

COPY

CLERK'S OFFICE

FEB 10 2005

LUTHER L. ... Clerk  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

Civil Action File No.

1:05-CV-0400

FRANK R. V. LOOMANS,

Defendant, and

LUC F. LOOMANS,

Relief Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff Securities and Exchange Commission (the  
"Commission") files this complaint and alleges the following:

SUMMARY

1. Between July 2000 and July 2001, Frank R.V. Loomans ("F.  
Loomans"), the manager of investor relations for Cox Communications, Inc.  
("Cox"), engaged in insider trading in options for securities of Cox and of  
Concurrent Computer Corporation ("Concurrent"), which had a business  
relationship with Cox. The unlawful trading in Cox occurred in July 2000

and in July 2001, prior to Cox's public release of its second quarter earnings report in each of those years. The unlawful trading in Concurrent's securities occurred in April 2001, prior to a release of its quarterly earnings report. To carry out the scheme, F. Loomans learned of the contents of the releases prior to the releases being made publicly available, and then placed orders to trade in a brokerage account in the name of his father, Luc F. Loomans ("L. Loomans"), via the Internet using a computer at Cox and by telephone. Loomans' ill-gotten gains from the insider transactions total approximately \$285,000.

2. Defendant F. Loomans, directly or indirectly, engaged in acts, practices, and courses of business which have constituted and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

3. The Commission, pursuant to authority conferred upon it by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78w(a)], has promulgated Rule 10b-5 [17 C.F.R. § 240.10b-5] which was in effect at all times relevant herein and remains in effect.

4. The defendant, unless enjoined by this Court, will continue to engage in the acts, practices and courses of business alleged herein, and in acts, practices and courses of business of similar purport and object.

### **JURISDICTION AND VENUE**

5. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)] seeking to permanently enjoin the defendant from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, including civil money penalties and an officer and director bar. The Commission also seeks a final judgment ordering the defendant F. Loomans and relief defendant L. Loomans to disgorge ill-gotten gains plus prejudgment interest thereon. In addition, the Commission brings this case pursuant to Section 21A of the Exchange Act, [15 U.S.C. § 78u-1], for civil penalties under the Insider Trading and Securities Enforcement Act of 1988 (“ITSFEA”).

6. F. Loomans, directly and indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts,

practices, and courses of business alleged herein. Certain of these acts, practices, and courses of business have occurred within the Northern District of Georgia, including but not limited to, the opening of securities trading accounts, F. Loomans's acquisition of material nonpublic information, and the placement and execution of orders to purchase and sell securities in the form of stock options.

7. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act have occurred within the Northern District of Georgia. Among other things, Cox maintained a principal office in the Northern District of Georgia, F. Loomans acquired material nonpublic information within his offices at Cox, and further placed and executed orders to purchase and sell securities in the form of stock options within the Northern District of Georgia.

**DEFENDANT, RELIEF DEFENDANT AND RELAVANT ENTITY**

8. **F. Loomans**, 31, a Belgian citizen, was at all relevant times a resident of Atlanta, Georgia.

9. F. Loomans began work at Cox on May 13, 1999 as a financial analyst in the Cox Treasury Department, with responsibilities in the investor relations area.

10. On March 5, 2001, F. Loomans was promoted to the position of Manager of Finance where he was the head of the Cox investor relations staff.

11. In February 2002, F. Loomans resigned his position at Cox and departed to Belgium where he now is believed to reside.

12. **L. Loomans**, 57, the father of Frank Loomans, resides in a suburb of Brussels, Belgium.

13. **Cox**, based in Atlanta, conducts cable TV and broadband network operations and other related businesses. In addition, Cox holds investments focused on cable programming, telecommunications, and technology. At all relevant times herein, Cox's common stock was traded on the New York Stock Exchange under the symbol COX. The options at issue in this matter were at all relevant times listed and traded on the Chicago Board Options Exchange, the American Stock Exchange and the Pacific Stock Exchange.

### **FACTS**

A. **F. Loomans Received Material Nonpublic Information In The Course Of His Employment At Cox**

14. In his positions with Cox, initially as a financial analyst and later as Manager of Finance, F. Loomans routinely received material

nonpublic information pertaining to Cox and other companies with which Cox had business relations.

15. At the end of each quarter, F. Loomans was intimately involved in the preparation of the Cox quarterly earnings releases.

16. By the eighth working day after the end of each quarter, the accounting department prepared preliminary drafts of the financial results for the quarter and distributed that information to various Cox officials, including F. Loomans.

17. F. Loomans therefore possessed highly material and detailed nonpublic information regarding the financial performance of Cox after the end of each quarter through the date and time of each quarterly earnings release.

18. As the date for the releases approached, the nonpublic information F. Loomans possessed became progressively more accurate as he obtained and reviewed input from various departments within Cox.

19. During these periods, F. Loomans received sequential drafts of the financial statements and drafts of the CFO's prepared remarks. Further, his duties called for him to provide comments and suggestions for the CFO's prepared remarks for public dissemination to the analyst community.

20. As Manager of Finance and head of the investor relations department, F. Loomans had continuous access to Cox financial information and reports.

21. F. Loomans also received material nonpublic information regarding publicly traded companies with which Cox had proposed business transactions such as investments, acquisitions, mergers, and significant vendor relationships.

22. In his position as the head of investor relations, F. Loomans was responsible for answering questions from analysts, which required him to be informed of proposed announcements by corporations doing business with Cox. For example, often a company doing business with Cox would announce developments involving itself as well as Cox.

23. In such circumstances, the Cox staff was advised in advance of the nature of the announcement so that they could avoid the publication of confidential information, trade secrets, or inaccurate information, and in order to be prepared to respond to inquiries.

24. In connection with this responsibility, F. Loomans often received advance copies of press releases such corporations were preparing and contacted officials at such companies to get clarification or to modify the text of a proposed release.

25. In his duties at Cox, F. Loomans reported to the Cox Treasurer.

26. Cox policies, in effect during the entire period of his employment, prohibited F. Loomans and any other employee from trading Cox securities, or securities of any other publicly traded company, while in possession of material nonpublic information. Cox provided all employees, including F. Loomans, with the corporate compliance manual at the outset of their employment.

**B. The Luc Loomans Account**

27. F. Loomans and L. Loomans each opened brokerage accounts at a TD Waterhouse branch office in Atlanta near the Cox offices where F. Loomans worked.

28. F. Loomans opened his account on October 28, 1999.

29. Less than two months later, on December 20, 1999, L. Loomans opened an account at the same TD Waterhouse branch.

30. TD Waterhouse account opening documents for the Luc Loomans account bear the signature of L. Loomans and his address in Belgium, and reflect that F. Loomans referred L. Loomans to TD Waterhouse.

31. Both F. Loomans and L. Loomans had a financial interest in the Luc Loomans account.

32. Among other things, on December 29, 1999, F. Loomans transferred stock for which he had paid \$20,300, from his TD Waterhouse account into the Luc Loomans account.

33. Transfers into the Luc Loomans account also include a wire transfer of \$5,466.07 on March 31, 2000, by L. Loomans from a Belgium bank account.

**C. Purchases And Sales Of Cox Put Options In July 2000**

34. Analysts' expectations of Cox were shaped by a June 1, 2000, announcement that Cox expected to achieve new-service subscriptions of 1.5 to 1.6 million by year-end 2000, representing a 20 percent increase over projections outlined earlier in the year. Cox's CFO stated "[w]e expect the exceptional growth we achieved with new-service subscriptions during the first quarter of 2000 to continue throughout the year...." Cox also announced that it expected year-end revenue for 2000 to exceed 1999 results by 13 to 15 percent. Additionally, Cox announced projections of operating cash flow growth of 11 to 13% for year-end 2000 over year-end 1999. This projection focused on the expectations for the year as a whole including all four of the quarterly periods. Cox hinted that the increase would be weighted in the later half of the year but did not provide any indications of second quarter revenue or growth. Focusing on the expense side of the

equation, Cox stated that, with increased spending for staffing and marketing planned to continue through the middle of the year, it expected a large portion of the increase in operating cash flow to be realized in the third and fourth quarters of 2000.

35. Between the end of the second quarter on June 30, 2000 and the Cox earnings release on July 27, 2000, F. Loomans, while preparing the Cox second quarter earnings release, learned that Cox was going to announce that operating cash flow growth was only 7% for the quarter.

36. F. Loomans also knew that Cox would issue the earnings release after the close of the markets on July 27, 2000.

37. At 2:29 p.m. on July 27, 2000, shortly before the earnings release was to be made public, F. Loomans placed a 12-minute cell phone call to the TD Waterhouse direct trading line, in which F. Loomans directed his broker to buy Put options for Cox stock in the Luc Loomans account.

38. At 2:37 p.m., an order ticket was completed for the Luc Loomans's account for a purchase of 500 August 40 Put options for Cox stock. A Put Option is essentially a contract which grants the right to sell at a specified price a specific number of shares by a certain date.

39. This transaction represented an aggressive bet that the stock price of Cox common stock would drop because these Put options had a

strike price below the current market price--that is they were "out-of-the-money."

40. During the two-week period prior to this transaction, Cox stock had traded in a range between \$42 and \$44 per share and closed on July 27 at \$43.875.

41. The Put options purchased were the shortest term available because they were for August expiration and were purchased in late July.

42. The trade in the Luc Loomans account was substantially larger than any previous trade in that account and at over \$50,000 represented substantially all of the equity in the account. F. Loomans engaged in this transaction while in possession of and in reliance on, material, nonpublic information regarding, among other things, Cox's anticipated announcement that operating cash flow growth was only 7% for the quarter.

43. After the markets closed, at 5:12 p.m. on July 27, 2000, Cox released its second quarter 2000 earnings report.

44. The second quarter 2000 was the first quarter that Cox had "missed its numbers" since it became a public company. Cox reported a 7% growth in cash flow for the quarter, significantly short of the 11 to 13% growth previously projected. In addition, Cox reported revenue growth of 12% for the quarter, also missing its previous projections.

45. Two events contributed to Cox's reporting numbers that were less than what Wall Street had expected. First, in San Diego, Cox had published telephone books containing some non-public telephone numbers and was required to reprint the telephone books. Second, Cox lost revenue by responding to aggressive pricing in the Phoenix, Arizona market by a Cox competitor.

46. The financial impact of those events was known by F. Loomans and was available to the Cox staff throughout the preparation of the earnings release.

47. F. Loomans and other Cox staff working on the release thought that the Cox stock price would drop after the earnings report was released.

48. On July 28, 2000, Cox common stock closed at \$35.813, an 18% decline from the previous day's closing price of \$43.875.

49. On Friday, July 28, 2000, the day after the earnings release, F. Loomans sold the Put options out of the Luc Loomans account. He used his computer at Cox to place orders to sell the Put options.

50. The 500 Put options were sold within a twelve-minute period on July 28, 2000, at an average price of \$2.85, resulting in a profit of \$95,412.

51. F. Loomans informed L. Loomans of the trading results in two calls totaling 28 minutes from the cell telephone of F. Loomans to L. Loomans beginning at 5:12 p.m. on July 28.

52. Near the end of the year, F. Loomans received proceeds of the sales, in the form of a check for \$25,000 dated December 25, 2000 and drawn on a TD Waterhouse checking account of L. Loomans.

**D. Purchases And Sales Of Concurrent Options in April 2001**

53. On January 25, 2001, Concurrent, a company engaged in joint business with Cox, published its earnings expectations in connection with a quarterly earnings release. Concurrent projected fourth quarter Video-On-Demand revenue of \$12 million, fourth quarter revenue on a consolidated basis of \$22 million, and fourth quarter results from operations of \$.01 per share.

54. In early 2001, Concurrent was actively developing a new technology for the cable industry to provide video or entertainment on demand to cable customers.

55. On April 11, 2001, Concurrent announced an initiative to create an integrated interactive TV and Video-On-Demand offering to be deployed at the Cox-San Diego cable system. The stock market responded favorably

to the news—from April 11 to April 26, 2001, the market price of Concurrent stock moved up from \$6.15 to \$8.80 per share.

56. On April 25 and 26, 2001, F. Loomans purchased Call options on Concurrent stock, apparently anticipating an increase in the value of Concurrent common stock. F. Loomans's cell telephone records and the trading records from TD Waterhouse establish that on April 25, 2001, F. Loomans purchased 35 May 07.5 Call options in the Luc Loomans account. Then on the morning of April 26, F. Loomans purchased another 100 May 07.5 Calls in the Luc Loomans account. A Call option entitles the owner to buy a specific number of shares of a specified stock at a predetermined price before a preset deadline, in exchange for a premium.

57. The Call options purchased were the shortest term available.

58. The options, when purchased, were in-the-money, because the strike price of the Call options (at which the option owner could purchase shares) was below the current market price of Concurrent shares.

59. On April 25 and 26, 2001, Concurrent shares traded in a range of \$8.35 to \$8.80, with an average share price of \$8.575.

60. F. Loomans was routinely informed of proposed press releases by companies, like Concurrent, with which Cox had business relationships.

61. Concurrent was scheduled to make its quarterly earnings release after the close of the markets on April 26, 2001.

62. The Concurrent earnings release specifically mentioned Cox in connection with the video-on-demand deployment and was therefore a release that F. Loomans reviewed prior to its release.

63. At 1:01 p.m. on April 26, 2001, F. Loomans placed a 16 minute telephone call to the Concurrent CFO. F. Loomans was advised that, among other things, the April 26, 2001 release would reduce Concurrent's guidance as to earnings going forward.

64. After his telephone call at 1:01 p.m. to the Concurrent CFO, F. Loomans abruptly changed his position on Concurrent. While in possession of, and in reliance on, material nonpublic information relating to, among other things, Concurrent's reduced projected fourth quarter revenue, F. Loomans sold all 135 Call options and purchased 900 Put options.

65. The put contracts that F. Loomans purchased were short-term and were out-of-the-money. They entitled the owner to sell shares of Concurrent stock at a lower price than the current market price.

66. At 4:06 p.m. on April 26, 2001, Concurrent issued its quarterly earnings release.

67. In the release, Concurrent reduced projected fourth quarter Video-On-Demand revenue from \$12 million to \$6 million, reduced projected fourth quarter revenue on a consolidated basis from \$22 million to \$18 million, and changed its projected fourth quarter results from operations from a profit of \$.01 per share to a loss of \$.02 per share.

68. On the day after the Concurrent announcement, the price of Concurrent shares plummeted from the previous day's close of \$8.80 to close at \$5.50.

69. F. Loomans issued orders to sell, and sold the Put options for Concurrent stock.

70. The following table summarizes transactions by F. Loomans in Concurrent options from April 25-27, 2001.

<u>Trade Date/Time</u>	<u>Buy/Sell</u>	<u>Security</u>	<u>Quantity</u>	<u>Price</u>
04/25—3:08 p.m.	B	Call May 07.5	25	1.45
04/25—3:53 p.m.	B	Call May 07.5	10	1.50
04/26—9:44 a.m.	B	Call May 07.5	100	1.65
04/26—1:01 p.m.	Telephone conversation with Concurrent CFO.			
04/26—2:08 p.m.	S	Call May 07.5	100	1.70
04/26—2:39 p.m.	S	Call May 07.5	35	1.70
04/26—3:03 p.m.	B	Put May 07.5	50	0.50

04/26—3:03 p.m.	B	Put May 07.5	250	0.55
04/26—3:43 p.m.	B	Put May 07.5	500	0.65
04/26—3:58 p.m.	B	Put May 07.5	100	0.65
04/26—4:06 p.m. Concurrent issued its press release with negative guidance.				
04/27—9:35 a.m.	S	Put May 07.5	100	2.40
04/27—9:35 a.m.	S	Put May 07.5	200	2.30
04/27—9:35 a.m.	S	Put May 07.5	600	2.25

71. The purchase and sale of the Put options in the Luc Loomans account resulted in a profit of \$145,448.

72. The sale of the Call options resulted in a loss avoided of approximately \$22,575, representing the difference in the price of the Call options before and immediately after the release was issued.

73. The total of the ill-gotten gain and the losses avoided to the Luc Loomans account in these Concurrent transactions was approximately \$168,023.

**E. Purchases And Sales Of Cox Put Options in July 2001**

74. During July 2001, news stories pertaining to the cable industry primarily focused on the acquisition of AT&T cable operations by Comcast or other possible suitors, including Cox.

75. From the end of the quarter, June 30, to July 20, the last business day before the second quarter earnings release on July 23, the closing price of Cox shares fluctuated from a high of \$44.19 to a low of \$41.44 and closed on Friday, July 20 at \$42.19.

76. At all pertinent times, F. Loomans had access to ongoing financial information regarding the performance of Cox. During June 2001, F. Loomans had access to monthly summaries comparing the company's goals with its actual performance. In July 2001, F. Loomans worked on the second quarter 2001 press release and thus knew what the numbers would look like before the date and time of the release.

77. Prior to the Cox second quarter earnings release on July 23, 2001, F. Loomans engaged in several transactions acquiring Cox Put options that were short-term and out-of-the-money. "Out-of-the-money" is a term used to describe an option whose strike price for a stock is either higher than the current market value, in the case of a call; or lower than the current market value, in the case of a put. F. Loomans purchased the put options in reliance upon material non-public information which he obtained as a result of his position.

78. These purchases began on June 28 and continued through Friday, July 20, the last trading day before the Cox release on Monday, July 23, 2001.

79. In addition to four transactions F. Loomans made from June 28 through July 12, the following table sets forth the purchases of Cox Put options by Loomans in July 2001.

<u>Trade Date</u>	<u>Buy/Sell</u>	<u>Security</u>	<u>Quantity</u>	<u>Price</u>
07/13	B	Put Aug 040	100	0.80
07/18	B	Put Aug 040	100	0.70
07/20	B	Put Aug 040	14	0.75
07/20	B	Put Aug 040	100	0.70
07/20	B	Put Aug 040	86	0.80

80. The summaries issued in mid-June 2001, to which F. Loomans had access, indicated that Cox was falling behind its performance goals in some categories. F. Loomans was heavily involved in the preparation of the earnings release and by July 13 he knew that the Cox results would be below expectations.

81. On July 16, Loomans sent an e-mail message to two Cox employees stating "The final numbers for the quarter should be in,"

indicating that he had already seen preliminary numbers, which indicated that results would be worse than expectations.

82. On July 18, a draft of the earnings release, showing results which were materially worse than expectations, was sent by e-mail to numerous Cox employees, including F. Loomans.

83. On July 19, 2001, F. Loomans received an e-mail from an employee he supervised that compared “Wall Street Expectations” with actual results.

84. The e-mail included data that Cox performance in “Basic Customer % Growth” and “Advertising % Growth” were both below analysts’ expectations. The “Basic Customer % Growth” was 0.5% compared to average analysts expectation of 1.5%, and “Advertising % Growth” was -1.0% compared to an average analysts expectation of +4.8%. In the second quarter of 2001, Cox revenue growth for digital subscribers, high-speed data subscribers, and basic customers was all less than Wall Street’s expectations.

85. Cox released its earnings at 7:11 a.m. on Monday, July 23, 2001.

86. On July 23, 2001, after the release, F. Loomans sold the Cox Put options.

87. The transactions involving Put options purchased July 13 through July 20, resulted in profits of \$22,070 in the Luc Loomans account.

**F. Loomans's Actions After Learning Of The SEC Investigation And After His Sworn Testimony**

88. In November 2001, after learning of the SEC staff's inquiry to Cox, F. Loomans modified his telephone practices substantially. For example, he used a pay telephone to make a series of 25 telephone calls to his father's telephone numbers in Belgium during a three-week period after he learned of the SEC staff's inquiry into these matters. This frequency of calls to L. Loomans far exceeds the number of calls in any prior 3 week period and the use of a pay telephone for these calls was not consistent with F. Loomans's prior calling patterns, in which he used his cell telephone and his telephone at Cox.

89. In November 2001, F. Loomans cancelled his cell telephone number and told the telephone company that his reason for doing so was that he was leaving the country for business reasons. Then, shortly after his testimony to the SEC staff in February 2002, Loomans fled to Belgium.

90. When the SEC staff first initiated its investigation, F. Loomans appeared voluntarily for testimony. During that session, F. Loomans falsely testified that he had no knowledge of any account in his father's name at TD Waterhouse. F. Loomans denied knowledge of the Luc Loomans account--

even after being shown copies of the account opening documentation and account statements. F. Loomans also denied knowledge of any transactions in the Luc Loomans account and specifically denied any knowledge of trading in options on Cox stock.

91. Shortly after learning of the SEC staff's investigation into this matter, L. Loomans initiated instructions to wire transfer \$350,000 from the Luc Loomans account to a bank account in his name at a European bank.

92. Pursuant to these instructions substantially all of the assets in the Luc Loomans account were transferred outside of the United States.

93. Relief Defendant L. Loomans, obtained funds described above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 92 and under circumstances in which it is not just, equitable or conscionable for him to retain the funds. As a consequence of the foregoing, Relief Defendant L. Loomans has been unjustly enriched.

**COUNT I—FRAUD**  
**Violations of Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and**  
**Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder Based on Options For**  
**Cox Securities in 2000**

94. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 93, above.

95. At various times in 2000, defendant F. Loomans, in connection with the purchase and sale of securities described herein, specifically in

conjunction with Put Options in Cox stock, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices , and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

96. Defendant F. Loomans knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, F. Loomans acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

97. By reason of the foregoing, Defendant F. Loomans directly and indirectly violated, and unless permanently restrained and enjoined will

continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**COUNT II--FRAUD**

**Violations of Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder Based On Options for Concurrent Securities in 2001**

98. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 93, above.

99. At various times in 2001, defendant F. Loomans, in connection with the purchase and sale of securities described herein, specifically in conjunction with options for Concurrent stock, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

100. Defendant F. Loomans knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to

defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, F. Loomans acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

101. By reason of the foregoing, Defendant F. Loomans directly and indirectly violated, and unless permanently restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**COUNT III--FRAUD**  
**Violations of Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and**  
**Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder Based on Options For**  
**Cox Securities in 2001**

102. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 93, above.

103. At various times in 2001, defendant F. Loomans, in connection with the purchase and sale of securities described herein, specifically in conjunction with Put options in Cox stock, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices , and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

104. Defendant F. Loomans knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, F. Loomans acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

105. By reason of the foregoing, Defendant F. Loomans directly and indirectly violated, and unless permanently restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff Commission, respectfully prays that the Court:

### I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

### II.

Issue a permanent injunction enjoining defendant F. Loomans, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them: from violating Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

### III.

Issue an Order requiring defendant F. Loomans and relief defendant L. Loomans to disgorge all ill-gotten gains and losses avoided as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

#### IV.

Issue an Order requiring defendant F. Loomans, pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. 78u(d)(3) and 78u-1], to pay civil monetary penalties.

#### V.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. 78u(d)(2)] permanently prohibiting defendant F. Loomans from acting as an officer or director of any company that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)].

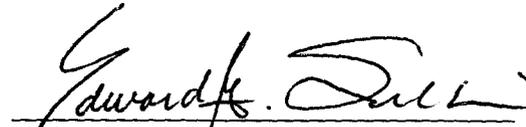
#### VI.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

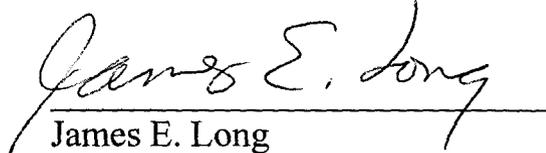
#### VII.

Grant such other and further relief as may be necessary and appropriate.

RESPECTFULLY SUBMITTED,



Edward G. Sullivan  
Georgia Bar No. 691140  
Senior Trial Counsel



James E. Long  
Georgia Bar No. 457100  
District Counsel

COUNSEL FOR PLAINTIFF  
U. S. SECURITIES AND EXCHANGE COMMISSION  
3475 Lenox Road, N.E., Suite 1000  
Atlanta, Georgia 30326-1234  
(404) 842-7612