

JUDGE POLLACK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Doc # 1

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[REDACTED]
of himself and all others
similarly situated,

: 02-CV-

02 CV

0688

Plaintiff,

-against-

: CLASS ACTION COMPLAINT
: FOR VIOLATIONS OF
: FEDERAL SECURITIES LAW

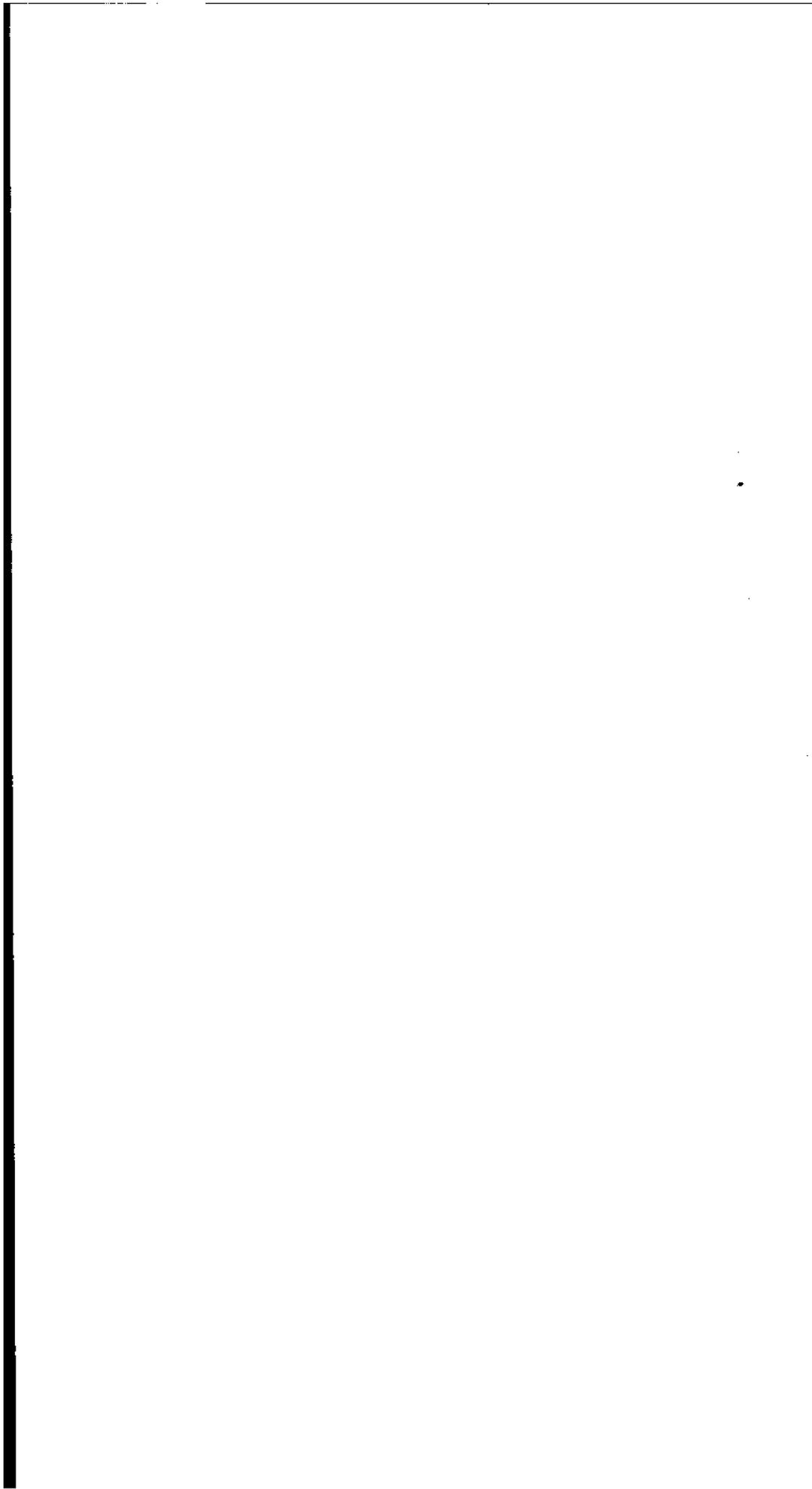
FORD MOTOR CO., JACQUES NASSER,
and HENRY D.G. WALLACE.

: JURY TRIAL DEMANDED

Defendants.

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Plaintiff, by and through by his attorneys, as and for
his Class Action Complaint, alleges upon personal knowledge as to
his own acts and as to all other matters upon information and
belief based upon, inter alia, the investigation made by and
through his attorneys, which investigation included, among other
things, a review of reports filed with the Securities and Exchange
Commission (including without limitation, Form 10-K's, Form 10-Q's,
and proxy statements), published reports, news articles, and
information concerning the daily prices and trading volume of Ford
Motor Co. ("Ford") securities, as follows:



SUMMARY OF ALLEGATIONS

1. At the start of the Class Period, part of the business of defendant Ford involved the purchase of platinum, palladium, rhodium or similar commodities as raw materials for use in the devices in Ford's vehicles which reduced the emissions of pollutants during the operation of such vehicles. Therefore, declines in the prices of platinum, palladium, rhodium and similar commodities favor (or should favor) the business of Ford and other auto makers in that they reduced their costs of acquiring these raw materials. Moreover, technological advances by Ford during the Class Period reduced the amounts of platinum, palladium, rhodium and similar commodities needed for Ford's business.

2. During the Class Period, the prices of platinum, palladium, rhodium or similar commodities declined dramatically, losing approximately sixty percent of their value. This substantially favored (or should substantially favor) the business of Ford and other auto makers.

3. However, unbeknownst to the market for Ford securities that was conducted in this District during the Class Period, Ford's top management had substantially undermined Ford's competitive position by (a) making and maintaining during late 1999 and thereafter a series of contracts for the purchase of platinum, palladium, rhodium or similar commodities at all-time high or very high price levels, and (b) exposing Ford to speculative losses by

ailing to effectively hedge these purchases and otherwise adjust for Ford's technological advances that reduced Ford's need for such commodities. Indeed, recent reports indicate that Ford has or had been selling excess unneeded palladium or similar commodities at a low price and that Ford's excess sales were causing further declines in the prices of palladium or similar commodities.

4. During the Class Period, Ford and its top management were facing various difficulties which were adversely impacting Ford's business prospects, the value of Ford's securities, and the perceptions of the market about the capabilities and performance of Ford's top management.

5. In order to support the price of Ford's stock and try to cast the performance of Ford's top management in the most favorable light, the defendants purposely made during the Class Period representations about Ford's hedging programs, its prohibitions on speculation, its commodity price exposures (including with respect to aluminum, commodity futures or derivative contracts relating to currencies, and other matters), its top management's conduct of Ford's business, and Ford's competitive position.

6. Defendants' self-serving representations regarding the foregoing matters were all rendered false and misleading by defendants' failure to disclose (a) that Ford's management purposely had made and failed to hedge large commitments to purchase platinum, palladium, rhodium or similar commodities at

very high prices, (b) that the declines in the prices of such commodities during the Class Period (which, to outward appearances, were favoring Ford's business) were not helping Ford and, on the contrary, were hurting Ford's business and prospects, (c) that these large unhedged purchase commitments had placed Ford at a disadvantage to, for example, General Motors, and/or (d) that the large unhedged purchase commitments by Ford's management were exposing Ford to potentially in excess of \$1 billion in losses from the type of commodity price speculation in which the defendants' self-serving representations indicated that Ford was prohibited from engaging.

7. Only after defendants Nasser and Wallace had departed the employment of Ford, did defendants, on January 11, 2002, belatedly disclose a portion of the foregoing material adverse facts in Ford's "write-off" of one billion dollars of charges (or losses) relating to such unhedged commodity exposure.

8. Defendants' false and misleading statements concealed during the Class Period top management's errors and speculation, and Ford's true financial and competitive position all in violation of the federal securities laws. This artificially inflated the market's judgments about Ford's operations, financial performance, and top management during the Class Period.

9. Plaintiff and members of the Class who purchased Ford stock during the Class Period were damaged in that they paid the

artificially inflated prices for Ford securities that defendants' foregoing violations of the federal securities laws intentionally caused.

JURISDICTION

10. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act 15 U.S.C. §§ 78j(b) and 78t(a) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission 17 C.F.R. §240.10b-5.

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act 15 U.S.C. § 78aa.

VENUE

12. Venue is proper in this district because many of the material acts and injuries alleged herein occurred within the Southern District of New York in that the stock of Ford is traded here, the platinum group metals whose price Ford affected are traded here, and plaintiff and members of the Class reside here.

13. In connection with the acts, conduct, and other wrongs complained of herein, the defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the mails, telephone communications and the facilities of interstate commerce.

THE PARTIES

14. Plaintiff [REDACTED]

[REDACTED] and purchased 90 shares of Ford stock on June 13, 2001.

15. Plaintiff and class members relied or are deemed to have relied on the market prices and on Defendants to prepare truthful and complete filings.

16. Ford Motor Company ("Ford") is incorporated under the laws of Delaware and maintains its executive offices at One American Road, Dearborn, Michigan. Ford claims to be the world's second largest producer of cars and trucks combined, and along with its subsidiaries, engages in other businesses, including financing and renting vehicles and equipment. Ford transacts substantial business in this District, its stock is traded here, and purchases of its platinum group metals were effected and/or affected prices here.

17. The Individual Defendants (the "Individual Defendants"), at all times relevant to this action, served in the capacities listed below:

(a) Defendant Jacques Nasser ("Nasser") served as President and Chief Executive Officer from January 1999 to October 2001.

(b) Defendant Henry D.G. Wallace ("Wallace") served as Group Vice President and Chief Financial Officer from January 2000 to July 2001.

18. By reason of their management positions, Nasser's membership on Ford's Board of Directors, their ability to make public statements in the name of Ford, and their control or influence over the presentation and content of Ford's statements to investors, the Individual Defendants were and are controlling persons, and had the power and influence to cause (and did cause) Ford to engage in the unlawful conduct complained of herein.

CLASS ACTION ALLEGATIONS

19. This action is brought as a class action pursuant to Rule 23(a) and 23(b) (3) of the Federal Rules of Civil Procedure, on behalf of plaintiff and all persons and entities who purchased, converted, exchanged, or otherwise acquired the common stock of Ford from December 1, 1998 through January 2, 2002, both dates inclusive (the "Class Period"). Excluded from the class are defendants herein, members of the immediate family of the defendants, any entity in which any of the defendants has a controlling interest, and the legal representatives, heirs, successors or assigns of any of the defendants.

20. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. Ford's common stock has been actively traded during the Class Period on the New York Stock Exchange, an efficient

market. Defendants have outstanding 1,764,198,802 shares of Common Stock outstanding and 70,852,076 shares of Class B Stock. As a result, it is believed that there are at least thousands of members of the Class located throughout the United States.

(b) There are common questions of law and fact involved herein which predominate over any questions affecting only individual members of the Class. These common questions of law and fact include:

(i) Whether the federal securities laws were violated by defendants' acts as alleged herein;

(ii) Whether the documents and filings disseminated by defendants to the investing public in connection with omitted and/or misrepresented material facts; and

(iii) The extent of injuries sustained by members of the Class and the appropriate measure of damages.

(c) Plaintiff's claims are typical of the claims of the other members of the Class. The damages suffered by plaintiff and all other Class members arise from and were caused by the same violations and course of conduct. Plaintiff does not have interests antagonistic to, or in conflict with, the Class.

(d) Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained competent counsel experienced in class and securities litigation to vigorously prosecute this action.

(e) A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

(f) Notice can be provided to Class members via a combination of published notice and first class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

21. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) defendants made public misrepresentations during the Class Period, as alleged herein;

(b) the misrepresentations were material;

(c) shares of Ford securities were traded on a developed national stock exchange, namely the New York Stock Exchange, which is an efficient market within the meaning of that term in the context utilized herein;

(d) plaintiff and the other members of the Class purchased their Ford securities between the time defendants made the

representations and the time the truth was revealed, and made such purchases without knowledge of the falsity of the misrepresentations.

22. Based upon the foregoing, plaintiff is entitled to a presumption of reliance upon the integrity of the market with respect to the omissions alleged herein.

UNDERLYING FACTS

23. During the Class Period, part of the business of Ford involved the purchase of platinum, palladium, rhodium or similar commodities as raw materials for use in the devices in Ford's vehicles which reduced the emissions of pollutants during the operation of such vehicles. Therefore, declines in the prices of platinum, palladium, rhodium and similar commodities favor (or should favor) the business of Ford and other auto makers in that they reduced their costs of acquiring these raw materials. Moreover, technological advances by Ford during the Class Period reduced the amount of platinum, palladium, rhodium or similar commodities needed for Ford's business.

24. During the Class Period, the prices of platinum, palladium, rhodium or similar commodities declined dramatically, losing approximately sixty percent of their value. This substantially favored (or should substantially favor) the business of Ford and other auto makers.

25. However, in or about late 1999 or early 2000, defendant Ford's management caused Ford to enter into a series of commitments to purchase commodities (specifically, platinum, palladium, rhodium or similar commodities) at historically all-time high or extremely high prices for such commodities.

26. Throughout the Class Period, Ford's top management caused Ford to maintain these commitments but failed to hedge effectively the price exposure therein in a manner that would insulate Ford from losses due to declines in the prices that Ford had paid or committed to pay for platinum, palladium, rhodium or the similar commodities.

27. On the contrary, Ford's top management purposely left Ford in a position in which it was speculating on the direction of the prices of platinum, palladium, rhodium and similar commodities. Such position was made even further speculative by Ford's technological progress and prospective reduced need for platinum, palladium, rhodium or similar commodities. Indeed, recent reports indicate that Ford has or had been selling excess unneeded palladium or similar commodities at a low price and that Ford's excess sales were causing further declines in the prices of palladium or similar commodities.

28. During the Class Period, the foregoing combination of steps by Ford's top management exposed Ford to in excess of one billion dollars in losses from changes in the prices of platinum,

palladium, rhodium or similar commodities.

29. In fact, as previously alleged, the prices of platinum, palladium, rhodium or similar commodities did substantially decline by approximately sixty percent during the Class Period. This should have been favorable to Ford; however, due to Ford's speculative purchases, such declines were actually unfavorable to Ford and its cost position compared to, for example, General Motors.

30. In a series of filings that defendants made with the Securities and Exchange Commission ("SEC") in Ford's name, the defendants failed to disclose Ford's foregoing speculative exposure, its adverse effect on Ford's competitive position, and its adverse reflect on top management's performance.

31. However, defendants purported to describe in Ford's filings with the SEC and other statements to investors, Ford's hedging practices, prohibition of speculation, its significant management steps to conduct its business, its exposure to commodity price changes, and other matters.

32. In Ford's 1999 10-K Report filed on March 16, 2000, defendant represented as follows on page FS-10:

Ford has a commodity hedging program that uses primarily forward contracts and options to manage the effects of changes in commodity prices on the Automotive sector's results. Gains and losses are recognized in cost of sales during the settlement period of the related transactions.

Furthermore on FS-25 page of the Report, defendants represented:

At December 31, 1999, the notional amount of commodity hedging contracts outstanding totaled \$2,700 million; the notional amount at December 31, 1998 was \$853 million. The company also had guaranteed \$586 million of debt to unconsolidated subsidiaries, affiliates and others at December 31, 1999. **The risk of loss under these financial agreements is not material.** [Emphasis supplied.]

33. Further, defendants represented in the 1999 10-K at p. 51 as follows:

Ford enters into commodity forward and option contracts. Such contracts are executed to offset Ford' exposure to the potential change in prices mainly for various non-ferrous metals used in the manufacturing of automotive components. The fair value liability of such contracts, excluding the underlying exposures, as of December 31, 1999 and 1998 was approximately \$223 and \$(48) million, respectively. The potential change in the fair value of commodity forward and option contracts, assuming a 10% change in the underlying commodity price, would be approximately \$300 and \$69 million at December 31, 1999 and 1998, respectively. This amount excludes the offsetting impact of the price change in the physical purchase of the underlying commodities.

34. Similarly, defendants represented in the December 31, 2000 10-K as follows:

We enter into commodity forward and option contracts. Such contracts are executed to offset our exposure to the potential change in prices mainly for various non-ferrous metals (e.g., aluminum) used in the manufacturing of automotive components. The fair value liability of such contracts, excluding the underlying exposures, as of December 31, 2000 and 1999 was approximately \$56 million and \$223 million, respectively. The potential change in the fair value of commodity forward and option contracts,

assuming a 10% change in the underlying commodity price, would be approximately \$280 million and \$300 million at December 31, 2000 and 1999, respectively. This amount excludes the offsetting impact of the price change in the physical purchase of the underlying commodities.

Ford 10-K at p. 48.

35. In Ford's Annual Report on Form 10-K for the year ended December 31, 2000, Ford further represented that it managed commodity price exposures and did so in a way that did not involve using any derivative instruments for speculative purposes:

Ford has operations in over 30 countries and sells vehicles in over 200 markets, and is exposed to a variety of market risks, including the effects of changes in foreign currency exchange rates, interest rates, and commodity prices. **These financial exposures are monitored and managed by the Company as an integral part of the Company's overall risk management program, which recognizes the unpredictability of financial markets and seeks to reduce the potentially adverse effect on the Company's results.** The Company uses derivative financial instruments to manage the exposures to fluctuations in exchange rates, interest rates, and commodity prices. All derivative financial instruments are classified as "held for purposes other than trading"; **company policy specifically prohibits the use of leveraged derivatives or use of any derivatives for speculative purposes.**

Ford's primary foreign currency exposures, in terms of net corporate exposure, are in the Swedish krona, euro, British pound sterling, Japanese yen, Mexican peso, and Brazilian real. Agreements to manage foreign currency exposures include forward contracts, swaps, and options. **The Company uses these derivative instruments to hedge assets and liabilities denominated in foreign currencies, firm commitments, and certain investments in foreign subsidiaries.** Gains and losses on hedges of firm commitments are deferred and recognized with the related transactions. In the case of hedges of net investments in

foreign subsidiaries, gains and losses are recognized in other comprehensive income to the extent they are effective as hedges. All other gains and losses are recognized in cost of sales for the Automotive sector and interest expense for the Financial Services sector. These instruments usually mature in three years or less for Automotive sector exposures and longer for Financial Services sector exposures, consistent with the underlying transactions. The effect of changes in exchange rates may not be fully offset by gains or losses on currency derivatives, depending on the extent to which the exposures are hedged. [Emphasis supplied]

Ford 10-K at p. FS-9.

36. As would be expected from defendants' statements about hedging price risks, defendants also stated in the 1999 10-K that Ford faced price risks regarding commodities:

Risk Factors - Statements included or incorporated by reference herein may constitute "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements involve a number of risks, uncertainties, and other factors that could cause actual results to differ materially from those stated, including, without limitation: greater price competition in the U.S. and Europe resulting from currency fluctuations, industry overcapacity or other factors; a significant decline in industry sales, particularly in the U.S. or Europe, resulting from slowing economic growth; currency or commodity price fluctuations; ...

Ford 1999 10-K at p. 49. See also Ford 2000 10-K at p. 46.

37. However, such generalized statements, coupled with defendants' statements about hedging and prohibiting speculation, purposely failed to apprise investors that, when commodity prices moved in Ford's favor, Ford would suffer \$1 billion in charges (or

losses) due to unhedged exposure to palladium prices; nor did such "warnings" apprise investors of the other material facts alleged at paragraph 6 and elsewhere herein.

38. Nor did defendants disclose that Ford was, in fact, speculatively exposed to losses from palladium and similar commodities that potentially were orders of magnitude greater than the aluminum and other exposures that Ford did disclose.

39. Defendants' foregoing representations and failures to disclose the critical facts alleged herein were all made knowingly or recklessly intending that the market would rely thereon. Among other things, Ford was encountering declining performance, concerns about lawsuits, and other problems which began to exert a downward pressure on its stock price, and jeopardize the stock related compensation, bonuses, amounts of salary, and other emoluments of the Individual Defendants during 2000 and 2001. Such developments also caused questions in the marketplace about Ford's management.

40. In order to try to put the best spin on Ford's financial position and management performance, and to help maintain and support Ford's stock price, defendants purposely omitted to disclose the critical facts alleged herein.

41. Only after the Individual Defendants, in fact, departed from Ford's employment, did Ford belatedly disclose on January 11, 2002 its huge unhedged commodity price exposure. Ford then announced that it was taking a charge against assets in the amount

of approximately \$1 billion due to the effects of the declines in the prices of palladium and similar commodities on the commitments which Ford's management had made and maintained in an unhedged manner.

42. Such disclosure was mixed in with the announcement of positive information involving a series of restructuring and other positive developments.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
FOR VIOLATIONS OF SECTION 10 (b) OF THE SECURITIES AND
EXCHANGE ACT OF 1934 AND RULE 10b-5 PROMULGATED
THEREUNDER**

43. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein.

44. The Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations, and future prospects of Ford as specified herein.

53. The Individual Defendants purposely delayed disclosure of material facts. The selective disclosure coupled with delayed negative disclosure was intended to manipulate market perceptions and constitute a course of conduct which was intended to and did: (i) deceive the investing public, including plaintiff and other

Class members, until at least the partial disclosure on January 11, 2002; (ii) artificially inflate and maintain the price of the Ford shares; and (iii) cause plaintiff and other members of the Class to purchase the Ford shares at artificially inflated prices.

45. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein. In doing so, defendants (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Ford shares.

46. Alternatively, such defendants recklessly misled plaintiff and the Class and prevented them from ascertaining the true facts until on or about January 11, 2002 when partial disclosures began to be made and began to be more fully analyzed by the market. If defendants did not have actual knowledge of the misrepresentations and omissions alleged, then they were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover them.

47. As a result of the dissemination of the materially false and misleading information and failure to disclose all the material facts, the market price of the Ford shares was artificially inflated. In reliance on defendants' conduct and the market,

plaintiff and the other members of the Class acquired the Ford shares at artificially high prices and were damaged thereby.

48. Plaintiff and the Class members reasonably relied or are legally deemed to have reasonably relied on defendants' omissions of the previously alleged material facts. Plaintiff's acquisition of the Ford shares at an inflated price was the foreseeable result of the aforementioned material omissions because said omissions led to the boosting of the valuation of the Ford shares.

49. By virtue of the foregoing, defendants violated § 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. As a direct and proximate result of said violation, plaintiff and the other members of the Class suffered damages in connection with the purchase and sale of the Ford shares during the Class Period.

**AS AND FOR A SECOND CAUSE OF ACTION
PURSUANT TO SECTION 20(a) OF THE EXCHANGE ACT
AGAINST THE INDIVIDUAL DEFENDANTS**

50. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein.

51. The Individual Defendants acted as controlling persons of Ford within the meaning of Section 20(a) of the Exchange Act as alleged herein. The Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Ford, including the content and dissemination of the various statements that plaintiff contends are false and misleading. The Individual Defendants were provided with

or had unlimited access to copies of Ford's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

52. In particular, each of these defendants had direct and/or supervisory involvement in the day-to-day operations of Ford and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violation herein, and exercise the same.

53. As set forth above, Ford and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to § 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases and/or sales of the Ford shares during the Class Period.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

A. Declaring this action to be a plaintiff class action properly maintained pursuant to Rule 23 of the Federal Rules of

Civil Procedure and certifying plaintiff as Class representative and his counsel as Class counsel;

B. Awarding plaintiff and the Class damages and statutory compensation against each defendant, jointly and severally, and in favor of plaintiff and all other members of the Class, in an amount to be determined to at trial plus pre-judgment interest thereon;

C. Awarding plaintiff and the Class the costs and expenses of this litigation, including reasonable attorneys' fees, and experts' fees and other costs and disbursements; and

D. Awarding plaintiff and other members of the Class such other and further relief as to this honorable Court may seem just and proper.

Dated: New York, New York
January 29, 2002