



# CLAIM FORM

<b>In the</b> High Court of Justice Chancery Division	
<b>Claim No.</b>	HC11C 001930

<b>Claimant</b>	Dennis Varney 29 The Lindens Langdon Hills Basildon Essex SS16 6RP	
<b>Defendant(s)</b>	Ford Motor Company Limited  Eagle Way Brentwood Essex CM13 3BW	
<b>Brief details of claim</b>	The Claimant claims damages for negligence. Please see Particulars of Claim attached.	
<b>Value</b>	The Claimant expects to recover damages in excess of £50,000 but not more than £100,000.	

Defendant's name and address  
 Ford Motor Company Limited  
 Eagle Way, Brentwood, Essex CM13 3BW

	£
Amount claimed	To be assessed
Court Fee	£630
Solicitor's costs	to be assessed
Total amount	To be assessed
Issue date	28 JAN 2011

The court office at Royal Courts of Justice, Strand, London WC2 is open between 10 a.m. and 4 p.m. Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998

Yes

No

Particulars of Claim (attached)

Statement of Truth

\* ~~(I believe)~~(The Claimant believes) that the facts stated in these particulars of claim are true.

\* I am duly authorised by the claimant to sign this statement

Full name Kate Fox

Name of claimant's solicitor's firm THOMPSONS SOLICITORS

signed Kate Fox position or office held Solicitor

\* ~~(Claimant)~~(Litigation friend)(Claimant's solicitor) (if signing on behalf of firm or company)

\* delete as appropriate

Thompsons Solicitors  
Congress House  
Great Russell Street  
London  
WC1B 3LW  
DX 35722 BLOOMSBURY  
Tel.: 020 7290 0000  
Fax: 020 7637 0000

RNS/UNITE VISTEON/G0960091

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**B E T W E E N:**

**DENNIS VARNEY**

**Claimant**

**and**

**FORD MOTOR COMPANY LIMITED**

**Defendant**

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**PARTICULARS OF CLAIM**

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**Background**

1. The Claimant was employed by the Defendant as a Supervisor – Manufacturing Engineering prior to 1<sup>st</sup> May 2000 when his employment was transferred to Visteon UK Ltd ('Visteon') pursuant to the Transfer of Undertakings Regulations 1981. His employment commenced on 11 September 1967. He was employed by Visteon from 1<sup>st</sup> May 2000 until he retired on 31<sup>st</sup> January 2006.
2. The transfer referred to at paragraph 1 above was executed in accordance with a Ford European Works Council Agreement dated 25<sup>th</sup> January 2000. The underlying purpose of this Agreement was to create a separate independent entity which would be responsible for the production of various components for the manufacture of motor vehicles. The European Works Council

Agreement stated that, for the duration of their employment the Claimant's terms and conditions of employment would mirror Ford conditions. The European Works Council Agreement also provided arrangements that would allow employees who transferred to Visteon to return to the Defendant's employment. These arrangements shall be referred to as the "Flowback arrangements".

3. Prior to the transfer of employment identified at paragraph 1 above the Claimant was a member of the Ford Salaried Contributory Pension Fund. He joined on 31<sup>st</sup> December 1968. The Ford Salaried Contributory Pension Fund shall be referred to as 'the Ford Scheme' below.
4. With effect from 1<sup>st</sup> April 2001 and in the circumstances set out below the Claimant became a member of the Visteon UK Pension Plan ('the Visteon Scheme') and transferred his accrued benefits in the Ford Scheme to the Visteon Scheme. He remained an active member of the Visteon Scheme until he retired on 31<sup>st</sup> January 2006.
5. A transfer payment was made in or about May 2002 from the Ford Scheme to the Visteon Scheme calculated on the past service reserve method, as adjusted for contributions and investment performance between 1 April 2001 and the date when the transfer payment was made.
6. Although it is not contended by the Claimant that the facts and matters set out at paragraph 5 involved any unlawful conduct on the part of the Defendant, it was inevitable that any such transfer payment, which was calculated on the past service reserve method, would result in the Visteon Scheme commencing its existence with a substantial funding deficit.
7. Further to paragraph 6 above, the initial valuation of the Visteon Scheme as at 1<sup>st</sup> April 2002 stated that the Visteon Scheme was in deficit, at inception, by £49,000,000 on an ongoing basis and by £117,000,000 on a winding up basis.
8. On 31 March 2009 Visteon went into administration and on 1 April 2010 it went into liquidation.

9. The Visteon Scheme entered into Pension Protection Fund assessment in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 on 31 March 2009. As at that date it had a deficit of £350,000,000 on a solvency basis. It has insufficient assets to meet its protected liabilities as defined in section 131 of the Pensions Act 2004 and in due course its assets and liabilities will be transferred to the Pension Protection Fund. As a consequence the Claimant will receive pension and other benefits from the Pension Protection Fund at the levels specified in section 162 and Schedule 7 to the Pensions Act 2004, in respect of (i) the benefits that he accrued in the Ford Scheme and transferred to the Visteon Scheme and (ii) in respect of the benefits that he accrued in the Visteon Scheme. Until the assets and liabilities of the Visteon Scheme are transferred to the Pension Protection Fund he will receive benefits from the Visteon Scheme at that level during the assessment period.
10. In the circumstances, the true position was that the security of any pension or other benefits that were to be paid from the Visteon Scheme was always dependent upon the level of solvency of the Visteon Scheme. As such any individual who transferred their accrued entitlements in the Ford Pension Scheme to the underfunded Visteon Scheme was exposing themselves to the risk that they may lose their accrued benefits in whole or in part. This risk was of particular relevance to individuals who were closer in time to their retirement age and/or who could have taken early retirement from the Ford Pension Scheme and/or who could have subsequently applied to return to employment with the Defendant under the Flowback arrangements.

#### **Statements made by the Defendant**

11. Prior to 1<sup>st</sup> April 2001 a number of statements were made by the Defendant, or made by Visteon with the sanction and approval of the Defendant, regarding the impact on the pension entitlements of the Claimant of the transfer referred to at paragraph 1 above. The relevant statements are referred to at paragraph 15 below.
12. The relevant statements were made in circumstances in which the Defendant knew or should have known that the Claimant would place reliance upon them

when exercising his options in relation to his pension entitlements and, in particular, on whether or not he would transfer his accrued benefits in the Ford Scheme into the Visteon Scheme. Furthermore, by making and/or approving and sanctioning the statements, the Defendant assumed a responsibility to ensure that they were not misleading.

13. Furthermore the statements were made in the context of other comments being made by the Defendant to the employees who were subject to the transfer referred to in paragraph 1 above to the effect that it was recommended that they should transfer their accrued entitlements to the Visteon Scheme. Examples of the other comments are set out in the Schedule. This was on the basis that by retaining deferred benefits in any Ford Scheme these employees would lose the ability to retire at age 58 and/or would not receive any enhancements to those accrued benefits if they did not transfer them into the Visteon Scheme.
14. In the circumstances the Defendant was under an obligation to ensure that the statements made by it regarding the security of benefits in the Visteon Scheme were accurate and/or not misleading and/or were not made negligently.
15. The relevant statements were as follows.

#### **The first statement**

- 15.1 The Defendant's Pension Office approved and sanctioned a question and answer document that was provided by Visteon to the Claimant on or about 18<sup>th</sup> April 2000. The purpose of the document was to address some of the questions which would inevitably have been on the minds of those individuals, including the Claimant, who were considering whether or not to transfer their accrued benefits in the Ford Scheme to the Visteon Scheme. The document stated as follows.

#### Pensions

1. *If I stay with Visteon, will my pension be secure?*

*A. Visteon has committed to mirror the terms and conditions of Ford. This means that not only will your pension be secure but future increase by Ford will be passed on to you.*

**The second statement**

15.2 On or about 20<sup>th</sup> December 2000 a document was provided to the employees of Visteon headed 'Future Pension Arrangements at Visteon UK'. The document was approved and sanctioned by the Defendant's Pensions Office. It included a questions and answers document which stated as follows.

*Q. If Visteon UK Ltd becomes incapable of funding The Visteon UK Pension Plan, what happens to my pension?*

*A. Safeguards are in place to protect the Plan's assets and the funding of benefits. Contributions, once paid in by Visteon, cannot be taken out by Visteon, except under very strictly regulated conditions. The Company's contribution rate must be confirmed by the Actuary of the Plan as being adequate to meet the Minimum Funding Requirement specified by the Pensions Act 1995. If a shortfall in funding on this basis is identified by the Plan's Actuary, it must be addressed within the timeframe required under the Act. The Trustees are responsible for ensuring that the Plan is adequately funded and that the assets are securely held. They are also responsible for ensuring that the investment of the assets reflects the future calls on the assets. The Trustees take professional advice on all of these various matters.*

*Q. What would happen if Visteon were to cease trading?*

*A. In such event, employment would be terminated. Members would be entitled to pension benefits as defined in the Plan Rules. This would include the right to take a pension from age 55 – subject to the required consent and reduction for early retirement. For members age 58 and above it would be possible to take a pension based on service to date without reduction for early retirement.*

16. The statements referred to at paragraph 15 above were provided in breach of the obligations set out at paragraph 14 above.

#### PARTICULARS

- 16.1 The first statement asserted that pension benefits were secure. This statement was wrong. The pension benefits were not 'secure' but were dependent upon the solvency of the Visteon Scheme.
- 16.3 The second statement failed to deal with the question asked. The statement was designed to provide comfort regarding a shortfall in funding but failed to state that if Visteon failed to fund the Visteon Scheme the accrued benefits would not be payable in whole or in part.
17. The Claimant shall further rely upon the fact that at no stage did the Defendant state that pension benefits were not secure and/or that there was any risk at all associated with the transfer of accrued rights in the Ford Scheme to the Visteon Scheme. In failing to do so the Defendant acted in breach of the obligations set out at paragraph 14 above.

#### **Reliance**

18. In reliance upon the statements set out at paragraph 15 above the Claimant opted to transfer his accrued benefits from the Ford Scheme to the Visteon Scheme. If he had been properly informed of the true position regarding the security of his accrued benefits he would not have done so.
19. Further and in the alternative the Claimant did not apply under the Flowback arrangements in reliance upon the statements set out at paragraph 15 above. If he had been properly informed of the true position regarding the security of his accrued benefits he would have made such an application.

#### PARTICULARS

- 19.1 The Claimant transferred the benefits he had accrued during a period of 32 years and 3 months to the Visteon Scheme on 1 April 2001, when he was aged 50. He retired with an immediate pension on 31 January 2006, having accrued

a further 4 years and 8 months' pensionable service in the Visteon Scheme. If he had known that the Visteon Scheme might not be able to afford to pay the benefits he had accrued in the Ford Scheme he would not have transferred them.

- 19.2 Moreover, he would have applied under the Flowback arrangements, and if as is likely his application would have succeeded, during the remaining 4 years and 8 months of his career he would have accrued further benefits in the Ford Pension Scheme.

### **Loss**

20. By reason of the matters set out at paragraph 9 above the Claimant has suffered loss and damage. The benefits that he is receiving from the Visteon Scheme and will in due course receive from the Pension Protection Fund in respect of the accrued Ford Scheme benefits that he transferred to the Visteon Scheme are not as valuable as the benefits that he would have received if he had remained a deferred member of the Ford Scheme. A Schedule of Loss will be provided in due course.

### **Interest**

21. The Claimant claims interest on the sums found to be due to them at such rate and for such period as the Court deems fit pursuant to Section 35A of the Supreme Court Act 1981.

### **And the Claimant claims:**

- (1) Damages; and
- (2) Interest pursuant to Section 35A of the Supreme Court Act 1981 to be assessed.

NICHOLAS RANDALL

## THE FIRST SCHEDULE

1. On or about 17<sup>th</sup> February 2000 Mr Bob Hill, who was the Director of Personnel of Ford Britain, was asked by David Cannon, who was a union convenor, in an email to confirm in writing a number of interpretations and assurances that were given to employee representatives at a meeting on 7<sup>th</sup> February 2000. In particular he was asked to confirm the accuracy of the following:

*Q2 How will equivalent pensions be provided by Visteon?*

*Ans. Visteon would have to set up their own pension fund to mirror the Ford Fund. Ford would transfer funding to the Visteon Fund to adequately cover employees past service entitlements as recommended by an independent actuary.*

*Q3 The Visteon Pension Fund will be much smaller than the Ford fund and may not achieve similar levels of investment returns?*

*Ans. Jaguar have a small, independent fund that is successful. Pension benefits are guaranteed.*

Mr Hill responded in the form of an email dated 21<sup>st</sup> February 2000. In that email he stated that he thought that the assurances given were 'pretty accurate'. Although he then went on to clarify a number of points relating to other matters, he provided no further clarification at all regarding the matters referred to under Q2 and Q3 as set out above.

2. Letter from Ford Human Resources Manager Brian Smith sent to all Claimant dated 17 April 2000:

*"Your accrued pension rights will be protected. Specifically it has been agreed that Visteon UK Limited will establish pension arrangements that mirror those which now exist in Ford. This means that:*

- (i) *After transfer to Visteon UK Limited's employment, you will be able to join the new Visteon UK Limited pension scheme and*

*continue to earn pension benefits for future years on the same basis as you would have done at Ford.*

*(ii) You will also be able to transfer to the new Visteon UK Limited pension scheme the pensionable service that you have earned in the Ford pension scheme for the period of your past employment with Ford, on a year for year basis."*

3. Employee Notice from Ford Human Resources Manager Nichola Johnson dated 18 April 2000 (Questions and Answers format):

1. *(As pleaded in paragraph 15.1).*

2. *Can we freeze our pension with Ford Motor Company?*

A. *Employees will be able to:*

*either*

- Transfer their accrued pension benefits to a mirror scheme to the Ford scheme that will be established by Visteon UK Limited. This scheme will provide exactly the same benefits as the Ford scheme, now and in the future, including increases to pensions in payment*

*or*

- Opt for a preserved pension, which would be increased in line with legislation, and payable from age 65.*

*(i)*

*You will shortly be receiving a further letter, which will explain pension options in more detail."*

4. Letter sent by Mr B Smith to all Visteon employees on the Dunton and associated sites dated 4 September 2000. Mr Smith was at that stage a Visteon UK employee. A draft of his letter was seen and approved by Ford.

*The EWC agreement guarantees that Visteon employees transferring their past service benefits to the Visteon fund will receive the same benefits as in Ford, both now and in the future for all their pensionable service.*

*Employees who opt to leave their past service benefits in the Ford Fund would only be entitled from the Ford Fund to a preserved pension payable at normal retirement age which is currently 65 – **this option is not a recommended one** but each individual will have the opportunity to make the choice.”*

(Emphasis in the original).

5. Letter sent to all employees on 20 December 2000, with attached questions and answers leaflet. Although the letter was signed by the chairmen of the company side and trade union side of the Visteon National Negotiating Committee, the letter and the enclosed leaflet were drafted by the Ford Pension Office.

The questions and answers include the following:

*Q: Will there be any differences between the Visteon UK Pension Plan and the existing Ford Pension Funds?*

*A: For Visteon employees who are currently members of one of the Ford Pension Funds, the Visteon UK Pension Plan (the “Mirror” Plan) will replicate the benefits offered by the Ford Pension Funds. There will be no difference in the benefits between those for Ford employees who stay in the Ford Pension Funds and Visteon employees who join the Visteon UK Pension Plan (the “Mirror” Plan) and transfer their Ford pension benefits to the Visteon UK Pension Plan.*

*The administrative arrangements will be different ... Since the funding position of the Visteon UK Pension Plan will be different from that of the Ford Pension Funds, it is likely that the Trustees*

*will pursue a different investment policy too. But the benefits and employee contribution level will be the same.*

*Q: What is the effect of transferring Ford pension benefits to the Visteon UK Pension Plan?*

*A: If you leave your benefits in the Ford Pension Fund, your deferred pension is unlikely to increase in line with future pay increases. It will increase in line with the Retail Price Index (inflation) or by 5% a year, whichever is the lower. If you transfer your benefits to the Visteon UK Pension Plan, your pension relating to past service will continue to reflect future pay increases, whilst you remain an active Plan member.*

*In addition, Ford's policy in the past has been not to extend improvements in the Ford Pension Funds benefits to deferred pensions. While you remain an active Visteon employee the benefits offered by the Visteon UK Pension Plan will be improved in line with any future improvements in the Ford Pension Funds, including for your past service if your benefits were transferred from a Ford Pension Fund to the Visteon UK Pension Plan.*

*Q: If Visteon is purchased by another company, do we retain our existing benefits?*

*A: The separation agreement between Ford and Visteon obliges any future owner of Visteon to abide by the terms under which Visteon employees effectively enjoy Ford terms and conditions, including pension arrangements.*

*If Visteon were to be liquidated after the Plan is established, there are legal safeguards in place to ensure that the Plan is funded at least to the level that all pension benefits accrued to date are secured. It is the Trustees' responsibility to ensure that these legal requirements are met.*

*Q: (As pleaded in paragraph 15.2)*

*Q: What would happen if Visteon were to cease trading?*

*A: In such an event, employment would be terminated. Members would be entitled to pension benefits as defined in the Plan Rules. This would include the right to take a pension from age 55 – subject to the required consent and reduction for early retirement. For members age 58 and above it would be possible to take a pension based on service to date without reduction for early payment.”*

6. Letter and option form sent to all employees dated 30 January 2001, drafted by the Ford Pension Office but sent by Visteon:

*If you join the Visteon UK Pension Plan, then for future service from 1 April 2001, you will receive the same pension benefits as you would have received from your Ford Pension Fund based on the current and future provisions of that scheme.*