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16 Attorneys for Plaintiff And All Others  
17 Similarly Situated

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 COLUMBUS CAPITAL PARTNERS, L.P.,  
21 On Behalf Of Itself And All Others Similarly  
22 Situated,

23 Plaintiff,

24 vs.

25 CRITICAL PATH, INC., WILLIAM H.  
26 RINEHART And DAVID A. THATCHER,

27 Defendants.

Case No. C01-20359(PVT)

CLASS ACTION

**COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAW**

**JURY TRIAL DEMANDED**

1 **SUMMARY OF THE ACTION**

2 1. This is a securities fraud class action on behalf of persons - such as plaintiff  
3 Columbus Capital Partners, L.P. - who purchased Critical Path, Inc. (“Critical Path” or the  
4 “Company”) common stock between October 20, 2000 and February 1, 2001 (the “Class  
5 Period”). This action names Critical Path and certain of its former top officers as defendants for  
6 violations of the federal securities laws arising out of defendants’ dissemination of false and  
7 misleading financial statements and information during the Class Period.

8 2. Critical Path provides e-mail hosting services to a variety of organizations,  
9 including Internet service providers (“ISPs”), Web hosting companies, Web portals, and  
10 corporations. Many of these types of companies were new and were suffering from a downturn in  
11 Internet-related funding which began in the spring of 2000. In its financial press releases for the  
12 third and fourth quarters of 2000, Critical Path masked its disappointing performance by  
13 misrepresenting its actual revenue. Its reported revenue exceeded its actual revenue by \$9.7  
14 million in both the third and the fourth quarters of 2000.

15 3. On April 5, 2001, Critical Path issued the following press release admitting to the  
16 materially false misrepresentations:

17 SAN FRANCISCO, Apr 5, 2001- - Critical Path, Inc. (Nasdaq: CPTH), a global  
18 provider of business-to-business Internet messaging infrastructure solutions, today  
19 announced restated financial results for its third quarter and revised results for its  
20 fourth quarter and full year ended December 31, 2000. On February 15, 2001, the  
21 Company provided estimates of the expected changes to its previously released  
22 third and fourth quarter results. The extent of the final revisions is greater than  
23 originally estimated. In addition, the Company has recorded non-cash impairment  
write downs aggregating approximately \$1.3 billion related to the carrying value of  
goodwill and other intangible assets, investments and other deferred charges. The  
Company’s cash position of \$216.5 million on December 31, 2000 was not  
affected by these adjustments. The results released today are contained in the  
Company’s Annual Report on Form 10-K, which was filed today with the  
Securities and Exchange Commission.

24 “Today’s announcement represents the result of an intensive investigation into the  
25 issues that led to the Company’ financial results for 2000 being misstated. I’m  
26 pleased with the decisive actions taken by the Company,” said David Hayden,  
27 Critical Path’s executive chairman. “Since identifying the problem in late January,  
28 a special committee of the Board of Directors has undertaken a thorough  
investigation, and our independent accountants have completed an audit of our  
financial statements. The findings of that investigation have been used in  
determining the financial statement adjustments and disclosures included in the

1 Form 10-K that we filed today. To ensure against a repeat of this problem we  
2 have instituted new policies and procedures, including those for approving and  
3 signing sales contracts.”

4 \* \* \*

5 Revenue for the third quarter of 2000 was restated to \$35.3 million, down \$9.7  
6 million from revenue of \$45.0 million reported on October 19, 2000. The net loss  
7 and net loss per share in the third quarter, excluding special charges, have been  
8 restated to \$18.6 million and \$0.30 per share, compared with a net loss and net  
9 loss per share, excluding special charges, of \$8.7 million and \$0.14 per share,  
10 reported previously.

11 Revenue for the fourth quarter of 2000 was revised to \$42.3 million, down \$9.7  
12 million from revenue of \$52.0 million announced on January 18, 2001. The total  
13 net loss and net loss per share for the quarter, excluding special charges, have been  
14 revised to \$23.3 million and \$0.33 per share, compared with a net loss and net loss  
15 per share, excluding special charges, of \$11.5 million, or \$0.16 per share,  
16 announced previously.

17 Revenue for the full year 2000 was revised to \$135.7 million, down \$19.3 million  
18 from revenue of \$155.0 million announced on January 18, 2001. The total net loss  
19 and net loss per share for the year, excluding special charges, was \$78.9 million, or  
20 \$1.31 per share, compared with the net loss and net loss per share, excluding  
21 special charges, of \$57.2 million, or \$0.95 per share, announced previously.

22 According to Larry Reinhold, Critical Path’s chief financial officer, the \$19.3  
23 million adjustment in fiscal 2000 revenue resulted from the following:

- 24 • Approximately \$6.3 million related to non-substantive software licensing  
25 transactions for which no revenue will be recognized;
- 26 • Approximately \$7.1 million related to software licensing transactions for  
27 which no revenue will be recognized, primarily as a result of reevaluating  
28 the judgment that management used in the application of accounting  
principles to these transactions; and approximately \$5.9 million related to  
transactions, predominately software licensing, for which revenue was  
recognized in 2000 but for which it was determined that revenues should  
have been, or may be, recognized in a later period after 2000.

“It is important to separate the first category of adjustments, which related to non-  
substantive transactions that had been identified by the Company prior to the  
February 15, 2001 press release, from the second category, which are the result of  
rigorous evaluation of the contract documentation and the accounting principles  
that were applicable to these transactions,” said Reinhold.

In addition to the revised revenue and operating results, the Company recorded an  
impairment charge of approximately \$1.3 billion to reduce goodwill, other  
intangible assets and deferred charges, and the Company increased its loss on  
investments of \$23.6 million as of December 31, 2000. The impairment charge is  
predominately due to a evaluation of acquisitions made in 1999 and 2000 in light  
of current market conditions, the performance of those acquired entities relative to  
projections, the Company’s net book value of assets being significantly in excess of  
its market capitalization, and the Company’s lower projected operating results for

1 2001. The loss on investments reflects the Company's evaluation of the current  
2 value of its investments in several private and public companies in light of  
3 prevailing market conditions. As a result of these charges and other non-cash  
4 adjustments, the Company's revised loss for 2000, including special charges, is  
5 approximately \$1.85 billion.

#### 6 JURISDICTION AND VENUE

7 4. The claims asserted herein arise under §§10(b) and 20(a) of the Securities  
8 Exchange Act of 1934 ("1934 Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5. Jurisdiction  
9 is conferred by §27 of the 1934 Act, 15 U.S.C. §78aa.

10 5. Venue is proper here pursuant to §27 of the 1934 Act. Critical Path is located in  
11 San Francisco, CA and the acts and transactions giving rise to the violations of law complained of  
12 occurred here.

#### 13 THE PARTIES

14 6. Plaintiff Columbus Capital Partners, L.P. purchased shares of Critical Path  
15 common stock during the Class Period in the amount shown on the accompanying certification,  
16 and was damaged thereby.

17 7. Defendant Critical Path describes itself as providing Internet messaging  
18 infrastructure. It is headquartered in San Francisco, and during the Class Period had offices  
19 worldwide.

20 8. (a) Defendant William H. Rinehart ("Rinehart") was, during the Class Period,  
21 Vice President of Worldwide Sales of the Company. He was placed on administrative leave on  
22 February 2, 2001 and later resigned.

23 (b) Defendant David A. Thatcher ("Thatcher") was, during the Class Period,  
24 President of the Company. He was placed on administrative leave on February 2, 2001 and later  
25 resigned.

26 9. The parties listed in ¶8(a)-(b) are referred to as the "Individual Defendants." They  
27 are liable for the false statements pleaded herein, as those statements were each "group-published"  
28 information for which they were collectively responsible. The Individual Defendants, by reason of  
their stock ownership and positions with Critical Path, were controlling persons of Critical Path.

1 Critical Path controlled each of the Individual Defendants. These controlling persons were liable  
2 under §20(a) of the 1934 Act.

### 3 SCIENTER AND SCHEME ALLEGATIONS

4 10. The Individual Defendants were among Critical Path's top executives. They ran  
5 Critical Path as "hands-on" managers, dealing with important issues facing Critical Path's business,  
6 i.e., its customer base, the Internet Service Providers, or ISPs (some of whom were having  
7 difficulty surviving), Critical Path's market share position, and its ability to achieve growth in its  
8 business in fiscal 2000 in light of the dramatic adverse developments which had been affecting  
9 Critical Path's core customers' ISPs since the spring of 2000.

10 11. Critical Path went public in March 1999. The Initial Public Offering was a hot  
11 offering and the stock price went up dramatically in connection with the market's appetite for  
12 Internet-related companies. In mid-April 2000, the NASDAQ suffered a significant decline.  
13 Critical Path's stock recovered by June 2000 as it successfully convinced the market that its  
14 business was strong and revenues and earnings would continue to grow rapidly.

15 12. By September 2000, the problems the ISPs were having raising money had reached  
16 crisis proportions. In late September 2000, many of Critical Path's customers had suffered large  
17 stock declines and were going further into debt. Other Critical Path customers were also having  
18 trouble raising money. The defendants knew, from their frequent conversations with customers  
19 and other Critical Path employees, that many of these customers were cutting capital expenditures  
20 which would cause Critical Path's future revenues to decline. Moreover, defendants also had  
21 known for almost a year that new accounting rules would prevent defendants from recognizing  
22 revenue from transactions defendants made merely on an up-front licensure basis and could only  
23 be recognized on a "sell through" basis. Defendants actually knew this would directly impact the  
24 Company's Q3 and Q4.

25 13. Thus, at the time Critical Path reported its Q3 and Q4 2000 results it faced  
26 increasingly bleak short-term and long-term prospects. Nevertheless, defendants sought to  
27 conceal the problems to maintain the appearance that it was not being affected by the economic  
28

1 downturn affecting many of its competitors. Thus, defendants disseminated false information  
2 about Critical Path's business and prospects concealing the fact that new accounting regulations  
3 would materially impact its Q3 and Q4, and its customers were cutting back on capital  
4 expenditures which would hurt future results.

5 14. Each of the defendants was personally familiar with Critical Path's Q3 and Q4  
6 2000 revenues as they monitored Critical Path's sales, and the performances of Critical Path's  
7 operations via reports from Critical Path's Finance and Sales Departments which were generated  
8 and provided to management on a regular basis. The reports summarized orders, dollar volume  
9 and product type. As a result of the Individual Defendants' monitoring, each of the Individual  
10 Defendants was aware that Critical Path was publishing false financial statements, as its ISP  
11 business was slowing and its customers were unable to continue the capital expenditure programs  
12 at the levels previously conveyed to defendants in light of the dramatic adverse developments of  
13 2000. Moreover, defendants actually knew that the Company's ability to recognize future  
14 revenue was contingent upon its ability to consummate a "sell through" transaction. However,  
15 because the "appearance" of maintaining growth was so critical to defendants' plan to inflate the  
16 price of Critical Path shares, defendants continued to maintain throughout the Class Period that  
17 Critical Path had met analyst expectations for Q3 and had \$52 million of revenue in Q4, when, in  
18 reality, defendants knew that Critical Path had not achieved such performance.

19 **FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

20 15. On October 19, 2000, after the stock market closed, defendants caused Critical  
21 Path to issue the following financial information in a press release:

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

24 Net Loss Cut in Half from Prior Quarter, Clearing Company's Path to Profitability

25 SAN FRANCISCO, Oct. 19 /PRNewswire/ - - Critical Path, Inc. (Nasdaq:  
26 CPTH) the dominant global provider of business-to-business Internet messaging  
27 infrastructure solutions, today announced record financial results for the quarter  
28 and nine months ended September 30, 2000.

Revenue for the quarter reached nearly \$45.0 million, a 34 percent  
sequential increase over revenue of \$33.5 million in the second quarter, and an 815

1 percent increase over revenue of \$33.5 million in the same quarter of the prior  
 2 year. The net loss for the quarter, excluding special charges, was \$8.7 million, or  
 3 \$0.14 per share, compared with a net loss, excluding special charges, of \$20.2  
 4 million, or \$0.34 per share, in the second quarter of this year, and a net loss of  
 5 \$6.2 million, or \$0.17 per share, in the second quarter of this year, and a net loss  
 6 of \$6.2 million, or \$0.17 per share, in the same quarter a year ago. The Company  
 7 also reported gross margin, excluding special charges, of \$25.3 million, a 58  
 8 percent increase over gross margin of \$16.0 million in the quarter ended June 30,  
 9 2000.

10 “All of our business areas contributed to the outstanding performance in  
 11 the third quarter,” said Doug Hickey, Critical Path’s CEO. “Rapidly growing  
 12 revenue and stronger margins demonstrate the strength of our product and service  
 13 offerings across several broad horizontal markets. At the same time, cutting the  
 14 operating loss by more than half from the prior quarter reflects the leverage  
 15 achieved in each operating expense category.”

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

24 CRITICAL PATH, INC.  
 25 Condensed Consolidated Statement of Operations  
 26 (Unaudited)  
 27 (In thousands, except per share amounts)

	Three Months Sept. 30, 1999	Ended Sept. 30, 2000
28 Net revenues		
Licenses	\$ -	\$21,998
Services	4,913	22,977
Total net revenues	4,913	44,975
Cost of net revenues		
Licenses	-	634
Services	4,681	19,076
Amortization of purchased technology	-	4,434
Acquisition-related retention bonuses	130	260
Stock-based expenses	2,712	381
Total cost of net revenues	7,523	24,785
Gross profit (loss)	(2,610)	20,190

1 //  
2 //  
3 16. On November 14, 2000, defendants caused Critical Path to file a Report on Form  
4 10-Q with the Securities Exchange Commission. It contained the same financial representations  
5 as appeared in the October 19 press release.

6 17. The press release and Form 10-Q contained materially false information. In the  
7 third quarter, total net revenue was not \$45 million, but \$35.3 million. Gross Profit was not  
8 \$20.2 million, but \$10.5 million.

9 18. On November 2, 2000, Critical Path issued a press release entitled, "Critical Path  
10 Provides Financial Guidance for Anticipated Fourth Quarter 2000 and Full Year 2001; Company  
11 Capitalizes on Infrastructure Opportunity to Drive to Profitability and Join Elite Group of  
12 Profitable New Economy Companies." The press release went on to state:

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

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

29 "The fourth quarter of 2000 is a pivotal one for Critical Path, one in which  
30 we join an elite group of profitable 'new economy' companies. Critical Path is  
31 executing across all product segments and target markets, said Doug Hickey,  
32 Critical Path's CEO. "We anticipate continued high demand for our product and  
33 service offerings, and leverage in our operations to deliver initial profitability in Q4  
34 2000 and increase in our profitability in 2001."

35 19. On December 6, 2000, after the close of the market, Critical Path held a  
36 conference call for analysts, money and portfolio managers, institutional investors and large  
37 Critical Path shareholders to discuss Critical Path's Q4 results, its business and its prospects.  
38

1 During the call - and in follow-up conversations with analysts - Doug Hickey stated:

2 //

- 3 • The Company would report a profitable Q4 of at least \$0.01 and revenue of \$55 million - its first profitable quarter ever;
- 4 • The Company's CFO was resigning for personal reasons - not associated with any accounting problems with the Company;
- 5 • The Company's Q4 and fiscal 2001 prospects were extremely bullish;
- 6 • There would be no additional management changes in the near future; and
- 7 • The Company was not being impacted by foreign exchange fluctuation - nor would it be - as the Company had a natural hedge against such risk as its Euro-denominated expenses offset any Euro-denominated revenue hits.

9 20. After the close of the market on January 18, 2001, Critical Path issued a press  
10 release entitled, "Critical Path Reports Fourth Quarter Revenue of \$52 Million; Company Revises  
11 Guidance for 2001." The press release went on to state:

12 Critical Path, Inc., the dominant global provider of business-to-business Internet  
13 messaging infrastructure solutions, today announced record financial results for the  
14 quarter and year ended December 31, 2000.

15 Revenue for the quarter reached \$52.0 million, a 16 percent sequential  
16 increase over revenue of \$45.0 million in the third quarter of 2000, and a 534  
17 percent increase over revenue of \$8.2 million in the fourth quarter of 1999. The  
18 net loss for the quarter, excluding special charges, was \$11.5 million, or \$0.16 per  
19 share, compared with a net loss, excluding special charges, of \$8.7 million, or  
\$0.14 per share, in the third quarter of 2000, and a net loss of \$11.0 million, or  
\$0.26 per share, in the fourth quarter of 1999. The Company also reported gross  
profit, excluding special charges, of \$29.1 million, a 15 percent increase over gross  
profit of \$25.3 million in the third quarter of 2000.

20 The reported revenues for the quarter do not include \$7.0 million related to  
21 a large enterprise license agreement that was executed during the quarter. Due to  
22 complex and evolving rules governing revenue recognition for software license  
23 arrangements, the Company, in consultation with its outside auditors, determined  
that the revenue from this transaction required deferral as of December 31, 2000.  
The Company anticipates recognizing the revenue from this transaction on a "sell-  
through" basis in the future rather than as an up-front license fee in the fourth  
quarter of 2000, as anticipated.

24 "Despite a difficult economic environment, Critical Path achieved solid  
25 revenue growth and improved gross margins, while adding over 200 new  
26 customers and further solidifying our category leadership position," said Doug  
Hickey, Critical Path's CEO.

27 According to Chief Financial Officer Larry Reinhold, other factors in  
28 addition to the deferred revenue mentioned previously had an impact on results in  
the fourth quarter of 2000. These factors included a non-operating foreign

1 exchange loss due primarily to currency fluctuations in U.S. dollar-denominated  
2 European revenues, higher than expected operating expenses in the recently  
3 acquired PeerLogic business as full synergies have not yet been achieved, and the  
4 provision of a significant allowance for doubtful accounts.

5  
6 “While we are disappointed with the bottom-line impact of these charges,  
7 we are evaluating and will be taking concrete steps to control the underlying  
8 factors impacting these areas,” said Reinhold.

9  
10 Hickey stated, “Taking into account economic indicators that seem to be  
11 affecting the technology sector across the board, we are also reevaluating our  
12 guidance for 2001 and taking a very conservative stance toward the Company’s  
13 financial expectations. The Company expects revenue for the first quarter 2001 of  
14 between \$54 million and \$56 million, and a loss per share, excluding special  
15 charges, estimated between \$0.15 and \$0.16. For the full year 2001, revenue is  
16 expected between \$255 million and \$260 million, with the Company becoming  
17 profitable in the third quarter.

18  
19 “It’s disappointing to lower the expectations for Critical Path, but  
20 macroeconomic forecasts and reports from leaders in the technology space lead us  
21 to believe it is prudent to be conservative at this time,” said Hickey. “It is our  
22 strategy to make this move now and position the Company to execute effectively  
23 throughout the year.”

24  
25 Hickey went on to discuss the positive indications for the quarter and the  
26 year. “Regardless of near term uncertainty, I continue to be excited at the size and  
27 potential of the Internet messaging solutions market, and my confidence is  
28 bolstered by our success in addressing that market. We have the best and broadest  
suite of messaging solutions, the most flexible delivery capability and the unique  
ability to scale to meet the demands of the largest customers,” he said.

The Company reported revenue for 2000 of \$155.0 million, compared with  
revenue of \$16.2 million in 1999. The net loss for the year, excluding special  
charges, was \$57.2 million, or \$0.95 per share, compared with a net loss,  
excluding special charges, of \$29.4 million, or \$0.99 per share, in 1999.

“Our balance sheet remains very strong and our financial resources are a  
strategic advantage by which we can continue to pursue profitable business and  
investment opportunities,” said Hickey. The Company reported that as of  
December 31, 2000, its cash and cash equivalents totaled \$216.5 million. During  
the fourth quarter of 2000, the Company used \$25.9 million in cash.

21. Following the Company’s January 18, 2001 Q4 announcement, Critical Path held a  
conference call with analysts and large shareholders. During the conference call, defendants  
stated:

Hickey: . . . In the fourth quarter, Critical Path saw strength across all lines  
of business and we continued to see the validation of our strategy  
from all major target markets, and those include Internet-centered  
wireless telephone and enterprise market space. I will tell you that  
the CP sales force executed well, bringing a major talent versus

1 multiple services, and our products continue to demonstrate their  
2 ability to achieve impressive ROIs very quickly. Revenue reached  
3 about \$52 million, up 16 percent sequentially from Q3. We are  
4 continually and repeatedly demonstrating our products as the most  
5 complete and effective Internet messaging infrastructure solutions  
6 available today and our customer list is evident of that. This  
7 quarter we added some customers like Wells Fargo, Applied  
8 Materials, Farmers Insurance, as well as a whole series of other  
9 customers. We continued to see traction in our wireless  
10 relationships with Verizon, Logica, with which we signed  
11 partnerships, and our customers who we are partnered with is one  
12 that I think you'll agree is one of the best in the category. Our  
13 gross profit, which includes a \$29.1 million, a 15 percent over gross  
14 profit in the third quarter of 2000. Now despite the fact that net  
15 profitability has been pushed out, we continue to show meaningful  
16 progress in that direction and the goal is within sight. Now on our  
17 balance sheet we continue to remain very strong and our financial  
18 resources are a strategic advantage but we shall continue to pursue  
19 profitable business and investment opportunities. At the end of the  
20 quarter, cash and cash equivalents equated to about \$216.5 million.  
21 Our operating results clearly demonstrate, despite some unexpected  
22 events at Critical Path as well as a tumultuous period for Internet-  
23 related industries, is trying to conquer Internet messaging  
24 infrastructure solutions and customers across our four broadly  
25 horizontal target markets are realizing the value they can reap from  
26 turning to seeking solutions. Our results also solidify our  
27 confidence that as our target customers seek solutions, we really  
28 stand apart from the pack as a clear leader in the category with the  
best [inaudible] of products and, by the way, the most flexible  
delivery mechanisms. So, when you look at all that, you have to sit  
back and say, "What really happened this quarter?" Suffice it to  
say, nothing we ever want to see again. But let me first address the  
top line. As we begin to close the book on the fourth quarter, to  
the best of our knowledge revenues sit at about \$50 million. Late  
yesterday, our TWC team informed us of a nuance they are reading  
into sales that indicated a \$7 million large enterprise contract we  
executed during the quarter required deferral as of December 31,  
2000. We anticipate recognizing this revenue from the transaction  
on a sale-through basis in the future rather than as if from a licensee  
in the fourth quarter of 2000. This number increases our level of  
deferred revenue but is of little comfort to any of us. We don't see  
this ruling as an indication that CP's revenue model needs to be  
changed, nor have we seen any lengthening in our sales cycle or a  
slow down in demand. We have every reason to believe that this is  
a one-time occurrence and you can believe we are working closely  
with TWC and our team to eliminate the element of surprises going  
forward in this matter. Next, what happened to keep us from  
achieving profitability? There are really a couple of key factors  
there that held us back in this quarter. Number one was a foreign  
exchange loss due to currency fluctuations in dollar-denominated  
European revenues, and Larry will get into that in detail. Secondly,  
there is a significant allowance in doubtful accounts related to  
dot.com industry weakness which we took in the quarter. The third  
factor affecting our profitability for the fourth quarter and affecting

1 our outlook for '01 is related to the ownership operating expenses  
2 at PeerLogic which we acquired at the end of Q3, frankly, tells me  
3 we should have been more conservative as we announced this  
4 highly strategic and advantageous acquisition and assumed that the  
5 quality associated with it would offset profitability out of the box.  
6 The other continues to drive profitability in the long run as our lock  
7 on the megafield messaging market was assured. After a quarter of  
8 integration efforts, our long-term outlook on PeerLogic's  
9 contribution to our model is as strong as ever, and we stand out as  
10 the only player in our category able to scale our functionalities with  
11 the largest customers who are growing larger and larger every day.  
12 For the time being, the synergies have not been fully realized but I  
13 can tell you, you can be assured we'll have our stake in reducing  
14 operating expenses in the future. These factors are not welcome,  
15 and I think that goes without saying, in the quarter. In factual level  
16 we find totally unacceptable and we single-mindedly focus on  
17 reversing this trend immediately. Larry will talk to you about those  
18 efforts in a moment, but in the meantime, I want to review up front  
19 changes to our financial guidance that we decided to make in an  
20 effort to responsibly negate the risk to shareholders as soon as we  
21 learned of changes in the operating environment. As such, we are  
22 reducing expectations for revenue in Q1 for 2001 to between \$54  
23 and \$56 million, and a loss this year, excluding special charges,  
24 between 15 and 16 cents. For the full year 2001, revenue is  
25 expected between \$255 and \$260 million, with the Company  
26 becoming profitable in the third quarter of 2001. ...

14 Larry: Okay, thank you Doug, and I would like to thank each of you for  
15 joining us today. As Doug stated, we are pleased with certain  
16 aspects of this quarter's financial results and disappointed in others.  
17 Our opportunities for the continued success we're having strategic  
18 focus. To avoid any confusion, all of my comments today on our  
19 financial results exclude the effect of special charges which are  
20 disclosed in our press release issued earlier today. We are  
21 continuing to see strong demand for our licensed and our hosted e-  
22 mail offerings, a greater degree of interest in our value added  
23 services, and increased penetration into the corporate enterprise  
24 market. Consistent with prior quarters, I would like to begin my  
25 remarks by reviewing the quarterly operating results and our  
26 financial position and our comments on the financial trends we are  
27 experiencing. As stated earlier, net revenues for the quarter were  
28 \$52 million, up 16 percent sequentially over the prior quarter, and  
that's an excess of 500 percent over revenues of \$8.2 million in the  
fourth quarter of 1999. As outlined in the press released and as  
mentioned previously, in addition to the \$52 million of revenue and  
we recorded, we also have entered into a \$7 million software  
license arrangement during the quarter that we had anticipated  
would be recounted as revenue. However, due to very complex  
revenue recognition rules that surround software transactions, we  
ended up concluding that deferring all revenue from this transaction  
was appropriate.

22. Thus, Critical Path asserted that it had revenue of \$52 million, and had an

1 additional \$7 million of revenue that for technical reasons would be recorded in the following  
2 quarter. The financial representations in the press release were false. In fact, Critical Path's net  
3 revenue in the fourth quarter was not \$52 million, but \$42.3 million. Gross Profit was not \$29.1  
4 million, but \$19.4 million.

### 5 THE DISCLOSURE OF THE TRUTH

6 23. On February 2, 2001, Critical Path issued a press release which stated in part:  
7 Critical Path, Inc. announced today that the Board of Directors has formed a  
8 special committee of the Board to conduct an investigation into the Company's  
9 revenue recognition practices. The Company has discovered a number of  
10 transactions that put into question the Company's financial results.

11 On January 18, 2001, the Company announced Fourth Quarter revenue of  
12 \$52 million in revenue [sic] and net loss, excluding special charges, of \$11.5  
13 million. The Company now believes that these results may be materially misstated.  
14 The Company cautioned that the investigation has just begun.

15 Effective immediately, the Board of Directors has placed on administrative  
16 leave David Thatcher, the Company's president, and William Rinehart, the vice  
17 president of worldwide sales.

18 The special committee and the Company are working with its independent  
19 auditors, PricewaterhouseCoopers, and outside counsel, Wilson Sonsini Goodrich  
20 & Rosati.

21 At the time of this shocking announcements, NASDAQ suspended trading in Critical Path stock  
22 for two weeks. When trading resumed, on February 17, the stock had fallen to below \$4 per  
23 share. In subsequent weeks, the stock has continued to decline. It now trades between \$1 and \$2  
24 per share.

25 24. This disclosure shocked the market, causing Critical Path's stock to decline to less  
26 than \$4 per share in pre-market trading, inflicting hundreds of millions of dollars of damage on  
27 plaintiffs and the Class. Defendants' misconduct has wiped out over \$2.5 billion in market  
28 capitalization as Critical Path stock has fallen 90% from its Class Period high of over \$40 per  
share as the truth about Critical Path and its financial performance began to reach the market.

29 25. In response, analysts blasted the Company for its improper conduct. "This sounds  
30 like it's out right fraud," said Charles Trafton, an Adams, Harkness and Hill analyst. "It sounds  
31 like there was a concerted effort to cook the books."



1 time. SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with  
2 the SEC which are not prepared in compliance with GAAP are presumed to be misleading and  
3 inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial  
4 statements must also comply with GAAP, with the exception that interim financial statements  
5 need not include disclosure which would be duplicative of disclosures accompanying annual  
6 financial statements. 17 C.F.R. §210.10-01(a).

7 32. Critical Path falsified its reported financial results through its improper revenue  
8 recognition.

9 33. In Critical Path's 1999 Form 10-K, it represented the following with respect to its  
10 revenue recognition on licenses:

11 Revenues for software licenses for which collection of the  
12 resulting receivable is deemed probable are recognized upon  
13 delivery of the product provided there is persuasive evidence of an  
14 arrangement, the fee is fixed and determinable, and the agreement  
15 does not require significant customization of the software.  
16 Revenues from software maintenance are recognized ratably over  
17 the maintenance term. Revenues from the Company's enhanced  
18 facsimile, long distance and other services are recognized as the  
19 services are performed. Amounts billed or received in advance of  
20 service delivery are recorded as deferred revenue.

21 34. Pursuant to GAAP, as set forth in AICPA Statement of Position (“SOP”) 97-2,  
22 which describes the accounting for software licenses, revenue should not be recognized unless  
23 there is persuasive evidence of an agreement, collection is probable and delivery has occurred.

24 35. During the Class Period, Critical Path improperly recognized revenue even though  
25 these conditions did not exist.

26 36. Absent the Company's improper revenue recognition, Critical Path would have  
27 reported materially lower revenues and higher losses in Q3 and Q4 2000.

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

1 to be the type of information which is expected to be and must be disclosed.

2 **CLASS ACTION ALLEGATIONS**

3 38. This is a class action on behalf of purchasers of Critical Path common stock  
4 between October 20, 2000 and February 1, 2001. Excluded from the Class are officers and  
5 directors of the Company, as well as their families and the families of the defendants (the "Class").  
6 Class members are so numerous that joinder of them is impracticable.

7 39. Common questions of law and fact predominate and include whether defendants:  
8 (i) violated the 1934 Act; (ii) omitted and/or misrepresented material facts; (iii) knew or recklessly  
9 disregarded that their statements were false; and (iv) artificially inflated Critical Path's stock price  
10 and the extent of and appropriate measure of damages.

11 40. Plaintiffs' claims are typical of those of the Class. Prosecution of individual actions  
12 would create a risk of inconsistent adjudications. Plaintiffs will adequately protect the interests of  
13 the Class. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy.

15 **CLAIM FOR RELIEF**

16 41. Defendants violated §10(b) and Rule 10b-5 by:

- 17 a. Employing devices, schemes and artifices to defraud;
- 18 b. Making untrue statements of material facts and omitting to state material  
19 facts necessary in order to make statements made, in light of the circumstances under which they  
20 were made, not misleading; and
- 21 c. Engaging in acts, practices and a course of business that operated as a  
22 fraud or deceit upon the Class in connection with their purchases of Critical Path stock.

23 42. Class members were damaged as they paid artificially inflated prices for Critical  
24 Path common stock in reliance on the integrity of the market.

25 **PRAYER**

26 WHEREFORE, plaintiff, on behalf of itself and the Class, pray for judgment as follows:

- 27 A. Declaring this action to be class action properly maintained pursuant to Rule 23 of  
28

1 the Federal Rules of Civil Procedure;

2 B. Awarding plaintiff and other members of the Class damages together with interest  
3 thereon;

4 C. Awarding plaintiff and other members of the Class costs and expenses of this  
5 litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs  
6 and disbursements; and

7 //

8 D. Awarding plaintiff and other members of the Class such equitable/injunctive or  
9 other and further relief as may be just and proper under the circumstances.

10 **JURY DEMAND**

11 Plaintiff demands a trial by jury.

12 DATED: April 25, 2001

GOLD BENNETT CERA & SIDENER LLP

13 - and -

14 BERGER & MONTAGUE, P.C.

15 By: \_\_\_\_\_  
16 Paul F. Bennett

17 Attorneys for Plaintiff And All Others  
18 Similarly Situated

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1 DATED: April \_\_\_\_\_, 2001

GOLD BENNETT CERA & SIDENER LLP

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BERGER & MONTAGUE, P.C.

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

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Paul F. Bennett

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Attorneys for Plaintiff And All Others

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Similarly Situated

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