AUSA Bruce Brandler

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

3: CR- 96 274

| | | |
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| UNITED STATES OF AMERICA | :CRIMINAL NO. ( , J.) | |
| v. | : | |
| PAUL F. POLISHAN, | :Violations: | 18 U.S.C. § 371 (conspiracy)(count 1) |
| DEFENDANT | : | 18 U.S.C. § 1001 (false statements) (counts 2-8) |
| | | 15 U.S.C. § 78(j)(b), § 78ff, 17 C.F.R. 240.10b-5 (securities fraud) (count 9) |
| | | 18 U.S.C. § 1344 (bank fraud) (count 10) |
| | | 18 U.S.C. § 1343 (wire fraud) (counts 11-20) |
| | | 18 U.S.C. § 982(a)(2)(A) (forfeiture)(count 21) |

FILED
SCRANTON
OCT 29 1996

PER
DEPUTY CLERK

## INDICTMENT

THE GRAND JURY CHARGES:

## INTRODUCTION

AT ALL TIMES MATERIAL TO THIS INDICTMENT:

1. The Leslie Fay Companies, Inc. (LFC) is principally engaged in the design, manufacture and sale of women's apparel. It considers itself a leading producer of women's apparel, including dresses, suits, sportswear and legwear in the United

States. LFC has been in continuous operation as an apparel company since 1947 and employed approximately 4200 people in 1992.

2. LFC is incorporated in the state of Delaware and LFC's executive and sales offices as well as design facilities are located in New York City. At all times material to this indictment, LFC operated its world administrative headquarters in Hanover Township, Luzerne County, Pennsylvania, which is within the Middle District of Pennsylvania.

3. In 1992, LFC was organized into six major product groups and was further divided into approximately 18 different divisions. LFC also operated numerous wholly owned subsidiary corporations at that time.

4. LFC is a publicly owned corporation and its shares were traded on the New York Stock Exchange under the symbol LES.

5. Paul F. Polishan, defendant herein, joined LFC in 1969 as a member of the accounting staff. In 1971 he became controller of the textile division. In 1974 he became controller of the sportswear divisions. From 1978 until 1987 Polishan served as LFC's corporate controller. In 1986 Polishan was named Chief Financial Officer and Chief Accounting Officer for LFC. Polishan was appointed Vice-President of Finance and was appointed Senior-Vice President of Finance in 1987. Polishan remained as Senior Vice-President-Finance, Chief Financial

Officer and Chief Accounting Officer until he was terminated in September 1993.

6. As Chief Financial Officer, Chief Accounting Officer and Senior Vice-President-Finance, Polishan described his job responsibilities as follows:

(a) Dealing with all lenders, banks and insurance companies.

(b) Generation of all financial statements - actuals and budgets.

(c) Dealing with Wall Street and investors.

(d) Co-ordination of outside accountants at year end.

(e) Acquisition reviews from a financial standpoint.

(f) Active participation on the MIS (Management and Information Systems) and Human Resource Committee.

(g) Preparation of board meeting information packages.

(h) Monitoring and communication of divisional results as compared to budget.

(i) Working with the union on audits on payroll and contracting.

(j) Anything of a fiscal nature.

7. As Chief Financial Officer, Chief Accounting Officer and Senior Vice-President-Finance, Polishan supervised numerous individuals associated with the financial operations of LFC including the corporate controller, the assistant corporate controller and the divisional controllers.

8. Polishan and LFC entered into a three-year employment contract commencing January 1, 1989, which was effective until December 31, 1991. The contract negotiated by Polishan included a base salary and various additional compensation based upon the earnings of LFC. For example, Polishan's base salary for 1989 was $200,000 per year, for 1990 was $212,500 per year, and for 1991 $225,000 per year. In addition to his base salary, Polishan was entitled to additional compensation of up to $250,000 per year if LFC had net profits above certain pre-determined threshold levels. Also, Polishan had the right to exercise substantial stock options that he had been granted.

9. Polishan and LFC entered into a five-year employment contract upon the expiration of the 1989 contact. The new employment contract commenced January 1, 1992, and was to be effective until December 31, 1996. The compensation Polishan was entitled to receive was similarly tied to the earnings of LFC. For example, Polishan's base salary for 1992 was $240,000 per year, for 1993, $255,000 per year, for 1994, $270,000 per year, for 1995, $285,000 per year and for 1996, $300,000 per year. In addition to his base salary, Polishan was entitled to additional compensation of up to $250,000 per year if LFC had net profits above certain pre-determined threshold levels. In addition, the new employment contract included a provision for a $25,000 per year bonus for each year in which net income per share exceeded net income per share of the prior year by not less than 15%.

Finally, the new contract also included a stock options clause whereby Polishan was granted options to purchase 5000 shares of LFC common stock each year, which options were exercisable for five years.

10. Donald F. Kenia joined LFC in 1976 as a member of the accounting staff. In 1978, Kenia became assistant corporate controller under Polishan who was then serving as corporate controller. In 1987, Kenia became the corporate controller and served in that capacity until he was terminated in September 1993. During his tenure Kenia served at the pleasure of Polishan and did not have an employment contract.

11. The Securities and Exchange Commission (SEC) is an independent agency of the United States Government charged with the duty to administer and enforce the federal securities laws that seek to provide protection for investors. As part of its enforcement activities, the SEC regulates and monitors the trading of securities within the United States and reviews and comments on the required filings of publicly held companies. The securities laws of the United States require that every publicly held company file reports with the SEC, which report among other things, the financial condition of the company. These reports are required to be filed on a quarterly basis in a SEC Form 10-Q and on an annual basis in a SEC Form 10-K. In addition, certain significant events during the fiscal year are required to be reported in a SEC Form 8-K.

12. LFC filed Forms 10-K, 10-Q and 8-K with the SEC. As Chief Financial Officer, Chief Accounting Officer and Senior Vice-President-Finance, Polishan caused those reports to be created and filed. Polishan also signed the various reports which were filed with the SEC and thereby represented that they were accurate.

13. LFC issued quarterly press releases which reported its financial results to the investing public. As Chief Financial Officer, Chief Accounting Officer and Senior Vice-President-Finance, Polishan drafted and caused those press releases to be created and distributed. Polishan employed Business Wire, an international media relations wire service based in New York City and San Francisco, California, to distribute its press releases. Business Wire used the means and instrumentalities of interstate commerce to distribute those press releases. In addition, Polishan employed the Financial Relations Board, Inc., a consulting firm based in New York City, to coordinate the exchange of information between LFC and the investment community. The Financial Relations Board arranged for meetings and telephone conference calls between the senior management of LFC and various stock market analysts, investment brokers and portfolio managers in order for LFC to report its financial results.

14. In order to finance its business, LFC entered into a financing agreement with Manufacturer's Hanover Trust Company, Chemical Bank, Bankers Trust Company and Marine Midland Bank,

N.A. on May 22, 1987, which was amended and restated as of July 26, 1989, and was to expire in May 1992. All the banks were then insured by the Federal Deposit Insurance Corporation. The July 26, 1989 financing agreement increased the commitments under the original financing agreement and provided LFC a $150,000,000 revolving credit loan and letters of credit of up to $85,000,000.

15. On January 15, 1992, LFC entered into another financing agreement which superseded the July 26, 1989, financing agreement. This agreement was between LFC and Manufacturers Hanover Trust Company, Chemical Bank, National Westminster Bank USA, the Bank of New York and Marine Midland Bank, N.A. All of those banks were then insured by the Federal Deposit Insurance Corporation. The financing agreement provided LFC with $150,000,000 revolving credit loan and letters of credit of up to $100,000,000. Separate agreements were also entered with the banks for $100,000,000 in additional lines of credit.

16. In order to induce the banks to enter into the financing agreements, LFC warranted that its financial statements were correct and fairly presented the financial position of the company. LFC was also required to provide periodic financial statements to the banks during the life of the financing agreements. LFC warranted that all financial statements provided the banks were complete and correct in all material respects and were prepared in reasonable detail and in accordance with Generally Accepted Accounting Principles (GAAP) applied

consistently throughout the periods reflected therein. LFC further warranted that it had made full disclosure to the banks and there was no fact known to the company or which should be known to the company which the company had not disclosed to the banks which materially and adversely affected or in the future might materially adversely affect the condition, financial or otherwise, of LFC.

17. Both financing agreements required LFC to maintain consolidated working capital and consolidated net worth at certain levels or else a default would occur. The 1989 Financing agreement required consolidated working capital at no less than $70,000,000 and consolidated net worth at no less than $125,000,000. The 1992 financing agreement required consolidated working capital at no less than $100,000,000 for 1992, increasing to $133,100,000 in 1995 and consolidated net worth at no less than $150,000,000 in 1992, increasing to $199,650,000 in 1995.

18. In addition to the financing agreements described above, LFC financed its business by issuing notes to two insurance companies. On January 4, 1990, LFC issued $50,000,000 in Senior Notes due in 2000 and $25,000,000 in Senior Subordinated Notes due in 2002 which were purchased by the Prudential Insurance Company of America and the Northwestern Mutual Life Insurance Company. The Note Agreement between LFC and the insurance companies required LFC to maintain consolidated working capital at no less than $70,000,000 and consolidated net

worth at no less than $125,000,000. The proceeds from the Notes were used to prepay existing subordinated debt and repay existing current debt under the 1989 financing agreement.

19. In order to induce the insurance companies to enter into the Note Agreement, LFC warranted that its financial statements were true and correct in all material respects, fairly presented the consolidated financial condition of LFC and were prepared in accordance with GAAP. LFC was also required to provide the insurance companies with periodic financial statements while the Notes were outstanding. LFC warranted that the financial statements it provided were true and accurate.

20. On February 1, 1993, LFC publicly announced that it requested its Audit Committee to commence an investigation into alleged accounting irregularities that could result in a restatement of its 1991 earnings and the elimination of any profit for 1992. According to LFC, false entries had been made in the Companies' books and records which resulted in an overstatement of earnings. As a result of this announcement, trading in Leslie Fay stock was suspended, and at the end of the trading day, the stock had fallen to $7.375 per share from its close of $12.00 per share on the previous day.

21. On February 25, 1993, BDO Seidman, LFC's then independent certified public accountants, withdrew its opinion on the consolidated financial statements for 1991. On May 6, 1993, BDO Seidman resigned as LFC's independent certified public

| | | | |
|---|---|---|---|
| 1990 | - 4th Quarter | - | $4,763,000 |
| 1991 | - 1st Quarter | - | $ 816,000 |
| | - 2nd Quarter | - | To be determined |
| | - 3rd Quarter | - | To be determined |
| | - 4th Quarter | - | $14,623,000 |
| 1992 | - 1st Quarter | - | $ 9,399,000 |
| | 2nd Quarter | - | $13,724,000 |
| | 3rd Quarter | - | $11,557,000 |
| | 4th Quarter | - | $20,496,000 |
| | | | $75,378,000 |

25. The Audit Committee report further stated that the unsupported entries had a significant impact on LFC's consolidated financial statements and results in 1990, 1991, and 1992 as stated below:

1990

| | As Reported | Adjustments | As Restated |
|---|---|---|---|
| Net sales | $858,768,000 | 0 | $858,768,000 |
| Gross Profit | $269,409,000 | ($ 3,062,000) | $266,347,000 |
| Overhead | $220,578,000 | 1,701,000 | $222,279,000 |
| Net Income Pre-Tax | $ 48,831,000 | ($ 4,763,000) | $ 44,068,000 |
| Earnings per Share | $ 1.53 | ($0.15) | $ 1.38 |

1991

| | As Reported | Adjustments | As Restated |
|---|---|---|---|
| Net sales | $836,564,000 | 0 | $836,564,000 |
| Gross Profit | $251,514,000 | ($12,432,000) | $239,082,000 |
| Overhead | $207,294,000 | 3,007,000 | $210,301,000 |
| Net Income Pre-Tax | $ 44,220,000 | ($15,439,000) | $ 28,781,000 |
| Earnings per Share | $ 1.55 | ($0.48) | $ 1.07 |

accountants. On September 28, 1993, BDO Seidman withdrew its opinion on the consolidated financial statements for 1990.

22. On April 5, 1993, LFC and three of its wholly owned subsidiaries filed for protection under Chapter 11, of the Bankruptcy Code, and in response, its common stock price fell to $2.75 per share. LFC was also declared in default of its financing agreements. LFC continues to operate its business and manage its properties as a debtor in possession pursuant to the Bankruptcy Code.

23. In late September 1993, the Audit Committee finished its investigation and issued a report. During the eight-month course of its investigation, the Audit Committee interviewed approximately 80 current and former employees; received and analyzed extensive documentation from employees' and LFC files; and undertook various procedures and analyses designed to verify or test information and to assist in evaluating issues relevant to the investigation.

24. The Audit Committee report identified hundreds of unsupported entries that were made to LFC's accounting books and records, chiefly, the general ledger. According to the report, those unsupported entries led to LFC overstating its pre-tax income as follows:

1992

| | As Reported | Adjustments | As Restated |
|---|---|---|---|
| Net sales | $777,870,000 | ($ 429,000) | $777,441,000 |
| Gross Profit | $225,528,000 | ($35,799,000) | $189,729,000 |
| Overhead | $188,224,000 | 19,377,000 | $207,601,000 |
| Net Income Pre-Tax | $ 37,304,000 | ($55,176,000) | ($ 17,872,000) |
| Earnings per Share | $ 1.31 | ($1.84) | ($ 0.53) |

26. LFC issued a press release dated September 29, 1993, which stated that the accounting irregularities totaled approximately $81 million, pre-tax over the period 1990 - 1992. The Audit Committee noted that the amount set forth in its report differed from the amount announced by LFC as a result of LFC including the reversal from income of reserves released following the acquisition of HUE International Inc. (a legwear business) and excluded profit sharing refunds which were necessitated by the new earnings figures.

27. The Audit Committee also emphasized that its quantification of the overstatement of income reflected only unsupported entries, which was the subject of the report. It noted that additional adjustments were to be made to LFC's financial statements because of deviations from GAAP.

28. On April 15, 1994, LFC filed its Form 10-K for 1992 with the SEC. That filing restated LFC's 1990 and 1991 financial results, as follows:

| | 1991 | 1990 |
|---|---|---|
| Net Income - originally reported | $29,392,000 | $29,078,000 |
| Per share - originally reported | $1.55 | $1.53 |
| Adjustments: | | |
| Accounting irregularities: | | |
| Pre-tax impact | ($16,101,000) | ($4,885,000) |
| Income tax effect | ($ 1,344,000) | $1,753,000 |
| Impact on net income - Amount | ($17,445,000) | ($3,132,000) |
| - Per Share | ($0.92) | ($0.16) |
| Accounting adjustments: | | |
| Pre-tax impact | ($2,882,000) | ($9,134,000) |
| Income tax effect | ($ 239,000) | $3,279,000 |
| Impact on net income - Amount | ($3,121,000) | ($5,855,000) |
| - Per Share | ($0.17) | ($0.32) |
| Net income - restated | $8,826,000 | $20,091,000 |
| Per share - restated | $0.46 | $1.05 |

29. The Form 10-K filed by LFC on April 15, 1994, noted that the correction of the accounting irregularities generally resulted in the reversal of false entries which were originally recorded by former financial personnel in the company's books and records. LFC further noted that such entries impacted primarily on cost of sales, and to a lesser extent selling, warehouse, general and administrative expenses. LFC then stated that the aggregate accounting irregularities amounted to approximately $81,000,000 pre-tax over a two and one quarter year period, with most of the irregularities occurring in 1992. LFC further stated that the aggregate accounting adjustments were approximately $50,000,000 pre-tax for the years 1992 and prior, and those adjustments reflected the reconsideration of applications of

GAAP, including determinations to increase inventory reserves, reserves for charge backs and various cutoff issues.

30. The April 15, 1994, Form 10-K also reported LFC's consolidated financial results for 1992. LFC reported a net loss of $65,601,000 on net sales of $772,069,000 or a net loss of $3.45 per share of common stock. These results departed significantly from LFC's Form 10-Q filed on November 17, 1992, which reported that LFC had cumulative net income of $23,715,000 on net sales of $606,077,000, or $1.24 net income per share of common stock for the first three quarters of 1992.

## COUNT 1

## THE CONSPIRACY

31. Paragraphs one through thirty of this indictment are hereby incorporated by reference as if fully set forth herein.

32. Beginning on or about 1989, the exact date being unknown to the grand jury and continuing thereafter until on or about January 31, 1993, within the Middle District of Pennsylvania and elsewhere, the defendant,

**PAUL F. POLISHAN**

did knowingly and willfully combine, conspire, confederate and agree with other persons known and unknown to the grand jury to:

A. defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the SEC, an agency of the United States of America, in its enforcement of the federal securities laws, in violation of Title 18, United States Code, Section 371.

B. make and cause to be made false, fictitious and fraudulent material statements and representations, in a matter within the jurisdiction of the SEC in violation of Title 18, United States Code, Section 1001.

C. by the use of means and instrumentalities of interstate commerce and of the mails, to employ a device, scheme and artifice to defraud; to make untrue statements of material facts and omit to state material facts; and to engage in acts, practices and courses of business which would operate as a fraud and deceit in connection with the purchase and sale of any security; in violation of Title 17, Code of Federal Regulations § 240.10b-5 and Title 15, United States Code, Sections 78(j)(b) and 78 ff.

D. knowingly execute and attempt to execute a scheme and artifice to defraud Manufacturers Hanover Trust Company, Chemical Bank, National Westminister Bank USA, the Bank of New York and Marine Midland Bank, N.A. and to obtain moneys, funds, credits, assets, securities or other property owned by, or under the custody and control of the above-mentioned financial institutions by means of false or fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1344;

E. knowingly transmit and cause to be transmitted by means of wire communication in interstate, commerce, certain writings, signs, signals and sounds, for the purpose of executing a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1343.

## Manner and Means

The defendant, Paul F. Polishan, carried out the conspiracy in the following manner and by the following means:

33. Polishan falsely portrayed LFC to the investing public as a well managed company that had experienced and would continue to experience, significant growth in profits and revenues in future years, despite a difficult economic climate in the retail apparel industry. These misrepresentations were supported by LFC's financial statements and reports, SEC filings and press releases, all of which materially overstated LFC's earnings.

34. LFC's press releases, financial statements and reports were widely distributed using the means and instrumentalities of interstate commerce, including wire communications in interstate commerce. For example, LFC would transmit by wire a facsimile copy of a press release announcing quarterly results to Business

Wire in New York who would then transmit by wire the press release to numerous designated stock market analysts, investment houses and media outlets. Among the recipients of the fraudulent press releases were the banks and insurance companies which provided LFC with its financing.

35. Polishan caused the creation of the fraudulent financial statements and reports, SEC filings and press releases which overstated LFC's earnings and which were provided to the media, the investing public, as well as the banks and insurance companies which provided LFC with its financing. These fraudulent financial statements and reports thereby allowed LFC to continue its operation and allowed Polishan to continue his scheme.

36. LFC's earnings were overstated as a result of the manipulation of the books and records kept by LFC. Polishan directed the manipulation of the books and records in order to inflate or maintain at an artificially high level the price of LFC stock and its earnings per share and to avoid a default under the financing agreements. Polishan thereby curried favor with his superiors and substantially increased his own compensation.

37. Polishan employed various methods to manipulate the books and records of LFC and overstate LFC's earnings.

## The Unsupported Entries Scheme

38. The first form of manipulation consisted of the actual alteration of the financial results of LFC as recorded in its accounting books and records -- chiefly, the general ledger. This manipulation was accomplished by the overstatement of income and net assets, primarily at the end of each quarter, through the inflation of assets (chiefly inventory), the understatement of liabilities (chiefly accruals for goods received but not yet paid for) and the understatement of income statement expenses (i.e., cost of goods sold and various operating expenses). Results were inflated by recording unsupported journal entries which debited - that is, increased -- closing inventory and other assets and credited -- that is, decreased -- cost of sales and overhead expenses. Accounts payable and accrued liabilities were understated, either by improperly deferring recognition of expenses or by postponing, until after the financial statements were finalized, the recording of liabilities relating to the purchase of goods (which goods were included as inventory on LFC's balance sheet). Hundreds of unsupported journal entries were recorded and spread among the various divisions of LFC. In addition, unsupported entries were carried forward into subsequent accounting periods either by recording permanent journal entries in the general ledger, or by recording reversing

journal entries (which automatically reverse in the next period) and rebooking them in each of the subsequent periods.

39. In September 1993, LFC announced that for the years 1990, 1991 and 1992 the aggregate of the accounting irregularities described above totaled approximately $81 million. On April 15, 1994, LFC filed a Form 10-K which restated its 1990 and 1991 financial results and stated that the aggregate of the accounting irregularities amounted to approximately $81 million.

40. During the course of the conspiracy, Polishan would meet with Kenia and review various financial reports reflecting the prior period's financial activity. Polishan would make a determination of desired results including earnings per share and then indicate the required sales, net income and overhead figures to achieve those results. Kenia would then alter the financial reports or direct the division controllers and others to alter the financial reports to accomplish Polishan's objectives.

**The False Inventory Tags and Creation of False Records Scheme**

41. In order to avoid detection of the unsupported entries regarding inventory, false records were prepared and records were altered in order to support the inflated inventory figures. Polishan caused Kenia to create false physical inventory count tags showing quantities of goods when none physically existed. These false tags were added to the compilation of the number of

units of each product in year-end inventory in order to mislead LFC's independent auditors who performed an audit at year-end.

42. In addition, Polishan caused Kenia to increase the per unit standard cost of certain products and generate a computer printout showing the extended value of the inventory. After the printout was generated, it was given to LFC's independent auditors for their use during the audit. The effect of increasing the standard unit cost was to increase the value of inventory and correspondingly decrease the amount reported as cost of sales, thereby creating and reporting inflated gross profits. At the completion of the audit, the standard unit costs in the computer system were returned, at Kenia's direction, to their original values.

43. Polishan also caused Kenia to reclassify inventory reflected on LFC's inventory aging reports moving it to more recent seasons so as to justify a lower inventory obsolescence reserve. Records were also prepared showing understated accounts payable accruals for piece goods inventory in transit and in support of improper deferrals of expenses.

**The Pre-Billing and Pre-Shipping Scheme**

44. Other methods utilized by Polishan to fraudulently increase the profitability of LFC was to recognize sales prior to

the shipment of the goods and to ship goods prior to the time the goods were requested by the customer. Pursuant to GAAP, (Generally Accepted Accounting Principles), recognition of sales (income) occurs only at the time of shipment of the goods. Moreover, BDO Seidman, LFC's independent certified public accountants, issued two management letters dated June 30, 1990, and June 15, 1992, warning Polishan that sales should be recognized only upon completion and shipment of goods in order to avoid distorting the financial results for the financial reporting period. However, Polishan allowed LFC to operate under a "three day rule" which permitted shipment of goods billed in one accounting period during the first three working days of the subsequent accounting period. On occasion, Polishan also authorized and directed LFC personnel to pre-bill (recognize as income) shipments of goods that were not scheduled to be shipped for several weeks. For example, at year end 1991, Polishan directed the manager of the Laflin distribution center to pre-bill and record as sales in the fourth quarter of 1991 all shipments scheduled to occur through January 22, 1992. The relevant shipments invoiced but not shipped fraudulently inflated sales in 1991 by approximately $3 million.

45. Polishan also directed LFC personnel to prematurely ship goods in order to accelerate sales that were planned for the following accounting period. LFC customers would often provide LFC with a "not before" date (that is, a date before which the

store would not be ready to receive the goods). Shipment of goods prior to the "not before" date without the customer's permission increased the likelihood of customers refusing delivery or requesting chargebacks related to the goods. However, these refusals or chargebacks would only be accounted for in the subsequent account period, thereby allowing Polishan to falsely inflate the financial results for the preceding period.

## The HEAD Transaction

46. On September 18, 1991, LFC sold its HEAD Sportswear division for a total price of approximately $61,000,000. If properly accounted for, the transaction would have been reported as a one-time pre-tax gain of $6,513,000.

47. In order to improve the financial results of certain operating divisions, Polishan directed Kenia to transfer a portion of the gain ($3.4 million) to the operations side of the company and not to include that portion of the gain as a non-recurring income item. The manipulation was carried out by falsely inflating the assets of the HEAD Sportswear division (inventory, prepaid advertising, advances to salesman, prepaid design and leasehold improvements) and making an offsetting entry to the intercompany account with the corporate division (which

created a liability to corporate from the HEAD Sportswear division). At the corporate level, Polishan directed Kenia to debit (i.e., charge) the intercompany account with the Head Sportswear division and credit (i.e., record as income) the corporate division's income statement as well as the income statements of other divisions.

**Shrink Expense**

48. Shrink expense relates to goods lost through theft, damage, short shipments from manufacturers, excess shipments to customers and other discrepancies. LFC used a formula to calculate its expected shrink expense in the first two months of each quarter, i.e., at a rate of 1.25% of net sales. In the final month of each quarter, shrink expense was supposed to be adjusted to actual cost as a result of the actual shrink determined through performing the physical inventory count. In 1989 and 1990, shrink expense levels were in the $6-7 million range based on sales at standard cost in the $900 million range.

49. Shrink expense is one element of LFC's cost of sales and is added in arriving at cost of sales. Accordingly shrink expense is an additional deduction in determining actual gross profit. During 1991 and 1992, Polishan directed Kenia to drastically reduce and ultimately eliminate shrink expense in the financial records in order to fraudulently inflate LFC's

profitability. Thus, in 1991, shrink expense was reduced to $1,770,000 based on sales at standard cost of $971,465,000 and in 1992 shrink expense was reduced to $167,000 based on sales at standard cost of $907,680,000.

**Inventory Reserve, Claims and Chargeback**
**<u>Reserve Return Sales Reserve Scheme</u>**

50. In order to further inflate the earnings of LFC, Polishan set various reserve accounts at unrealistically low levels. For example, LFC maintained a reserve for inventory obsolescence related to finished goods and piece goods inventory. In theory, when LFC suspected that finished goods may not be able to be sold at a value equal to or greater than the cost of the merchandise, it should have provided a reserve for the difference between the cost of the merchandise and the expected selling price. LFC supposedly determined this reserve for finished goods inventory based upon a formula that reserved for inventory based on the age of the merchandise. LFC supposedly estimated its reserve for piece goods inventory based upon the age of the merchandise and an estimate of its market value. However, in order to increase LFC profits, Polishan directed that inventory reserves be set at unrealistically low levels, i.e., levels far below that called for by the formula or indicated by historic patterns. Between 1990 and 1992, inventory reserves were under-provided by a total of $19,709,000, thereby fraudulently inflating LFC's earnings.

51. Similarly, LFC's sales were subject to various reductions for returns, discounts, allowances and markdowns. LFC recorded deductions taken by customers as chargebacks (or claims) receivable. The claim was then negotiated with the customer to determine which claims receivable would be allowed. For accounting purposes, LFC estimated its claims and chargeback reserves according to a formula. Contrary to the formula, Polishan set claims and chargeback reserves at unrealistically low levels in order to inflate LFC earnings. Between 1990 and 1992, claims and chargeback reserves were under-provided by a total of $14,139,000 and return sales reserves were under-provided by a total of $1,425,000, thereby fraudulently inflating LFC's earnings.

## Overt Acts

52. In furtherance of the conspiracy, and to effect the objects of the conspiracy, the defendant Paul F. Polishan, and others known and unknown committed the following overt acts, among others, in the Middle District of Pennsylvania and elsewhere:

53. On numerous and separate occasions beginning in 1989 and continuing until January 31, 1993, Polishan caused, authorized and directed Kenia to inflate LFC's financial results or otherwise misstate those results.

54. On or about January 4, 1990, LFC issued $50,000,000 in Senior Notes due in 2000 and $25,000,000 in Senior Subordinated Notes due in 2002 which were purchased by the Prudential Insurance Company of America and the Northwestern Mutual Life Insurance Company. In order to induce the insurance companies to purchase those Notes, LFC warranted that its financial statements were true and correct in all material respects, fairly presented the consolidated financial condition of LFC and were prepared in accordance with GAAP.

55. On or about February 14, 1990, LFC issued a press release announcing that it had achieved record sales and net income for the 1989 fiscal year. Net sales for the 52 weeks ended December 30, 1989, were reported to be $786,257,000 compared to $682,690,000 for the 53 weeks ended December 31, 1988, an increase of 15.2%; while net income for the year was reported to be $25,762,000 or $1.35 per share compared to $22,251,000 or $1.17 per share for 1988, an increase of approximately 15.8%. LFC stated it was fortunate to be able to achieve record results for the year because 1989 was an extremely difficult year for the apparel industry. LFC further stated that its strong financial position would better enable it to meet the challenges that lie ahead.

56. On or about March 30, 1990, LFC filed its Form 10-K for the fiscal year 1989. LFC reported net income of $25,762,000 on net sales of $786,257,000 or $1.35 net income per share of common

stock. Polishan signed the Form 10-K as Senior Vice-President - Finance (principal financial officer and principal accounting officer).

57. LFC's 1989 Annual Report, which was also filed with the SEC on or about March 30, 1990, stated that despite operating in an extremely difficult and challenging environment, LFC was able to achieve record sales and earnings in 1989. Net sales were reported to have increased by 15.2% over the previous year and net income was reported to have increased 15.8% over the previous year. LFC stated that its business strategies will permit it to continue to grow in the future.

58. On or about April 26, 1990, LFC issued a press release announcing record first quarter results. LFC reported that for the 13 weeks ended March 31, 1990, net sales were $222,878,000 compared to $203,384,000 for the 13 weeks ended April 1, 1989, an increase of 9.6% and net income was $9,570,000 or $.50 per share for 1989. LFC stated that it was pleased to achieve another record first quarter in terms of sales, net income and earnings per share in spite of the turmoil in the retail climate. LFC further stated that it believed it was going into the balance of the year in a very clean and healthy position and that it continued in a strong financial position.

59. On or about May 8, 1990, LFC filed its Form 10-Q for the first quarter of 1990. LFC reported net income of $9,660,000 on net sales of $222,878,000 or $.51 net income per share of common

stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial officer.

60. On or about July 19, 1990, LFC issued a press release announcing that for its second quarter, which ended June 30, 1990, net sales were $166,302,000 compared to net sales of $154,965,000 for the comparable 1989 period. Net income for the second quarter of 1990 was $1,089,000 or $.06 per share compared to net income of $309,000 or $.02 per share for the 1989 second quarter. For the 26 weeks ended June 30, 1990, LFC reported net sales of $389,180,000 compared to $358,349,000 for the 1989 26-week period, and net income was $10,749,000 or $.56 per share compared to $9,879,000 or $.52 for the similar period in 1989. LFC stated it was pleased to once again report a profit for its second quarter and that LFC continued in a strong financial position.

61. On or about August 13, 1990, LFC filed its Form 10-Q for the second quarter of 1990. LFC reported cumulative net income of $10,749,000 on net sales of $389,180,000 or $.56 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

62. On or about October 16, 1990, LFC issued a press release announcing that it had achieved record sales and earnings for the 13 and 39 weeks ended September 29, 1990. Net sales were reported to be $268,655,000 for the 13 weeks ended September 29, 1990 compared to $256,169,000 for the 13 weeks ended September

30, 1989. Net income for the 1990 period was reported at $15,427,000 or $.81 per share, compared to net income of $13,487,000 or $.71 per share for the 1989 period. For the 39 weeks ended September 29, 1990, net sales were reported to be $657,835,000 and net income was $26,176,000 or $1.37 per share compared to net sales of $614,518,000 and net income of $23,366,000 or $1.22 per share for the 39 weeks ended September 30, 1989. LFC stated it was pleased, particularly in the extremely unsettled retail climate, to have been able to continue its strong performance for the third quarter surpassing the last year's record breaking third quarter. LFC further stated that the wide acceptance of its products and its strong financial condition should enable it to surmount the challenges and uncertainties which lie ahead.

63. On or about November 13, 1990, LFC filed its Form 10-Q for the third quarter of 1990. LFC reported cumulative net income of $26,176,000 on net sales of $657,835,000 or $1.37 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

64. On or about February 11, 1991, LFC issued a press release announcing that it had achieved record sales and net income for 1990. Net sales were reported to be $858,768,000 compared to $786,257,000 for 1989, an increase of 9.2%, while net income for the year was $29,836,000 or $1.57 per share, compared to $25,762,000 or $1.35 per share, an increase of 15.8%. For the

13 weeks ended December 29, 1990, net sales were reported to be $200,933,000 compared to $171,739,000 for the 1989 period, an increase of 17%. Net income for the fourth quarter increased to $3,660,000 from $2,396,000 for the comparable 1989 quarter, an increase of 52.8%. On a per share basis, net income for the quarter was $.19 per share compared to $.13 per share for the last quarter of 1989, an increase of 46.2%. LFC stated that although the extremely difficult retail climate continued in 1990 intensified by the general recession, LFC was still able to achieve record sales and earnings for the year because of its business strategy. LFC was reported to continue to be in a strong financial condition.

65. On or about February 15, 1991, Polishan exercised stock appreciation rights on 10,000 shares of LFC stock and realized a gain of $74,062.50.

66. On or about March 28, 1991, LFC filed its Form 10-K for 1990. LFC reported net income of $29,078,000 on net sales of $858,768,000 or $1.53 net income per share of common stock. Polishan signed the Form 10-K as Senior Vice President-Finance (principal financial officer and principal accounting officer).

67. LFC's 1990 Annual Report, which was also filed with the SEC on or about March 28, 1991, stated that LFC achieved record sales and earnings which were the highest in its 43 year history. Net sales increased by 9.2% over the previous year, from $786,257,000 to $858,768,000, and net income improved from

$25,762,000 to $29,078,000 from $1.35 per share to $1.53 per share, an increase of about 13%.

68. On or about April 24,1991, LFC issued a press release announcing record first quarter results for 1991. LFC announced that retail sales for the first quarter were $244,844,000 compared to $222,878,000 for the first quarter of 1990, an increase of 9.9% and that net income was $10,140,000 or $.54 per share compared to $9,660,000 or $.51 per share for the first quarter of 1990. LFC stated that it continued in a strong financial position.

69. On or about May 14, 1991, LFC filed its Form 10-Q for the first quarter of 1991. LFC reported net income of $10,140,000 on net sales of $244,844,000, or .54¢ net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

70. On or about July 18, 1991, LFC issued a press release announcing that net income in the second quarter of 1991 was $70,000 compared to net income of $1,089,000 for the comparable period in 1990. For the 26 weeks ended June 29, 1991, net income was reported as $10,210,000 compared to $10,749,000 for the comparable period in 1990. On a per share basis, net income was less than $.01 for the second quarter of 1991 as against net income of $.06 in 1990 and $.54 for the 1991 26-week period compared to the $.56 reported for the 26-week period in 1990. LFC stated that the second quarter's results were not indicative

of the entire year's results since traditionally it is the weakest of its four quarters. LFC stated it remained optimistic for the balance of 1991 and continued in a strong financial position.

71. On or about August 13, 1991, LFC filed its Form 10-Q for the second quarter of 1991. LFC reported cumulative net income of $10,210,000 on net sales of $415,957,000 or $.54 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

72. On or about September 3, 1991, Polishan exercised stock options on 4,375 shares of LFC stock and realized a gain of $48,360.02 upon the sale.

73. On or about September 18, 1991, LFC issued a press release announcing the sale of the HEAD Sportswear division to the Odyssey International Group for a total price of approximately $61,000,000.

74. On or about October 3, 1991, LFC filed its Form 8-K reporting the sale of its HEAD Sportswear division for a total of approximately $61,000,000.

75. On or about October 17, 1991, LFC issued a press release announcing that it had achieved record earnings for the 13 and 39 weeks ended September 28, 1991. LFC reported that net income for the quarter rose 21% to $18,621,000 or $.98 per share versus $15,427,000 or $.81 per share in the third quarter of 1990 despite sales of $249,234,000 compared to $268,655,000 in the

same period in 1990. LFC noted that results for the 1991 period included an after-tax gain of $2,563,000 or $.13 per share from the sale of the HEAD Sportswear division on September 14, 1991. LFC also reported that for the 39 weeks ended September 28, 1991, net income was a record $28,831,000 or $1.52 per share, an increase of 10% over the $26,176,000 or $1.37 per share in the 1990 period. LFC stated that it was pleased with its record earnings and that LFC continued in a strong financial position and expected 1991 to be another record year in earnings.

76. On or about November 12, 1991, LFC filed its Form 10-Q for the third quarter of 1991. LFC reported cumulative net income of $28,831,000 on net sales of $665,191,000 or $1.52 net income per share of common stock. The gain on the sale of the HEAD Sportswear division was reported as $3,134,000 or $.13 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President-Finance and Chief Financial Officer.

77. On or about January 15, 1992, LFC entered into a financing agreement with Manufacturers Hanover Trust Company, Chemical Bank, National Westminster Bank USA, the Bank of New York and Marine Midland Bank, N.A., and in order to induce the banks to enter into the agreement, LFC warranted that its financial statements were correct and fairly presented the financial position of the company. LFC thereafter provided the banks with fraudulent financial results and reports and on numerous and separate occasions between January 15, 1992, and

February 1, 1993, LFC fraudulently obtained funds from the banks under the financing agreement.

78. On or about February 4, 1992, LFC issued a press release announcing that it would discontinue its Mary Ann Restivo division, a designer line acquired in 1988. LFC stated that it anticipated that the elimination of the losses associated with the division would have a positive effect on future earnings. LFC estimated that it would report an increase in 1991 earnings per share to approximately $1.55 versus $1.53 in the prior year and continued to look forward to a strong 1992.

79. On or about February 11, 1992, LFC issued a press release announcing record net income for the year ended December 28, 1991, of $29,392,000 or $1.55 per share, compared to $29,078,000 or $1.53 per share in the prior year despite the fact that sales in 1991 were $836,564,000 versus $858,768,000 in 1990. For the fourth quarter of 1991 net income was reported at $561,000 or $.03 per share. LFC also reported that earnings for the year included an after-tax gain of $.13 per share from the sale of the HEAD Sportswear division in the third quarter. LFC stated that despite the well-documented weakness in retail apparel sales, it was in an excellent position for 1992.

80. On or about March 27, 1992, LFC filed its Form 10-K for 1991. LFC reported net income of $29,392,000 on net sales of $836,564,000 or $1.55 net income per share of common stock. The Form 10-K noted that net income for the year was benefitted by

non-recurring pre-tax credits of $3,134,000 relating to the sale of the HEAD Sportswear division. Polishan signed the Form 10-K as Senior Vice President - Finance (principal financial officer and principal accounting officer).

81. LFC's 1991 Annual Report, which was also filed with the SEC on or about March 27, 1992, stated that although 1991 was a challenging year, strategic actions were taken in many areas which made it possible to post record earnings and positioned it well for growth in the coming years. LFC told its shareholders that it looked forward to another record year in 1992.

82. On or about April 22, 1992, LFC issued a press release announcing that it had achieved record earnings for the first quarter ended March 28, 1992. LFC announced net earnings of $10,727,000 or $.56 per share compared to $10,140,000 or $.54 per share in the same quarter of 1991 despite the fact that sales for the 1992 period were $210,543,000 versus $244,844,000 in the 1991 quarter. LFC stated that current conditions force it to remain very cautious about the balance of the year but its efforts to further improve profitability should result in continued modest growth.

83. On or about May 12, 1992, LFC filed its Form 10-Q for the first quarter of 1992. LFC reported net income of $10,727,000 on net sales of $210,543,000 or $.56 net income

per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

84. On or about June 5, 1992, LFC issued a press release announcing that it would initiate a 1,000,000 share buyback over the next year because it believed that LFC shares were sharply undervalued. LFC stated that its decision underscored its confidence in the future of LFC.

85. On or about July 14, 1992, LFC issued a press release announcing that it had achieved record earnings for its second quarter ended June 27,1992. LFC announced net earnings of $1,636,000 or $.09 per share compared to $70,000 or less than $.01 per share in the same quarter in 1991 despite the fact that sales for the 1992 period were $156,242,000 versus $171,113,000 in the 1991 quarter. For the first six months of 1992, LFC announced that earnings jumped 21.1% to $12,363,000 or $.65 per share from $10,210,000 or $.54 per share in the first half of 1991. LFC stated that despite mixed news on the retail front that continues to result in difficult volume gains, its strategy of improving profitability while fine tuning its product offerings continues to be successful. LFC summed up and stated that it continued to be in a strong financial position and anticipated that profits for 1992 will be well above 1991's profits.

86. On or about July 15, 1992, Polishan, John Pomerantz (LFC's Chairman of the Board of Directors) and Herman Gordon (LFC's Senior Vice-President and General Counsel) conducted a telephone conference call with several stock market analysts and portfolio managers to discuss LFC's financial results for the first two quarters of 1992. During that conference call, Polishan fraudulently misrepresented and concealed the financial results of LFC.

87. On or about August 11, 1992, LFC filed its Form 10-Q for the second quarter of 1992. LFC reported cumulative net income of $12,363,000 on net sales of $366,785,000 or $.65 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

88. On or about September 14, 1992, LFC issued a press release announcing that continued economic weakness was expected to impact its results in the third quarter ending October 3, 1992. However, LFC stated that third quarter earnings per share would approximate $0.60 and full year earnings per share would approximate 1991's total earnings of $1.55. LFC stated that it continued to believe that its basic strategy of cost-cutting, inventory management and brand marketing would carry it through the current difficult period.

89. On or about September 16, 1992, LFC issued a press release announcing a new pricing strategy for dresses in its core moderate brand, Leslie Fay. LFC stated that while its

new prices will on average be lower, it did not believe that it would negatively impact its profitability. LFC stated that it was actually removing much of the source of margin erosion it had been experiencing.

90. On or about October 20, 1992, LFC issued a press release announcing its results for the third quarter of 1992. LFC reported cumulative net income of $23,715,000 on net sales of $606,077,000 or $1.24 net income per share of common stock. Although those results were not as strong as those reported in the third quarter of 1991, LFC stated that it was continuing to take action to position itself more strongly in the coming year.

91. On or about November 17, 1992, LFC filed its Form 10-Q for the third quarter of 1992. LFC reported cumulative net income of $23,715,000 on net sales of $606,077,000 or $1.24 net income per share of common stock. Polishan signed the Form 10-Q as Senior Vice President - Finance and Chief Financial Officer.

92. On or about December 1992, Polishan directed Kenia to fraudulently inflate the amount that LFC withheld from Polishan's pay for federal taxes in 1992 by $12,000. Kenia thereafter recorded an additional $12,000 in Polishan's federal income tax withholding account.

93. On or about December 23, 1992, Polishan gave Kenia two LFC corporate checks. The first check in the amount of $13,630 represented Kenia's 1992 year-end bonus of $20,000 less tax. The second check was signed by Polishan but left

blank as to the amount. Polishan directed Kenia to fill out the check in whatever amount he desired if he wasn't satisfied with his bonus. Polishan told Kenia that he just wanted to make sure Kenia was happy and that he appreciated the work Kenia was doing for him. He further told Kenia to be careful about the amount of the blank check because "we will have to bury it."

In violation of Title 18, United States Code § 371.

## COUNTS 2 - 6

THE GRAND JURY FURTHER CHARGES:

1. Paragraphs one through ninety-three of this indictment are hereby incorporated by reference as if fully set forth herein.

2. On or about the dates listed below, in the Middle District of Pennsylvania and elsewhere, in a matter within the jurisdiction of the SEC, an agency of the United States, the defendant Paul F. Polishan knowingly and willfully made and caused to be made false, fictitious and fraudulent material statements and representations, in that the defendant, who was the Senior Vice President - Finance and Chief Financial Officer of LFC made and caused the making of SEC Forms 10K and 10Q which falsely, materially and substantially inflated the earnings of LFC when the defendant well knew and believed that the earnings of LFC were substantially less than that reported on the Forms 10-K and 10-Q, as more fully set forth below:

| Count | SEC Form | Date filed With SEC | Cumulative Net Income/Cumulative Net Income Per Share Reported |
|---|---|---|---|
| 2 | 10Q (3rd Quarter 1991) | Nov. 12, 1991 | $28,831,000/$1.52 |
| 3 | 10K (1991) | Mar. 27, 1992 | $29,392,000/$1.55 |
| 4 | 10Q (1st Quarter 1992) | May 12, 1992 | $10,727,000/$.56 |
| 5 | 10Q (2nd Quarter 1992) | Aug. 11, 1992 | $12,363,000/$.65 |
| 6 | 10Q (3rd Quarter 1992) | Nov. 17, 1992 | $23,715,000/$1.24 |

In violation of Title 18, United States Code § 1001 and § 2.

<u>COUNTS 7 - 8</u>

THE GRAND JURY FURTHER CHARGES:

1. Paragraphs one through ninety-three of this indictment are hereby incorporated by reference as if fully set forth herein.

2. On or about the dates listed below, in the Middle District of Pennsylvania and elsewhere, in a matter within the jurisdiction of the SEC, an agency of the United States, the defendant Paul F. Polishan knowingly and willfully made and caused to be made false, fictitious and fraudulent material statements and representations, in that the defendant, who was the Senior Vice President - Finance and Chief Financial Officer of LFC made and caused the making of Forms 10K and 10Q which falsely, materially and substantially reduced the one-time pre-tax gain on the sale of the HEAD Sportswear division by $3,400,000 and transferred that portion of the gain to the operations side of LFC, when he well knew and believed that the gain on the sale of the HEAD subsidiary was $6,513,000 and that LFC was not entitled to show any part of that gain as profits from operations in its financial reports, as more fully set forth below:

| Count | SEC Form | Date filed with SEC |
|---|---|---|
| 7 | 10Q (3rd Quarter 1991) | Nov. 12, 1991 |
| 8 | 10K (1991) | Mar. 27, 1992 |

In violation of Title 18, United States Code § 1001 and § 2.

COUNT 9

THE GRAND JURY FURTHER CHARGES:

1. Paragraphs one through ninety-three of this indictment are hereby incorporated by reference as if fully set forth herein.

2. From on or about 1989, the exact date being unknown to the grand jury and continuing thereafter until on or about January 31, 1993, within the Middle District of Pennsylvania and elsewhere, the defendant Paul F. Polishan unlawfully, willfully and knowingly, by the use of the means and instrumentalities of interstate commerce and the mails, directly and indirectly did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security, in contravention of Rule 10 b-5 (17 Code of Federal Regulations §240.10b-5) of the rules and regulations promulgated by the SEC, in that the defendant employed a device, scheme and artifice to defraud; made untrue statements of material facts and omitted to state material facts necessary in order to make the statements not misleading in light of the circumstances under which they were made; and engaged in acts, practices and a course of business which would and did operate as a fraud and deceit upon investors who purchased and sold shares of LFC and the general investing public.

3. As more fully set forth in the overt acts section of count one of this indictment, in the Middle District of Pennsylvania and elsewhere, the defendant, Paul F. Polishan, for the purpose of executing the aforesaid manipulative and deceptive device and contrivance, fraudulently misrepresented the financial condition of LFC to the investing public by various means, including but not limited to, causing LFC to file fraudulent SEC Forms 10Q and 10K, causing LFC to issue fraudulent financial reports, causing LFC to issue fraudulent press releases which were reported in newspapers and carried on the means and instrumentalities of interstate commerce and conducting telephone conference calls and meetings with various members of the investment community whereby fraudulent misrepresentations were made regarding the financial condition of LFC.

In violation of Title 15, United States Code, § 78j (b) and 78ff, and 17 Code of Federal Regulations, Rule 240.10b-5, and Title 18 United States Code § 2.

## COUNT 10

THE GRAND JURY FURTHER CHARGES:

1. Paragraphs one through ninety-three of this indictment are hereby incorporated by reference as if fully set forth herein.

2. From on or about January 15, 1992, and continuing thereafter until on or about January 31, 1993, in the Middle District of Pennsylvania and elsewhere, the defendant Paul F. Polishan did knowingly execute and attempt to execute a scheme and artifice to defraud federally insured financial institutions, to wit: Manufacturers Hanover Trust Company, Chemical Bank, National Westminister Bank USA, the Bank of New York and Marine Midland Bank, N.A. and to obtain monies, funds, credits, assets, and other property owned by or under the custody and control of such federally insured financial institutions, by means of false or fraudulent pretenses, representations and promises, in that the defendant provided the above-mentioned financial institutions with fraudulent financial statements and warranted that they were correct and fairly presented the financial position of the company and that it had made full disclosure to the banks and there was no fact known to the company or which should be known to the company which the company had not disclosed to the banks which materially and adversely affected or in the future might materially adversely affect the condition, financial

or otherwise, of LFC, in order to obtain and later access a $150,000,000 revolving credit loan and letters of credit of up to $100,000,000 and $100,000,000 in additional bank lines when in fact the defendant well knew and believed that LFC's financial statements were incorrect and did not fairly present the financial position of the company and that full disclosure had not been made to the banks and there were facts known which did and would materially and adversely affect the condition of LFC.

3. On or about the following dates, within the Middle District of Pennsylvania, the defendant, Paul F. Polishan executed and attempted to execute the scheme and artifice to defraud and to obtain money, funds, credits, assets and other property by means of false pretenses, representations and promises as set forth above in that LFC accessed its revolving credit loan account and obtained funds as set forth below:

| <u>Date</u> | <u>Amount</u> |
|---|---|
| January 17, 1992 | $500,000 |
| January 23, 1992 | $5,000,000 |
| January 27, 1992 | $3,500,000 |
| January 29, 1992 | $3,000,000 |
| January 30, 1992 | $2,500,000 |
| January 31, 1992 | $3,500,000 |
| February 3, 1992 | $1,000,000 |
| February 5, 1992 | $3,000,000 |
| February 7, 1992 | $2,000,000 |
| February 10, 1992 | $6,000,000 |
| February 11, 1992 | $4,500,000 |
| February 26, 1992 | $3,000,000 |

| Date | Amount |
|---|---|
| February 27, 1992 | $1,500,000 |
| February 28, 1992 | $4,500,000 |
| March 5, 1992 | $2,500,000 |
| March 6, 1992 | $1,500,000 |
| March 9, 1992 | $1,000,000 |
| March 10, 1992 | $1,500,000 |
| March 27, 1992 | $2,500,000 |
| April 8, 1992 | $3,000,000 |
| May 12, 1992 | $7,000,000 |
| May 28, 1992 | $1,000,000 |
| May 29, 1992 | $2,500,000 |
| June 1, 1992 | $2,500,000 |
| June 3, 1992 | $3,000,000 |
| June 4, 1992 | $2,000,000 |
| June 5, 1992 | $1,500,000 |
| June 8, 1992 | $1,000,000 |
| June 10, 1992 | $3,000,000 |
| July 2, 1992 | $2,500,000 |
| July 3, 1992 | $1,000,000 |
| July 8, 1992 | $4,000,000 |
| July 9, 1992 | $3,000,000 |
| July 10, 1992 | $2,500,000 |
| July 17, 1992 | $6,000,000 |
| July 22, 1992 | $1,000,000 |
| July 23, 1992 | $4,000,000 |
| July 24, 1992 | $1,000,000 |
| July 28, 1992 | $9,000,000 |
| July 29, 1992 | $6,500,000 |
| July 30, 1992 | $1,000,000 |
| July 31, 1992 | $2,500,000 |
| August 3, 1992 | $2,000,000 |
| August 4, 1992 | $4,000,000 |
| August 5, 1992 | $3,000,000 |
| August 6, 1992 | $2,000,000 |
| August 10, 1992 | $3,000,000 |
| August 14, 1992 | $2,000,000 |
| August 20, 1992 | $5,000,000 |
| August 21, 1992 | $1,000,000 |
| August 24, 1992 | $1,500,000 |
| August 26, 1992 | $3,000,000 |
| August 27, 1992 | $3,000,000 |
| September 1, 1992 | $4,000,000 |
| September 2, 1992 | $4,000,000 |
| September 3, 1992 | $1,000,000 |
| September 4, 1992 | $5,000,000 |
| September 11, 1992 | $2,000,000 |
| September 18, 1992 | $7,000,000 |

| Date | Amount |
|---|---|
| September 21, 1992 | $3,000,000 |
| September 22, 1992 | $3,000,000 |
| September 25, 1992 | $3,000,000 |
| September 30, 1992 | $1,000,000 |
| October 1, 1992 | $3,000,000 |
| October 2, 1992 | $9,000,000 |
| October 7, 1992 | $2,000,000 |
| October 8, 1992 | $2,000,000 |
| October 9, 1992 | $16,000,000 |
| October 22, 1992 | $5,000,000 |
| October 23, 1992 | $1,500,000 |
| October 26, 1992 | $1,000,000 |
| October 28, 1992 | $3,000,000 |
| October 30, 1992 | $2,000,000 |
| November 2, 1992 | $1,000,000 |
| November 3, 1992 | $4,000,000 |
| November 5, 1992 | $2,000,000 |
| November 6, 1992 | $3,000,000 |
| November 9, 1992 | $1,000,000 |
| November 18, 1992 | $1,000,000 |
| November 20, 1992 | $2,000,000 |
| November 23, 1992 | $1,000,000 |
| November 24, 1992 | $1,000,000 |
| November 25, 1992 | $5,000,000 |
| November 27, 1992 | $2,500,000 |
| December 3, 1992 | $5,000,000 |
| December 10, 1992 | $5,000,000 |
| December 18, 1992 | $7,000,000 |
| December 23, 1992 | $5,000,000 |
| December 27, 1992 | $2,000,000 |
| December 31, 1992 | $10,000,000 |
| January 5, 1993 | $1,000,000 |
| January 6, 1993 | $1,500,000 |
| January 7, 1993 | $5,000,000 |
| January 12, 1993 | $1,000,000 |
| January 15, 1993 | $1,000,000 |
| January 21, 1993 | $2,000,000 |
| January 22, 1993 | $3,000,000 |
| January 26, 1993 | $1,000,000 |
| January 28, 1993 | $2,500,000 |
| January 29, 1993 | $2,500,000 |

In violation of Title 18, United States Code, § 1344 and § 2.

<u>COUNTS 11 - 20</u>

THE GRAND JURY FURTHER CHARGES:

1. Paragraphs one through ninety-three this indictment are hereby incorporated by reference as if fully set forth herein.

2. On or about the dates listed below in the Middle District of Pennsylvania, and elsewhere, the defendant, Paul F. Polishan, for the purpose of executing and attempting to execute the scheme and artifice to defraud, did cause to be transmitted by means of wire communication in interstate commerce the following writings, signs, signals and sounds:

| Count | Date | Point of Origin | Point of Reception | Wire Communication |
|---|---|---|---|---|
| 11 | 2-11-92 | Business Wire New York, N.Y. (212)575-1854 | Times Leader Newspaper Wilkes-Barre, PA (717)829-2002 | Press release titled "Leslie Fay Announces Record Earnings" |
| 12 | 4-22-92 | Business Wire New York, N.Y. (212)575-1854 | Citizen's Voice Newspaper Wilkes-Barre, PA (717)821-2247 | Press release titled "Leslie Fay Announces Record First Quarter Earnings" |
| 13 | 6-5-92 | LFC Wilkes-Barre, PA (717)829-8155 | Business Wire New York, N.Y. (212)575-1854 | Fax cover sheet from Paul Polishan to Michael Maguire and press release titled "Leslie Fay to Initiate Share Buyback" |

| Count | Date | Point of Origin | Point of Reception | Wire Communication |
|---|---|---|---|---|
| 14 | 6-5-92 | Business Wire New York, N.Y (212) 575-1854 | Times Leader Newspaper Wilkes-Barre, PA (717) 829-2002 | Press Release titled "Leslie Fay to Initiate Share Buyback" |
| 15 | 7-14-92 | Business Wire New York, NY (212) 575-1854 | LFC Wilkes-Barre, PA (717) 829-8155 | Fax cover sheet from Business Wire to Paul Polishan and press release titled "Leslie Fay Announces Record Second Quarter Earnings" |
| 16 | 7-14-92 | Business Wire New York, N.Y. (212) 575-1854 | Citizen's Voice Newspaper Wilkes-Barre, PA (717) 821-2247 | Press release titled "Leslie Fay Announces Record Second Quarter Earn-ings" |
| 17 | 9-14-92 | LFC Wilkes-Barre, PA (717) 829-8155 | Business Wire New York, N.Y. (212) 575-1854 | Fax cover sheet from Paul Polishan to Michael Maguire and press release titled "Leslie Fay Assesses Impact of Current Retail Environment on Earnings Outlook" |
| 18 | 9-14-92 | Business Wire New York, N.Y. (212) 575-1854 | LFC Wilkes-Barre, PA (717) 829-8155 | Fax cover sheet from Business Wire to Paul Polishan and press release |

| Count | Date | Point of Origin | Point of Reception | Wire Communication |
|---|---|---|---|---|
| | | | | titled "Leslie Fay Assesses Impact of Current Retail Environment on Earnings Outlook" |
| 19 | 9-14-92 | Business Wire New York, N.Y. (212)575-1854 (212)575-1854 | Times Leader Newspaper Wilkes-Barre, PA (717)829-2002 | Press release titled "Leslie Fay Assesses Impact on Earnings Outlook" |
| 20 | 10-20-92 | Business Wire New York, N.Y. (212) 575-1854 | Times Leader Newspaper Wilkes-Barre, PA (717)829-2002 | Press release titled "Leslie Announces Third Quarter Results" |

In violation of Title 18, United States Code § 1343 and § 2.

COUNT 21

**THE GRAND JURY FURTHER CHARGES:**

As a result of the foregoing offenses, specifically including the violations of Title 18 United States Code, Section 1343 and 1344, the defendant, Paul F. Polishan, shall forfeit to the United States any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as the result of the foregoing violations.

In violation of Title 18, United States Code § 982(a)(2)(A).

DAVID M. BARASCH
United States Attorney

A TRUE BILL:

Foreperson

DATED: 10/29/96