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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14 THOMSON-CSF VENTURES and LARRY ) CASE NO. C-01-1308-BZ  
E. WALLACE, On Behalf of Themselves and )  
15 All Others Similarly Situated, ) CLASS ACTION  
)  
16 Plaintiffs, ) **AMENDED CLASS ACTION**  
) **COMPLAINT FOR**  
17 vs. ) **THE VIOLATION OF**  
) **FEDERAL SECURITIES LAWS**  
18 CRITICAL PATH, INC., DOUGLAS )  
HICKEY, DAVID C. HAYDEN, DAVID A. ) JURY TRIAL DEMANDED  
19 THATCHER, JOSEPH DUNCAN and )  
WILLIAM H. RINEHART, )  
20 )  
Defendants. )  
21 )  
22 )

23 Plaintiffs, by their undersigned attorneys, respectfully submit this Amended Class Action  
24 Complaint for violation of the federal securities laws (the "Complaint") against the defendants  
25 named herein. The allegations made in this Complaint are based upon the investigation made by  
26 and through plaintiffs' attorneys, including, but not limited to, a review of press releases,  
27 announcements, filings with the Securities and Exchange Commission ("SEC"), information  
28

1 publicly disseminated by defendants, news articles, analyst reports and reports in financial  
2 publications.

### 3 SUMMARY OF ACTION

4 1. This is a shareholder class action on behalf of all purchasers (the “Class” or “Class  
5 Members”) of the securities of Critical Path, Inc. (the “Company” or “Critical Path”) including  
6 those individuals who acquired their Critical Path securities in exchange for shares or options in  
7 other companies which were acquired by the Company, between December 8, 1999 and February  
8 1, 2001, inclusive (the “Class Period”), seeking to pursue remedies under the Securities  
9 Exchange Act of 1934 (the “Exchange Act”) and the Securities Act of 1933 (the “Securities  
10 Act”).

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

20 3. After rising to \$119.50 per share in March 2000, Critical Path’s stock price  
21 suffered for the rest of 2000, declining steadily from its high to a low of \$25 on January 18,  
22 2001. Yet it was not until February 1, 2001 that the defendants began to disclose the truth about  
23 the problems facing Critical Path, admitting that its results may have been materially misstated.  
24 As a result, NASDAQ halted trading in the stock and the price collapsed.

25 4. In and around December, 1999, defendants embarked on a scheme to defraud  
26 investors in order to artificially boost Critical Path’s stock price, as they realized that a high stock  
27 price was necessary to effect purchases of other Companies and dispose of their shares of the  
28

1 Company, reaping millions of dollars in profits to themselves. By making a series of false and  
2 misleading statements throughout the Class Period and reassuring the public that Critical Path  
3 was not facing material difficulties in its business, defendants were able to artificially inflate the  
4 stock price of the Company.

5 5. Throughout the Class Period, defendants used fraudulent or misleading  
6 accounting methods and gave consistently misleading guidance to the numerous investment firms  
7 which they admittedly knew were following the Company and basing their advice and analysis  
8 directly on defendants' false and misleading representations.

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

13 (a) they were engaged in a scheme to fraudulently inflate the Company's  
14 financials;

15 (b) due to serious problems facing the Company throughout the Class Period,  
16 Critical Path was not "on track" to turn a profit in either the fourth quarter 2000 or for the first  
17 half of 2001;

18 (c) the costs for the acquisition of PeerLogic were significantly higher than  
19 reported by the defendants;

20 (d) Critical Path's business was declining as a result of "dot com" customers  
21 going out of business throughout the second half of 2000;

22 (e) in the Merger Agreement with ISOCOR, in the Form S-4 described below,  
23 and in other documents filed with the Securities Exchange Commission and distributed to  
24 ISOCOR shareholders and to the investing public, the Company was improperly recording a  
25 significant amount of licensing revenue as sales revenues;

26 (f) Critical Path had inadequate financial controls in place;

27 (g) management had inadequate internal controls on revenue recognition; and  
28

1 (h) the Company had inadequate expense controls.

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

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

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

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

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

1 For San Francisco-based Critical Path (CPTH: news, chart), which  
2 provides messaging and e-mail services, the fourth quarter was a  
3 monumental period. It was to be the first time the company would  
4 be profitable in its young history. It goes without saying that  
5 milestone was worth achieving at any cost. And that cost was  
6 management's credibility. Goals were missed by a long shot. See  
7 related story.

8  
9 Making matters worse, executives had opportunities to issue a  
10 warning, analysts say.

11  
12 At issue was a controversial \$7 million contract, 12 percent of the  
13 company's quarterly sales, that auditors said couldn't be recognized  
14 in the quarter.

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

22  
23 What's more, it appears the company lacked expense controls and  
24 was not upfront about it, analysts said. That's because even if the  
25 controversial contract was included, due to increases in operating  
26 expenses, the company would have lost 6 cents on the bottom line,  
27 vs. the expected 1-cent profit.

28  
29 "That's enough to be able to tell investors that it wouldn't have met  
30 its bottom line," said Larry Berlin, an analyst at First Analysis.  
31 When guidance is worthless.... Still, management's decision to  
32 remain mum caused undue optimism. "What's unusual is that the  
33 Street's expectations were so different from management guidance  
34 and reality," said Merrill Lynch analyst Rob Stimson. "I was  
35 shocked."

36  
37 As he should be, given that Critical Path CEO Doug Hickey  
38 presented at a Merrill Lynch conference just one week before the  
39 earnings announcement. According to Stimson, Hickey discussed  
40 the company's business model and the consensus estimates, leaving  
41 investors with confidence the company would make its numbers. . .  
42 . Even so, Stimson pointed out that management should have  
43 known that expenses were out of whack by the time they held an  
44 analyst day in the fourth quarter or "any time we spoke with them."  
45 Yet, management said nothing. According to Thatcher, it was a  
46 matter of certainty. Executives knew that they'd fall short of  
47 expectations and have to report "some" loss, Thatcher said. But  
48 since the company's books weren't closed until a "week or two  
49 weeks" after year-end, "we had no certainty as to the top-and  
50 bottom-line until a day before earnings." In other words,  
51 independent of the \$7 million in revenue, which executives believed  
52 would be included, there was "no certainty" with respect to how  
53 badly they would miss the bottom-line numbers. "To the best of  
54 my knowledge..." Making matters worse was the ambiguity

1 surrounding the \$7 million contract. Auditors were brought in to  
2 consult on the structuring of the deal as it was being negotiated in  
3 early December to ensure that Critical Path could recognize the  
4 revenue in the quarter. But it wasn't until well over one month later  
5 that auditors raised concerns. "To the best of my knowledge, the  
6 day before earnings" was the first time there was an uncertainty  
7 that the revenue might not be recognized, Thatcher said.

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

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

26 (Emphasis added).

27 10. On February 2, 2001, the NASDAQ announced that trading was halted in Critical  
28

1 Path. It was further announced that trading will remain halted until Critical Path has fully  
2 satisfied NASDAQ's request for additional information. This announcement was a result of the  
3 Company's shocking disclosure that:

4 the Board of Directors has formed a special committee of the  
5 Board to conduct an investigation into the Company's revenue  
6 recognition practices. The Company has discovered a number of  
7 transactions that put into question the Company's financial results.  
8 On January 18, 2001, the Company announced Fourth Quarter  
9 revenue of \$52 million in revenue and net loss, excluding special  
10 charges, of \$11.5 million. The Company now believes that these  
11 results may be materially misstated. The Company cautioned that  
12 the investigation has just begun. Effective immediately, the Board  
13 of Directors has placed on administrative leave David Thatcher, the  
14 Company's president, and William Rinehart, the vice president of  
15 worldwide sales. The special committee and the Company are  
16 working with its independent auditors, PricewaterhouseCoopers,  
17 and outside counsel, Wilson Sonsini Goodrich & Rosati.

#### 12 **JURISDICTION AND VENUE**

13 11. The claims herein arise under Sections 10(b) and 20(a) (15 U.S.C. §§78j(b) and  
14 78t(a)) of the Exchange Act and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5),  
15 and Sections 11 and 15 of the Securities Act, 15 U.S.C. §§77k and o.

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

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

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

#### 25 **THE PARTIES**

26 15. Plaintiff Thomson-CSF Ventures was a shareholder of ISOCOR, as set forth in its  
27 certification attached to plaintiffs' initial complaint. Thomson-CSF Ventures acquired its Critical  
28 Path shares in a merger through which Critical Path acquired all of the stock of ISOCOR.

1           16. Plaintiff Larry E. Wallace purchased shares of Critical Path common stock, as set  
2 forth in his certification attached to plaintiffs' initial complaint, during the Class Period and was  
3 damaged thereby.

4           17. In its own words, defendant Critical Path ignites the power of information for  
5 eBusiness by providing the Internet messaging infrastructure upon which the new economy is  
6 built. The Company is a single resource that powers the flow of mission-critical information  
7 through an integrated portfolio of secure messaging, directory, data integration and collaboration  
8 solutions. Critical Path's technology strengthens all aspects of the eBusiness value chain by  
9 providing the messaging infrastructure that fuels customers' new and existing  
10 eBusiness initiatives. Critical Path is headquartered in San Francisco, with offices worldwide. As  
11 of December 6, 1999, the Company had tens of millions of shares outstanding trading on  
12 NASDAQ.

13           18. (a) Defendant Douglas Hickey ("Hickey") served as the Chief Executive Officer  
14 of the Company at all relevant times.

15                   (b) Defendant David C. Hayden ("Hayden") served as Chairman of the Board of  
16 the Company at all relevant times and sold shares of the Company while in possession of non-  
17 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

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

<u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
August 25, 2000	50,000	\$3,162,500

1 August 31, 2000 20,182 \$1,561,582

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

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

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

12 <u>DATE</u>	<u>SHARES</u>	<u>PROCEEDS</u>
13 August 25, 2000	20,000	\$1,295,000
14 August 30, 2000	2,500	\$ 195,000
15 August 31, 2000	17,500	\$1,361,704
16 November 30, 2000	10,000	\$ 208,750
17 December 1, 2000	5,000	\$ 125,625

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

27  
28



1 from the class are defendants, officers and directors of the Company, members of their immediate  
2 families, and their legal representatives, heirs, successors or assigns and any entity in which  
3 defendants have or had a controlling interest.

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

8 25. The members of the class are so numerous that joinder of all members is  
9 impracticable. While the exact number of Class members is unknown to plaintiffs at this time and  
10 can only be ascertained through appropriate discovery, plaintiffs believe that there are thousands  
11 of members of the Class. As of December 6, 1999, Critical Path had tens of millions of shares of  
12 common stock outstanding and actively traded on the NASDAQ stock exchange, an efficient  
13 market, under the ticker symbol "CPTH."

14 26. Plaintiffs' claims are typical of the claims of the members of the Class as all  
15 members of the Class are similarly affected by defendants' wrongful conduct in violation of  
16 federal law that is complained of herein.

17 27. Plaintiffs will fairly and adequately protect the interests of the members of the  
18 Class and have retained counsel competent and experienced in class and securities litigation.  
19 Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

20 28. A class action is superior to other available methods for the fair and efficient  
21 adjudication of this controversy. Because the damages suffered by many individual Class  
22 members may be relatively small, the expense and burden of individual litigation make it virtually  
23 impossible for the Class members to individually seek redress for the wrongful conduct alleged  
24 herein.

25 29. Common questions of law and fact exist as to all members of the Class and  
26 predominate over any questions affecting solely individual members of the Class. Among the  
27 questions of law and fact common to the Class are:

28

- 1 a. whether the federal securities laws were violated by defendants' acts as  
2 alleged herein;
- 3 b. whether defendants participated in and pursued the common course of  
4 conduct complained of herein;
- 5 c. whether documents, press releases and other statements disseminated to the  
6 investing public and the Company's shareholders during the Class Period misrepresented the  
7 business condition of Critical Path;
- 8 d. whether defendants failed to correct prior statements when subsequent  
9 events rendered those prior statements untrue or inaccurate;
- 10 e. whether defendants acted willfully and/or with conscious or deliberate  
11 recklessness in misrepresenting and/or omitting to state material facts;
- 12 f. whether the market price of Critical Path's common stock during the Class  
13 Period was artificially inflated due to the misrepresentations and/or non-disclosures complained  
14 of herein; and
- 15 g. whether the members of the Class have sustained damages, and, if so, what  
16 is the proper measure thereof.

17 30. Plaintiffs will rely, in part, upon the presumption of reliance established by the  
18 fraud-on-the-market doctrine in that:

- 19 a. defendants made public misrepresentations or omitted material facts during  
20 the Class Period, as alleged herein;
- 21 b. the misrepresentations and/or omissions were material;
- 22 c. Critical Path's common stock was traded on an efficient market;
- 23 d. the misrepresentations and/or omissions alleged tended to induce reasonable  
24 investors to misjudge the value of Critical Path shares; and
- 25 e. plaintiffs and members of the Class acquired their shares between the time  
26 defendants made the misrepresentations and/or omissions and the time the truth was revealed,  
27 without knowledge of the falsity of the misrepresentations.
- 28



1 the Exchange Act) and each fairly presents in all material respects  
2 the consolidated financial position of Parent and its Subsidiaries at  
3 the respective dates thereof and the consolidated results of its  
4 operations and cash flows for the periods indicated, except that the  
5 unaudited interim financial statements were or are subject to  
6 normal adjustments which were not or are not expected to be  
7 material in amount.

8 \* \* \*

9 *3.7 Registration Statement; Proxy Statement.* None of the  
10 information supplied or to be supplied by Parent for inclusion or  
11 incorporation by reference in (i) the S-4 will, at the time the S-4  
12 becomes effective under the Securities Act, contains any untrue  
13 statement of a material fact or omits to state any material fact  
14 required to be stated therein or necessary in order to make the  
15 statements therein, in light of the circumstances under which they  
16 are made, not misleading; and (ii) the Proxy Statement/Prospectus  
17 will, at the date mailed to the shareholders of Company and at the  
18 time of Company Shareholders' Meeting and as of the Effective  
19 time, contain any untrue statement of a material fact or omit to  
20 state any material fact required to be stated therein or necessary in  
21 order to make the statements therein, in light of the circumstances  
22 under which they are made, not misleading. The S-4 will comply as  
23 to form in all material respects with the provisions of the Securities  
24 Act and the rules and regulations promulgated by the SEC  
25 thereunder. Notwithstanding the foregoing.

26 35. These statements were false and misleading since, at the time they were made,  
27 defendants already knew they had embarked upon a scheme and course of conduct to inflate the  
28 earnings of Critical Path by improperly recording revenues for software licenses as sales revenues  
before they had been earned. Defendants' scheme and course of conduct was intended to, and  
did, artificially inflate the market prices of Critical Path common stock in order to make it easier  
for the Company to take over other companies (such as ISOCOR and PeerLogic) by offering  
Critical Path stock selling at artificially inflated prices.

36. The Form S-4, stated at various points:

Revenues for software licenses for which collection of the resulting  
receivable is deemed probable are recognized upon delivery of the  
licensed software.

This statement was untrue for reasons stated above in ¶ 35.

37. After the close of the market on April 20, 2000, Critical Path reported record Q1  
2000 revenues of \$24.6 million, up 200% sequentially from the previous quarter, in a press

1 release entitled: "Critical Path Significantly Exceeds EPS and Revenue Consensus Estimates."

2 The press release stated in part:

3 Critical Path, Inc. the dominant global provider of business-to-  
4 business Internet messaging and collaboration solutions for the  
5 corporate, Internet-centric, wireless and telecommunications  
6 markets, today announced record results for the first quarter ended  
7 March 31, 2000. Revenues for the first quarter mark the largest  
8 quarter in Critical Path's history at \$24.6 million, a 200 percent  
9 increase over revenue of \$8.2 million in the previous quarter ended  
10 December 31, 1999, and more than a 2,200 percent increase over  
11 revenue of \$1.05 million for the same quarter of the prior year. The  
12 net loss for the quarter, excluding special charges was \$16.8  
13 million, or \$0.33 per share, beating the First Call consensus  
14 estimate of a loss of \$0.41 per share. During the corresponding  
15 quarter in 1999, the net loss, excluding special charges, was \$5.4  
16 million, or \$0.77 per share. Including special charges, net loss for  
17 the first quarter ended March 31, 2000, was \$76.9 million or a loss  
18 of \$1.52 per share.

19 These statements were untrue for reasons stated above in ¶ 35.

20 38. On July 19, 2000, Critical Path issued a press release entitled: "Critical Path  
21 Reports Record Second Quarter Revenue of \$33.5 Million, Up More Than 1500 Percent From  
22 Prior Year; Net Revenue, Gross Margin and EPS Significantly Exceed First Call Estimates." The  
23 press release went on the state, in part:

24 Critical Path, Inc. the dominant global provider of business-to-  
25 business messaging solutions, today announced record financial  
26 results for the quarter and six months ended June 30, 2000.  
27 Revenue for the quarter reached \$33.5 million, a 36 percent  
28 sequential increase over revenue of \$24.6 million in the first  
quarter, and more than a 1,500 percent increase over revenue of  
\$2.0 million in the same quarter of the prior year. The net loss for  
the quarter, excluding special charges, was \$20.2 million, or \$0.34  
per share, compared with a net loss, excluding special charges, of  
\$16.8 million, or \$0.33 per share, in the first quarter this year, and  
a net loss of \$6.9 million, or \$0.21 per share, in the same quarter a  
year ago. The Company also reported gross margin of \$16.0  
million, a 74 percent increase over gross margin of \$9.2 million in  
the quarter ended March 31, 2000.

These statements were untrue for reasons stated above in ¶ 35.

39. On or about August 8, 2000, Critical Path, in a press release over PR Newswire,  
announced it had signed a definitive agreement to acquire Peer Logic, Inc., ("Peer Logic") a

1 private, San Francisco-based provider of eBusiness infrastructure software. The press release  
2 stated further that among the “Key Acquisition Benefits” were:

- 3 -- Company expects transaction to be accretive to 2001 consensus  
4 estimates for revenue and earnings per share. Acquisition does not  
5 impact commitment to fourth quarter 2000 profitability.
- 6 -- Consolidates complementary technologies in the directory services  
7 marketplace and creates an extraordinary position in the eBusiness  
8 value chain.
- 9 -- Complements and accelerates Critical Path's business model by  
10 providing additional scale and market presence in secure  
11 end-to-end messaging.
- 12 -- Introduces Critical Path and PeerLogic to their respective partners,  
13 distributors and customers such as Verisign, Baltimore and  
14 Entrust; Royal Mail/ViaCode and many of the world's national  
15 postal authorities; PricewaterhouseCoopers, KMPG, Worldcom;  
16 and others, creating new and diversified revenue opportunities.
- 17 -- Integrates PeerLogic's Smart Application Network capabilities to  
18 secure the flow of business information, even over wireless  
19 networks.

20 (emphasis added).

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

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

41. 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).

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

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

5 Critical Path Reports Record Third Quarter Revenue Of \$45  
6 Million And Increases Estimates For Fourth Quarter and 2001; Net  
7 Loss Cut in Half from Prior Quarter, Clearing Company's Path to  
8 Profitability

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

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

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

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

(Emphasis added).

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

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

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

5 The San Francisco company, which provides Internet messaging  
6 infrastructure, forecast fourth-quarter earnings of a penny a share,  
7 compared with a loss of 26 cents a share in the same period last  
8 year. The fourth-quarter estimate meets the 14-analyst consensus  
9 estimate on First Call/Thomson Financial.

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

12 For 2001, the company expects revenue to grow about 95% from  
13 2000, to between \$300 million and \$310 million, with pro forma  
14 earnings per share reaching 39 cents to 41 cents. Wall Street  
15 expects the company to lose 76 cents a share in 2000 and earn 40  
16 cents a share in 2001.

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

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

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

1 The meaning of scale is exponentially greater than simply  
2 delivering millions of mailboxes to an enterprise," said Hickey. "Of  
3 course, when it comes to delivering any number of mailboxes to a  
4 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.

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

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

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

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

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

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

In a pair of presentations entitled "Organizational Excellence,"  
chief financial officer Mark Rubash and senior vice president for  
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.

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

6 (Emphasis added).

7 46. The "related" release published in Business Wire on November 2, 2000 stated, in  
8 part, as follows:

9 Company Capitalizes on Infrastructure Opportunity to Drive to  
10 Profitability and Join Elite Group of Profitable New Economy  
11 Companies

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

19 Citing the broad market opportunity, the Company expects  
20 revenue for the fourth quarter ending December 31, 2000 of  
21 between \$54 million and \$56 million, which represents growth of  
22 approximately 22 percent over the third quarter of 2000. The  
23 Company expects pro forma earnings per share for the period to  
24 improve from a loss of \$0.14 to a gain of approximately \$0.01 per  
25 share. For the year 2001, revenue is expected to grow  
26 approximately 95 percent over 2000, to between \$300 million and  
27 \$310 million, with pro forma earnings per share growing to a level  
28 ranging between \$0.39 and \$0.41. These pro forma per share  
estimates exclude special charges related to the amortization of  
goodwill and purchased technology, acquisition-related retention  
bonuses and stock-based charges.

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

Business Outlook

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

-- Gross margins for license revenues are expected to range  
between 95 percent and 97 percent for the fourth quarter and  
2001. As Critical Path continues to penetrate the enterprise

1 market and operating efficiencies are realized, gross margins for  
2 services are expected to grow from 17 percent in the third quarter  
3 to between 29 and 31 percent in the fourth quarter, and they are  
4 expected to continue to increase to 36 percent to 38 percent for  
5 2001. "It's our long-term goal to see the company's total gross  
6 margin reach 70 percent, aided significantly by our ability to  
7 increase the service margin consistently," Hickey stated.

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

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

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

22 In an earlier press release dated October 19, 2000, Critical Path  
23 reported financial results for the quarter ended September 30,  
24 2000, including revenue of \$45.0 million and a net loss, excluding  
25 special charges, of \$8.7 million, or \$0.14 per share.

26 According to Hickey, 16 securities analysts currently publish  
27 reports on the Company, which include their own financial  
28 forecasts.

(Emphasis added).

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

48. In fact, these securities analysts published glowing reports on Critical Path  
immediately and shortly after the November 2, 2000 conference. Typical of these reports are  
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.

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

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

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

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

9            \* We expect the company to post first-time operating profit of  
10           \$0.01 per share on revenues and margins of \$55.3 million and  
             62.8%, respectively.

11           December-Quarter Update: We are comfortable with our  
12           4Q00 estimates for Critical Path. We look for the company to post  
13           revenues of \$55.3 million and first-time operating profit, before  
14           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.

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

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

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

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

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

24           51.      Other, similarly positive, analyses were published throughout the Class Period,  
25           after discussions with Critical Path management by Merrill Lynch Capital Markets (August 22,  
26           2000 - "Reason for Report: Meeting With Management"; 12 Month price objective \$80- per  
27           share); Wall Street Transcript Corporation (August 28, 2000 - "CEO Interview: Douglas  
28           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

1 are comfortable with our estimates and expectations of profitability in 4Q00 \*We reiterate our  
2 Buy-Speculative rating and \$100 price target on CPTH shares; 52 wk range \$119-\$26.); Lehman  
3 Brothers Inc. (\*September 14, 2000 - price target \$80); Chase Hambrecht & Quist (October 30,  
4 2000 - "Strong Buy"); Dain (December 7, 2000, reporting on conference call with defendants  
5 "Despite management changes, we remain comfortable with our 4Q00 estimates on the CPTH  
6 shares. We continue to expect the company to post first-time operating EPS of \$0.01 on  
7 revenues of \$55.3 million." Price target \$100.); Chase Hambrecht & Quist (December 7, 2000 -  
8 Reporting on conference call with defendants - \*Company also reiterated that it is comfortable  
9 with current estimates of \$55.1 million in revenue and \$0.01 EPS for Q400, and \$306.5 million in  
10 revenue and \$0.40 EPS for FY01.); Lehman Brothers, Inc. (December 12, 2000 - \* We reiterate  
11 our Buy rating after CPTH's upbeat presentation at our T3 conference, which highlighted its  
12 strong positioning in the exploding wireless messaging marketplace. \* CPTH was bullish  
13 about its prospects for the projected \$35B messaging marketplace, and reiterated its comfort  
14 with previous guidance for 4Q (\$55M in Rev. and turning EPS positive) and 2001. \* To hit  
15 topline guidance for 4Q & 2001, we point out that CPTH needs to average just \$9M in seq.  
16 growth/qtr compared to 3Q's \$11.5M of growth. With its strong record of execution and  
17 upcoming catalyst of turning EPS positive this qtr, we think CPTH should trade in line with  
18 peers. The company reiterated its comfort level with its previously given  
19 guidance for 4Q and 2001 : \$55M in revenue this quarter and more importantly, reaching EPS  
20 profitability for the first time, and \$300M-\$310M in revenue for next year and \$0.39-\$0.40 in  
21 earnings. Based on our analysis below, we are very comfortable with the guidance, and  
22 believe there is likely upside to these numbers."); S.G. Cowen & Co. (December 13, 2000);  
23 Merrill Lynch Capital Markets (December 13, 2000 - \* We recently met with CPTH's CEO,  
24 Doug Hickey, and new CFO, Larry Reinhold, to discuss the overall outlook for the company and  
25 to reconfirm our projections for 4Q and FY01. Coming away from the meeting, we believe the  
26 near-term outlook for CPTH remains extremely bright and highlight four near-term  
27 catalysts: 1). CPTH's "all sourcing" strategy is paying dividends in a tough  
28

1 market environment.”); Chase Hambrecht & Quist (January 4, 2001); and Lehman Brothers, Inc.  
2 (January 9, 2001 - We would also point out to investors that current guidance for 2001 seems  
3 achievable to us.)

4 52. On December 6, 2000, the Company announced, in PR Newswire:

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

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

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

"Mark has been a valuable asset to Critical Path during this year of  
growth," continued Hickey. "As we emerge into the profitable  
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."

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

24 HEADLINE: Critical Path Misses Estimates, Offers Bleak  
25 Forecast

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

1 But the company didn't stop there. Critical Path now expects  
2 revenue for the first fiscal quarter of \$54 million to \$56 million,  
3 and a loss, excluding charges, of 15 cents to 16 cents a share. For  
4 2001, the company expects revenue of \$255 million to \$260  
5 million, with the hope of becoming profitable in the third quarter.  
6 Analysts had been forecasting a profit not only for the latest  
7 quarter, but for each quarter in fiscal 2001, including an earnings  
8 projection of 3 cents for the first fiscal quarter.

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

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

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

22 54. Finally, on February 2, 2001, the massive problems confronting Critical Path were  
23 revealed to the investment community. On February 2, 2001, the NASDAQ announced that  
24 trading was halted in Critical Path. It was further announced that trading will remain halted until  
25 Critical Path has fully satisfied NASDAQ's request for additional information. This announcement  
26 was a result of the Company's shocking disclosure that:

27 the Board of Directors has formed a special committee of the  
28 Board to conduct an investigation into the Company's revenue  
recognition practices. The Company has discovered a number of  
transactions that put into question the Company's financial results.  
On January 18, 2001, the Company announced Fourth Quarter  
revenue of \$52 million in revenue and net loss, excluding special  
charges, of \$11.5 million. The Company now believes that these  
results may be materially misstated. The Company cautioned that  
the investigation has just begun. Effective immediately, the Board  
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           55.     During the Class Period, the Individual Defendants who were senior executives  
2 and/or directors of Critical Path were privy to confidential and proprietary information  
3 concerning Critical Path, its operations, finances, financial condition, products and business  
4 prospects.

5           56.     The Individual Defendants were 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          57.     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          58.     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          59.     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

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

8  
9 **STATUTORY SAFE HARBOR**

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

21 **COUNT I**

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

24 61. Plaintiffs repeat and reallege the allegations above as though fully set forth herein.

25 62. During the Class Period, the defendants, and each of them, carried out a plan,  
26 scheme and course of conduct which was intended to and, throughout the Class Period, did: (i)  
27 deceive the investing public, including plaintiffs and the other Class Members, as alleged herein;  
28

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

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

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

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

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**COUNT II**

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

66. Plaintiffs incorporate by reference the above paragraphs above as if set forth fully herein. This Count is asserted against the Individual Defendants.

67. Defendants Hickey, Hayden, Thatcher, Duncan and Rinehart acted as controlling persons of Critical Path within the meaning of Section 20 of the Exchange Act as alleged herein. By reasons of their executive, managerial or director positions with Critical Path, the Individual Defendants had the power and authority to cause the Company to engage in the wrongful conduct complained of herein.

68. By reasons of the aforementioned wrongful conduct, defendants Hickey, Hayden, Thatcher, Duncan and Rinehart are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of their wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with purchasing the Company's securities during the Class period.

**COUNT III**

**(By Plaintiff Thomson-CSF Ventures Against All Defendants for Violations of Section 11  
of the Securities Act of 1933)**

69. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above that relate to this cause of action as if fully set forth herein. This Count does not allege fraud by defendants.

70. This claim is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, and is based on defendants' negligence or theories of strict liability, asserted on behalf of plaintiff Thomson-CSF Ventures and all other persons who acquired their Critical Path stock pursuant to the Form S-4 under which they exchanged ISOCOR shares for shares of Critical Path common stock.



1           77.     The Individual Defendants were control persons of Critical Path by virtue of their  
2 positions as directors and/or as senior officers of Critical Path. By reason of their senior  
3 management positions and/or directorships as alleged above, these defendants had the power to  
4 influence and exercised the same to cause Critical Path to engage in the unlawful acts and  
5 conduct complained of herein. Critical Path, in turn, controlled each of the Individual  
6 Defendants.

7           78.     By reason of such wrongful conduct, the Individual Defendants are liable pursuant  
8 to Section 15 of the Securities Act of 1933. As a direct and proximate result of the Individual  
9 Defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in  
10 connection with their purchases of the Company's common stock during the Class Period.

11           **WHEREFORE**, plaintiffs pray for relief and judgment, as follows:

12           1.     Determining that this action is a proper class action, certifying plaintiffs as  
13 class representatives under Rule 23 of the Federal Rules of Civil Procedure and plaintiffs' counsel  
14 as class counsel;

15           2.     Awarding compensatory damages in favor of plaintiffs and the other Class  
16 Members against all defendants, jointly and severally, for all damages sustained as a result of  
17 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

18           3.     Awarding plaintiffs and the Class their reasonable costs and expenses  
19 incurred in this action, including counsel fees and expert fees; and

20           4.     Such other and further relief as the Court may deem just and proper.

21 Dated: April \_\_, 2001

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**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: April 06, 2001

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