

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PETER A. RAETSCH, GERALDINE
RAETSCH and CURTIS C. SHIFLETT,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

LUCENT TECHNOLOGIES, INC., LUCENT
TECHNOLOGIES, INC. EMPLOYEE
BENEFITS COMMITTEE, AND LUCENT
TECHNOLOGIES, INC. MEDICAL EXPENSE
PLAN FOR RETIRED EMPLOYEES,

Defendant.

Civil Action No. 05-cv-5134 (PGS)

ORDER

This matter having come before the court on Defendant Lucent Technologies' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) & (6), and having considered the parties' briefs, and argument, and in accordance with the Court's Opinion filed herewith;

IT IS on the 26 day of October 2006,

ORDERED that defendant's motion to dismiss because there is no private right of action to enforce the Internal Revenue Code is denied; and it is further


ORDERED that defendants motion to dismiss because plaintiff failed to exhaust Plan remedies is granted in part and denied in part, and it is further

ORDERED that the Plan fiduciaries determine and implement the exhaustion procedure to be utilized, and to decide the substantive matters presented by the named plaintiffs in this case. This includes, but is not limited to, the timeliness of such claims, the Health Maintenance Period as

defined in the Opinion, whether deductible and co-pays were changed in violation of Plan terms; and the impact, if any, on other Plan Participants; and it is further

ORDERED that prior to December 31, 2006, defendants shall report their factual and legal findings to the Court.

October 26, 2006



PETER G. SHERIDAN, U.S.D.J.