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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PETER A. RAETSCH, GERALDINE RAETSCH, and CURTIS C. SHIFLETT, individually and on behalf of all others similarly situated,	
Plaintiffs,	CIVIL ACTION NO.
v.	2:05-cv-
LUCENT TECHNOLOGIES, INC., LUCENT TECHNOLOGIES, INC. EMPLOYEE BENEFITS COMMITTEE, and LUCENT TECHNOLOGIES, INC. MEDICAL EXPENSE PLAN FOR RETIRED EMPLOYEES,	CLASS ACTION
Defendants.	

COMPLAINT

INTRODUCTION

1. Plaintiffs bring this class action to redress defendants' unlawful reductions and

terminations of retiree medical benefit coverage owed to them and the members of the proposed Class during the period September 29, 1999 to the present. These medical benefits were payable to plaintiffs and the members of the Class under the terms of benefit plans established by their former employer, AT&T Corporation (and its affiliated business units), and defendant Lucent Technologies, Inc.

2. Plaintiffs Peter A. Raetsch and Curtis C. Shiflett were long-term employees of both AT&T and defendant Lucent who retired from Lucent. Plaintiffs earned their retiree medical benefits as compensation for their long service to AT&T and Lucent.

3. In 1996, AT&T formed Lucent in a corporate reorganization. As a result of this business transaction, plaintiffs and thousands of other active and retired pension plan and medical plan participants were involuntarily transferred from participation in AT&T's plans to new plans at Lucent. Lucent agreed to assume all of AT&T's benefit obligations under the plans, including the obligation to pay retiree medical benefits to plaintiffs and the members of the Class who then were retired or would retire thereafter.

4. In consideration for Lucent's assumption of the obligation to perform these benefit obligations, AT&T transferred to Lucent billions of dollars of assets to finance the benefits that Lucent assumed. Lucent established its own identical pension and medical plans to begin paying the benefits that AT&T was obligated to pay, including the retiree medical benefits.

5. Notwithstanding (a) the long history of treating and describing the retiree medical benefits as permanent benefits that would be provided throughout retirement, (b) the additional conduct of Lucent beginning in 1999 to use and transfer excess pension assets to fund retiree medical obligations, circumstances under which the governing provisions of the Internal Revenue Code allowing these transfers, which provisions were expressly incorporated in the

pension and medical plans, required Lucent to maintain during the five year period ending in September 2003 the same program of benefits which had been in force in 1998, and (c) the provisions of both federal law and the retiree medical plan and pension plan which protected the benefits from cutback or elimination during this "benefits maintenance period" and the ensuing "cost maintenance period," defendant Lucent reduced the level of medical benefits for some retirees and eliminated the medical coverage altogether for certain categories of spouses of retiree participants.

6. When it announced these cutbacks and terminations of the retiree medical benefits, Lucent publicly admitted that these actions enabled it to evade benefit obligations in the hundreds of millions of dollars. As a result of this willful violation of the terms of the medical and pension plans which incorporate the statutory requirements for the maintenance of benefits, tens of thousands of spouses of retirees have been deprived of medical coverage paid by Lucent, including spousal plaintiff Geraldine Raetsch and the spouse of plaintiff Curtis Shiflett, Betty Shiflett, and the costs of coverage have improperly been shifted from Lucent to the retirees and their spouses.

7. Plaintiffs therefore bring this class action to challenge Lucent's willful violation of its legal obligations to maintain the program of retiree medical benefits under the terms of the pension plan and medical plan and the strict requirements of ERISA.

JURISDICTION AND VENUE

8. This Complaint arises under Section 502(a) of ERISA, 29 U.S.C. § 1132(a). This Court has subject matter jurisdiction over this action under Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), and under 28 U.S.C. § 1331. In addition, declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by ERISA Section 502(a), 29 U.S.C. § 1132(a).

9. Venue is proper in this district under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), because the relevant pension and retiree medical plans are administered, in whole or part, in this district, the violations of law alleged in this action occurred in this district, and defendants do business and are found in this district. Venue is also proper in this district under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions that give rise to plaintiffs' claims occurred in this district.

PARTIES

10. Plaintiff Peter A. Raetsch is a retired employee of defendant Lucent. Plaintiff Peter A. Raetsch commenced his employment with AT&T in May 1962. Following more than 35 years of dedicated service to AT&T and Lucent, he retired from Lucent effective December 30, 1997 and began receiving pension and retiree medical benefit payments as a participant in the Lucent Technologies, Inc. Management Pension Plan, later renamed the Lucent Technologies, Inc. Retirement Income Plan (the "Pension Plan") and the Lucent Technologies, Inc. Medical Expense Plan for Retired Employees (the "Medical Plan"). Plaintiff Peter A. Raetsch is currently 66 years old and resides at 511 Carsonia Avenue, Reading, Pennsylvania. Plaintiff Geraldine Raetsch is his spouse and resides at the same address. Plaintiff Geraldine Raetsch is a beneficiary of the Pension Plan and the Medical Plan.

11. Plaintiff Curtis C. Shiflett is a retired employee of defendant Lucent. Plaintiff Shiflett commenced his employment with AT&T in February 1962. Following more than 35 years of dedicated service to AT&T and Lucent, he retired from Lucent effective December 30, 1997 and began receiving pension and retiree medical benefit payments as a participant in the Pension Plan and the Medical Plan. Plaintiff Shiflett is currently 71 years old and resides at 5015 Valley Stream Lane, Macungie, Pennsylvania. His spouse, Betty L. Shiflett, is a beneficiary in the Pension Plan and the Medical Plan.

12. Plaintiffs Peter Raetsch and Curtis Shiflett are vested participants, within the meaning of Section 3(7) of ERISA, 29 U.S.C. § 1002(7), and currently are receiving service pensions from the Pension Plan, from which assets were transferred to fund their retiree medical benefits payable from the Medical Plan.

13. Defendant Lucent Technologies Inc. ("Lucent") is a Delaware corporation that has its principal place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974. Lucent is the "Plan Administrator" of the Pension Plan and the Medical Plan within the meaning of ERISA Section 3(16)(A), 29 U.S.C. § 1002(16)(A), a "named fiduciary" of both plans within the meaning of ERISA Section 402(a), 29 U.S.C. § 1102(a), a "fiduciary" of both plans within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), and the "sponsor" of both plans.

14. Defendant Lucent Technologies Inc. Employee Benefits Committee ("the Committee") is a committee whose members are appointed by Lucent and who are responsible for administration and management of the Pension Plan. The identities of the individual members of the Committee are not currently known to plaintiffs but these individuals will be added as defendants upon receipt of this identifying information. The Committee is a "named

fiduciary" of the Pension Plan within the meaning of ERISA Section 402(a), 29 U.S.C. § 1102(a), and each of its members is a "fiduciary" of the plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

15. Defendant Lucent Technologies Inc. Medical Expense Plan for Retired Employees ("the Medical Plan") is a "welfare benefit plan" within the meaning of Section 3(1) of ERISA, 29 U.S.C. § 1002(1). The purpose of the Medical Plan is to provide post-retirement medical coverage to plan participants and their beneficiary spouses and other eligible dependents. The Medical Plan is the successor in interest to several retiree medical plans sponsored by AT&T.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class, defined as:

> All persons who are (or who have been) participants or beneficiaries in the Lucent Technologies, Inc. Retirement Income Plan and in the Lucent Technologies, Inc. Medical Expense Plan for Retired Employees who were eligible to receive retiree medical benefit coverage under the latter plan at any time beginning on and after September 29, 1999 and continuing through the present.

17. The members of the Class are so numerous that joinder of all Class members is impracticable. The exact number of Class members is currently unknown to plaintiffs. However, in its SEC Form 8-K filing dated September 8, 2003, Lucent disclosed that its retiree medical plans then covered approximately 240,000 retirees and dependents. It is believed that approximately one-half of these covered individuals are members of the Class. Given the large number of Class members and their geographical dispersion among many states, it is impracticable for all Class members to join in individual litigation.

18. Common questions of law and fact exist as to all members of the Class. Among the

questions of law and fact common to the Class are:

(a) Whether plaintiffs and the members of the Class as of September 29, 1999 or at any time thereafter were eligible for and entitled to payment of retiree medical benefits provided under the Medical Plan or any other plan which received the transfers of “excess” pension assets beginning on or about September 29, 1999;

(b) Whether the retiree medical benefits for each plaintiff and Class member became fixed and irreducible during the five-year “benefit maintenance period” which began on or about October 1, 1998, the start of the tax year during which the first transfer of excess pension assets from the Pension Plan occurred to fund retiree medical benefits pursuant to Internal Revenue Code Section 420;

(c) Whether the retiree medical benefits which were to be provided to each plaintiff and Class member thereafter, during the subsequent period which began on October 1, 2003 and which will end on September 30, 2006 (the end of the fourth year following the year in which the last of the transfers occurred), are subject to the “cost maintenance” requirement, based on the cost of the program of retiree medical benefits which should have been maintained during the preceding “benefit maintenance period,” i.e. the same program of retiree medical benefits that was in force during 1998;

(d) Whether the provisions of ERISA and the Internal Revenue Code and/or the terms of the Pension Plan and Medical Plan prohibited defendants from reducing or eliminating the retiree medical benefits during the five-year “benefit maintenance period” ending on or about September 30, 2003, and also prohibited defendants from acting to reduce the cost of the benefits provided during the ensuing “cost maintenance period” ending on September 30, 2006; and

(e) Whether each plaintiff and Class member is entitled to the relief prayed for in this Complaint.

19. Each plaintiff is a member of the Class and the claims of each plaintiff are typical of the claims of the members of the Class.

20. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel who are competent and experienced in ERISA and class action litigation. Plaintiffs do not have interests that are antagonistic to, or in conflict with, the members of the Class whom they seek to represent.

21. Class certification is appropriate under Rules 23(b)(1)(B) and (b)(2), Fed. R. Civ. P., because adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of other non-party members, and defendants have acted on grounds generally applicable to the Class, making appropriate declaratory, injunctive and other equitable relief on a class-wide basis.

22. If necessary, class certification also would be appropriate under Rule 23(b)(3), Fed. R. Civ. P., because the common issues of law and fact presented in this action predominate over any individual issues. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all members is impracticable. Furthermore, the expense and burden of individual litigation makes it impractical for the members of the Class to pursue individual litigation in order to vindicate their rights. Plaintiffs are not aware of any problems that would militate against the maintenance of this action as a class action.

FACTUAL BACKGROUND

23. Pension and retiree medical benefits represent a form of deferred compensation for employees, particularly for those who devote their careers to an employer that intends its employees to form the reasonable expectation that promised retirement benefits are an important component of their overall program of compensation. Over their many years of service at AT&T and its affiliates and at Lucent and its affiliates, plaintiffs Peter Raetsch and Curtis Shiflett and the retiree members of the Class earned pension and medical benefits that were to be paid following retirement to them and their eligible spouses and dependent beneficiaries, under AT&T's long-established pension and retiree medical plans, and later from Lucent's successor plans.

24. Lucent was incorporated in Delaware on November 29, 1995 as NS-MPG. Lucent was formed following AT&T's announcement in September 1995 of its intention to create a separate company comprised of the AT&T systems and technology businesses and operations. On February 1, 1996, AT&T began executing its decision to separate Lucent into a stand-alone company by transferring assets and liabilities to it.

25. In February 1996, shortly after AT&T began executing its decision to separate Lucent into a stand-alone company, AT&T sent a form letter to plaintiffs and other participants in the AT&T Management Pension Plan describing its intention to spin-off pension and other benefit obligations as part of the transaction. The letter was signed by H.W. Burlingame, Executive Vice President-Human Resources at AT&T, and Curtis Artis, Senior Vice President-Human Resources at Lucent. This letter informed participants as follows:

> A team has been hard at work since September determining the best way to fairly divide AT&T's numerous pension and benefit plans for both active employees and retirees. *The team's objective throughout has been to complete the task in a way that protects the interests of employees and retirees, meets all*

> *legal and contractual requirements, and contributes to successfully launching two strong independent companies.*

(emphasis supplied). The same letter quoted a letter from the Milliman & Robertson actuarial firm indicating that AT&T's pension plans were "situated in the top tier of well-funded plans."

26. Before the effective date of the spin-off, in August, 1996, AT&T issued a form letter to plaintiffs and other participants in the AT&T Management Pension Plan who were to be transferred to Lucent. This letter, which bore the signature of H.W. Burlingame, advised participants that "at the time of the spin-off, Lucent Technologies will have more assets than legally required to continue the pension benefits earned by current and former employees." Participants were told that "[t]he benefits earned at AT&T by AT&T and Lucent employees are protected by law, and both companies will receive sufficient assets to meet their corresponding liabilities."

27. Lucent was spun-off from AT&T effective as of October 1, 1996. At the time that Lucent was spun-off from AT&T, the value of the assets held for the benefit of the AT&T pension plans exceeded liabilities by a substantial amount. The ability of AT&T to transfer, and of Lucent to assume, pension assets and liabilities from the AT&T pension plan was governed by Section 208 of ERISA, 29 U.S.C. § 1058, which requires that each participant be assured of a benefit after the transfer that is not less than the benefit he/she would have received if the transferring plan had terminated immediately before the transfer. The same provision had also regulated the allocation when pension assets and liabilities were spun-off from the Bell System Management Pension Plan to the Baby Bells in 1984.

28. In connection with the spin-off of Lucent, AT&T and Lucent entered into an agreement, the "Employee Benefits Agreement," dated as of February 1, 1996, which was thereafter amended as of March 29, 1996. Under the Employee Benefits Agreement, AT&T

delegated the duty to pay the benefits owed to plaintiffs and the members of the Class, and Lucent "assumed and agreed to pay, perform, fulfill and discharge, in accordance with their respective terms, all Liabilities (as defined), to or relating to former employees of AT&T or its affiliates employed by [Lucent] and its affiliates and certain former employees of AT&T or its affiliates (including retirees) who either were employed in the Company Business (as defined) or who otherwise are assigned to [Lucent] for purposes of allocating employees benefit obligations (including all retirees of Bell Labs)." Plaintiffs and the members of the Class did not consent to this assignment of AT&T's benefits obligations.

29. Lucent was obligated under the terms of the Employee Benefits Agreement to establish plans that replicated the terms of the corresponding AT&T plans and to provide all transferring participants full credit for all benefits they had earned through their years of service prior to the spin-off. In return for accepting this obligation, Lucent received an allocation of assets from the AT&T pension and welfare plan trusts that exceeded the actuarial present value of the liabilities it accepted.

30. The Employee Benefits Agreement explicitly provided that Lucent's receipt of benefits plan assets from AT&T was conditioned upon its assumption of all of the AT&T benefit liabilities for the transferring participants: "the provision of this Agreement for the transfer of assets from certain trusts relating to AT&T [Pension] Plans (including Foreign Plans) to the corresponding trusts relating to Lucent [Pension and Medical] Plans (including Foreign Plans) are based upon the understanding of the parties that each such Lucent Plan will assume all Liabilities of the corresponding AT&T Plan to or relating to Transferred Individuals, as provided for herein." The Employee Benefits Agreement further provided that, to the extent liabilities were not effectively assumed by Lucent, the amount of assets transferred to it would be

recalculated and an appropriate amount of assets transferred back to AT&T's pension trust.

31. The liabilities that Lucent assumed and agreed to pay under the Employee Benefits Agreement included the liabilities of the AT&T pension plan and retiree medical plan to pay benefits to plaintiffs and the members of the Class.

32. Effective October 1, 1996, Lucent established the Lucent Technologies, Inc. Management Pension Plan (the "Pension Plan"). The Pension Plan was the vehicle for Lucent to perform the obligations it assumed under the Employee Benefits Agreement to pay AT&T's pension benefit liabilities to plaintiffs and the members of the Class, based upon their service through September 30, 1996. Also on October 1, 1996, Lucent established the Medical Plan, which was the vehicle for Lucent to perform the obligations it assumed under the Employee Benefits Agreement to pay AT&T's retiree medical benefit liabilities to plaintiffs and the members of the Class.

33. The October 1, 1996 plan document for the Pension Plan provided in Section 1 that "for Transferred Individuals who Terminate Employment before October 1, 1996, the provisions of the AT&T Management Pension Plan in effect at termination of the Transferred Individual's employment as incorporated in the Prior Plan shall govern."

34. The 1996 plan document for the Pension Plan also incorporated in full in Section 6 the provisions of the predecessor AT&T Management Pension Plan, adopted in 1991, dealing with transfers of pension assets under IRC Sections 401(h) and 420 to fund post-retirement health benefits, which provisions were copied from the March 1995 plan document for the AT&T Management Pension Plan.

35. Effective January 1, 2000, the Pension Plan was restated and renamed the Lucent Technologies, Inc. Retirement Income Plan in conjunction with a shift from a traditional defined

benefit plan to a "cash balance" plan structure.

36. Both the AT&T Management Pension Plan and the Pension Plan historically held assets that exceeded their liabilities by a substantial amount. Beginning in September 1999, defendant Lucent acted to take advantage of the provisions of Sections 401(h) and 420 of the Internal Revenue Code, 26 U.S.C. §§ 401(h), 420, which enable sponsors of defined benefit pension plans, under certain strictly defined circumstances, to make a "qualified transfer" and use certain "excess assets" in the pension plan to fund retiree medical benefits for persons who are retired participants in the same pension plan and their eligible spouses and dependents.

37. Defendant Lucent made several Section 420 transfers of pension assets from the Pension Plan as follows: in the amount of $182,993,000 on or about September 29, 1999; in the amount of $191,169,000 on or about December 31, 1999; in the amount of $214 million on or about December 27, 2000; and in the amount of $300 million on or about December 26, 2001. The total of these four transfers was $881,162,000.

38. In conformity with the requirements of Section 420, defendant Lucent caused the Pension Plan to include provisions that, *inter alia*, a separate account "Health Care Fund" was established within the pension trust to fund a portion of the retiree medical benefits; the Health Care Fund "shall meet the requirements of Code § 401(h)" and any transfers of pension assets would be limited to transfers that were qualified under the Code; and a transfer of pension assets would be permitted only if each medical plan "provides that the Applicable Health Benefits for each taxable year during the Benefit Maintenance Period are substantially the same as the Applicable Health Benefits provided by the employer during the taxable year immediately preceding the taxable year of the Qualified Transfer." The provision incorporating the requirement of the Benefit Maintenance Period appears in the versions of the Pension Plan dated

as of October 1, 1996, January 1, 1998, and January 1, 2000.

39. Lucent also amended the Medical Plan to recite that:

> **17.11 Pension Asset Transfers**
>
> Pursuant to Sections 401(h) and 420 of the Code, Lucent Technologies Inc. shall comply with all cost maintenance period requirements and benefit maintenance period requirements that may be applicable to this Plan for any Code Section 420 pension asset transfer by or on behalf of Lucent Technologies Inc. for qualified current retiree health liabilities (as defined under Code Section 420). With respect to any prior asset transfer by AT&T under Code Section 420, Lucent Technologies Inc. agrees to comply with the provisions of Code Section 420 for the applicable cost maintenance or benefit maintenance periods to which this Plan is subject.

Lucent Technologies Inc. Medical Expense Plan for Retired Employees, § 17.11 at 129 (as amended and restated effective January 1, 2001 and executed September 30, 2002).

40. Among the conditions and limitations imposed by Sections 401(h) and 420 of the Internal Revenue Code are the requirements that pension plan assets may be subject to such a transfer and use only if, *inter alia*, the existing funding level of the plan then exceeds, and the funding level thereafter remains in excess of, 125% of full funding as defined by the Code. Another mandatory requirement of these provisions, as set forth in 26 U.S.C. § 420(c)(3) before its amendment effective December 17, 1999, is that the retiree medical benefits of participants must be maintained by the employer at “substantially the same level” during the five-year “benefit maintenance period” commencing with the year in which the transfer of pension assets occurs. Under the statute, a “benefit maintenance period” requirement was in force for all transfers occurring before December 18, 1999, including the transfer that Lucent made on or about September 29, 1999. For subsequent transfers, a “cost maintenance period” requirement was in force for the period of time following expiration of the benefit maintenance period. Through these measures, Congress acted to ensure that, in exchange for the permitted reduction

in the funding level and security of their pension benefits, participants would be assured that their retiree medical benefits would be maintained.

Lucent's Wrongful Elimination and Reduction of Retiree Medical Benefits for Plaintiffs and the Members of the Class

41. Although Lucent knowingly agreed and undertook the obligation in its Pension Plan and Medical Plan to ensure maintenance of retiree medical benefits in connection with its transfers of pension assets under IRC Sections 401(h) and 420 commencing on or about September 29, 1999, soon thereafter Lucent began to effect illegal reductions and terminations of retiree medical benefits to plaintiffs and the members of the Class. These actions included the following reductions and terminations of benefits:

(a) Effective January 1, 2001, Lucent acted to (1) impose contribution requirements for participation in the Medical Plan by certain retirees (and their spouses) who retired on or after March 1, 1990; (2) increase co-pays for medical services covered under the Medical Plan; and (3) increase co-pays for retail and mail order prescription drugs covered under the Medical Plan;

(b) Effective January 1, 2002, Lucent acted to further increase co-pays for retail and mail order prescription drugs covered under the Medical Plan;

(c) Effective January 1, 2003, Lucent acted to (1) impose contribution requirements for participation in the Medical Plan by all retirees who retired on or after March 1, 1990; (2) increase co-pays, individual and family deductibles, and individual and family out of pocket maximums for medical services covered under the Medical Plan; and (3) further increase co-pays for retail and mail order prescription drugs covered under the Medical Plan;

(d) Effective January 1, 2004, Lucent acted to (1) eliminate company-paid coverage for dependents of management retirees who retired on or after March 1, 1990 and whose base salary at retirement was $ 87,000 or more; (2) eliminate company reimbursements of Medicare Part B premiums paid by all management retirees and dependents; and (3) eliminate dental coverage for all management retirees and dependents;

(e) Effective January 1, 2005, Lucent acted to eliminate company-paid coverage for dependents of management retirees who retired on or after March 1, 1990 and whose base salary at retirement was $ 65,000 or more; and

(f) On or about October 15, 2005, Lucent announced that, effective January 1, 2006, it will impose large increases in contribution requirements for participation in the Medical Plan for certain retirees and spouses and impose new contribution requirements for participation in the Medical Plan by certain other retirees who retired on or after March 1, 1990 and their spouses.

42. Upon information and belief, the officers and other members of Lucent top management, including those who exercised fiduciary responsibility for the Pension Plan and/or the Medical Plan, were informed and aware that the provisions of Internal Revenue Code Sections 401(h) and 420, which were incorporated in both plans, required a five-year "benefit maintenance period" for retiree medical benefits through September 30, 2003. Despite their knowledge and despite these legal requirements, defendants nevertheless made and implemented these cutbacks in the benefits, with severe consequences on retirees and their spouses, including surviving spouses, most of whom live on fixed incomes and are ill-prepared to bear the costs of their promised medical coverage.

43. The requirements of IRC Section 420 pertaining to pension asset transfers commencing in September 1999 were brought to the attention of Lucent management by the Internal Revenue Service during a review of the Pension Plan's tax qualified status. As a result

of that review, on or about December 21, 2004, defendant Lucent amended the Pension Plan to expressly recite the requirement of the five-year "benefit maintenance period" applicable to the September 1999 transfer. In addition to the foregoing, plaintiffs incorporate by reference a presentation booklet (particularly pages numbered 49-50 thereof) distributed at a meeting of the Lucent Board of Directors on or about December 18, 2002. This document was produced by defendants in related pending litigation challenging Lucent's illegal elimination of the death benefits payable under the Pension Plan. The contents of this document currently are subject to a confidentiality order but are known to defendants. Despite the fact that Lucent management was made aware of these legal requirements and of defendants' violations of these requirements, defendants have taken no action whatsoever to remedy their violations.

44. Instead of complying with the legal requirements of the Internal Revenue Code and the implementing provisions of both the Pension Plan and Medical Plan, defendant Lucent acted to evade its funding obligations to the Medical Plan by purporting to terminate or reduce benefits despite their protected status. Lucent management acted unlawfully in order to increase the company's profits, thus enriching the compensation of its top management.

COUNT ONE

VIOLATION OF ERISA AND MEDICAL PLAN AND PENSION PLAN PROVISIONS RELATING TO MAINTENANCE OF BENEFITS AND COSTS FOLLOWING TRANSFER OF PENSION PLAN ASSETS TO FUND RETIREE MEDICAL BENEFITS, UNLAWFUL INUREMENT OF PLAN ASSETS, AND PROHIBITED TRANSACTIONS

45. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 44. This Count is brought on behalf of all members of the Class against all defendants.

46. Under the provisions of the Lucent Retirement Income Plan and its predecessor plans, and by virtue of the operation of 26 U.S.C. § 420(c)(3), which was expressly incorporated in the Medical Plan and the Pension Plan effective beginning as of the time of the first transfer of excess pension assets by Lucent on or about September 29, 1999, each plaintiff and each Class member was legally entitled to maintenance of the level of retiree medical benefits that was in force during the immediately preceding year (1998) during the five-year "benefits maintenance period" commencing on October 1, 1998 and ending on or about September 30, 2003. The applicability of the benefit maintenance requirement throughout this five-year period is set forth in the legislative Transition Note, P.L. No. 106-170, § 535(c)(2), reproduced in the historical note to 26 US.C.A. § 420(c), which states as follows:

> If the cost maintenance period for any qualified transfer after the date of enactment of this Act [December 17, 1999] includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period).

Substantially the same text was incorporated in the amendment to the Pension Plan, dated December 21, 2004, which is referred to above.

47. The statutory "benefit maintenance period" elapsed on or about September 30, 2003. Upon expiration of that period, the retiree medical plan was governed by the "cost

maintenance period" requirement of amended 26 U.S.C. § 420(c)(3). That requirement obligated defendants to expend during the remainder of a five-year "cost maintenance period" (which commenced October 1, 2003 and will end September 30, 2006) a dollar amount that was at least equal to the higher of the annual dollar amounts that should have been expended for retiree medical benefits during the two preceding years – assuming defendants had complied with the benefit maintenance requirement – i.e., the cost of providing during the year October 1, 2002 to September 30, 2003 the program of benefits that was in effect during 1998.

48. Each action by a defendant which was inconsistent with these benefit maintenance and cost maintenance requirements, including each of the benefits cutbacks and terminations enumerated in paragraph 41 above, constitutes a violation of 26 U.S.C. § 420(c)(3), the terms of which are expressly incorporated in Section 17.11 of the Medical Plan and Section 6 of the Lucent Retirement Income Plan. Defendants' actions in contravention of these statutory and plan provisions also constitute (1) one or more unlawful inurements of approximately $ 881 million of Pension Plan assets to defendant Lucent and its officers, in violation of ERISA Section 403(c)(1), 29 U.S.C. § 1103(c)(1), and (2) one or more unlawful prohibited transactions by defendant Lucent and its officers and defendant the Committee in violation of ERISA Section 406(a)-(b), 29 U.S.C. § 1106(a)-(b).

49. In addition, each defendant violated the strict fiduciary duties applicable under ERISA Section 404(a), 29 U.S.C. § 1104(a), to the extent he/she/it either failed to maintain the benefit structure, and later the cost structure, of the retiree medical program during the periods of time that the Medical Plan has been governed by these legal restrictions. or treated the benefits as reducible or terminable for any participant or beneficiary, or acted to facilitate and implement amendments to the Medical Plan that contravened these requirements. The failure to provide the

retiree medical benefits in conformity with the Medical Plan and Pension Plan provisions implementing 26 U.S.C. § 420(c)(3) also constitutes a violation of these incorporated statutory provisions of each of the plans and a breach of the strict fiduciary duty to follow the terms of the plans. Each fiduciary defendant is personally liable for all losses resulting from these breaches of duty.

50. Plaintiffs and the members of the Class are entitled to (a) enforce their rights under ERISA and the terms of the plans, or clarify their rights to future benefits, under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B); (b) restore all losses suffered by the Pension Plan as a result of defendants' violations, under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), and (c) secure other relief under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), as may be necessary and appropriate to fully and effectively remedy these violations. The same sections of ERISA are a basis for necessary monetary, declaratory and equitable relief to fully remedy each of these violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray as follows:

A. That the Court certify this action as a class action under Rules 23(b)(1)(B), 23(b)(2), or 23(b)(3) Fed. R. Civ. P., and appoint plaintiffs' counsel as counsel for the Class;

B. That the Court declare, adjudge and decree that (1) the retiree medical benefits payable to plaintiffs and the members of the Class during the period September 29, 1999 to and including September 30, 2006 were and are governed by the restrictions of Internal Revenue Code Sections 401(h) and 420, as made applicable through implementing amendments to the Lucent Technologies Inc. Medical Expense Plan for Retired Employees and the Lucent Retirement Income Plan; (2) defendants were required to maintain the program of retiree medical benefits that was in force during 1998 during the entire five-year period ending on September 30, 2003, and during the ensuing period ending September 30, 2006, defendants were obligated and continue to be obligated to maintain the minimum cost of the retiree medical program, as measured by the cost of the program of benefits that should have been provided during 2003 (i.e., the cost of providing the 1998 program of benefits during 2003); (3) defendants violated the strict duties, responsibilities, and obligations imposed on them by ERISA, 29 U.S.C. § 1001 et seq., in acting to implement each amendment which purported to reduce or terminate any of the medical benefits payable to plaintiffs and the members of the Class, and committed one or more unlawful inurements of pension plan assets and one or more prohibited transactions; and (4) each amendment purporting to reduce or eliminate any of the benefits payable to plaintiffs and the members of the Class under the Medical Plan, including all changes having the effect of increasing their costs or premiums, are null and void and without legal effect;

C. That the Court enter an order for reformation of the Medical Plan to strike out all amendments that are inconsistent with the Court's ruling.

D. That the Court order and enjoin all defendants (1) to take all necessary to steps to disgorge the unlawful inurement of pension plan assets and the unjust enrichment resulting therefrom, and to ensure the timely payment, reimbursement and/or refund to each plaintiff and Class member of all financial burdens that were illegally imposed by defendants, together with prejudgment and post-judgment interest thereon, including all necessary steps to notify Class members who are entitled to these payments, and (2) to make full and timely payments of all retiree medical benefits that may become due following the date of entry of the Court's decree on terms that are consistent with full compliance with the law;

E. That the Court enter such other remedial and injunctive relief, including appointment of one or more independent fiduciaries, as may be necessary to conduct an accounting of the assets of the Medical Plan and Pension Plan and to ensure that defendants' violations are remedied and that appropriate procedures are established to prevent any further acts purporting to reduce or eliminate the retiree medical benefits in a manner that are contrary to the requirements of IRC Sections 401(h) and 420 and the plan provisions incorporating these requirements;

F. That the Court award plaintiffs and the members of the Class reasonable costs and expenses, pre- and post-judgment interest, and attorneys' fees; and

G. That the Court grant such other relief as may be just and proper.

Dated: October 24, 2005

Respectfully submitted,

SANDALS & ASSOCIATES, P.C.

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