CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT

Lead Plaintiff, on behalf of himself and all others similarly situated, by his attorneys, alleges the following upon information and belief (except for those allegations which pertain to lead plaintiff and his attorneys, which allegations are based on personal knowledge). Lead Plaintiff's information and belief is based, inter alia, on the investigation made by and through his attorneys, which investigation included, without limitation, a review and analysis of various public filings made by and articles concerning e.spire Communications ("e.spire" or the "Company"), reports of securities analysts, and press releases and news articles relating to e.spire.

NATURE OF ACTION

1. Lead Plaintiff brings this action as a class action on behalf of himself and all others who purchased shares of e.spire common stock (the "Class") during the period August 12, 1999 through March 30, 2000, inclusive, (the "Class Period"), to recover damages caused by defendants' violations of the federal securities laws.

2. During the Class Period, e.spire and certain of its senior officers and directors engaged in a common course of conduct that operated as a fraud on the integrity of the market for e.spire common stock by intentionally or recklessly issuing materially false financial statements about e.spire's financial condition, revenues, expenses, and results of operations. Among other reasons, defendants caused these materially false and misleading statements to be
made in order to artificially inflate the price of e.spire's stock so that insiders could profit from the inflation of the Company's stock through sales of their e.spire common stock and for e.spire to comply with debt covenants.

3. As alleged in detail below, the Company improperly recognized revenues related to long-term leases of certain equipment by its wholly-owned subsidiary, ACSI Network Technologies, Inc. ("ACSI") and failed to establish necessary reserves on a timely basis. Both of these violations of SEC rules and Generally Accepted Accounting Principles ("GAAP"), had the effect of inflating earnings and earnings per share and misstating the Company's liquidity and compliance with debt covenants.

4. In particular, a portion of e.spire's business relates to the construction of a fiber optic network linking New York, Philadelphia and Baltimore. e.spire sold the right to use its fiber optic network to various customers to send data over the network, terming such agreements "indefeasible rights of use" or IRUs. A typical contract would provide that the customer would have the right to transmit data on the fiber optic network for 5 years and e.spire would be paid a certain amount of money for the use of the network. With many of the contracts, e.spire received all of the contract payments up-front and immediately recognized all of the revenue from those contracts upon receipt. Under GAAP, however, e.spire was to record the revenue ratably over the life of the IRU. In other words, if a customer paid $10 million to use the fiber optic network over 5 years, e.spire should have recorded $2 million per year for 5 years.

5. Prior to the commencement of the Class Period, e.spire took the position that it was allowed to record the entire amount of revenues from the IRUs when received. The financial accounting standards board ("FASB"), however, issued an interpretive release, FIN 43, which clarified that the IRU agreements, from which e.spire was recognizing revenue up-front,
required revenue to be recognized over the life of the agreement pursuant to Financial Accounting Standard ("FAS") 66, 98 and 13. FIN 43 was issued in June 1999 prior to the start of the Class Period. Nonetheless, despite publicly recognizing the existence of FIN 43 at the beginning of the Class Period, e.spire continued to recognize revenue from the IRUs up-front. e.spire never publicly disclosed how it was accounting for the revenues it obtained from the IRU agreements. At the conclusion of the Class Period, e.spire was forced to restate its previously issued financial statement for its 1999 fiscal third quarter because it failed to properly account for revenues from the IRUs. This was very significant for e.spire because, as a start-up company, it was incurring significant costs in constructing its fiber optic network and its ability to report greater than achieved revenues would allow it to meet Wall Street analyst expectations, comply with its debt covenants and allow certain defendants to sell significant amounts of their common stock while e.spire’s stock price was inflated.

6. At the end of the Class Period, the Company disclosed to the market that revenues for the 1999 third quarter would be restated downward by $12.3 million, and reserves would be increased by $8.7 million. The Company further announced that: “[d]ue to the financial results for the [fourth] quarter, the Company was not in compliance with certain [debt] covenants...”

7. This news, released less than one hour before the close of the stock market on March 30, 2000, met with negative investor reaction. The stock price began its tumble on March 30, 2000 to close at $9.688, after trading as high as $10.500 per share on that day on heavy trading volume. On March 31, 2000, the market digested the news, and the stock price fell to as low as $5.250 per share and closed at $7.031 per share, on record trading volume of approximately 8.4 million shares.


10. Venue is proper in this District because ASCI is incorporated in this District, e.spire had its principal executive offices located in this District during most of the Class Period, and many of the acts and transactions constituting the violations of law complained of herein occurred within this District including the preparation and dissemination of materially false and misleading financial statements, corporate documents, and press releases.

PARTIES

11. By order dated August 15, 2000 this Court appointed Thomas J. Gleason to act as lead plaintiff pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934. In addition, plaintiffs Rolland Gillham, Paul D. Goyins, Peter B. Ip, Sharon Parisi and A. Stioykhet purchased shares of e.spire during the Class Period and have stated their willingness to participate as a class representative as indicated by their certifications attached hereto.

12. e.spire is a Delaware corporation with its principal executive offices located at 133 National Business Parkway, Annapolis, Maryland, 20701 during most of the Class Period. On February 24, 2000, e.spire announced that it was opening its headquarters at Worldgate Drive, Herndon, Virginia. e.spire still maintains corporate offices at 7125 Columbia Gateway Drive, Columbia, Maryland 21046.
(a) e.spire is a facilities based integrated communications provider to businesses primarily in 35 markets in the United States.

(b) The Company maintains a site on the Internet at http://www.espire.com, where it disseminates material information about the Company, its products, and its financial condition to customers, vendors, and the investing public.

(c) e.spire’s common stock is traded on the NASDAQ stock market (the “NASDAQ”) under the symbol “ESPI.” As of November 8, 1999, the Company had issued and outstanding to non-affiliates 51,122,783 shares of its common stock.

13. Defendant Anthony J. Pompliano ("Pompliano") was Chairman of the Board and Chief Executive Officer of the Company from 1993 until his resignation on December 31, 1999 which became effective January 21, 2000. According to the proxy statement filed with the SEC on May 12, 1999 (the "1999 Proxy"), at December 31, 1998, Pompliano beneficially owned 1,649,999 shares or 3.3% of e.spire common stock which included currently exercisable options to purchase 1,649,899 shares.

(a) Pompliano knew of or recklessly disregarded the adverse, non-public information about e.spire's business and operations, as well as its finances, markets, and present and future business prospects because his executive and directorial positions provided him with access to internal corporate documents and information (including the Company's operating plans, budget and forecasts and reports of actual operations compared thereto), and allowed him to have conversations and meetings with other corporate officers and employees. Pompliano attended meetings of management and the Board of Directors (and committees thereof), and received internal reports and other information in connection therewith.

(b) Pompliano's participation included the preparation and dissemination of false
and/or misleading press releases, SEC filings, dissemination of false statements during presentations at securities conferences, analyst conference calls, and during individual conversations with securities analysts.


(a) Hudson knew of or recklessly disregarded the adverse, non-public information about e.spire's business and operations, as well as its finances, markets, and present and future business prospects because his executive positions allowed him access to internal corporate documents and information (including the Company's operating plans, budget and forecasts and reports of actual operations compared thereto), and allowed him to have conversations and meetings with other corporate officers and employees. Hudson attended meetings of management and the Board of Directors (and committees thereof), and received internal reports and other information in connection therewith.

(b) Hudson's participation included the preparation and dissemination of false and/or misleading press releases and SEC filings.


(a) Piazza knew of or recklessly disregarded the adverse, non-public information about e.spire's business and operations, as well as its finances, markets, and present and future
business prospects because his executive positions provided him with access to internal corporate
documents and information (including the Company's operating plans, budget and forecasts and
reports of actual operations compared thereto), and allowed him to have conversations and
meetings with other corporate officers and employees. Piazza attended meetings of management
and the Board of Directors (and committees thereof), and received internal reports and other
information in connection therewith.

(b) Piazza's participation included the preparation and dissemination of false
and/or misleading financial statements.

(c) As of December 31, 1998, Piazza beneficially owned 105,406 shares of the
Company's common stock.

16. Defendant ING Equity Partners, L.P.I. ("ING"), located at 135 East 57th Street,
New York, NY 10022, was a principal stockholder of the Company since at least 1995. ING
owned 16.4% of e.spire's common stock until November 5, 1999, when it disposed of almost all
of its stock in e.spire for proceeds of over $32 million.

17. Benjamin P. Giess ("Giess"), a managing partner of ING, served as a member of
the Board of Directors of e.spire since June 1995 until his resignation effective October 29, 1999.
Giess knew of or recklessly disregarded the adverse, non-public information about e.spire's
business and operations, as well as its finances, markets, and present and future business
prospects because his executive position provided him with access to internal corporate
documents and information (including the Company's operating plans, budget and forecasts and
reports of actual operations compared thereto), and allowed him to have conversations and
meetings with other corporate officers and employees. Giess attended meetings of management
and the Board of Directors (and committees thereof), and received internal reports and other information in connection therewith.

18. Oliver L. Trouveroy ("Trouveroy"), a managing partner of ING, served as a member of the Board of Directors and Audit Committee of e.spire since June 1995 until his resignation effective October 29, 1999. Trouveroy knew of or recklessly disregarded the adverse, non-public information about e.spire's business and operations, as well as its finances, markets, and present and future business prospects because his executive position provided him with access to internal corporate documents and information (including the Company's operating plans, budget and forecasts and reports of actual operations compared thereto), and allowed him to have conversations and meetings with other corporate officers and employees. Trouveroy attended meetings of management and the Board of Directors (and committees thereof including the Audit Committee), and received internal reports and other information in connection therewith.

19. Defendants Pompliano, Piazza, Hudson, Giess, and Trouveroy are sometimes referred to as the "Individual Defendants."

20. As set forth in the 1999 Proxy, the Company's executive compensation consists of base salary, bonus, and long-term incentives. The annual management bonus awards and the long-term incentive compensation are linked to the Company's performance. A prescribed percentage of business plan objectives based on both revenue and profit must be achieved before any bonuses are awarded. Among the factors considered for awarding executives long-term incentives, which have consisted of stock options and other cash and stock awards, are the individual's position with the Company, his performance in the recent period, and his expected contributions to the achievement of the Company's long-term performance goals. Thus, each of
the Individual Defendants had a substantial economic motive to inflate e.spire's reported operating results.

21. The Individual Defendants, as officers and/or directors of e.spire had a duty, because of the positions they held, to disseminate complete, accurate, and truthful information regarding e.spire's business operations. The Individual Defendants also had a duty to correct promptly any public statements issued by e.spire that had become false and misleading. Because of their positions, their ability to exercise power and influence with respect to e.spire's course of conduct, and their access to material inside information about e.spire, the Individual Defendants were, at the time of the wrongs alleged herein, controlling persons of e.spire within the meaning of Section 20(a) of the Exchange Act. Further, ING with two of its principals on the Board of Directors of e.spire had the ability to exercise power and influence with respect to e.spire's, Giess' and Trouveroy's course of conduct, and had access to material inside information about e.spire through Giess and Trouveroy. Therefore, ING was, at the time of the wrongs alleged herein, a controlling person of e.spire and Giess and Trouveroy within the meaning of Section 20(a) of the Exchange Act.

CLASS ACTION ALLEGATIONS

22. Lead Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of himself and a class consisting of all persons who purchased e.spire common stock during the period from August 12, 1999 through March 30, 2000, inclusive, and who suffered damages thereby. Excluded from the Class are defendants, members of the immediate families of the Individual Defendants, any entity in which any defendant has a controlling interest in or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, affiliates, legal representatives, heirs, predecessors,
successors and assigns of any of the defendants.

23. The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of class members is unknown at this time and can only be ascertained from the books and records maintained by e.spire and/or its agents, lead plaintiff believes there are thousands of members of the Class, who purchased their shares during the Class Period. The Company had 51,122,783 million shares of its common stock issued and outstanding as of November 8, 1999.

24. The members of the Class are located throughout the United States. The names and addresses of the record owners of the shares of e.spire common stock purchased during the Class Period are available from e.spire and/or its transfer agent(s). Notice can be provided to purchasers of e.spire common stock by a combination of published notice and first class mail using the form of notice similar to that customarily used in securities class actions.

25. There are questions of law and fact common to the Class that predominate over questions affecting any individual member of the Class. Among the questions of law and fact common to the Class are whether:

(a) the federal securities laws were violated by defendants' acts and omissions as alleged herein;

(b) e.spire issued materially false and misleading statements during the Class Period;

(c) the Individual Defendants caused e.spire to issue false and misleading financial statements during the Class Period;

(d) defendants acted knowingly or recklessly in issuing materially false and misleading statements;
(e) the market prices of e.spire securities during the Class Period were artificially inflated because of defendants' conduct complained of herein; and

(f) members of the Class have sustained damages and, if so, what is the proper measure of damages.

26. Lead Plaintiff's claims are typical of the claims of the members of the Class as lead plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

27. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in securities class action litigation. Lead Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

**FRAUD-ON-THE-MARKET ALLEGATIONS**

29. With regard to his allegations arising under Section 10(b) and Rule 10b-5, lead plaintiff intends to rely on the fraud-on-the-market doctrine, as there is an efficient market for e.spire common stock. In that connection, brokers nationwide have immediate access to press releases and trading information about e.spire through computer and news wire systems. These systems display, within minutes of the release or transaction taking place, pertinent information and the most recent trades and prices.
30. Lead Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) defendants made misrepresentations or failed to disclose facts during the Class Period;

(b) the omissions and misrepresentations of fact were material;

(c) e.spire met the requirements for listing, and its stock was listed on the NASDAQ, an efficient and automated market;

(d) as a regulated issuer, e.spire filed periodic public reports with the SEC;

(e) e.spire's trading volume, during the Class Period, was substantial, thereby reflecting numerous trades each day;

(f) the misrepresentations alleged herein would tend to induce a reasonable investor to misjudge the value of e.spire common stock;

(g) lead plaintiff and the members of the Class purchased their common stock during the Class Period without knowledge of the omitted or misrepresented facts; and

(h) e.spire was followed by various analysts employed by brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms and which were available to the public through various automated data retrieval services. Thus, each of these reports was publicly available and entered the public marketplace.

31. Based upon the foregoing, lead plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market for their Section 10(b) claims.

**NO SAFE HARBOR**

32. The statutory safe harbor provided for forward-looking statements under certain
circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made, there was no statement made with respect to any of those representations forming the basis of this complaint that actual results "could differ materially from those projected," and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker had actual knowledge that the particular forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized and/or approved by an executive officer of e.spire who knew that those statements were false when made.

SUBSTANTIVE ALLEGATIONS

33. During the Class Period, defendants disseminated materially false and misleading information and omitted information about e.spire's financial condition and results of operations. As a consequence of defendants' wrongful conduct, e.spire's common stock traded at artificially inflated prices, reaching a high of $16.8125 during the Class Period.

Background

34. e.spire was formed in 1993 and describes itself as a facilities-based integrated communications provider to businesses. The Company operates in 35 markets throughout the United States where it maintains local fiber optic networks. By the end of 1997, the Company
became a "competitive local exchange carrier" ("CLEC"). As such, the Company was able to combine the provision of dedicated, local and long distance voice services with frame relay, ATM and Internet services.

35. In August 1998, the Company announced its plan to enter the New York, Philadelphia and Baltimore markets and to provide long-haul fiber capabilities between New York and Baltimore through a long-term dark fiber lease with Metromedia Fiber Network, Inc.

36. As of December 31, 1998, the Company's facilities-based network infrastructure included 1,742 route miles of fiber in 21 states, and approximately 22,000 backbone long haul miles in its leased coast-to-coast broadband data network.

37. Further, as of December 31, 1998, e.spire had installed 133,070 customer access lines representing a significant increase over the 35,105 access lines installed only a year earlier.

38. As stated in the Company's description of its business contained in the Annual Report filed for December 31, 1998 on Form 10-K with the SEC (the "1998 10-K") the Company is short of cash flow at its present stage of development.

The development of the Company's business and the construction, acquisition and expansion of its networks require significant capital expenditures, a substantial portion of which are incurred before realization of revenues. These expenditures, together with the associated early operating expenses, result in negative cash flow until an adequate customer base is established.

* * *

The Company has made specific strategic decisions to build high capacity networks with broad market coverage, which initially increases its level of capital expenditures and operating losses.

39. Note 2 to the Company's financial statements contained in the 1998 10-K reiterated e.spire's cash flow needs.
To date, the Company has funded the construction of its networks and its operations with external financing through various preferred stock, common stock, and debt issuances, as well as through capital lease financing. As a result of certain of these transactions, the Company will be required to satisfy substantially higher periodic cash debt service obligations in the future.

40. A substantial majority of ACSI's revenues are derived from capital leases or indefeasible rights of use ("IRUs"). In the Revenue Recognition section of Note 1 of the 1998 10-K, the Company provided no disclosure with regard to how it recognized revenues from its IRUs. The only mention of such accounting policies was contained in Note 14 of the 1998 10-K.

The Company has entered into various agreements to provide [IRUs] of multiple fibers along certain sections of e.spire's networks. Such agreements include contracts with five major customers for an aggregate purchase price of approximately $38,355[,000]. Revenue related to these five major customers was approximately $0 and $23,450[,000] for the years ended December 31, 1997 and 1998, respectively, and is included in Network Technologies services revenue. Progress billings are made primarily based on customers' acceptance of certain milestones. The Company expects to bill and collect all costs and estimated earnings in excess of billings as of December 31, 1998, in 1999.

41. As was subsequently disclosed, e.spire was recording the entire amount of revenue it was to receive from the IRU upon delivery of the dark fiber as opposed to ratably over the life of the lease.

42. e.spire has two main lines of business that it reports on using segment accounting. These two segments are Telecommunications and Network Technologies.

43. The Telecommunications segment includes special access, local switched voice, data transmission and Internet services, over the Company's own facilities and on a resale basis.

44. The Network Technologies segment, which includes the subsidiary ACSI, offers
fiber optic network design, project management, and construction services. Defendants Pompliano and Piazza are listed as executive officers of ACSI. The Network Technologies division generally records most of the revenues earned by the Company from the lease transactions and IRUs.

45. Reported revenue for the year ended December 31, 1998 was $127.3 million and $29.4 million, for the Telecommunications and Network Technologies segments, respectively.

46. In June 1999, prior to the start of the Class Period, the Financial Accounting Standards Board issued Financial Accounting Standards Interpretation No. 43 ("FIN 43"), "Real Estate Sales: An Interpretation FASB Statement No. 66." FIN 43 became effective for all transactions entered into after June 30, 1999. FAS 66, Accounting for Sales of Real Estate, established standards for recognition of profit on all real estate sales transactions without regard to the nature of the seller's business. FIN 43 interprets the phrase "all real estate sales" to include sales of real estate with property improvements or integral equipment that cannot be removed and used separately from the real estate without incurring significant costs. e.spire's dark fiber and conduit are considered integral equipment under this interpretation. As such, FIN 43 established that, under GAAP, e.spire was obligated to account for its sales, capital lease and IRU transactions in accordance with the provisions and requirements of FAS 66.

47. Industry practice and FAS Nos. 66, 98 and 13, issued long before June 30, 1999, dictated that revenues resulting from certain of ACSI's lease and IRU transactions should have been deferred and recognized ratably over the life of the lease or IRU. FAS 98 (Accounting for Leases) is an amendment to FAS 13 (Accounting for Leases). FIN 43 reiterated that such revenues in many instances should not be recognized immediately upon "delivery," which, as belatedly disclosed, was e.spire's accounting policy during the Class Period. Thus, any
ambiguity as to whether FAS 66 applied to e.spire’s accounting for revenues for its leases and IRUs was eliminated by the adoption of FIN 43.

48. Significantly, the Company also violated GAAP when it recorded revenues doubtful of collection from Incumbent Local Exchange Carriers (“ILECs”).

49. The Company reported the following in its 1998 10-K:

As of March 25, 1999, over 30 state [Public Utility Commissions (“PUCs”)] have rendered decisions holding that ILECs were required to make reciprocal compensation payments to CLECs [such as e.spire] . . . . On the other hand, several other state PUCs recently have ruled that CLECs [such as e.spire] are not entitled to collect reciprocal compensation [from ILECs].

50. Notwithstanding that a substantial number of state PUCs and other authorities had either not decided the issue yet or decided against the Company, e.spire recorded $17.7 million of revenue from reciprocal compensation arrangements with ILECs in fiscal 1998 and continued to do so in 1999 without adequately reserving for known collectibility and/or enforcement problems regarding these contracts. FAS No. 5, Accounting for Contingencies, mandates that estimated losses from loss contingencies shall be accrued by a charge to income.

51. Against this background, defendants either knew or were reckless in failing to comply with these basic accounting principles relating to revenue recognition throughout the Class Period.

**Defendants' False and Misleading Statements**


   e.spire . . . today announced revenues of $63.3 million for the quarter ended June 30, 1999, a 77% increase over the year ago quarter.
In its second consecutive quarter of strong fundamental improvement since refocusing its strategy in late 1998, the Company delivered a 12% sequential gain in core telecommunications revenue, complemented by an additional (earnings before interest $18.6 million from its Network Technologies group. EBITDA (earnings before interest, taxes, depreciation and amortization) for the quarter was ($13.3) million, a 13% sequential improvement, which is on top of a 21% sequential EBITDA improvement in the prior quarter. This strong performance underscores the Company’s success in improving gross margins while continuing to deliver solid revenue growth.

* * *

e.spire DATA and ACSI Network Technologies (ACSI NT), e.spire’s wholly-owned network construction subsidiary, continued to deliver positive results during the quarter. . . .

ACSI NT contributed $18.6 million in revenue during the period, a 175% increase as compared to $6.8 million for the same period last year. The quarter also produced a significant milestone for ACSI NT, as the subsidiary crossed the $100 million threshold regarding awarded contract value since its inception just 15 months ago.

53. The Company’s false and misleading statements concerning its second quarter 1999 revenues had their intended effect on the price of e.spire common stock. Following the August 12, 1999 release, the price of the Company’s stock climbed as high as $10.250 per share on August 12, 1999, on above average trading volume, and closed at $9.188 per share, slightly lower than the previous day’s close of $9.438. On August 13, 1999, the Company’s stock price again rose to close at $9.250.

54. After the Company’s second quarter conference call on August 12, 1999 and in response to the Company’s purported results, several analysts issued reports trumpeting the Company. Deutsche Banc Alex. Brown issued a research report on August 13, 1999 maintaining its market perform rating citing “better-than-expected revenue as well as in-line EBITDA and access line results.” Further, First Union Capital Markets issued a research report on August 13,
1999 also maintaining its outperform rating indicating their belief that "the company is trending in the right direction" as revenues came in above expectations. Finally, on that same day, PaineWebber issued a research report maintaining its neutral rating on the stock as second quarter revenues were slightly lower than their expectations.

55. On August 16, 1999, the Company filed with the SEC its Form 10-Q for the quarter ended June 30, 1999 (the "1999 Second Quarter 10-Q"). Defendants Pompliano and Piazza signed the 1999 Second Quarter 10-Q.

56. Defendants repeated the financial results reported in the August 12, 1999 press release. In Note 1 to the interim condensed consolidated financial information, the Company stated:

   In the opinion of management all adjustments, which include normal recurring adjustments necessary to present fairly the financial position, the results of operations and cash flows at June 30, 1999 . . . have been made.

57. On August 16, 1999, Bear, Stearns & Co., Inc. issued a research report commenting on e.spire's second quarter 1999 results with an attractive rating on the stock as the second quarter reflected solid improvements. Specifically, the report indicated that "[w]e expect the stock to be driven higher during the balance of 1999 by (1) strong organic revenue growth, (2) continued improvement [sic] the quality of its revenue and corresponding margins, (3) the performance of a number of new management hires made in 2Q99, and (4) the recognition of the Metromedia Fiber-like qualities of its network technologies (NT) unit."

58. The statements by e.spire in the August 12, 1999 press release and 1999 Second Quarter 10-Q, identified in paragraphs 52 and 55-66, were knowingly or recklessly misleading when made and omitted from disclosure material facts for the following reasons: (a) e.spire was
recognizing revenue from certain lease and IRU transactions immediately upon receipt when, in fact, and going forward, e.spire would be required to recognize revenue ratably over the life of the IRU in order to comply with GAAP; (b) under GAAP, revenues from leases, IRUs, which did not transfer title in real property – which the IRUs did not – required the revenue to be recorded over the life of the lease and not immediately upon payment; and, (c) e.spire was recognizing revenue on reciprocal compensation agreements that were either uncollectible or unenforceable as void; and (d) “all adjustments of normal recurring items, necessary to present fairly the financial position . . . and the results of operations for the quarter” were not made, as revenues were significantly overstated and not in accordance with GAAP, for the preceding reasons.

59. In addition, the 1999 Second Quarter 10-Q also stated the following:

In June 1999, the FASB issued FASB Interpretation No. 43, “Real Estate Sales: An Interpretation of FASB Statement No. 66,” which is effective for all transactions entered into after June 30, 1999. The Company is currently assessing the impact of this interpretation and such impact could be significant.

60. This statement was knowingly or recklessly misleading when made and omitted from disclosure material facts because the Company (a) failed to disclose the impact of FIN 43 on the recognition of revenues going forward and (b) failed to disclose that the Company had been recording revenue on operating leases immediately upon delivery of the fiber and the collection of payment instead of ratably over the term of the agreement in contravention of FAS 66 and FIN 43.

61. On October 28, 1999, the Individual Defendants caused the Company to announce its results of operations for the quarter ended September 30, 1999 in a press release.
e.spire . . . today announced revenue of $67.5 million for the quarter ended September 20, 1999, a 49% increase over the year-ago quarter and a 7% sequential improvement. Adjusted EBITDA (earnings before interest, taxes, depreciation, amortization, non-cash compensation expense and a charge primarily related to phasing out of a line of business) for the quarter was ($11.8) million, an 11% sequential improvement over the prior quarter. A charge of $8.0 million was taken during the quarter and is primarily related to the Company's previously announced elimination of its local resale business. Including this charge, EBITDA for the quarter was ($19.8) million.

. . . Network Technologies, e.spire's wholly owned, fiber-optic construction subsidiary posted record results with a revenue contribution of $22 million, up 92% from the year ago period. [Emphasis added].

62. Also, on October 28, 1999, the Company issued a press release announcing the resignation of its Chief Financial Officer, Piazza, effective immediately.

63. Again, in reaction to the Company's October 28, 1999 release, the market for e.spire's common stock responded positively. On above average trading volume, the Company's stock price closed at $7.344 per share on October 28, 1999, trading as high as $7.500 per share.

64. After a conference call e.spire management had with analysts on October 28, 1999 and in response to the third quarter 1999 results, several analysts again issued research reports depicting the Company in a positive light. Deutsche Banc Alex. Brown issued a report on October 29, 1999 maintaining its market perform rating as revenues came in slightly below expectations. The research report indicated concern with the resignation of Piazza and Pompliano. On October 29, 1999, PaineWebber also issued a research report maintaining its neutral rating stating "[w]e continue to see e.spire make the necessary changes to ensure profitable growth going forward." Finally, on that same date, Bear Stearns & Co. Inc. issued a research report upgrading its rating to a buy citing that "[t]he company's third quarter marked a
continuing improvement in its operational and performance [sic] . . . [and] demonstrated solid
organic growth and a concerted effort to improve the quality of its revenue stream by ending its
local resale business." Specifically, the report stated "we believe that there [sic] significant
positive drivers for the company: (1) solid organic revenue growth, (2) continued improvement
[sic] the quality of its revenue and corresponding margins and (3) the recognition of the
Metromedia Fiber-like qualities of its network technologies (NT) unit."

65. On November 15, 1999, the Company filed with the SEC its Form 10-Q for the
quarter ended September 30, 1999 (the "1999 Third Quarter 10-Q"). Defendant Pompliano
signed the 1999 Third Quarter 10-Q. The 1999 Third Quarter 10-Q also stated:

The condensed consolidated balance sheet as of September 30,
1999, the condensed consolidated statements of operations for the
three and nine months ended September 30, 1999 and 1998, and
the condensed consolidated statements of cash flows for the nine
months ended September 30, 1999 and 1998, have been prepared
by the Company, without audit. In the opinion of management, all
adjustments necessary to present fairly the financial position,
results of operations and cash flows at September 30, 1999, and for
all periods presented, have been made.

66. Defendants repeated the financial results reported in the October 28, 1999 press
release in the 1999 Third Quarter 10-Q.

67. The October 28, 1999 press release and the 1999 Third Quarter 10-Q were
knowingly or recklessly misleading and omitted from disclosure material facts for the reasons
stated in paragraphs 58 and 60. In addition, these financial statements were restated because of
the failure to comply with FIN 43 and FAS No. 66. Revenues were overstated by $12.3 million,
an 18% overstatement.

68. In addition, the 1999 Third Quarter 10-Q stated the following:
In June 1999, the FASB issued [FIN 43], which is effective for all transactions entered into after June 30, 1999. Under FIN 43, sales, capital leases, and indefeasible rights of use ("IRUs") of dark fiber, conduit and capacity related to fiber optic cable systems may be required to be accounted for under FASB No. 66 based upon the terms of the transaction and, components of asset involved. The Company believes that its sales, capital leases, and IRUs of dark fiber, conduit and fiber optic cable systems, to the extent title is transferred, will continue to meet the criteria for sales type lease accounting. Although management believes FIN 43 will not have any effect on its cash flows and should not have a material effect on its accounting policies, consolidated financial condition or results of operations, accounting practice and authoritative literature guidance is currently evolving in the industry, accounting profession and regulatory authorities, with resolution expected within the next several months.

69. Relying on the Company's previous press releases and financial statements, on January 5, 2000, Ladenburg Thalmann initiated coverage of e.spire with a strong buy rating stating that "ACSI Network Technologies group is one of e.spire's hidden assets and a real success story." Ladenburg Thalmann reiterated its strong buy rating on January 12, 2000 stating that access line growth, monthly revenues per line and gross margins had all shown remarkable improvement over the last three quarters. Also on January 12, 2000, First Union Securities issued a research report maintaining their buy rating.

70. The preceding statements contained in paragraph 68 were knowingly or recklessly misleading and omitted from disclosure material facts because: (a) defendants knew that they were not in compliance with GAAP and industry accounting standards with regard to certain lease and IRU transactions, even before the issuance of FIN 43, and; (b) the effect on the Company's "accounting policies, consolidated financial condition, [and] results of operations" to bring e.spire into compliance with GAAP and industry practice would be material.

The Truth is Revealed

To comply with prevailing industry accounting practices, [FIN 43], and the guidance of the Company’s independent auditors, e.spire adopted FIN 43, the operating lease method of revenue recognition for dark fiber sales. This approach requires e.spire’s subsidiary, ACSI Network Technologies, to recognize revenue from certain [IRUs] as operating leases over the term of the contract, instead of recognizing the entire revenue in the period when payment is received and the dark fiber delivered. ... The adoption of FIN 43 resulted in a $12.3 million reduction in the Company’s estimated 1999 revenues.

Additionally, the Company established incremental reserves for reciprocal compensation during the fourth quarter ended December 31, 1999, based on a state by state analysis. At December 31, 1999, these reserves totaled $8.7 million.

* * * *

The Company expects to report revenues of approximately $55 million for the quarter ended December 31, 1999 and approximately $244 million for the 12-month period ended December 31, 1999, a 56% increase over full year 1998 revenues of $156.8 million. Reflected in these numbers is the adoption of FIN 43 and the reciprocal compensation reserves.

* * * *

The Company expects to report earnings before interest, taxes, depreciation, amortization and non-cash compensation (EBITDA) for the quarter ended December 31, 1999, as a loss of approximately $35 million. Included in the EBITDA loss are the effects of the aforementioned accounting pronouncement and reciprocal compensation reserves, as well as other items such as an increase in receivable reserves. Preliminary EBITDA for the full year totaled a loss of approximately $84 million.

Due the financial results for the quarter, the Company was not in compliance with certain debt covenants within its $200 million Senior Secured Credit facility. ... The Company’s failure to
comply with certain of the covenants as mentioned above could, if not remedied or waived, result in cross covenant violations related to other of the Company's debt instruments.

72. The market reacted swiftly and severely to this unexpected news. On greater than 10 million shares traded, the stock price plummeted $3.407 per share over the next two days to close at $7.031 per share or 38% from its closing price of $10.438 on March 29, 2000.

73. On March 31, 2000, the Company filed on Form NT 10-K, a Notification of Late Filing of its 1999 annual report with the SEC. The Form NT 10-K stated that:

Form 10-K for [e.spire] could not be filed within the prescribed period due to the financial statements of the Company not being completed in the time period necessary for current filing.

74. On April 14, 2000, the Company filed with the SEC on Form 10-K its annual report for the year ended December 31, 1999. Therein, the Company revealed the following in regard to accounting for its IRUs.

The Company believes FIN 43 limits the application of sale-type [sic] lease accounting to grants of indefeasible rights of use (IRUs) of constructed dark fiber in exchange for cash unless the Company transfers ownership of the underlying assets to the customer as, under this interpretation, dark fiber and conduit are considered integral equipment and, accordingly, title must transfer to a customer in order for a lease transaction to be accounted for as a sales-type lease. In the event that sales-type lease accounting is not applicable to portions of or all of an IRU, the Company will apply operating lease accounting and recognize revenue and operating costs ratably over the term of the agreement. The effect of adopting the provisions of FIN 43 on 1999 results was to decrease revenues by $12.3 million and increase net loss by $10.9 million. Revenue for 2000 and forward will be negatively impacted by FIN 43. [Emphasis added.]

75. After this disclosure, on March 31, 2000, First Union Securities put their rating on e.spire under review. Bearn Stearns & Co. Inc. already reduced its rating to neutral on January 7, 2000.
On May 12, 2000, the Company filed with the SEC its restated Form 10-Q/A for the quarter ended September 30, 1999 reporting restated financial results for the three and nine months ended September 30, 1999 to reflect the impact on certain transactions of complying with FIN 43 and FASB 66. The previously reported false and misleading financial results and the restated financial results are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Three months ended 9/30/99</th>
<th>Nine months ended 9/30/99</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As reported</td>
<td>$67,492,000</td>
<td>$188,885,000</td>
</tr>
<tr>
<td>As restated</td>
<td>$65,116,000</td>
<td>$186,509,000</td>
</tr>
<tr>
<td><strong>Cost of Sales</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As reported</td>
<td>$41,752,000</td>
<td>$118,250,000</td>
</tr>
<tr>
<td>As restated</td>
<td>$41,340,000</td>
<td>$117,838,000</td>
</tr>
<tr>
<td><strong>Net Loss</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As reported</td>
<td>($70,019,000)</td>
<td>($186,584,000)</td>
</tr>
<tr>
<td>As restated</td>
<td>($71,983,000)</td>
<td>($188,548,000)</td>
</tr>
<tr>
<td><strong>Basic and diluted</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss per common share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As reported</td>
<td>($1.60)</td>
<td>($4.37)</td>
</tr>
<tr>
<td>As restated</td>
<td>($1.64)</td>
<td>($4.41)</td>
</tr>
</tbody>
</table>

On May 15, 2000, the Company’s new management team held a conference call as reported in a May 24, 2000 morning meeting note from Ladenburg Thalmann. During the conference call, e.spire’s new Chief Executive Officer, George Schmitt, commented on former e.spire management as follows:
I don't want to be critical of anybody who ran this company, because I didn't sit in their shoes at the time they were making decisions. I think what I can say is that Brad [Brad Sparks, the new CFO] and I and Chris [Christopher Resavy, the new COO] and the rest of the management team here at e.spire, have significantly changed the way we do business. We now do business where people can talk to us. They can tell us their point of view. And we take that into account as we make decisions. There is absolutely zero tolerance for any lying, cheating, or stealing, in any way, shape, or form here. And that includes any public statement, or any public information that I or anybody else gives out to you or to any other investor. [Emphasis added].

**False and Misleading Financial Statements**

78. GAAP consists of those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at the particular time. Regulation S-X, to which e.spire is subject as a registrant under the Exchange Act, 17 C.F.R. § 210.4-01(a)(1), provides that financial statements filed with the SEC, which are not prepared in compliance with GAAP, are presumed to be misleading and inaccurate.

79. SEC Rule 13a-13 requires issuers to file quarterly reports. SEC Rule 12b-20 requires that periodic reports contain such further information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading. In addition, Item 303 of Regulation S-K requires that, for interim periods, the MD&A must include, among other things, a discussion of any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided. Instructions to Item 303 require that this discussion identify any significant elements of the registrant's income or loss from continuing operations that do not arise from or are not necessarily representative of the registrant's ongoing business.

80. Defendants failed to comply with the foregoing provisions during the Class
Period in that they knowingly or recklessly failed to disclose the impact of the non-compliance
with GAAP for revenue recognition, as alleged herein.

81. APB Opinion No. 28 provides that:

There is a presumption that users of summarized interim financial
data will have read the latest published annual report, including the
financial disclosures required by generally accepted accounting
principles and management's commentary concerning the annual
financial results, and that the summarized interim data will be
viewed in that context. In this connection, the management is
encouraged to provide commentary relating to the effects of
significant events upon the interim financial results.

82. Throughout the Class Period, defendants failed to comply with APB No. 28 in
that, as particularized herein, each of the interim financial statements, which were disseminated
to the investing public, failed "to provide commentary relating to the effects of significant events
upon the interim financial results."

83. In addition, throughout the Class Period, defendants failed to disclose that the
Company had significant revenues related to IRUs and leases, which if properly accounted for
would materially impact the Company's financial condition and compliance with debt covenants.

84. In contravention of the provisions of GAAP and Regulations S-K, the Company's
financial statements were devoid of disclosures concerning the Company's non-compliance with
GAAP. In addition, the Company's financial statements failed to comply with the provisions of
AICPA Statement Of Position 94-6, Disclosure Of Significant Risks and Uncertainties, which
states that:

Financial statements should include a description of the major
products or services the reporting entity sells or provides and its
principal markets, including the locations of those markets. If the
entity operates in more than one business, the disclosure should
also indicate the relative importance of its operations in each
business and the basis for the determination for example assets, revenues, or earnings.

85. Such disclosure is intended to clarify the investment community's understanding of the operations of the Company. As stated by the SEC in its Accounting Series Release 173: "it is important that the overall impression created by the financial statements be consistent with the business realities of the company's financial position and operations . . ."

86. The financial statements of the Company disseminated to the investing public during the Class Period were not presented in accordance with GAAP in that such financial statements failed to disclose the fact that there existed a material overstatement of:

a. the carrying value of receivables as assets on the Company's balance sheet;

b. income, assets, and net worth due to the failure to timely and fully reserve for unenforceable or uncollectible reciprocal compensation agreements; and

c. revenue on the statement of operations and related unbilled revenue on the balance sheet due to improper accounting of certain real estate transactions.

87. The financial statements of the Company were not presented "fairly" in conformity with GAAP because the financial statements, including revenues and reserves for bad debts, were not informative of matters that affected their use, understanding, and interpretation, and because the financial statements did not reflect the underlying events and transactions in a manner that presents the financial position and the results of operations within a range of acceptable limits that were reasonable and practicable to attain in financial statements.

88. The Company was required to disclose, in its financial statements, the existence of the material facts described herein and to appropriately recognize and report assets, revenues,
and expenses in conformity with GAAP. The Company failed to make such disclosures and to account for and to report its financial statements in conformity with GAAP.

89. Due to the Company's material omissions, materially misleading disclosures, deceptive disclosures, and non-GAAP accounting, the Forms 10-Q, (and the financial statements contained therein) which it filed with the SEC during the Class Period were materially false and misleading.

90. Defendants knew, or were reckless in not knowing, the facts which indicated that the 1999 financial statements and all of the Company's interim financial statements, press releases, public statements, and filings with the SEC which were disseminated to the investing public during the Class Period, were materially false and misleading for the reasons set forth herein.

91. The Individual Defendants intentionally mischaracterized in press releases, the public filings with the SEC, discussions with analysts and mass media, the nature and extent of e.spire's credit worthiness and financial condition.

92. Had the true financial position and results of operations of the Company been disclosed during the Class period, its common stock would have traded at prices well below that which it did.

**SCIENTER ALLEGATIONS**

93. As alleged herein, defendants acted with scienter in that they knew or recklessly disregarded that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly participated in the issuance or dissemination of such statements or documents as primary
violations of the Federal securities laws.

94. Defendants caused the Company to file financial statements during the Class Period that were materially false and misleading, which defendants knew or recklessly disregarded were not in conformity with GAAP.

95. As set forth herein, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding the Company and/or their control over the Company, which made them privy to confidential proprietary information, participated in the fraudulent scheme alleged herein. With respect to non-forward-looking statements and/or omissions, defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to the investing public.

96. The Individual Defendants had the opportunity to commit and participate in the wrongful conduct complained of herein. Each is, or was, a senior executive officer and/or director of the Company and, accordingly, controlled the information disseminated to the investing public in the Company's press releases, SEC filings, and communications with analysts. Thus, each could falsify, and did falsify, the information that reached the public about the Company's business and financial results.

97. The Individual Defendants engaged in such a scheme and course of conduct to inflate the price of the Company's common stock in order to, among other things: (a) enhance the Individual Defendants compensation and stock holdings and (b) comply with debt covenants.

Enhancement of Executive Compensation and Stock Ownership

98. Defendants Pompliano, Piazza and Hudson had the motive to commit and participate in the wrongful conduct complained of herein. The Company filed on April 19, 1999, a Schedule 14A Information Statements with the SEC (the “e.spire Proxy”). As set forth in the
e.spire Proxy, e.spire’s executive compensation consists of base salary, annual incentive (i.e., bonuses), and long-term incentives, including shares of performance based restricted stock and options to purchase e.spire stock under the 1996 Stock Option Plan, and contributions under e.spire’s 401(K) Plan. The e.spire Proxy states:

The Company’s approach to executive compensation, as implemented by the Compensation Committee, . . . [is] designed to encourage shareholder value creation, corporate teamwork, equity ownership in the Company and long term loyalty to the Company. The Company’s executive compensation has two key elements: (1) an annual component, i.e., base salary and an annual discretionary bonus based upon achievement of corporate and personal objectives, and (2) a long-term component consisting of stock options and awards.

The Company strives to provide compensation opportunities that emphasize effectively rewarding management for the achievement of critical corporate and personal performance objectives.

* * *

Additionally, if certain Board-approved financial objectives for the first and second quarters of 1999 are met, an additional amount equal to the targeted bonuses, minus the amount previously paid on March 15, 1999, will be paid in cash or stock, in the Company’s discretion.

* * *

The long term incentive element of the Company’s management compensation program has historically been primarily in the form of stock option grants. The employment agreements for the Named Officers typically specify initial stock options that vest over a three or four year period and performance stock options which vest upon achievement of certain criteria.

99. Under the 1999 Executive Compensation Policy, Pompliano received a minimum base salary of $330,000 per year, cash bonuses of $250,000 per year, and options to purchase 1,649,899 shares of Common Stock under e.spire’s 1996 Stock Option Plan.
100. Piazza, under that same Executive Compensation Policy, received a minimum salary of $175,000, a signing bonus of $30,000, an annual achievement bonus of up to 30% of his salary, and options to purchase 250,000 shares of Common Stock under e.spire’s 1996 Stock Option Plan.

101. Hudson, under that same Executive Compensation Policy, received a minimum salary of $135,000, a cash bonus of $243,750, and options to purchase an aggregate of 300,002 shares of Common Stock under e.spire’s 1996 Stock Option Plan.

102. According to the 1999 Proxy, half of Pompliano’s, Piazza’s and Hudson’s bonuses were contingent upon the achievement of certain revenue and EBITDA objectives. Thus, a significant portion of the compensation package for Pompliano, Piazza and Hudson was contingent upon the financial success of the Company. The improper recordation of revenue under the Company’s operating leases substantially increased reported revenues for e.spire during the Class Period thereby increasing the compensation of these defendants.

**Insider Selling**

103. During the Class period, certain of the Individual Defendants and certain insiders sold shares of e.spire Common Stock with knowledge of material, non-public, adverse information and realized proceeds therefrom.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Position</th>
<th>Shares</th>
<th>Avg. Price</th>
<th>Percentage Holdings</th>
<th>Approximate Proceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/99</td>
<td>Anthony J. Pompliano</td>
<td>Chairman of the Board; CEO</td>
<td>103,000</td>
<td>$6.55</td>
<td>51.4%</td>
<td>$674,580</td>
</tr>
<tr>
<td>8/23/99</td>
<td>Douglas R. Hudson</td>
<td>President of ACSI NT</td>
<td>2,000</td>
<td>$9.0125</td>
<td>15.7%</td>
<td>$18,025</td>
</tr>
<tr>
<td>8/99</td>
<td>Anthony J. Pompliano</td>
<td>Chairman of the Board; CEO</td>
<td>50,000</td>
<td>$9.01</td>
<td>99.8%</td>
<td>$450,718</td>
</tr>
<tr>
<td></td>
<td>TOTALS</td>
<td></td>
<td>155,000</td>
<td></td>
<td></td>
<td>$1,143,324.50</td>
</tr>
</tbody>
</table>
104. Prior to the Class Period, Pompliano only completed one sale of 50,000 shares in May 1999. Likewise, Hudson only completed one sale of 12,350 shares in May 1999.

105. Further, defendant Hudson had outstanding as of March 31, 1999, $84,353 of loans secured by e.spire common stock.

106. ING disposed of substantially all of its shares of e.spire common stock during the Class Period.
   
   (a) The following table illustrates the shares of e.spire common stock divested by ING during the Class Period:

<table>
<thead>
<tr>
<th>Date</th>
<th>Shares</th>
<th>Price</th>
<th>Approximate Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/5/99</td>
<td>4,693,036*</td>
<td>$6.50**</td>
<td>$30,504,734*</td>
</tr>
<tr>
<td>11/5/99</td>
<td>308,790</td>
<td>$6.625</td>
<td>$2,045,734</td>
</tr>
<tr>
<td>TOTALS</td>
<td>5,001,826</td>
<td></td>
<td>$32,550,468</td>
</tr>
</tbody>
</table>

* = Distributed to a limited partner of ING.
** = opening price.

(b) According to the 1999 Proxy, as of December 31, 1998, ING beneficially owned 7,966,826 shares or 16.4 percent of the Company’s common stock. Pursuant to Schedule 13D filed with the SEC on or about November 17, 1999, ING beneficially owned only 40,000 shares of the common stock of e.spire and it “ceased being the beneficial owner of more than five percent of the Company’s common stock on November 5, 1999.”

(c) Giess and Trouveroy served as the partners responsible for “originating, structuring and managing equity and debt instruments” for ING, according to the 1999 Proxy.

107. The Individual Defendants were highly motivated to inflate the value of the Company’s common stock because a substantial and material portion of their compensation and stock ownership of e.spire was derived from the value of such stock.

**Compliance with Debt Covenants**
108. Defendants were motivated to inflate revenues and postpone booking reserves in violation of GAAP because of the existence of debt covenants. A debt covenant is a promise by a borrower that certain acts will be performed and others will be refrained from. They are designed to protect a lender's interests, and typically cover such matters as working capital, debt-equity ratios, and dividend payments. As alleged above, the Company had severe cash-flow problems, as evidenced by its inability to generate sufficient cash from operating activities to sustain its operations throughout the Class Period. If the Company was unable to satisfy the debt covenants, it would be unable to continue to borrow much-needed funds to maintain its operations.

109. e.spire's covenants include fixed charge and interest coverage tests and leverage ratio tests.

110. As announced by e.spire in a March 30, 2000 press release, after the $12.3 million reduction in the Company's 1999 revenues as a result of complying with FIN 43, the Company was not in compliance with certain covenants within its $200 million Senior Secured Credit Facility. e.spire was finally able to secure an amendment to the agreement on July 17, 2000 to take it out of default.

**COUNT I**
Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder (Against All Defendants)

111. Lead Plaintiff repeats and realleges each and every allegation contained above, as if set forth herein.

112. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated
in a continuous course of conduct that operated as a fraud and deceit upon lead plaintiff and the other members of the Class; made various untrue and/or misleading statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, and artifices to defraud in connection with the purchase and sale of securities in that each of the defendants: (a) knew or had access to the material adverse non-public information about e.spire's financial results and then-existing business conditions, which were not disclosed; and (b) participated in drafting, reviewing, and/or approving the misleading statements, releases, reports, and other public representations of and about e.spire.

113. During the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

114. At all times relevant herein, the material misrepresentations and omissions particularized herein directly or proximately caused the damages sustained by lead plaintiff and the other members of the Class.

115. Information showing that defendants acted knowingly or with reckless disregard of the truth is peculiarly within defendants' knowledge and control. As directors and senior corporate officers of e.spire, the Individual Defendants had knowledge of the details of the Company's business and operations. Lead Plaintiff and members of the Class, who purchased shares of e.spire common stock on the open market, did not have knowledge of the details of e.spire's internal corporate affairs.
116. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of the Company's common stock was artificially inflated during the Class Period. In ignorance of the materially false and misleading nature of the reports and statements described above, lead plaintiff and the other members of the Class relied to their detriment on the statements described above and/or on the integrity of the market price of the Company's common stock as reflecting the completeness and accuracy of the information disseminated by the Company in connection with their purchases of the Company's securities.

117. At the time of such misstatements and omissions, lead plaintiff and the other members of the Class were ignorant of their falsity and believed them to be true. Lead Plaintiff and the other members of the Class could not, in the exercise of reasonable diligence, have known the actual facts. Had lead plaintiff and the other members of the Class known the truth, they would not have purchased their e.spire shares.

118. The market for e.spire common stock was open and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose the full truth about e.spire, its financial condition, performance, and business, e.spire common stock traded at artificially inflated prices during the Class Period, until the time the adverse information referred to above was finally provided to and digested by the securities markets. Lead Plaintiff and other members of the Class purchased or otherwise acquired e.spire stock relying upon the integrity of the market price of e.spire stock and market information relating to e.spire, or in the alternative, upon defendants' false and misleading statements, and in ignorance of the adverse, undisclosed information known to defendants, and have been damaged thereby. Those who sold their shares during the Class Period were not able to fully recoup their
119. Lead Plaintiff and other members of the Class have suffered substantial damages as a result of their purchase(s) of e.spire common stock.

120. This action is brought within three years after the securities at issue were purchased and within one year after the discovery of the untrue statements and omissions or after such discovery should have been made by the exercise of reasonable diligence.

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

COUNT II
Section 20(a) of The Exchange Act
(Against The Individual Defendants and ING)

122. Lead Plaintiff repeats and realleges each and every allegation stated above, as if fully set forth herein.

123. Lead Plaintiff asserts this Count for liability pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), on behalf of all members of the Class and against the Individual Defendants as control persons of e.spire and ING as a control person of e.spire and Giess and Trouveroy.

124. Through their positions of control and authority at the Company, the Individual Defendants and ING were able to and did control, directly and indirectly, the content of the public statements disseminated by the Company. With knowledge of the falsity of the statements contained therein and in reckless disregard of the true status of the business of the Company, the Individual Defendants and ING caused the false and misleading statements and omissions of material facts as alleged herein.

125. By reason of their positions and stock ownership, the Individual Defendants and
ING were "controlling persons" within the meaning of Section 20(a) of the Exchange Act, and had the power and influence to direct the management and activities of the Company and its employees, and to cause the Company to engage in the unlawful conduct complained of herein. Because of their executive and directorial positions within e.spire, the Individual Defendants and ING had access to adverse, non-public information about the Company and acted to conceal the same, or knowingly or recklessly authorized and approved the concealment of the same.

126. By virtue of the foregoing, each Individual Defendant and ING is liable for the violation of Section 10(b) pursuant to Section 20(a) of the Exchange Act.

127. Lead Plaintiff and the other members of the Class have been damaged by the violations of the Individual Defendants and ING as described in this Count and seek recovery for the damages caused thereby.

**COUNT III**
Section 20A of the Exchange Act
(Against Certain Defendants)

128. Lead Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth fully herein.

129. This Count is asserted against Defendants Pompliano, Hudson and ING for violations of Section 20A of the Exchange Act, 15 U.S.C. § 78t-1, and the rules and regulations promulgated thereunder for illegal insider trading.

130. During the Class Period, the Pompliano, Hudson and ING collectively sold 5,156,826 shares of e.spire common stock in the amounts set forth at paragraphs 103 and 106(a) herein while in the possession of the material, non-public information as set forth above. Pompliano, Hudson and ING violated Section 10(b) of the Exchange Act and SEC Rule 10b-5.
promulgated thereunder as alleged hereinabove. As a result of these violations, Pompliano’s, Hudson’s, and ING’s stock sales violated Section 20A of the Exchange Act.

131. During the Class Period, Pompliano, Hudson and ING, while in the possession of material, non-public information, sold e.spire common stock while certain members of the Class, including plaintiff Gillham, contemporaneously purchased the common stock of e.spire.

132. As a result of the foregoing, the Pompliano, Hudson and ING have violated Section 20A of the Exchange Act and lead plaintiff and the other members of the class have suffered substantial damages.

BASIS OF ALLEGATIONS

133. Because the PSLRA requires complaints to be pleaded in conformance with Federal Rule of Civil Procedure 11, lead plaintiff has alleged the foregoing based upon the investigation of his counsel, which included a review of e.spire’s SEC filings, articles in the financial news media, press releases and other publicly available information about the Company. Each document upon which lead plaintiff relied to make the allegations in this Complaint is set forth specifically herein, by name, date and author.

WHEREFORE, lead plaintiff, on behalf of himself and the other members of the Class, prays for judgment as follows:

A. declaring this action to be a proper class action maintainable pursuant to Fed. R. Civ. P. 23 and 23(b)(3), and declaring lead plaintiff to be a proper class representative;
B. awarding lead plaintiff and the other members of the Class the damages suffered as a result of the wrongs complained of herein together with appropriate interest;
C. awarding lead plaintiff and the other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees and experts' fees and out-of-pocket costs and disbursements; and

D. awarding lead plaintiff and the other members of the Class such other and further relief as may be just and proper under the circumstances.

JURY TRIAL DEMANDED

Lead Plaintiff hereby demands a trial by jury.

Dated: September 14, 2000

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