

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

**1. JON CLARK,
Defendant.**

INFORMATION

**15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Aiding and Abetting and Causing an Act to be Done]**

The United States Attorney charges:

At all times pertinent to this Information:

I. BACKGROUND

1. Vari-L Company, Inc. (“Vari-L”) was a company that designed, manufactured and marketed a range of signal processing components that were used in communications equipment and systems, such as cellular telephones and base stations, local area computer networks, and other applications. Vari-L was located at 4895 Peoria Street, Denver, Colorado 80239.

2. Vari-L was a publicly traded company, with its stock traded on the national market of the National Association of Securities Dealers’ Automated Quotation System (“NASDAQ”), an electronic trading system. Vari-L had shareholders located throughout the United States, including in the District of Colorado.

3. As a public company, Vari-L was required to comply with regulations of the United States Securities and Exchange Commission (“SEC”). Those regulations are designed to protect members of the investing public by, among other things, ensuring that a company’s financial information is accurately recorded and disclosed to the public.

4. Under those regulations, Vari-L and its personnel had a duty, among other requirements to: (a) maintain books and records that accurately and fairly reflect the company’s business transactions; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company’s transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles (“GAAP”); and (c) file with the SEC quarterly reports (on Form 10-QSB) and annual reports (on Form 10-KSB) which included reliable financial statements. The Forms 10-QSB included unaudited financial statements, and the Forms 10-KSB included audited financial statements.

5. Between May 1994 through June 30, 2000, defendant JON CLARK was employed in the respective positions of controller and principal accounting officer, assistant treasurer, vice president of finance, and chief financial officer. Defendant JON CLARK was appointed chief financial officer in 1998. In his various positions as the principal accounting and financial officer of Vari-L, JON CLARK’s duties included: (1) banking and investor relations; (2) supervising the controller and accounting department employees; (3) overseeing the accounting functions and the maintenance of the financial books and records of Vari-L; and (4) reviewing and signing the Quarterly Report Forms 10-QSB and Annual Report Forms 10-KSB of Vari-L, which were filed with the SEC as required under Section 13 or 15 (d) of the Securities Exchange Act of 1934. The financial statements included in the Quarterly Report Forms 10-QSB and Annual Report Forms 10-

KSB filed with the SEC, were required to be prepared in accordance with Generally Accepted Accounting Principles (“GAAP”).

II. OVERVIEW OF FALSITIES IN VARI-L’S BOOKS AND RECORDS

6. From at least January 1997 through December 1999, Vari-L maintained false books and records that reflected two types of improper revenue, namely: (1) Ship in Place (“SIP”) and (2) Bill in Place (“BIP”). Vari-L personnel used these two methods of recording revenue to assist them in their management of earnings, and to achieve certain earnings levels fraudulently.

7. “Ship in Place” revenue involved the recording of customer sales invoices for products that were at some stage of the manufacturing process but had not been completed or shipped to the customer by the end of the accounting period. SIP invoices were created in some instances but were not sent to the customer, and were held in Vari-L files as back-up documentation for the accounting entries. SIP “revenue” was not legitimate revenue under GAAP because the revenue had not yet been earned, and thus could not properly be recorded as revenue in Vari-L’s internal books, or included as revenue within filings by Vari-L to the SEC.

8. “Bill in Place” revenue involved the recording of customer sales invoices for products that were not manufactured. In some instances, BIP invoices were created but were not sent to the customer for payment. BIP invoices for nonexistent revenue were held in the Vari-L files as back-up documentation for the accounting entries. BIP “revenue” was not legitimate revenue under GAAP, and thus could not properly be recorded as revenue in Vari-L’s internal books or included as revenue within filings by Vari-L to the SEC.

9. SIP and BIP amounts were recorded each quarter as part of Vari-L’s management of earnings. SIP and BIP amounts then were reversed off the books, and re-recorded each quarter

to ensure that accounts receivable, which were pledged as collateral with various financial institutions, were listed as current.

10. In or about 1995 or 1996, defendant JON CLARK was told by Vari-L's controller that she was recording SIP revenue on the books of Vari-L, and that this recording of SIP revenue was an ongoing practice.

11. In or about July 1998, defendant JON CLARK was told by Vari-L's controller that she had recorded approximately \$1.1 million in non-existent BIP revenue on the books of Vari-L for the quarter ending 12/31/97, and that she was continuing to record SIP on the books until the end of the year. During the quarter ending 12/31/98, defendant JON CLARK was again aware from seeing records prepared by Vari-L's controller that she had continued to record SIP revenue on the books of Vari-L for the quarter ending 9/30/98.

12. From in or about October 1998 through December 1998, defendant JON CLARK discussed with Vari-L's controller the need to remove, disguise and hide the fraudulent BIP revenue on the books of Vari-L without disclosing the falsity of the revenue to the SEC or to the investing public.

SIP, BIP and SEC Filings for the period ending 12/31/97

13. On or about 12/31/97, at the direction of certain Vari-L management, Vari-L's controller caused the recording of SIP revenue on the books of Vari-L for the accounting period ending 12/31/97, in the approximate amount of \$787,000. On or about 1/1/98 through 1/16/98, at the direction of certain Vari-L management, Vari-L's controller caused the recording of BIP revenue on the books of Vari-L for the accounting period ending 12/31/97, in the amount of \$1,332,976.

SIP and BIP for the period ending 3/31/98

14. On or about 1/13/98, Vari-L's controller caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$787,000. On or about 1/31/98 through 3/31/98, Vari-L's controller caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,296,251. On or about 3/31/98, at the direction of certain Vari-L management, Vari-L's controller caused the recording of SIP revenue on the books of Vari-L in the approximate amount of \$469,000. On or about 3/31/98, Vari-L's controller caused the recording of BIP revenue on the books of Vari-L in the amount of \$1,296,251.

SIP and BIP for the period ending 6/30/98

15. On or about 4/15/98, Vari-L's controller caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$469,000. On or about 6/30/98, Vari-L's controller caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,209,128. On or about 6/30/98, at the direction of certain Vari-L management, Vari-L's controller caused the recording of SIP revenue on the books of Vari-L in the approximate amount of \$816,000. On or about 6/30/98, Vari-L's controller caused the recording of BIP revenue on the books of Vari-L in the amount of \$1,209,128.

SIP and BIP for the period ending 9/30/98

16. On or about 7/21/98, Vari-L's controller caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$816,000. On or about 9/30/98, Vari-L's controller caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,209,128. On or about 9/30/98, at the direction of certain Vari-L management, Vari-L's controller caused the recording in SIP revenue on the books of Vari-L in the approximate amount of \$556,000. On or about 9/30/98, Vari-L's controller caused the recording of BIP revenue on the books of Vari-L in the amount of \$1,333,028.

SIP and BIP for the period ending 12/31/98

17. On or about 10/31/98, Vari-L's controller caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$556,000. On or about 12/12/98, Vari-L's controller caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,333,028.

18. Specifically, Vari-L's controller reversed the \$1,333,028 in BIP revenue on the books of Vari-L into an asset account on the balance sheet entitled "M&E Clearing" (e.g., machinery and equipment cleaning). On 12/31/98, Vari-L's controller caused the recording of an additional BIP on the books of Vari-L in the amount of \$250,000. The \$250,000 was recorded against the M&E Clearing account. On or about 12/31/98, Vari-L's controller caused an adjusting journal entry, to move \$1,082,976 from the M&E Clearing account to the Machinery & Equipment balance sheet account on the books of Vari-L.

COUNT I

15 U.S.C. §§ 78m(a) and 78ff;

17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2

[False Statements in a Report Filed with the SEC];

18 U.S.C. § 2 [Aiding and Abetting and Causing an Act to be Done]

19. Paragraphs 1 through 18 are realleged as though fully set forth herein.

20. On or about March 16, 1999, in the District of Colorado, defendant JON CLARK, aided and abetted by others known and unknown, knowingly and wilfully made and caused to be made a materially false and misleading statement, and omitted material facts necessary in order to

make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the Securities and Exchange Commission.

21. Defendant JON CLARK and others falsely stated in Vari-L's Annual Report Form 10-KSB for the period ending December 31, 1998, that Vari-L's machinery and equipment was properly valued at \$22,299,396.

22. In signing Vari-L's 10-KSB Report for the period ending December 31, 1998, as the Principal Financial and Accounting Officer of Vari-L, defendant JON CLARK knowingly and willfully omitted the following material facts:

a. That Vari-L's controller had created and caused to be created false and fraudulent entries in the accounting records of Vari-L, which falsely reflected that \$1,082,976 of fraudulent SIP and BIP revenue had been transferred to an asset "clearing account;" and

b. That the \$1,082,976 was then fraudulently recorded as the value of a fixed asset of Vari-L, and included within its "machinery and equipment" on its balance sheet for that period.

23. These omissions were material in that they would have disclosed that Vari-L management and accounting personnel were falsifying transactions within the records of Vari-L in order to manage its earnings and achieve certain earnings levels for Vari-L fraudulently.

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The foregoing acts were in violation of 15 U.S.C. §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2; and 18 U.S.C. § 2.

Respectfully submitted,

John W. Suthers
United States Attorney

by: Patricia W. Davies
Assistant United States Attorney

DEFENDANT: JON CLARK

DOB: 12/21/46

ADDRESS: P.O. Box 6595, Navajo Dam, New Mexico 87419

LOCATION OF OFFENSE: Aurora, CO

OFFENSE: 15 U.S.C. §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2 [False Statements in a Report Filed with the SEC]; 18 U.S.C. § 2 [Aiding and Abetting and Causing an Act to be Done]

PENALTY: For each violation of 15 U.S.C. §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2 [False Statements in a Report Filed with the SEC]; 18 U.S.C. § 2 [Aiding and Abetting and Causing an Act to be Done]:

NMT 10 years imprisonment; NMT \$1,000,000 fine, or both; not more than 3 years supervised release; and \$100 special assessment fee.¹

AGENT: Inspector George Allen
US Postal Inspection Service

SA Kevin Knierim
Federal Bureau of Investigation

AUTHORIZED BY: Patricia W. Davies
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:
 X five days or more

THE GOVERNMENT
 X will not seek detention in this case
The statutory presumption of detention **is not** applicable to this defendant.

¹By amendments enacted in July 2002, the statutory maximum penalty was increased to not more than 20 years imprisonment; not more than a \$5,000,000 fine, or both. However, due to *ex post facto* considerations, the government believes that the applicable penalties for this case are as stated above.