

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 08/29/05 for the Period Ending 08/23/05

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, CO 80021
Telephone	7208881000
CIK	0000794323
Symbol	LVLT
SIC Code	4813 - Telephone Communications, Except Radiotelephone
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

LEVEL 3 COMMUNICATIONS INC

FORM 8-K

(Unscheduled Material Events)

Filed 8/29/2005 For Period Ending 8/23/2005

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, Colorado 80021
Telephone	720-888-1000
CIK	0000794323
Industry	Communications Services
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): August 23, 2005

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-0210602
(I.R.S. Employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado
(Address of principal executive offices)

80021
(Zip code)

720-888-1000
(Registrant's telephone number including area code)

Not applicable
(Former name and former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events

On November 19, 2002, Gary Haegele (the "Plaintiff") commenced a stockholder's derivative suit on behalf of Level 3 Communications, Inc. (the "Company") in the District Court of Colorado for the City and County of Broomfield entitled Haegele v. Scott, et al., (Index No. 02-CV-0196) (the "Complaint"). The action was brought against the Company as a nominal defendant and against the directors of the Company, certain former directors of the Company and Peter Kiewit Sons', Inc. ("PKS," and together with the Company and the individual defendants, the "Defendants"). The Complaint alleged that the director defendants, aided and abetted by PKS, breached their fiduciary duties to the Company in connection with several transactions between the Company and PKS including contracts under which PKS constructed the Company's fiber optic cable network and manages the Company's mine properties. The Complaint also alleged that in building the fiber optic cable network, the defendants caused the Company to violate the property rights of landowners, thereby subjecting the Company to substantial potential liability. In addition, the Complaint alleged that Company assets were transferred to its officers and directors in the form of personal loans, excessive salaries and the payment of personal expenses. The action sought both equitable and legal relief, including restitution, compensatory and punitive damages of an unspecified amount, imposition of a constructive trust, disgorgement and injunctive relief. The Defendants filed a motion to dismiss, which was denied by the Court in early October 2003. Subsequently, the Board of Directors of the Company appointed a Special Litigation Committee comprised of an independent director with the exclusive power to conduct or cause to be conducted an impartial and independent investigation of all matters alleged by the Plaintiff and to determine whether the litigation should be maintained, terminated, or otherwise disposed, in accordance with its findings as to whether the litigation is in the best interests of the Company and its stockholders. On August 2, 2004, the Special Litigation Committee delivered its report in which it concluded that it was not in the best interests of either the Company or its stockholders to pursue any of the claims the plaintiff asserted in the Complaint. The Company filed a motion to dismiss the Complaint based on the recommendation of the Special Litigation Committee. On May 2, 2005, the Company filed a further motion to dismiss for lack of subject matter jurisdiction and seeking the award of sanctions.

In July 2005, the parties began to discuss the dismissal of the lawsuit in full with each side to the litigation to bear their own costs and expenses, including attorney's fees. No compensation in any form has or will pass directly or indirectly from the Company or any of the Defendants to the Plaintiff or Plaintiff's attorneys. On August 23, 2005, the Court entered an order dismissing the Complaint and thereby confirming the parties agreement that the Plaintiff dismisses his individual claims against the Defendants, with prejudice and that the Plaintiff dismisses the remainder of the Complaint against the Defendants without prejudice. The Company received notice of the entry of this order of dismissal on August 29, 2005. A copy of the Court's order is filed as part of Exhibit 99.1 to this Current Report and is incorporated herein by reference as if set forth in full.

Item 9.01. Financial Statements and Exhibits

(a) Financial Statements of business acquired

None

(b) Pro forma financial information

None

(c) Exhibits

99.1 Stipulation of Settlement

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

Level 3 Communications, Inc.

August 29, 2005
Date

By: /s/ Neil J. Eckstein
Neil J. Eckstein, Senior Vice President

**DISTRICT COURT, CITY AND COUNTY OF
BROOMFIELD, COLORADO**

17 DesCombes Drive
Broomfield, CO 80020 COURT USE ONLY Plaintiff:
GARY HAEGELE, Derivatively on Behalf of
LEVEL 3 COMMUNICATIONS, INC.

Defendants:
WALTER SCOTT, JR., et al.

Nominal Defendant:
LEVEL 3 COMMUNICATIONS, INC.

Andrew J. Petrie (#11416)
Dart M. Winkler (#33916)
Petrie Schwartz llp
1775 Sherman Street, Suite 2500
Denver, CO 80203
303.226.7700 (phone)
303.226.7777 (fax)
Email: apetrie@petrieschwartz.com

Case Number: 2002CV196
Division: A
Courtroom: 2

STIPULATION OF SETTLEMENT

WHEREAS, on November 19, 2002, Plaintiff Gary Haegele commenced this stockholder's derivative action on behalf of Level 3 Communications, Inc., against the Defendants (the "Litigation"); and

WHEREAS, the Defendants have denied all of the material allegations of the Plaintiff's Complaint, and have pending both a motion to dismiss for lack of standing and a motion to dismiss based on the report of Level 3's special litigation committee finding that the continuation of this action is not in the best interests of the company or its stockholders; and

WHEREAS, the parties to this action have resolved all of the issues before this Court on a mutually agreeable basis.

IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff and the Defendants, that, subject to the Court's approval, the Litigation shall be finally and fully compromised and settled, and the Litigation shall be dismissed, as to all parties, upon and subject to the terms and conditions of this Stipulation.

I. DEFINITIONS

As used in this Stipulation, and in the Stipulation of Dismissal attached as Exhibit "A," the following terms have the meanings specified below:

1. "Defendants" means Walter Scott, Jr., James Q. Crowe, R. Douglas Bradbury, Charles C. Miller, III, Kevin J. O'Hara, Mogens C. Bay, William L. Grewcock, Richard R. Jaros, Robert E. Julian, David C. McCourt, Kenneth E. Stinson, Michael B. Yanney, Colin V.K. Williams and Peter Kiewit Sons', Inc., and nominal defendant Level 3 Communications, Inc.
2. "Plaintiff" means Gary Haegele.
3. "Stipulation of Dismissal" means the Stipulation of Dismissal to be entered by the Court in the form attached hereto as Exhibit "A."

II. STIPULATION OF DISMISSAL

Plaintiff agrees he will execute, obtain the Defendants signatures and promptly file a Stipulation of Dismissal, dismissing the Litigation. The Stipulation of Dismissal shall be substantially in the form attached to this Stipulation as Exhibit A and shall:

(a) confirm the parties' agreement and the Court's July 15, 2005 ruling that Level 3 will have provided notice to all of its stockholders that is adequate and reasonable under the circumstances of this case by providing notice to all members of the public in either its Form 8-K or Form 10-Q disclosures to be filed with the SEC;

(b) dismiss Plaintiff's individual claims against Defendants, with prejudice, with each party to bear his or its own attorneys' fees, costs and expenses; and

(c) dismiss the remainder of the Litigation, without prejudice, with each party to bear his or its own attorneys' fees, costs and expenses.

III. OTHER TERMS

Each party agrees that he or it shall conclusively release the other parties (including any subset or committee of the parties, and specifically including the Special Litigation Committee of the Board of Directors of Level 3 Communications, Inc.), their respective counsel, and, where applicable, their subsidiaries and affiliates, from any and all claims the parties asserted or could have asserted in the Litigation or arising out of the Litigation.

In the event the Court does not approve the Stipulation of Dismissal, the Court requires notice to Level 3's stockholders over and above the notice it approved on July 15, 2005 and as set forth in Section II(a), or the settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the Plaintiff and the Defendants shall be restored to their respective positions in the

Litigation as of July 15, 2005. In that event, the terms and provisions of this Stipulation shall have no further force and effect with respect to the Parties; and any Stipulation of Dismissal entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, nunc pro tunc to July 15, 2004.

IN WITNESS WHEREOF, the parties have each signed the Stipulation on the dates set forth next to their signatures below.

DATED: August 8, 2005

*/s/ Gary Haegele
Gary Haegele*

DATED: August 10, 2005

LEVEL 3 COMMUNICATIONS, INC.

*/s/ Thomas C. Stortz
By: Thomas C. Stortz
Its: Executive Vice President*

DATED: August 18, 2005

PETER KIEWIT SONS', INC.

*/s/ Tobin A. Schropp
By: Tobin A. Schropp
Its: Senior Vice President*

DATED: August 9, 2005

DYER & SHUMAN, LLP

/s/ Kip B. Shuman

Kip B. Shuman
801 East 17th Avenue
Denver, CO 80218-1417
Phone: 303-861-3003
Fax: 303-830-6920

DATED: August 9, 2005

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RUDMAN & ROBBINS LLP

/s/ Andrew J. Brown

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Fax: 619-231-7423

DATED: August 9, 2005

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/s/ Bruce D. Oakes

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Attorneys for Plaintiff Gary Haegele

DATED: August 10, 2005

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/s/ Andrew J. Petrie

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Attorneys for Nominal Defendant
Level 3 Communications, Inc.

DATED: August 11, 2005

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/s/ Holly Stein Sollod

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Phone: 303-295-8000
Fax: 303-295-8261

- and -

DATED: August 15, 2005

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/s/ Stephen W. Greiner

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William L. Grewcock, Richard R. Jaros,
Robert E. Julian, David C. McCourt,
Kenneth E. Stinson, Michael B. Yanney,
Colin V.K. Williams

DATED: August 17, 2005

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/s/ Roger P. Thomasch

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- and -

DATED: August 15, 2005

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/s/ Irwin H. Warren

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Fax: 212-310-8007

Attorneys for Defendant Peter Kiewit
Sons', Inc.

**DISTRICT COURT, CITY AND COUNTY OF
BROOMFIELD, COLORADO**

17 DesCombes Drive
Broomfield, CO 80020

COURT USE ONLY

Plaintiff:

GARY HAEGELE, Derivatively on Behalf of
LEVEL 3 COMMUNICATIONS, INC.

Defendants:

WALTER SCOTT, JR., et al.

Nominal Defendant:

LEVEL 3 COMMUNICATIONS, INC.

Andrew J. Petrie (#11416)

Case Number: 2002CV196

Dart M. Winkler (#33916)

Division: A

Petrie Schwartz llp

1775 Sherman Street, Suite 2500

Courtroom: 2

Denver, CO 80203

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303.226.7777 (fax)

Email: apetrie@petrieschwartz.com

STIPULATION OF DISMISSAL AND [PROPOSED] ORDER THEREON

EXHIBIT A

WHEREAS, on November 19, 2002, Plaintiff commenced this stockholder's derivative action (the "Litigation") on behalf of Level 3 Communications, Inc., against Defendants Walter Scott, Jr., James Q. Crowe, R. Douglas Bradbury, Charles C. Miller, III, Kevin J. O'Hara, Mogens C. Bay, William L. Grewcock, Richard R. Jaros, Robert E. Julian, David C. McCourt, Kenneth E. Stinson, Michael B. Yanney, Colin V.K. Williams, and Peter Kiewit Sons', Inc.; and nominal defendant Level 3 Communications, Inc. (together, "Defendants"); and

WHEREAS, the Defendants denied all of the material allegations of the Plaintiff's complaint, and his entitlement to any of the relief sought; and

WHEREAS, the parties to the action have resolved the issues before this Court on a mutually agreeable basis.

IT IS HEREBY STIPULATED AND AGREED by and among the parties, through their respective counsel of record and in accord with C.R.C.P. 41(b), as follows:

1. Plaintiff dismisses his individual claims against Defendants, with prejudice.
2. Plaintiff dismisses the remainder of the Litigation against Defendants, without prejudice.
3. Each party shall bear his or its own costs and attorneys' fees.
4. Under the circumstances of this case, reasonable and appropriate notice to the stockholders of nominal defendant Level 3 Communications, Inc., will be provided in accord with C.R.C.P. 23.1 by Level 3 Communications, Inc. disclosing the

settlement in its Form 8-K or Form 10-Q filings with the United States Securities and Exchange Commission as the Court authorized at the July 15, 2005 status conference.

5. Each party has agreed that he or it shall conclusively release and hereby conclusively releases the other parties (including any subset or committee of the parties, and specifically including the Special Litigation Committee of the Board of Directors of Level 3 Communications, Inc.), their respective counsel, and, where applicable, their subsidiaries and affiliates, from any and all claims the parties asserted or could have asserted in the Litigation or arising out of the Litigation.

DATED: August 9, 2005

DYER & SHUMAN, LLP

/s/ Kip B. Shuman

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DATED: August 9, 2005

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DATED: August 9, 2005

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Attorneys for Plaintiff Gary Haegele

DATED: August 10, 2005

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DATED: August 11, 2005

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DATED: August 15, 2005

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DATED: August 17, 2005

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Attorneys for Defendant Peter Kiewit
Sons', Inc.

* * *

IT IS SO ORDERED.

DATED: Aug 23, 2005

/s/ C. Vincent Phelps, Jr.

THE HONORABLE C. VINCENT PHELPS, JR.
DISTRICT COURT JUDGE

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