

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
WICHITA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

ACI, INC. and CLARENCE E. LONG,

Defendants,

and

JON G. ERVIN, SR.,

Defendant Solely for Purposes
of Equitable Relief.

Civil Action No. 03-1343-JTM

**FINAL JUDGMENT GRANTING PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANTS
ACI, INC. AND CLARENCE E. LONG**

This matter came before this Court on the application of Plaintiff Securities and Exchange Commission ("Commission"), seeking entry of a final judgment by default providing it with the relief requested in its Complaint against Defendants ACI, Inc. ("ACI") and Clarence E. Long ("Long").

This Court having considered the pleadings and declarations on file herein makes the following findings of fact and conclusions of law:

1. The Commission's Complaint against ACI and Long was filed on September 25, 2003.
2. ACI and Long were served, by serving Long, individually and as President of ACI, with the Summons and Complaint on October 5, 2003.

3. The Commission caused the affidavits of service to be filed with this Court on November 14, 2003. (Docket #8 & 9)

4. ACI was also served, by serving State Agent and Transfer Syndicate, Inc., Resident Agent for ACI, with the Summons and Complaint on October 16, 2003.

5. The Commission caused the affidavit of service to be filed with this Court on December 10, 2003. (Docket #15)

6. ACI failed to file an answer to the Commission's Complaint, nor did it otherwise appear before this Court to defend in this cause.

7. The Court entered a judgment of permanent injunction by default against ACI on January 9, 2004. (Docket #22)

8. On August 13, 2004, the Court entered an order striking the answer of Long and finding him in default as a sanction pursuant to Fed. R. Civ. P. 16(f), 37(b)(2) and 37(d) for persistent and repeated violations of pretrial and discovery obligations. (Docket #39)

9. The allegations in the Commission's Complaint as to ACI and Long's conduct and activities are, as to them, deemed admitted.

10. The Commission is entitled to entry of a final judgment of permanent injunction as to ACI and Long for violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

11. The Commission is entitled to a final judgment permanently enjoining Long from participating in any sale or offer to sell any security in an unregistered transaction while acting in association with an issuer, underwriter, broker, or dealer involved in such transaction.

12. The Commission is entitled to an Order requiring ACI and Long to file with the Court and serve upon Plaintiff Commission, an accounting, under oath, of (1) all monies and other assets they received, directly or indirectly, from investors in the securities described in the Commission's Complaint; (2) all assets in which ACI and Long, or either of them, has a beneficial interest, directly or indirectly, wherever they may be located and by whomever they are being held; and (3) all accounts with any financial institution or securities brokerage firm maintained in any of their names or for their benefit on or after October 1, 2000.

13. As a result of the fraudulent scheme described in the Complaint, the Commission is entitled to an Order requiring ACI and Long jointly and severally to disgorge \$7,756,750, an amount equal to the funds and benefits it obtained illegally as a result of the violations alleged herein, plus prejudgment interest in the amount of \$1,253,700.

14. The Commission is also entitled to an Order imposing third-tier civil penalties against ACI in the amount of \$600,000 and against Long in the amount of \$120,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

On the basis of the foregoing findings of fact and conclusions of law,

IT IS THEREFORE ORDERED:

I.

ACI and Long, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, are restrained and enjoined from:

A. Violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), by directly or indirectly, in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails: (1) employing any device, scheme or artifice to defraud; or (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which they were made, not misleading; or (3) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

B. Violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange, using or employing in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered any manipulative or deceptive device or contrivance in contravention or a rule or regulation prescribed by the Securities and Exchange

Commission.

C. Violating Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. § 240.10b-5, by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange: (1) employing any device, scheme or artifice to defraud; (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which were made, not misleading; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

D. Violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a) and (c), by directly or indirectly, (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security through the use or medium of any prospectus or otherwise; or (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, a security for the purpose of sale or for delivery after a sale, unless a registration statement is in effect as to that security; or (3) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security unless a registration statement has been filed with the Securities and Exchange Commission as to that security or while the registration statement is the subject of a refusal order or a stop order or (prior to the effective date of the registration

statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

II.

Long, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this final judgment by personal service or otherwise, and each of them, are restrained and enjoined from participating in any sale or offer to sell any security in an unregistered transaction while acting in association with an issuer, underwriter, broker, or dealer involved in such transaction.

III.

ACI and Long, shall, within twenty days of service of this Final Judgment upon it, make an accounting under oath (1) detailing all monies and other benefits which each of them received, directly and indirectly, as a result of the activities alleged in the Complaint (including the date on which the monies or other benefit was received and the name, address and telephone number of the person paying the money or providing the benefit), (2) listing all current assets of ACI and Long, and each of them, wherever they may be located and by whomever they are being held (including the name and address of the holder and the amount or value of the holdings) and (3) listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of or for the benefit of ACI or Long (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from October 1, 2000, through the date of the accounting.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant are jointly and severally liable for disgorgement of \$7,756,750 representing their unjust enrichment from the conduct alleged in the Complaint, plus prejudgment interest thereon in the amount of \$1,253,700, and civil penalties in the amounts of \$600,000 and \$120,000, respectively, pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]. Defendants shall satisfy this obligation within 30 business days after service of this final judgment by U.S. Postal money order, certified check, bank cashier's check, or bank money order to the Clerk of this Court, together with a cover letter identifying Defendants ACI and Long as defendants in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further

order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this action that is proportionately attributable to the civil penalty paid by Defendant ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Defendants shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this

action.

V.

This Court shall retain jurisdiction over this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to setting disgorgement, and prejudgment interest thereon, and all other relief requested by the Commission in its Complaint.

VI.

This Order may be served upon ACI and Long in person, by electronic mail or by certified mail, either by the United States Marshal, the Clerk of the Court, or any member of the staff of the Securities and Exchange Commission.

VII.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order pursuant to Rules 54, 58 and 79 of the Federal Rules Civil Procedure.

SIGNED this 26th day of August, 2004.

s/ J. Thomas Marten
J. THOMAS MARTEN
UNITED STATES DISTRICT COURT JUDGE