

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Securities and Exchange Commission,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.
)	
Gary C. Gerhardt,)	
)	
)	Trial by Jury Demanded
Defendant.)	

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“the Commission”), for its Complaint, alleges as follows:

SUMMARY

1. From 1997 through 2003, Gary C. Gerhardt participated in a fraudulent scheme intended to enrich certain officers, directors, and employees of Engineered Support Systems, Inc. (“Engineered Support” or “the Company”). Engineered Support’s management periodically issued stock options to officers, directors and certain employees as an incentive, purportedly tying the recipients’ compensation to the Company’s future stock price. Pursuant to Engineered Support’s stock option plans, the Company was required to grant these options “at-the-money,” which means that the option exercise price would be equal to the closing market price of the Company’s common stock on the date of the award. Thus, employees and directors would profit only if the Company’s stock price rose after options were awarded.

2. During this period of time, Engineered Support regularly issued proxy statements and annual reports which represented that the Company’s stock options were

issued with exercise prices equal to the closing market prices on the dates of the awards. However, these statements were false.

3. Gerhardt, who was Engineered Support's Chief Financial Officer ("CFO") during the relevant period, directed Steven Landmann ("Landmann"), his subordinate and Engineered Support's Controller, to backdate the grant dates of certain of Engineered Support's stock options to coincide with low points in the closing market price for the Company's common stock. This undisclosed practice resulted in grants of disguised in-the-money options, where the options had a lower exercise price than the market price of Engineered Support's common stock on the actual date of the award. Because the Company's stock options vested immediately, Gerhardt and the other option recipients could realize an immediate profit on the option grants which had not been authorized by shareholders.

4. As part of this scheme, on at least two occasions, Gerhardt directed Landmann to cancel and reissue previously issued Engineered Support options with a new backdated grant date and exercise price because the Company's stock price declined after the Company had granted those options. These efforts were intended to bring options that fell out-of-the-money back in-the-money, further thwarting the stock option plans' stated goal of tying compensation to increases in the Company's stock price.

5. As part of this scheme, Gerhardt also directed Landmann to improperly issue stock options to non-employee directors beyond what those directors were authorized to receive under Engineered Support's stock option plans. The Company never disclosed to shareholders that it had awarded this additional compensation to its non-employee directors in violation of the terms of the stock option plans.

6. In connection with the scheme, Gerhardt also reviewed and approved or signed proxy statements and periodic reports filed with the Commission from 1997 through 2003 which he knew, or was reckless in not knowing, contained materially false and misleading statements and omissions of material facts concerning Engineered Support's stock option grants. Gerhardt also certified materially misstated financial statements that understated compensation expenses required by Generally Accepted Accounting Principles ("GAAP"). As a result, Engineered Support materially overstated its total pretax operating income of \$148 million (for the fiscal years 1997 through 2002) by approximately \$26 million, or 21%.

7. Gerhardt also was involved in the preparation, review, and approval of stock option award letters and certificates which contained false grant dates. These documents were provided to Engineered Support's auditors as evidence of the actual grant dates. Gerhardt knew that these documents and the other underlying accounting and business records relating to the Company's option grants concealed the options backdating.

8. These manipulative options granting practices improperly increased the compensation granted to the employees and executives of Engineered Support by a total of \$20 million. Gerhardt personally received ill-gotten gains, including at least \$1,906,300 in unauthorized compensation, from his participation in this scheme.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77v(a)], and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act")

