  
24 remain mum caused undue optimism. "What's unusual is that the  
25 Street's expectations were so different from management guidance  
26 and reality," said Merrill Lynch analyst Rob Stimson. "I was  
27 shocked."

28 As he should be, given that Critical Path CEO Doug Hickey  
presented at a Merrill Lynch conference just one week before the  
earnings announcement. According to Stimson, Hickey discussed  
the company's business model and the consensus estimates, leaving  
investors with confidence the company would make its numbers. . .  
. Even so, Stimson pointed out that management should have  
known that expenses were out of whack by the time they held an  
analyst day in the fourth quarter or "any time we spoke with them."  
Yet, management said nothing. According to Thatcher, it was a  
matter of certainty. Executives knew that they'd fall short of  
expectations and have to report "some" loss, Thatcher said. But  
since the company's books weren't closed until a "week or two  
weeks" after year-end, "we had no certainty as to the top-and  
bottom-line until a day before earnings." In other words,  
independent of the \$7 million in revenue, which executives believed  
would be included, there was "no certainty" with respect to how  
badly they would miss the bottom-line numbers. "To the best of  
my knowledge..." Making matters worse was the ambiguity  
surrounding the \$7 million contract. Auditors were brought in to  
consult on the structuring of the deal as it was being negotiated in  
early December to ensure that Critical Path could recognize the  
revenue in the quarter. But it wasn't until well over one month later

1 that auditors raised concerns. "To the best of my knowledge, the  
2 day before earnings" was the first time there was an uncertainty  
that the revenue might not be recognized, Thatcher said.

3 The contract - with a company whose name Thatcher couldn't  
4 recall -- is a distribution deal for a product within PeerLogic, a  
5 company acquired by Critical Path. As part of the contract, the  
6 customer or distributor took title of inventory, with a no-return  
7 guarantee clause, of which Critical Path would be paid \$7.5  
8 million. And even though the goods weren't sold to an end  
9 customer, the sale was recognized up front. Typically, personal  
10 computer makers follow these accounting procedures, but they're  
11 often accused of "stuffing the channel" if they ship more than the  
12 distributor needs. To a lesser degree, it's practiced in software  
13 license deals as well, but it's considered aggressive accounting.  
14 Apparently, Critical Path opted to take the aggressive course while  
15 accountants took the cautious route. Auditors had a different  
16 interpretation and "tightened the existing rules," Thatcher  
17 explained. And the differentiating factor, I asked? Thatcher wasn't  
18 "privy" to the conversations with the auditors to give any details as  
19 to what the sticking points. Hmm. How can the president not be  
20 "privy" to the details of such a significant deal in the biggest  
21 quarter of this company's life? And how could auditors drag their  
22 feet for more than a month before signing off on what was also a  
23 make-or-break deal. "Even if the deal was done at the end of the  
24 month, I would think accountants would have been able to give  
25 their opinion within a few days," said Mark Verbeck, an analyst at  
26 Epoch Partners.

27 Final thoughts.... Given the uncertain nature of the \$7 million  
28 contract, the company should have been obligated to tell the Street  
29 that 12 percent of its sales were in question and that its bottom line  
30 severely impacted, especially by the time they met with investors  
31 face-to-face at Merrill Lynch's conference. One could argue that in  
32 hindsight, it might not have mattered whether Critical Path warned  
33 earlier as shares would have been cut in half sooner rather than  
34 later. But many companies opted to get word of their troubles out  
35 early. . . . So, there was little advantage in keeping up a charade  
36 until reporting day. And the days or weeks of price stability hardly  
37 make up for the loss in management credibility, which will likely  
38 last for two more quarters. Critical Path plans to issue a press  
39 release to outline its financial outlook for '01 some time in the first  
40 two weeks of February. Merrill Lynch's Stimons has a message for  
41 the company: "He (Doug Hickey) better come clean in February  
42 because he will not get a second chance."

43 (Emphasis added).

44 10. On February 2, 2001, the Nasdaq announced that trading was halted in Critical  
45 Path. It was further announced that trading will remain halted until Critical Path has fully  
46 satisfied Nasdaq's request for additional information. This announcement was a result of the  
47 Company's shocking disclosure that:  
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1 the Board of Directors has formed a special committee of the  
2 Board to conduct an investigation into the Company's revenue  
3 recognition practices. The Company has discovered a number of  
4 transactions that put into question the Company's financial results.  
5 On January 18, 2001, the Company announced Fourth Quarter  
6 revenue of \$52 million in revenue and net loss, excluding special  
7 charges, of \$11.5 million. The Company now believes that these  
8 results may be materially misstated. The Company cautioned that  
9 the investigation has just begun. Effective immediately, the Board  
10 of Directors has placed on administrative leave David Thatcher, the  
11 Company's president, and William Rinehart, the vice president of  
12 worldwide sales. The special committee and the Company are  
13 working with its independent auditors, PricewaterhouseCoopers,  
14 and outside counsel, Wilson Sonsini Goodrich & Rosati.

### 9 JURISDICTION AND VENUE

10 11. The claims herein arise under Sections 10(b) and 20(a) (15 U.S.C. §§78j(b) and  
11 78t(a)) of the Securities and Exchange Act of 1934 (15 U.S.C. §78) (the "Exchange Act") and  
12 Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

13 12. This Court has subject matter jurisdiction of this action pursuant to Section 27 of  
14 the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. §§ 1331 and 1337.

15 13. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because defendant  
16 Critical Path maintains its corporate offices in this district and the violations of law complained of  
17 herein occurred primarily in this district, including the dissemination of materially false and  
18 misleading statements and the omission of material information complained of herein.

19 14. In connection with the conduct complained of herein, defendants, directly or  
20 indirectly, used the means and instrumentalities of interstate commerce, including the mails and  
21 interstate telephone communications, and the facilities of a national securities exchange.

### 22 THE PARTIES

23 24 15. Plaintiffs purchased shares of Critical Path common stock, as indicated in their  
25 certifications attached hereto, during the Class Period and was damaged thereby.

26 27 16. In its own words, defendant Critical Path ignites the power of information for  
28 eBusiness by providing the Internet messaging infrastructure upon which the new economy is  
built. The Company is a single resource that powers the flow of mission-critical information

1 through an integrated portfolio of secure messaging, directory, data integration and collaboration  
2 solutions. Critical Path's technology strengthens all aspects of the eBusiness value chain by  
3 providing the messaging infrastructure that fuels customers' new and existing  
4 eBusiness initiatives. Critical Path is headquartered in San Francisco, with offices worldwide. As  
5 of August 8, 2000, the Company had tens of millions of shares outstanding trading on NASDAQ.

6 17. (a) Defendant Douglas Hickey ("Hickey") served as the Chief Executive Officer  
7 of the Company at all relevant times.

8 (b) Defendant David C. Hayden ("Hayden") served as Chairman of the Board of  
9 the Company at all relevant times and sold shares of the Company while in possession of non-  
10 public adverse information about Critical Path as follows:

<u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
October 27, 2000	100,000 shares	\$4,931,250
November 29, 2000	250,000 shares	\$5,265,625

14 (c) Defendant David A. Thatcher ("Thatcher") served as President and  
15 Secretary of the Company at all relevant times until being placed upon administrative leave on or  
16 about February 2, 2001 and sold shares of the Company while in possession of non-public  
17 adverse information about Critical Path as follows:

<u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
August 25, 2000	50,000	\$3,162,500
August 31, 2000	20,182	\$1,561,582

21 (d) Defendant Joseph Duncan ("Duncan") served as Vice-President and Chief  
22 Information Officer of the Company at all relevant times and sold shares of the Company while in  
23 possession of non-public adverse information about Critical Path as follows:

<u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
December 28, 2000	101,761	\$3,256,352
December 26, 2000	64,696	\$1,940,880
August 11, 2000	60,000	\$3,047,280

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1 (e) Defendant William H. Rinehart (“Rinehart”) served as Vice-President of the  
2 Company at all relevant times until and sold shares of the Company while in possession of non-  
3 public adverse information about Critical Path as follows:

4 <u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
5 August 25, 2000	20,000	\$1,295,000
6 August 30, 2000	2,500	\$ 195,000
7 August 31, 2000	17,500	\$1,361,704
8 November 30, 2000	10,000	\$ 208,750
9 December 1, 2000	5,000	\$ 125,625

10 18. Defendants Hickey, Hayden, Thatcher, Duncan and Rinehart (the “Individual  
11 Defendants”) were at all relevant times during the Class Period controlling persons of Critical  
12 Path within the meaning of Section 20(a) of the Exchange Act. By reason of stock ownership,  
13 management position, and/or membership on Critical Path’s Board, the Individual Defendants  
14 were controlling persons of Critical Path and had the power and influence, and exercised the  
15 same, to cause Critical Path to engage in the illegal conduct complained of herein. The Individual  
16 Defendants are liable for the false statements pleaded herein, as those statements were made by  
17 them or the Company over which they were control persons.

18 19. As officers, directors and/or controlling persons of a Company registered with the  
19 SEC under the federal securities laws, whose common stock is registered with the SEC, traded  
20 on NASDAQ, and governed by the provisions of the federal securities laws, the Individual  
21 Defendants had a duty to disseminate truthful information promptly and accurately with respect  
22 to the Company’s operations, products, markets, management, earnings and business prospects,  
23 to correct any previously issued statements that had become materially misleading or untrue, and  
24 to disclose any trends that would materially affect earnings and the financial results of Critical  
25 Path, so that the market price of the Company’s publicly traded securities would be based upon  
26 truthful and accurate information.

27 20. The Individual Defendants, because of their positions with the Company,  
28 controlled and/or possessed the power and authority to control the contents of Critical Path’s

1 quarterly and annual reports, press releases and presentations to securities analysts, which  
2 information was conveyed through the analysts to the investing public. They were provided with  
3 copies of the Company's reports and press releases alleged herein to be misleading prior to or  
4 shortly after their issuance and had the ability and opportunity to prevent their issuance or cause  
5 them to be corrected.

6 21. Because their positions and access to material non-public information available to  
7 them but not to the public, the Individual Defendants knew or, with conscious and deliberate  
8 recklessness, disregarded that the adverse facts specified herein had not been disclosed to and  
9 were being concealed from the public and that the positive representations and/or omissions  
10 which were being made were then materially false and misleading.

11  
12 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

13 22. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of  
14 the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities  
15 who purchased or otherwise acquired Critical Path common stock from August 8, 2000 to  
16 February 1, 2001, inclusive (the "Class Period"), and who were damaged thereby. Excluded  
17 from the class are defendants, officers and directors of the Company, members of their immediate  
18 families, and their legal representatives, heirs, successors or assigns and any entity in which  
19 defendants have or had a controlling interest.

20 23. During the Class Period, thousands of shares of common stock of Critical Path  
21 were traded on an efficient and developed securities market. Thousands of brokers nationwide  
22 have access to trading information about Critical Path through the system. Within minutes of any  
23 transaction taking place, this system displays the most recent trades and prices.

24 24. The members of the class are so numerous that joinder of all members is  
25 impracticable. While the exact number of Class members is unknown to plaintiffs at this time and  
26 can only be ascertained through appropriate discovery, plaintiffs believe that there are thousands  
27 of members of the Class. As of August 8, 2000, Critical Path had tens of millions of shares of  
28

1 common stock outstanding and actively traded on the NASDAQ stock exchange, an efficient  
2 market, under the ticker symbol “CPTH.”

3 25. Plaintiffs’ claims are typical of the claims of the members of the Class as all  
4 members of the Class are similarly affected by defendants’ wrongful conduct in violation of  
5 federal law that is complained of herein.

6 26. Plaintiffs will fairly and adequately protect the interests of the members of the  
7 Class and have retained counsel competent and experienced in class and securities litigation.  
8 Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

9 27. A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy. Because the damages suffered by many individual Class  
11 members may be relatively small, the expense and burden of individual litigation make it virtually  
12 impossible for the Class members to individually seek redress for the wrongful conduct alleged  
13 herein.

14 28. Common questions of law and fact exist as to all members of the Class and  
15 predominate over any questions affecting solely individual members of the Class. Among the  
16 questions of law and fact common to the Class are:

- 17 a. whether the federal securities laws were violated by defendants’ acts as  
18 alleged herein;
- 19 b. whether defendants participated in and pursued the common course of  
20 conduct complained of herein;
- 21 c. whether documents, press releases and other statements disseminated to the  
22 investing public and the Company’s shareholders during the Class Period misrepresented the  
23 business condition of Critical Path;
- 24 d. whether defendants failed to correct prior statements when subsequent  
25 events rendered those prior statements untrue or inaccurate;
- 26 e. whether defendants acted willfully and/or with conscious or deliberate  
27 recklessness in misrepresenting and/or omitting to state material facts;

28

1 f. whether the market price of Critical Path's common stock during the Class  
2 Period was artificially inflated due to the misrepresentations and/or non-disclosures complained  
3 of herein; and

4 g. whether the members of the Class have sustained damages, and, if so, what  
5 is the proper measure thereof.

6 29. Plaintiffs will rely, in part, upon the presumption of reliance established by the  
7 fraud-on-the-market doctrine in that:

8 a. defendants made public misrepresentations or omitted material facts during  
9 the Class Period, as alleged herein;

10 b. the misrepresentations and/or omissions were material;

11 c. Critical Path's common stock was traded on an efficient market;

12 d. the misrepresentations and/or omissions alleged tended to induce reasonable  
13 investors to misjudge the value of Critical Path shares; and

14 e. plaintiffs and members of the Class acquired their shares between the time  
15 defendants made the misrepresentations and/or omissions and the time the truth was revealed,  
16 without knowledge of the falsity of the misrepresentations.

17 30. Based upon the above, plaintiffs are entitled to a presumption of reliance upon the  
18 integrity of the market for the purposes of class certification. Similarly, plaintiffs are entitled to a  
19 presumption of reliance with respect to the material misrepresentations and omissions alleged in  
20 this Complaint.

21

22 **SUBSTANTIVE ALLEGATIONS**

23 31. On or about August 8, 2000, the beginning of the Class Period, Critical Path, in a  
24 press release over PR Newswire, announced it had signed a definitive agreement to acquire Peer  
25 Logic, Inc., ("Peer Logic") a private, San Francisco-based provider of eBusiness infrastructure  
26 software. The press release stated further that among the "Key Acquisition Benefits" were:

27 -- Company expects transaction to be accretive to 2001 consensus  
28 estimates for revenue and earnings per share. Acquisition does not  
impact commitment to fourth quarter 2000 profitability.

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- Consolidates complementary technologies in the directory services marketplace and creates an extraordinary position in the eBusiness value chain.
- Complements and accelerates Critical Path's business model by providing additional scale and market presence in secure end-to-end messaging.
- Introduces Critical Path and PeerLogic to their respective partners, distributors and customers such as Verisign, Baltimore and Entrust; Royal Mail/ViaCode and many of the world's national postal authorities; PricewaterhouseCoopers, KMPG, Worldcom; and others, creating new and diversified revenue opportunities.
- Integrates PeerLogic's Smart Application Network capabilities to secure the flow of business information, even over wireless networks.

(emphasis added).

32. As a result, Robertson Stephens, a major stock brokerage house issued the following positive statement:

Critical Path announced that it plans to acquire Peer Logic, Inc. in an all-stock purchase transaction for 6.4 million shares," said Juarez. "We believe the acquisition will enable the company to secure larger, deeper and longer sales contracts. We are maintaining estimates pending management guidance that it expects to share at the end of the third quarter, and we reiterate our Buy rating."

33. In the face of 15% drop in the price of Critical Path stock, it was reported on August 10, 2000 over Business Wire:

Douglas Hickey, CEO of Critical Path, says he's unfazed by investor reaction to the \$416 million acquisition of PeerLogic. Critical Path stock dropped by 15 percent after the deal was announced, but Hickey says Critical Path will be profitable by the end of the year.

(Emphasis added).

34. On September 11, 2000, Robertson Stephens' Analyst listed Critical Path as one of his strongest performers over the next six to twelve month period.

35. On or about October 19, 2000, in an item published in PR Newswire, the Company announced:

Critical Path Reports Record Third Quarter Revenue Of \$45 Million And Increases Estimates For Fourth Quarter and 2001; Net

1                   Loss Cut in Half from Prior Quarter, Clearing Company's Path to  
2                   Profitability

3                   Critical Path, Inc. (Nasdaq: CPTH) the dominant global provider  
4                   of business-to-business Internet messaging infrastructure solutions,  
5                   today announced record financial results for the quarter and nine  
6                   months ended September 30, 2000.

7                   Revenue for the quarter reached nearly \$45.0 million, a 34 percent  
8                   sequential increase over revenue of \$33.5 million in the second  
9                   quarter, and an 815 percent increase over revenue of \$4.9 million  
10                  in the same quarter of the prior year. The net loss for the quarter,  
11                  excluding special charges, was \$8.7 million, or \$0.14 per share,  
12                  compared with a net loss, excluding special charges, of \$20.2  
13                  million, or \$0.34 per share, in the second quarter of this year, and a  
14                  net loss of \$6.2 million, or \$0.17 per share, in the same quarter a  
15                  year ago. The Company also reported gross margin, excluding  
16                  special charges, of \$25.3 million, a 58 percent increase over gross  
17                  margin of \$16.0 million in the quarter ended June 30, 2000.

18                  All of our business areas contributed to the outstanding  
19                  performance in the third quarter," said Doug Hickey, Critical Path's  
20                  CEO. "Rapidly growing revenue and stronger margins  
21                  demonstrate the strength of our product and service offerings  
22                  across several broad horizontal markets. At the same time, cutting  
23                  the operating loss by more than half from the prior quarter reflects  
24                  the leverage achieved in each operating expense category."

25                  "As a result of our acquisition of PeerLogic and the strength we  
26                  see in our business going forward, we are increasing our estimates  
27                  for revenue for the fourth quarter of this year, and revenue and  
28                  earnings per share for the full year 2001," said Hickey. The  
29                  Company expects revenue for the fourth quarter ending December  
30                  31, 2000 of between \$54 million and \$56 million, and fully diluted  
31                  earnings per share, excluding special charges, for the period  
32                  estimated at \$0.01. For the year 2001, revenue is expected  
33                  between \$300 million and \$310 million, with fully diluted earnings  
34                  per share, excluding special charges, of \$0.39 to \$0.41.

35                  (Emphasis added).

36                  36.       The substance of this press release was reported days later by The Street.Com as  
37                  follows:

38                  Critical Path Sees Fourth-Quarter Income in Line With Estimates

39                  Critical Path(CPTH:Nasdaq) expects to report a fourth-quarter profit in  
40                  line with analysts' expectations, amid continued high demand for its  
41                  products and services.

42                  The San Francisco company, which provides Internet messaging  
43                  infrastructure, forecast fourth-quarter earnings of a penny a share,  
44                  compared with a loss of 26 cents a share in the same period last

1 year. The fourth-quarter estimate meets the 14-analyst consensus  
2 estimate on First Call/Thomson Financial.

3 The company said it sees revenue for the fourth quarter of \$54  
4 million to \$56 million, up 22% from the latest third quarter.

5 For 2001, the company expects revenue to grow about 95% from  
6 2000, to between \$300 million and \$310 million, with pro forma  
7 earnings per share reaching 39 cents to 41 cents. Wall Street  
8 expects the company to lose 76 cents a share in 2000 and earn 40  
9 cents a share in 2001.

10 37. On November 2, 2000 defendants hosted more than 100 investors and analysts at  
11 an investor conference. Among other things, Hickey and representatives of the Company, as  
12 reported in Business Wire, stated, in part:

13 Doug Hickey, the Company's chief executive officer, opened the  
14 event by discussing major economic, commercial and technology  
15 trends that favor Critical Path. "Globalization of industries, time to  
16 market pressures, the proliferation of communication devices and  
17 increased security needs all drive demand for Internet messaging  
18 infrastructure we deliver. Combining that demand with our  
19 penetration of four broad markets -- enterprises, Internet-centric  
20 companies, telco carriers and wireless providers -- gives Critical  
21 Path the ability to touch every user on the Internet."

22 Hickey also described Critical Path's ability to evolve to meet  
23 growing market opportunities. "Through expanding our  
24 addressable market beyond email, through end-to-end messaging  
25 and into Internet messaging infrastructure, we have demonstrated  
26 our ability to stay on top of our game and bring value to our target  
27 market," he said. "We'll continue to extend our market  
28 opportunities through innovation, execution and vision."

"Where organizations once thought of messaging as email alone,  
they now face a messaging-related labyrinth through which we can  
guide them. Their challenges include: ensuring secure delivery and  
transactions, authenticating users, and empowering appropriate  
users with access to the information they need to do their jobs. Our  
customers are finding that the ability to connect existing  
applications and data gives them a power previously unimagined in  
terms of achieving internal efficiencies, delivering products and  
services and, ultimately, competing in their own markets."

The meaning of scale is exponentially greater than simply  
delivering millions of mailboxes to an enterprise," said Hickey. "Of  
course, when it comes to delivering any number of mailboxes to a  
customer, Critical Path wins hands-down, but in the broader  
eBusiness environment, we are scaling to tens of millions of users  
and hundreds of millions of messages and profiles. No one else can  
come close to this capability.

1 Hickey concluded by pointing out that Critical Path has delivered  
2 on all the key objectives described during its initial public offering  
3 in the spring of 1999. "We have penetrated four broad markets,  
4 built an industry-leading suite of services, provided our customers  
5 with carrier-class reliability, and moved aggressively towards  
6 profitability.

#### 7 Delivering Superior Solutions to a Rapidly Growing Market

8 Sharon Wienbar, the Company's vice president for strategic  
9 marketing, provided a more in-depth look at how Critical Path has  
10 developed the capability and the market presence to credibly  
11 address an opportunity estimated to exceed \$35 billion by 2003.

12 Only Critical Path has integrated all the solutions -- from email to  
13 secure file sharing to directory services to wireless access -- that an  
14 enterprise needs to compete effectively in eBusiness," she said.  
15 "Customers in all markets want one vendor who can solve their  
16 messaging problems, today and down the road. Our infrastructure  
17 approach to Internet messaging allows us to support the largest  
18 communication requirements, including mega-scale postal authority  
19 initiatives and third party business exchanges."

20 According to Wienbar, Critical Path's early entry into this market  
21 and its best of breed solutions suite has created a strong  
22 competitive advantage. "We have already demonstrated real-world  
23 problem solving experience and provided a high return on  
24 investment for a broad range of customers and strategic partners."

#### 25 Financial Model Provides Leverage, Stability and Visibility

26 In a pair of presentations entitled "Organizational Excellence,"  
27 chief financial officer Mark Rubash and senior vice president for  
28 operations and engineering Diana Whitehead discussed Critical  
Path's strong foundation for continued rapid customer and financial  
growth.

Rubash illustrated how Critical Path's business model provides a  
number of benefits, including the Company's ability to leverage its  
existing infrastructure as demand scales, recurring revenues from  
its services business which provide increased visibility into future  
performance, and broad target markets that provide stability.

Our path to profitability in the very near term is clear. Revenue is  
growing rapidly, our margins continue to expand, and we have  
strong financial control systems in place.

Doug Hickey then concluded the day with a discussion of the  
company's operating model, which is referred to in its entirety in a  
related release, "Critical Path Provides Financial Guidance For  
Anticipated Fourth Quarter 2000 And Full Year 2001," also  
released today.

(Emphasis added).

1           38.     The "related" release published in Business Wire on November 2, 2000 stated, in  
2 part, as follows:

3                     Company Capitalizes on Infrastructure Opportunity to Drive to  
4                     Profitability and Join Elite Group of Profitable New Economy  
5                     Companies

6                     Critical Path, Inc. (Nasdaq:CPTH) today provided financial  
7                     guidance for the fourth quarter 2000 and the full year 2001,  
8                     incorporating the expected contribution from the recent acquisition  
9                     of PeerLogic. This guidance, which was provided in New York  
10                    City in a meeting with over 100 investors and analysts, is intended  
11                    to provide all investors with information the Company believes is  
12                    important in evaluating Critical Path's business.

13                    Citing the broad market opportunity, the Company expects  
14                    revenue for the fourth quarter ending December 31, 2000 of  
15                    between \$54 million and \$56 million, which represents growth of  
16                    approximately 22 percent over the third quarter of 2000. The  
17                    Company expects pro forma earnings per share for the period to  
18                    improve from a loss of \$0.14 to a gain of approximately \$0.01 per  
19                    share. For the year 2001, revenue is expected to grow  
20                    approximately 95 percent over 2000, to between \$300 million and  
21                    \$310 million, with pro forma earnings per share growing to a level  
22                    ranging between \$0.39 and \$0.41. These pro forma per share  
23                    estimates exclude special charges related to the amortization of  
24                    goodwill and purchased technology, acquisition-related retention  
25                    bonuses and stock-based charges.

26                    "The fourth quarter of 2000 is a pivotal one for Critical Path, one  
27                    in which we join an elite group of profitable new economy'  
28                    companies. Critical Path is executing across all product segments  
29                    and target markets," said Doug Hickey, Critical Path's CEO. "We  
30                    anticipate continued high demand for our product and service  
31                    offerings, and leverage in our operations to deliver initial  
32                    profitability in Q4 2000 and increases in our profitability in 2001."

33                    Business Outlook

34                    The Company provided guidance on the following key metrics  
35                    underlying the revenue and net earnings estimates:

36                    -- Gross margins for license revenues are expected to range  
37                    between 95 percent and 97 percent for the fourth quarter and  
38                    2001. As Critical Path continues to penetrate the enterprise  
39                    market and operating efficiencies are realized, gross margins for  
40                    services are expected to grow from 17 percent in the third quarter  
41                    to between 29 and 31 percent in the fourth quarter, and they are  
42                    expected to continue to increase to 36 percent to 38 percent for  
43                    2001. "It's our long-term goal to see the company's total gross  
44                    margin reach 70 percent, aided significantly by our ability to  
45                    increase the service margin consistently," Hickey stated.

1 -- Operating margins are expected to grow to a range between 8  
2 percent to 10 percent in the fourth quarter 2000, and 18 percent to  
3 20 percent for 2001. Hickey added, "As top line growth scales, we  
4 take advantage of our leveraged business model and channel  
5 strategy to grow this margin, again toward a long-term goal in  
6 excess of 30 percent."

7 -- Net margins are expected to be approximately 1 percent in the  
8 fourth quarter 2000, and 11 percent to 13 percent for 2001. "This  
9 shows significant progress toward our long term goal of 20  
10 percent," said Hickey

11 "As we work toward our goal to touch every user on the Internet  
12 through these broad target markets, we expect Critical Path's  
13 financial results will see the benefits of our highly leverageable  
14 business model," Hickey continued.

15 In an earlier press release dated October 19, 2000, Critical Path  
16 reported financial results for the quarter ended September 30,  
17 2000, including revenue of \$45.0 million and a net loss, excluding  
18 special charges, of \$8.7 million, or \$0.14 per share.

19 According to Hickey, 16 securities analysts currently publish  
20 reports on the Company, which include their own financial  
21 forecasts.

22 (Emphasis added).

23 39. Thus, not only was Hickey making false and misleading representations and  
24 omissions – he knew that these misrepresentations and omissions would be used by at least 16  
25 securities analysts in their own financial forecasts regarding Critical Path.

26 40. In fact, these securities analysts published glowing reports on Critical Path  
27 immediately and shortly after the November 2, 2000 conference. Typical of these reports are  
28 those by CIBC World Markets, Corp. ("CIBC") and Dain Rauscher Wessels ("Dain"). On  
November 2, 2000 CIBC in its report on Critical Path stated in part:

Following an upbeat but largely uneventful analysts' day, we  
reiterate our Strong Buy rating and \$85 price target on Critical  
Path.

Though there was little new news, we come away increasingly  
convinced that Critical Path can potentially dominate the  
messaging market as we move to network-centric computing.

\* Management did a good job of expanding on its wireless  
strategy, and momentum may be picking up there . . . we saw no  
signs of weakness in the CPTH story coming out of yesterday's  
meeting.

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41. Similarly, on November 30, 2000 Dain in its report on the Company stated, in part:

\* We are comfortable with our 4Q00 estimates for Critical Path.

\* We expect the company to post first-time operating profit of \$0.01 per share on revenues and margins of \$55.3 million and 62.8%, respectively.

December-Quarter Update: We are comfortable with our 4Q00 estimates for Critical Path. We look for the company to post revenues of \$55.3 million and first-time operating profit, before charges, of \$0.01 per share. In the current quarter, we estimate gross margins to expand to 62.8% vs. 56.2% and 47.8% in the prior quarters, primarily driven by momentum in the enterprise market.

Critical Path continues to work toward gelling acquisitions completed in 1999 and 2000.

42. In its report on the Company of December 7, 2000, Merrill Lynch Capital Markets stated, in part:

\*Strong financial controls are in place, and we remain very comfortable with our 4Q estimates.

We think that the overall outlook for CPTH remains bright; positive traction in its telco and wireless vertical bodes well for '01 revenue growth

\*We maintain our intermediate and long-term BUY ratings.

43. Other, similarly positive, analyses were published throughout the Class Period, after discussions with Critical Path management by Merrill Lynch Capital Markets (August 22, 2000 - "Reason for Report: Meeting With Management"; 12 Month price objective \$80- per share); Wall Street Transcript Corporation (August 28, 2000 - "CEO Interview: Douglas Hickey"); Dain (September 13, 2000 - "\* Critical Path Inc. gave an upbeat presentation at the Technology Conference 2000 yesterday September 12 . . . We believe the quarter is on track and are comfortable with our estimates and expectations of profitability in 4Q00 \*We reiterate our Buy-Speculative rating and \$100 price target on CPTH shares; 52 wk range \$119-\$26.); Lehman Brothers Inc. (\*September 14, 2000 - price target \$80); Chase Hambrecht & Quist (October 30, 2000 - "Strong Buy"); Dain (December 7, 2000, reporting on conference call with defendants

1 “Despite management changes, we remain comfortable with our 4Q00 estimates on the CPTH  
2 shares. We continue to expect the company to post first-time operating EPS of \$0.01 on  
3 revenues of \$55.3 million.” Price target \$100.); Chase Hambrecht & Quist (December 7, 2000 -  
4 Reporting on conference call with defendants - \*Company also reiterated that it is comfortable  
5 with current estimates of \$55.1 million in revenue and \$0.01 EPS for Q400, and \$306.5 million in  
6 revenue and \$0.40 EPS for FY01.); Lehman Brothers, Inc. (December 12, 2000 - \* We reiterate  
7 our Buy rating after CPTH's upbeat presentation at our T3 conference, which highlighted its  
8 strong positioning in the exploding wireless messaging marketplace. \* CPTH was bullish  
9 about its prospects for the projected \$35B messaging marketplace, and reiterated its comfort  
10 with previous guidance for 4Q (\$55M in Rev. and turning EPS positive) and 2001. \* To hit  
11 topline guidance for 4Q & 2001, we point out that CPTH needs to average just \$9M in seq.  
12 growth/qtr compared to 3Q's \$11.5M of growth. With its strong record of execution and  
13 upcoming catalyst of turning EPS positive this qtr, we think CPTH should trade in line with  
14 peers. The company reiterated its comfort level with its previously given  
15 guidance for 4Q and 2001 : \$55M in revenue this quarter and more importantly, reaching EPS  
16 profitability for the first time, and \$300M-\$310M in revenue for next year and \$0.39-\$0.40 in  
17 earnings. Based on our analysis below, we are very comfortable with the guidance, and  
18 believe there is likely upside to these numbers.”); S.G. Cowen & Co. (December 13, 2000);  
19 Merrill Lynch Capital Markets (December 13, 2000 - \* We recently met with CPTH's CEO,  
20 Doug Hickey, and new CFO, Larry Reinhold, to discuss the overall outlook for the company and  
21 to reconfirm our projections for 4Q and FY01. Coming away from the meeting, we believe the  
22 near-term outlook for CPTH remains extremely bright and highlight four near-term  
23 catalysts: 1). CPTH's "all sourcing" strategy is paying dividends in a tough  
24 market environment.”); Chase Hambrecht & Quist (January 4, 2001); and Lehman Brothers, Inc.  
25 (January 9, 2001 - We would also point out to investors that current guidance for 2001 seems  
26 achievable to us.)

27 44. On December 6, 2000, the Company announced, in PR Newswire:

28

1 HEADLINE: Critical Path Appoints New Chief Financial Officer;  
2 Lawrence P. Reinhold Succeeds Mark Rubash, Former CFO;  
3 Company on Track to Deliver Profitability in Q4 and 2001

4 "We are extremely excited to have Larry [Reinhold] join the  
5 Critical Path leadership team. We selected Larry for three  
6 important criteria: experience managing growth and expanding  
7 margins, hands on leadership, and fit within the CP team and the  
8 dynamic market opportunity," said Doug Hickey, CEO of Critical  
9 Path. "In addition to our executive team, we have a deep bench of  
10 experience in our finance group and we're all committed to  
11 working with Larry through this pivotal quarter of profitability and  
12 beyond. We continue to be very bullish on both our short and long  
13 term prospects."

14 "Critical Path is defining the market for Internet messaging  
15 infrastructure solutions. It has an exciting and highly leverageable  
16 business model, a great leadership position, and its  
17 accomplishments to date speak for the team's quality of execution,"  
18 said Larry Reinhold. "Critical Path's messaging infrastructure  
19 products and services continue to find high demand across  
20 geographies and customer segments," continued Hickey. "Our  
21 business model and financial controls are working, and we continue  
22 to eagerly anticipate Critical Path's turning the corner to  
23 profitability in the fourth quarter." For specific financial guidance,  
24 the company continues to refer investors to the previously stated  
25 guidance in a press release of November 2, 2000.

26 "Mark has been a valuable asset to Critical Path during this year of  
27 growth," continued Hickey. "As we emerge into the profitable  
28 phase, we will build on the fruits of Mark's tenure. He contributed  
to the creation of a company infrastructure that will scale to the  
next level of success. We thank him, and wish him the best in his  
future endeavors."

45. It was not until January 18, 2001 that defendants began to reveal the truth about  
Critical Path's financial conditions and prospects. As reported by TheStreet.Com, on that date:

HEADLINE: Critical Path Misses Estimates, Offers Bleak  
Forecast

Critical Path(CPTH :Nasdaq) badly missed Wall Street's  
expectations, reporting a substantial loss for the fourth quarter - a  
period in which analysts expected the company to turn a profit for  
the first time.

But the company didn't stop there. Critical Path now expects  
revenue for the first fiscal quarter of \$54 million to \$56 million,  
and a loss, excluding charges, of 15 cents to 16 cents a share. For  
2001, the company expects revenue of \$255 million to \$260  
million, with the hope of becoming profitable in the third quarter.  
Analysts had been forecasting a profit not only for the latest  
quarter, but for each quarter in fiscal 2001, including an earnings  
projection of 3 cents for the first fiscal quarter.

1 Shares of Critical Path ended the Nasdaq regular session at \$20,  
2 but plunged to \$11.10 in after-hours Island activity.

3 Critical Path posted a fourth-quarter loss of \$11.5 million, or 16  
4 cents a share, excluding charges, while analysts were looking for  
5 earnings of a penny a share, according to First Call/Thomson  
6 Financial. The company lost \$11 million, or 26 cents a share, a year  
7 ago. Critical Path attributed the results to currency fluctuations and  
8 higher than expected operating expenses as factors in the latest  
9 fourth-quarter shortfall.

10 The San Francisco company, a provider of business-to-business  
11 Internet messaging infrastructure, reported fourth-quarter revenue  
12 of \$52 million, up sharply from \$8.2 million in the same quarter a  
13 year ago.

14 46. Finally, on February 2, 2001, the massive problems confronting Critical Path were  
15 revealed to the investment community. On February 2, 2001, the Nasdaq announced that trading  
16 was halted in Critical Path. It was further announced that trading will remain halted until Critical  
17 Path has fully satisfied Nasdaq's request for additional information. This announcement was a  
18 result of the Company's shocking disclosure that:

19 the Board of Directors has formed a special committee of the  
20 Board to conduct an investigation into the Company's revenue  
21 recognition practices. The Company has discovered a number of  
22 transactions that put into question the Company's financial results.  
23 On January 18, 2001, the Company announced Fourth Quarter  
24 revenue of \$52 million in revenue and net loss, excluding special  
25 charges, of \$11.5 million. The Company now believes that these  
26 results may be materially misstated. The Company cautioned that  
27 the investigation has just begun. Effective immediately, the Board  
28 of Directors has placed on administrative leave David Thatcher, the  
Company's president, and William Rinehart, the vice president of  
worldwide sales. The special committee and the Company are  
working with its independent auditors, PricewaterhouseCoopers,  
and outside counsel, Wilson Sonsini Goodrich & Rosati.

**DEFENDANTS' SCIENTER**

1  
2           47.     During the Class Period, the Individual Defendants who were senior executives  
3 and/or directors of Critical Path was privy to confidential and proprietary information concerning  
4 Critical Path, its operations, finances, financial condition, products and business prospects.

5           48.     The Individual Defendants wer provided with copies of Critical Path's  
6 management reports, press releases, SEC filings and/or handouts at investment advisor  
7 conferences alleged herein to be misleading prior to or shortly after their issuance. The Individual  
8 Defendants had the ability and opportunity to prevent their issuance or cause them to be  
9 corrected.

10          49.     During the Class Period, defendants directly and indirectly engaged and  
11 participated in a continuous course of conduct to misrepresent the results of Critical Path's  
12 operations and to conceal adverse material information regarding the current financial status and  
13 future financial prospects of Critical Path as specified herein. Defendants employed devices,  
14 schemes, and artifices to defraud, and engaged in acts, practices, and a course of conduct as  
15 herein alleged in an effort to increase and maintain an artificially high market prices for the  
16 common stock of the Company. This included the formulation, making, and/or participation in  
17 the making of untrue statements of material facts, and the omission to state material facts  
18 necessary in order to make the statements made, in light of the circumstances under which they  
19 were made, not misleading, which operated as a fraud and deceit upon plaintiffs and the other  
20 members of the Class.

21          50.     The defendants are liable, jointly and severally, as direct participants in the wrongs  
22 complained of herein. Defendants had a duty to promptly disseminate accurate and truthful  
23 information with respect to Critical Path's products, operations, financial condition and business  
24 prospects or to cause and direct that such information be disseminated so that the market price of  
25 Critical Path stock would be based on truthful and accurate information.

26          51.     The Company and, as an officer, director and/or controlling person of a publicly  
27 held company whose common stock is registered with the SEC under the Exchange Act, traded  
28 on the NASDAQ system, and governed by the provisions of the Exchange Act, the Individual

1 Defendants had a duty to promptly disseminate accurate and truthful information with respect to  
2 the Company's operations, business, products, markets, management, earnings and business  
3 prospects, to correct any previously issued statements from any source that had become untrue,  
4 and to disclose any trends that would materially affect earnings and the present and future  
5 financial operating results of Critical Path, so that the market price of the Company's publicly  
6 traded securities would be based upon truthful and accurate information.

7  
8 **STATUTORY SAFE HARBOR**

9 52. The statutory safe harbor providing for forward-looking statements under certain  
10 circumstances does not apply to any of the false forward-looking statements, if any, pleaded in  
11 this Complaint. None of the forward-looking statements pleaded herein were sufficiently  
12 identified as a "forward-looking statement" when made. Nor did meaningful cautionary  
13 statements identifying important factors that could cause actual results to differ materially from  
14 that in the forward-looking statements accompany those statements. To the extent that the  
15 statutory safe harbor does apply to any forward-looking statements pleaded, the defendants are  
16 liable for those false forward-looking statements because at the time each of those statements  
17 was made, the speaker actually knew the forward-looking statement was false and the  
18 forward-looking statement was authorized and/or approved by an executive officer of Critical  
19 Path who actually knew that those statements were false when made.

20  
21 **COUNT I**

22 **(Violations of Section 10(b) of the Exchange Act  
and Rule 10-5 Promulgated Thereunder, Against All Defendants)**

23 53. Plaintiffs repeat and reallege the allegations above as though fully set forth herein.

24 54. During the Class Period, the defendants, and each of them, carried out a plan,  
25 scheme and course of conduct which was intended to and, throughout the Class Period, did: (i)  
26 deceive the investing public, including plaintiffs and the other Class Members, as alleged herein;  
27 (ii) artificially inflate and maintain the market price of Critical Path stock; and (iii) cause plaintiffs  
28 and other members of the Class to purchase Critical Path securities at inflated prices. In

1 furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them,  
2 took the actions set forth herein. Defendants (a) employed devices, schemes, and artifices to  
3 defraud; (b) made untrue statements of material fact and/or omitted to state material facts  
4 necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course  
5 of business which operated as a fraud and deceit upon the purchasers of the Company's stock in  
6 an effort to maintain artificially high market prices for Critical Path securities in violation of  
7 section 10(b) of the Exchange Act and Rule 10b-5.

8 55. The statements made by defendants during the Class Period were materially false  
9 and misleading because at the time they were made, the Company and persons acting as  
10 corporate officers either knew or, with conscious or deliberate recklessness, disregarded but  
11 failed to disclose, the matters set forth herein.

12 56. In ignorance of the artificially high market prices of Critical Path's publicly traded  
13 securities, and relying directly on defendants or indirectly on the false and misleading statements  
14 made by defendants, upon the integrity of the market in which the securities trade, on the  
15 integrity of the regulatory process and the truth of representations made to appropriate agencies  
16 throughout the Class Period and/or on the absence of material adverse information that was  
17 known to defendants but not disclosed in public statements by defendants during the Class  
18 Period, plaintiffs and the other members of the Class acquired Critical Path securities during the  
19 Class Period at artificially high prices and were damaged thereby.

20 57. Had plaintiffs and the other members of the Class and the marketplace known of  
21 the true financial condition, business prospects and character of leadership of Critical Path which  
22 were not disclosed by defendants, plaintiffs and other members of the Class would not have  
23 purchased or otherwise acquired their Critical Path securities during the Class Period, or would  
24 have not done so at the artificially inflated prices which they paid. Hence, plaintiffs and the Class  
25 were damaged by defendants' violations of Section 10(b) and Rule 10b-5.

26  
27 **COUNT II**

28 **(Violation of Section 20(a) of the Exchange Act  
Against the Individual Defendants)**



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WEISS & YOURMAN  
Kevin J. Yourman

By: \_\_\_\_\_  
Kevin J. Yourman  
10940 Wilshire Blvd., 24th Floor  
Los Angeles, CA 90024  
Tel. (310) 208-2800

-and-

Joseph H. Weiss  
Moshe Balsam  
551 Fifth Avenue, Suite 1600  
New York, NY 10176  
Tel. (212) 682-3025

STULL, STULL & BRODY  
Michael Braun  
10940 Wilshire Blvd., Suite 2300  
Los Angeles, CA 90024  
Tel. (310) 209-2468

Jules Brody  
STULL, STULL & BRODY  
6 East 45th Street  
New York, NY 10017  
Tel. (212) 687-7230

Attorneys for Plaintiffs

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**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: February 2, 2001

WEISS & YOURMAN  
Kevin J. Yourman

By: \_\_\_\_\_

Kevin J. Yourman  
10940 Wilshire Blvd., 24th Floor  
Los Angeles, CA 90024  
Tel. (310) 208-2800

-and-

Joseph H. Weiss  
Moshe Balsam  
551 Fifth Avenue, Suite 1600  
New York, NY 10176  
Tel. (212) 682-3025

STULL, STULL & BRODY  
Michael Braun  
10940 Wilshire Blvd., Suite 2300  
Los Angeles, CA 90024  
Tel. (310) 209-2468

-and-

Jules Brody  
6 East 45th Street  
New York, NY 10017  
Tel. (212) 687-7230

Attorneys for Plaintiffs