

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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The JEFFREY H. KUCH TRUST and the TYSON :  
KUCH IRREVOCABLE TRUST on behalf of :  
themselves and all others similarly situated, : Civil Action No.  
  
Plaintiffs, :  
  
- against - :  
  
CLASS ACTION  
ASHANTI GOLDFIELDS COMPANY :  
LIMITED, SAM JONAH, MARK B. KEATLEY :  
and TREVOR S. SCHULTZ, :  
  
Defendants. : Jury Trial Demanded  
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**COMPLAINT**

Plaintiffs, by their attorneys, allege this class action complaint based upon personal knowledge as to themselves, their own acts and the acts and statements of defendants in which they participated directly; including any communications with, representations made, and documentation and information provided to, plaintiffs by defendants in the ordinary course of business; and the investigation of their counsel. Counsels' investigation conducted on plaintiffs' behalf, included, among other things: (i) an analysis of publicly-available news articles and reports; (ii) a review and analysis of public filings, including but not limited to, any by defendants; (iii) press releases issued by defendants, and (iv) other matters of public record. The allegations as to all other matters are made upon information and belief and are based upon, inter alia, an investigation made by plaintiffs' attorneys and research of the applicable law with respect to the claims asserted herein.

1. This is a class action on behalf of a class (the "Class") of all persons who purchased or otherwise acquired the Global Depository Shares ("shares") of Ashanti Goldfields

Company Limited ("Ashanti" or the "Company") between April 21, 1997 and October 5, 1999 inclusive (the "Class Period), seeking to pursue remedies under the Securities and Exchange Act of 1934 ("Exchange Act").

### **THE PARTIES**

2. Plaintiff Jeffrey H. Kuch Trust purchased Ashanti shares during the Class Period, as set forth in the certification attached hereto and incorporated herein by reference, and has suffered substantial damages as a result of the wrongful acts of defendants as alleged herein.

3. Plaintiff Tyson Kuch Irrevocable Trust purchased Ashanti shares during the Class Period, as set forth in the certification attached hereto and incorporated herein by reference, and has suffered substantial damages as a result of the wrongful acts of defendants as alleged herein.

4. Defendant Ashanti is a foreign corporation organized under the laws of the Republic of Ghana. The Company is headquartered in Ghana and its operations are located principally in Ghana. Ashanti describes itself as "the largest producer of gold in Africa outside of the Republic of South Africa" and as one of the largest gold producers in the world.

5. The Company's shares are traded on the New York Stock Exchange.

6. Defendant Sam Jonah was at all relevant times Chief Executive Officer of Ashanti, a member of its Board of Directors and Chairman of the Board's Strategic Planning Committee. He received substantial compensation for serving in these and other capacities.

7. Defendant Trevor S. Schultz was at all relevant times Chief Operating Officer of Ashanti and a member of its Board of Directors. He received substantial compensation for serving in these and other capacities.

8. Defendant Mark B. Keatley was at all relevant times Chief Financial Officer of Ashanti, a member of its Board of Directors and Chairman of the Board's Finance Committee. He received substantial compensation for serving in these and other capacities.

9. Messrs. Jonah, Schultz and Keatley collectively will be referred to as the "Individual Defendants".

10. By reason of their management positions and their ability to make public statements in the name of Ashanti, the Individual Defendants were and are controlling persons, and had the power and influence to cause (and did cause) Ashanti to engage in the unlawful conduct complained of herein.

#### **JURISDICTION AND VENUE**

11. Plaintiffs bring this action pursuant to the 1934 Act as amended (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the 1934 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

13. Venue is proper in this District pursuant to § 27 of the 1934 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b) and (c).

14. In connection with the acts, conduct and other wrongs complained of herein, the defendants used the means and instrumentalities of interstate commerce.

#### **CLASS ACTION ALLEGATIONS**

15. Plaintiffs brings this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf the Class consisting of all persons who purchased the shares of Ashanti between April 21, 1997 and October 5, 1999 inclusive.

16. Excluded from the Class are the defendants, officers and directors of defendants, members of each Individual Defendant's immediate family, their legal representatives, heirs, successors or assigns, and any entity in which any of the defendants or any excluded person has a controlling interest.

17. The members of the Class are so numerous that joinder of all members is impracticable. Ashanti has millions of shares outstanding, which were and are actively traded. At least 100 million shares of Ashanti were purchased during the Class Period. While the precise numbers of members of the Class are unknown at this time, plaintiffs believe that they number at least in the tens of thousands.

18. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests which are contrary to or are in conflict with those of the Class they seek to represent. Plaintiffs have retained competent counsel experienced in class action litigation of this type to further ensure protection of the Class and to prosecute this action vigorously.

19. Plaintiffs' claims are typical of the claims of the other members of the Class since all of their damages arise from and were caused by the same illegal conduct engaged in by defendants.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class individually to redress the wrongs done to them. Plaintiffs know of no difficulty that will

be encountered in the management of this litigation that would preclude its maintenance as a class action.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are the following:

(a) whether defendants violated the federal securities laws through the acts alleged herein and harmed the members of the Class;

(b) whether the Company's publicly disseminated regulatory filings, releases and statements during the Class Period omitted and/or misrepresented material facts and whether defendants breached any duty to convey material facts or to correct material facts previously disseminated;

(c) whether defendants participated in the course of conduct complained of;

(d) whether the defendants acted willfully, with knowledge or conscious misbehavior, or with deliberate recklessness, in omitting and/or misrepresenting material facts;

(e) whether the market prices of Ashanti shares during the Class Period were artificially inflated due to the material nondisclosures and/or misrepresentations complained of herein; and

(f) whether the members of the Class have sustained damages and the appropriate measure of damages.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

22. At all relevant times, Ashanti common stock traded in an open, well-developed

and efficient market, for the following reasons, among others:

(a) Ashanti common stock met the requirements for listing, and was listed and actively traded, on the New York Stock Exchange, an open, well-developed and highly efficient market;

(b) As a regulated issuer, Ashanti filed periodic public reports with the Securities and Exchange Commission and the NASD;

(c) Ashanti communicated with public investors via established market communication mechanisms, including through dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services. Each of these communications was publicly available and entered the public marketplace.

(d) Ashanti stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

23. As a result, the market for Ashanti securities promptly digested current information with respect to Ashanti from all publicly-available sources and reflected such information in Ashanti's stock price. Under these circumstances, all purchasers of Ashanti common stock during the Class Period were entitled to rely upon a presumption that the market set fair prices for Ashanti securities and they suffered similar injury through their purchases of Ashanti stock at artificially inflated prices.

## **SUBSTANTIVE ALLEGATIONS**

### **Factual Background**

24. Ashanti is primarily engaged in the mining and processing of gold ores and the exploration and development of gold properties in Africa.

25. The Company, as do other gold producers, engages in hedging transactions in order to protect itself against fluctuations in the price of gold.

26. In its Form 20-F (annual report) for the fiscal year ending December 31, 1996 (the "1996 Form 20-F"), the Company described its hedging activities as follows:

To reduce the impact on the Company of fluctuations in the price of gold, the Company engages in hedging transactions. The principal hedging technique used by the Company is to sell gold forward on a spot deferred basis ("spot deferred contracts"). Spot deferred contracts allow the Company to defer delivery of the gold under contract by rolling the contract forward upon expiration, usually subject to a five or seven-year limit, and to receive the original contract price plus the interest-like premium ("contango") prevailing in the gold markets at the time of deferral for forward sales of comparable maturity. (1996 Form 20-F at 45.)

27. Under ordinary hedging activity, gold producers sell forward gold for future delivery, thereby locking in the current price of gold (adjusted for the cost of interest). The gold producer's deposit is timed to mature at the same date as the forward sale, and the gold producer can either then use its newly mined gold production to satisfy the forward sale or buy gold in the market with the proceeds of the investment.

28. Gold producers also have utilized another hedging strategy which employs call option contracts and put option contracts. A put option gives the gold producer the right, but not the obligation, to sell gold at a certain price. In order to finance the purchase of put contracts, gold producers sell call options, which give the purchaser the right to buy gold at a substantially

higher price. The risk in this type of hedge is as follows: If the price of gold rises, the put contracts fall out of the money - i.e., the sale price pursuant to the put contract falls below the prevailing market price rendering the right to sell gold at that price worthless -- and the call options move into the money - i.e., the holder of the call now has the right to purchase gold at below market prices. The hedge is now deemed to have gone negative because the value of the put is exceeded by the liability of the call option. Under this circumstance, the financial institutions that sold the gold producer the option contracts has the right to demand cash deposits in order to protect against the negative value of the hedge. Gold producers also employ a combination of calls and puts in what the industry terms "exotic options."

29. Ashanti is 32% owned by Lonmin, a British company, and 20% owned by the Republic of Ghana. Neither Lonmin nor Ghana will permit Ashanti to issue new equity because they do not want to have their interest in the Company diluted. Ashanti, therefore, is required to raise capital for its mining activities through debt financing or selling forward its gold production.

30. Ashanti has publicly highlighted its purported ability to hedge its gold reserves in press releases and public statements. For example, in its 1996 Form 20-F, Ashanti stated:

Th[e] well controlled, orderly market [in gold bullion] provides the foundation for many derivative instruments such as futures, options, warrants and swaps. Substantial producers and purchasers use these markets to hedge, rather than to speculate, their respective positions. The process involves forward contracts and options to hedge part of the

production against falls in the gold price. This secures a predictable cashflow which assists in planning and forecasting future revenues, ensuring that financial commitments and other undertakings can be met (1996 Form 20-F at 40) (emphasis added).

31. The statement from the 1996 Form 20-F quoted in the paragraph immediately above similarly was contained verbatim in both the 1997 Form 20-F at pages 28-29 and the 1998 Form 20-F.

32. Likewise, on December 28, 1998, the Company issued a press release announcing the prepayment of \$93 million in project financings and a restructuring of hedge portfolio. The press release quoted defendant Keatley as follows:

I am delighted that through a combination of sound project performance and good financial engineering, we have succeeded in retiring the Bibiani and Siguirri project financings three years ahead of their scheduled final maturity. . . We have now captured the market value of the hedges and used the proceeds to retire the project financings, which were higher cost than our corporate debt.

33. Analysts have also praised the Company's purported hedging acumen. For example, the London branch of Investec Securities in a report published in June 1999 stated that: "The most remarkable feature of Ashanti is not the quality of its ore body, nor the skills of its mining team. . . . [it is] the financial ability of its treasury department which has managed to construct a hedge position that insures the future of the mine well into the next century."

34. By the start of the Class Period, Ashanti had consolidated its exploration activities in Africa with new projects commencing in Eritrea, Ethiopia, Mozambique, Burkina Faso and Angola. The Company then was operating on some 35 projects in twelve countries. In

addition, Ashanti was seeking to actively develop other projects including the Geita mine project, located in Tanzania. Ashanti, however, did not have the capital required to develop all these projects in a timely and feasible manner.

35. In order to raise those funds, commencing at the beginning of 1997, Ashanti knowingly or with deliberate recklessness began to change the nature of and increase its hedge book; but, Ashanti continued to publicly represent that its hedge activities were only a continuation of its operations and policies to protect the Company against fluctuations in the price of gold.

36. In truth, and unbeknownst to investors, Ashanti made repeated, material changes and increases to its hedge position, through continuous increases in the size of its hedged position which would benefit from a decrease in the price of gold (both in terms of the number of ounces hedged and as a percentage of Ashanti's total reserves), and the use of exotic option contracts and forward contracts with a floating lease rate. This conduct exposed the Company to continuous, material increases in its risk from increasing gold prices and increasing lease rates as well as the possibility that the Company might have to meet extraordinary margin calls should its hedges go "negative."

37. On October 5, 1999, Ashanti shocked the market when it announced that its hedge book had turned "negative" by \$450 million and that the Company would be required to meet massive margin calls which it did not have the capital to meet. Defendants' statements during the Class Period misrepresented the true purpose underlying the changes and increase in the Company's hedge book, concealed the true risks present in the Company's hedge book and concealed the Company's exposure to volatility in the price of gold.

### False And Misleading Statements During The Class Period

38. The Class Period began on April 21, 1997. On or about that date, the Company filed its 1996 Form 20-F with the SEC for the year ending December 31, 1996.

39. In that report, the Company reported earnings of approximately \$102 million for 1996; the profits from hedging operations were \$58.6 million of that amount.

40. Concerning Ashanti's hedging activities, the 1996 Form 20-F, signed by Individual Defendant Keatley, stated:

Th[e] well controlled, orderly market [in gold bullion] provides the foundation for many derivative instruments such as futures, options, warrants and swaps. Substantial producers and purchasers use these markets to hedge, rather than to speculate, their respective positions. The process involves forward contracts and options to hedge part of the production against falls in the gold price. This secures a predictable cashflow which assists in planning and forecasting future revenues, ensuring that financial commitments and other undertakings can be met. (1996 Form 20-F at 40) (emphasis added).

To reduce the impact on the Company of fluctuations in the price of gold, the Company engages in hedging transactions. The principal hedging technique used by the Company is to sell gold forward on a spot deferred basis ("spot deferred contracts"). Spot deferred contracts allow the Company to defer delivery of the gold under contract by rolling the contract forward upon expiration, usually subject to a five or seven-year limit, and to receive the original contract price plus the interest-like premium ("contango") prevailing in the gold markets at the time of deferral for forward sales of comparable maturity. (1996 Form 20-F at 45) (emphasis added).

*Hedging:* In order to protect against the impact of falling bullion prices, [Ashanti] enters into hedging transactions which provide a minimum price for future production and allow [Ashanti] to take advantage of increases in the gold price. Hedging transactions include spot deferred, gold price swaps and forward sales contracts, put and call option contracts and gold loans. (1996 Form 20-F at F-7) (emphasis added).

41. The 1996 Form 20-F also stated:

*Hedging Activities*[:] The Company's revenues are strongly influenced by the world gold price, which fluctuates widely and over which the Company has no control. The Company pursues a hedging strategy designed both to protect the Company's cashflow and ensure its continued ability to conduct its business and service its obligations in the event that the gold price falls and to allow the Company to participate in upward appreciation or any rallies in the gold price. The overall sales and hedging strategy is set by the Board of Directors of the Company at its quarterly meetings and continuing hedging operations are subject to strict internal controls. The controls currently in place over the Company's hedging operation include the separation of the trading and settlement functions and the requirement that each individual hedging transaction be approved by a member of the Board. (1996 Form 20-F at 65) (emphasis added).

42. Ashanti's 1996 Annual Report to Shareholders also stated:

The effect of the hedging programme is to establish a floor price for future gold production, while keeping open the possibility for the Company to benefit from movements/fluctuations in the gold price above that floor (1996 Annual Report at 28.)

43. The 1997 Form 20-F, signed by Individual Defendant Keatley, included essentially verbatim the three statements quoted above from the 1996 Form 20-F:

Th[e] well controlled, orderly market [in gold bullion] provides the foundation for many derivative instruments such as futures, options, warrants and swaps. Substantial producers and purchasers use these markets to hedge, rather than to speculate, their respective positions. The process involves forward contracts and options to hedge part of the production against falls in the gold price. This secures a predictable

cashflow which assists in planning and forecasting future revenues, ensuring that financial commitments and other undertakings can be met. (1997 Form 20-F at 28-29) (emphasis added).

To reduce the impact on the Company of fluctuations in the price of gold, the Company engages in hedging transactions. The principal hedging technique used by the Company is to sell gold forward on a spot deferred basis ("spot deferred contracts"). Spot deferred contracts allow the Company to defer delivery of the gold under contract by rolling the contract forward upon expiration, usually subject to a five to ten year limit, and to receive the original contract price plus the interest-like premium ("contango") prevailing in the gold markets at the time of deferral for forward sales of comparable maturity. (1997 Form 20-F at 30) (emphasis added).

*Hedging:* In order to protect against the impact of falling bullion prices, [Ashanti] enters into hedging transactions which provide a minimum price for future production and allow [Ashanti] to take advantage of increases in the gold price. Hedging transactions include spot deferred, gold price swaps and forward sales contracts, put and call option contracts and gold loans. (1997 Form 20-F at F-7) (emphasis added).

44. The 1997 Form 20-F also stated:

*Hedging Activities[:]* The Company's revenues are strongly influenced by the world gold price, which fluctuates widely and over which the Company has no control. The Company pursues a hedging strategy designed both to protect the Company's cashflow and ensure its continued ability to conduct its business and service its obligations in the event that the gold price falls and to allow the Company to participate in upward appreciation or any rallies in the gold price. The overall sales and hedging strategy is set by the Board of Directors of the Company at its quarterly meetings and continuing hedging operations are subject to strict internal controls. The controls currently in place over the Company's hedging operation include the separation of the trading and settlement functions and the requirements that each individual hedging transaction be approved by a member of the Board. (1997 Form 20-F at 48-49) (emphasis added).

45. Likewise, in its Form 20-F for the fiscal period ending December 31, 1998 (the "1998 Form 20-F"), signed by Individual Defendant Keatley, the Company described its hedging activities as follows:

Th[e] well controlled, orderly market [in gold bullion] provides the foundation for many derivative instruments such as futures, options, warrants and swaps. Substantial producers and purchasers use these markets to hedge, rather than to speculate, their respective positions. The process involves forward contracts and options to hedge part of the production against falls in the gold price. This secures a predictable cashflow which assists in planning and forecasting future revenues, ensuring that financial commitments and other undertakings can be met.

(emphasis added).

To reduce the fluctuations in the price of gold, the Company engages in hedging transactions. The principal hedging technique used by the Company is to sell gold forward on a spot deferred basis ("spot deferred contracts"). Spot deferred contracts allow the Company to defer delivery of the gold under contract by rolling the contract forward upon expiration, usually subject to a five to fifteen year limit, and to receive the original contract price plus the interest-like premium ("contango") prevailing in the gold markets at the time of deferral for forward sales of comparable maturity (emphasis added).

46. On July 28, 1999, Ashanti filed a Form 6-K (Report of a Foreign Issuer) with the SEC which attached a copy of the Company's report on its financial results for the second quarter of 1999 (the period ending June 30, 1999). With respect to the Company's hedging activities, the Company stated:

Ashanti's outstanding forward sale and put option contracts increased from

8.7 million ounces at an average price of \$390 per ounce at 31 March 1999 to 11 million ounces at an average price of US\$389 per ounce at 30 June 1999. About 60% of the hedging contracts comprise spot-deferred sales and about 30% comprise put options, providing Ashanti with considerable exposure to upward movements in the gold price. The increase of 2.3 million ounces is for maturities between 2000 and 2013. The outstanding call options were reduced to 2.8 million ounces at an average strike price of US\$406 per ounce. The estimated mark-to-market value of the hedge book increased to about \$US290 million as at 30 June 1999 as a result of the increase in hedges and lower spot prices.

47. On July 28, 1999, defendant Keatley was interviewed by Antony Sguazzin of Bloomberg Business News concerning the Company's 1999 second quarter financial results. That interview was carried by Bloomberg Business News. During the interview, defendant Keatley stated the following with respect to the Company's hedging policy:

It has been the strategic aim of Ashanti to maintain a high level of protection. We are going to up our production profile with the construction of the very large Geita mine in Tanzania, which will go into production in the second half of the year. . . We have been building up our hedge book to maintain the same level of coverage. . . Fortunately we were able to do this in the early part of the quarter before the announcement by the Bank of England of their gold auctions. . . Hedging gives us the assurance that our cash flow will be sufficient for our new projects and to service our debt.

48. Among other statements, the statements referenced above in the eight paragraphs immediately above were each materially false and misleading when issued as they failed to disclose and misrepresented the following adverse facts which were then known to defendants or with deliberate recklessness were disregarded by them:

(a) it was not true that the Company's "strategic aim" was to "maintain a high-level of protection" against fluctuations in the price of gold. Instead, the change and increase in the Company's hedge book was not related to protecting the Company against fluctuations in the

price of gold but rather was a material change in the purpose for and the extent of its hedging – which during the Class Period exposed the Company to continuous, material increases in its risk.

(b) Between year end 1996 through year end 1997, the Company increased by 115 percent its hedged position which would benefit from a decrease in the price of gold.

Between year end 1996 through year end 1998, the Company increased by 287 percent its hedged position which would benefit from a decrease in the price of gold. And, from year end 1996 through June 30, 1999, the Company increased by 303 percent its hedged position which would benefit from a decrease in the price of gold.

(c) that the change and increase in the Company's hedge position could expose the Company to substantial margin calls should the price of gold rise substantially and that the Company lacked the cash to meet those margin calls should that scenario arise. In other words, the Company had increased its hedge position and taken the risk that it would find itself unable to meet the obligations it had assumed;

(d) that the Company was employing exotic option contracts to increase its hedge book and these contracts exposed the Company to heightened risk should the price of gold rise; and

(e) that the reported mark-to-market value of the Company's hedge book, \$290 million, was materially inflated as it failed to take into account the extreme volatility that Ashanti had assumed in its hedge position by engaging in exotic option contracts;

(f) the Company's ongoing hedging operations were not subject to strict internal controls; and

(g) given the foregoing, defendants' estimates, projections and opinions as to

the Company's operations, earnings and income were knowingly lacking in a reasonable basis at all relevant times.

49. Thereafter, on September 26 1999, fifteen European central banks announced that they were limiting sales and loans of gold. In response to this announcement, the price of gold began to rise precipitously -- by more than \$55 per ounce.

50. Three days later, on September 29, 1999, Ashanti issued a press release announcing the purported expansion of the Geita mine project and to provide an update on its business plan. The Company reported that gold production at its Geita project in Tanzania was successful and would allow it to expand gold production to approximately 500,000 ounces per year at a cash operating cost below \$180 per ounce. The press release stated:

Ashanti operations have benefitted from the increase in the price of gold since the recent announcement of co-ordinated action by central banks to regulate official gold sales.

Ashanti has restructured 80% of its hedge book to remove the sensitivity of the hedge value to further rallies in the gold price. The restructuring was initiated before the recent rally, as part of the Company's contingency planning, and has covered approximately 9 million ounces (out of Ashanti's 11 million ounces book of forwards and put options). It has included converting a substantial component of the forward sales positions into synthetic put options. The Company has already, before the rally, eliminated any exposure to floating lease rates during the rest of 1999 and the first quarter of 2000. Ashanti's hedge book continues to be actively managed, and tightly controlled. Management is satisfied that the hedge portfolio is robust in the current gold market and will generate a realized gold price of US\$380 per ounce in 1999 and about US\$360 per ounce next year. [Emphasis added.]

51. The statements referenced above in the immediately preceding paragraph were each materially false and misleading when issued as they failed to disclose and misrepresented the adverse facts set forth above and which were then known to defendants or

were recklessly disregarded by them. In addition, the statements failed to disclose the following adverse facts:

(a) the rising gold price had caused the Company's hedge book to have an increasingly negative value such that the Company would be required to meet substantial margin calls which the Company would be unable to do;

(b) the mark-to-market value of the Company's hedge book was (\$450) million; and

(c) it was not true that the Company had eliminated any exposure to floating lease rates as the Company's hedge book had been materially negatively impacted by floating lease rates.

**The Defendants Admit the Truth: That They Made a "Reckless Bet" that the Price of Gold Would Go Down**

52. On October 5, 1999, Ashanti issued a press release announcing that "in light of the continued turmoil in the gold market, the Company continues to monitor its hedging position and has over the last few weeks managed the hedge book so as to reduce the sensitivity of the hedge value to rallies in the gold price." The press release stated:

Whilst the Ashanti Group has structured its hedging arrangements with - counter parties to allow a degree of flexibility in the event of prices rising, the recent sudden and unexpected rise in the price of gold and the dramatic increase in the volatility of the gold market has led to certain counter parties being entitled to margin calls. The Ashanti Group has entered into a joint arrangement with its major hedging partners for continuing support. [Emphasis added.]

According to news reports, Ashanti was subject to margin calls of as much as \$260 million and lacked the cash to meet those obligations.

53. In response to the Company's October 5, 1999 announcement, on that date the price of Ashanti common stock plummeted from \$9.375 per share to \$5.50 per share on extremely heavy trading volume.

54. On October 6, 1999, Bloomberg Business News reported on the Company's startling revelation, stating in pertinent part, as follows:

Ashanti Goldfields Co., Africa's third-largest gold producer, fell 35 percent to a record low, its biggest one-day drop, on investor concern creditor banks could demand payments the company would not be able to meet.

Accra-based Ashanti sold nearly seven years of production in advance, partly to finance an aggressive expansion in production, in a bet gold prices would keep falling. When 15 European central banks promised on Sept. 26 to limit gold reserve sales and lending, prices soared as much as 27 percent, exposing Ashanti and other forward sellers to possible losses.

The company said yesterday some of the banks with which it signed forward sales contracts are now entitled to margin calls, or demands for cash or securities to verify that it can meet its obligations. Investors are concerned Ashanti may not be able to meet those calls.

"They have to satisfy the market that they have the liquidity to cover the contracts," said Roger Chaplin, an analyst at T. Hoare Canaccord.

55. On October 6, 1999, Ashanti issued a press release announcing that it had entered into a temporary standstill arrangement with its hedging counterparties "in order to give the Company time to work out a more permanent arrangement with its counterparties." The price of Ashanti common stock declined further to \$4.125 per share.

56. On October 8, 1999, The Mining Journal published a report on Ashanti and its hedging problems. The report questioned the Company's public disclosures concerning

the nature and value of its hedge book and stated in pertinent part as follows:

The huge negative value of the hedging book is particularly surprising given Ashanti's hedging position at the end of June. The company then reported a total of 11 Moz covered by a variety of forward contracts and put options, from 1999 to 2013, at an average price of US\$389/oz. The average prices for forward contracts in 1999 and 2000 were all shown as above US\$380/oz. The company . . . had also sold 2.9Moz in call options to other parties, but none of the prices shown are 'in the money' (i.e. worth exercising). The only indication consistent with this week's announcement is the fact that the forward contracts specifically marked as having fixed lease rates represented only 900,000 oz and did not start maturing until 2007.

The "replacement cost" of US\$450 million is also completely at odds with rough marked-to-market values for Ashanti's hedging book calculated by analysts, based on the company's stated hedging positions. The implication is that the reported hedging positions although indicating the company's exposure to movements in gold price did not clearly show its potential exposure to changes in lease rate and volatility. Ashanti was unavailable for comment to clarify the position other than to confirm that the figure of US \$450 million ascribed to the current hedging book is a negative value. [Emphasis Added.]

57. On November 8, 1999, an article in the Financial Times entitled "Ashanti Left Dangerously Exposed By Holding High-Risk Exotics: Investment Bank Sold Company Cheap Derivatives As 'Insurance Policy'" reported that "Ashanti . . . was brought to its knees by holding cheap, high-risk derivatives known as "exotics." According to the article, about 15 percent of the Company's hedge book was comprised of exotics. Defendant Jonah was quoted in the article as stating: "I am prepared to concede that we were reckless. We took a bet on the price of gold. We thought it would go down and we took a position."

58. Plaintiffs and class members throughout the Class Period were unaware of defendants' material misrepresentations and nondisclosures, and they could not have discovered them through reasonable diligence as a result of defendants' conduct in fraudulently concealing

their wrongdoing until October 6, 1999. Plaintiffs made their purchases of Ashanti shares within three years of the date of this Complaint.

**MOTIVE, OPPORTUNITY AND KNOWLEDGE**

59. As a consequence of their positions with Ashanti, each of the Individual Defendants had access to the non-public information – including adverse information -- about the business, finances, markets and present and future business prospects of Ashanti via access to internal corporate documents, conversations or connections with corporate officers or employees, attendance at management and Board of Directors' meetings and committees thereof and/or via reports and other information provided to them in connection therewith.

60. Defendants had a duty to promptly disseminate accurate and truthful information with respect to Ashanti's operations and financial condition or to cause and direct that such information be disseminated and to promptly correct any previously disseminated information that was misleading to the market. As a result of their failure to do so, the price of Ashanti shares was artificially inflated during the Class Period, damaging plaintiffs and the Class.

61. The Individual Defendants, because of their positions with Ashanti, controlled the contents of quarterly and annual reports, press releases and presentations to securities analysts. Each Individual Defendant was provided with copies of the reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and

were being concealed from the public and that the positive representations which were being made were then false and misleading.

62. In addition, each of the Individual Defendants is responsible for the accuracy of Ashanti's corporate releases detailed herein as "group-published" information and is therefore responsible and liable for the representations contained therein.

63. Each of the defendants is liable as a primary violator in making false and misleading statements, and for participating in a fraudulent scheme and course of business that rated as a fraud or deceit on purchasers of Ashanti shares during the Class Period. All of the defendants had motives to pursue a fraudulent scheme in furtherance of their common goal, i.e., inflating the reported profits of Ashanti and the trading price of Ashanti shares by making false, w and misleading statements and concealing material adverse information. The fraudulent scheme and course of business was designed to and did: (i) deceive the investing public, including plaintiffs and other Class members; (ii) artificially inflate the price of Ashanti shares during the Class Period; (iii) cause plaintiffs and other members of the Class to purchase Ashanti shares at inflated prices; and (iv) conceal and coverup the Individual Defendants' mismanagement of Ashanti.

### **ADDITIONAL SCIENTER ALLEGATIONS**

64. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or with deliberate recklessness disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Ashanti and its business practices, their control over and/or receipt of Ashanti's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Ashanti were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or with deliberate recklessness disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

65. The 1996 and 1997 Forms 20-F each stated:

*Hedging Activities*[:] The Company's revenues are strongly influenced by the world gold price, which fluctuates widely and over which the Company has no control. The Company pursues a hedging strategy designed both to protect the Company's cashflow and ensure its continued

ability to conduct its business and service its obligations in the event that the gold price falls and to allow the Company to participate in upward appreciation or any rallies in the gold price. The overall sales and hedging strategy is set by the Board of Directors of the Company at its quarterly meetings and continuing hedging operations are subject to strict internal controls. The controls currently in place over the Company's hedging operation include the separation of the trading and settlement functions and the requirements that each individual hedging transaction be approved by a member of the Board. (1996 Form 20-F at 65; 1997 Form 20-F at 48-49) (emphasis added).

66. Each of the Individual Defendants was at all relevant times a member of Ashanti's Board of Directors, as well as a senior executive officer.

67. The Individual Defendants engaged in such a scheme to inflate the price of Ashanti common stock in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; and (ii) enhance the value of their personal holdings of Ashanti common stock.

68. The federal statutory safe harbor protecting forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Further, none of the statements pleaded herein which were forward-looking statements were identified as "forward-looking statements" when made. Nor was it stated that actual results "could differ materially from those projected." Nor were the forward-looking statements pleaded accompanied by meaningful cautionary statements identifying important

factors that could cause actual results to differ materially from the statements made therein.

Defendants are liable for the forward-looking statements pleaded because, at the time each of those forward-looking statements was made, the speaker knew the forward-looking statement was false and the forward-looking statement was authorized and/or approved by an executive officer of Ashanti who knew that those statements were false when made.

## CLAIM I

### **For Violations Of Section 10(b) Of The 1934 Act And Rule 10b-5 Promulgated Thereunder, Against All Defendants**

69. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein.

70. During the Class Period, defendants Ashanti and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiffs and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Ashanti common stock; and (iii) cause plaintiffs and other members of the Class to purchase Ashanti stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants Ashanti and the Individual Defendants, and each of them, took the actions set forth herein.

71. These 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 Company's common stock in an effort to maintain artificially high market prices for Ashanti common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued herein as controlling persons of Ashanti, as alleged below.

72. In addition to the duties of full disclosure imposed on defendants as a

result of their making affirmative statements and reports, or their participation in the making of affirmative statements and reports, to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et set.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

73. Ashanti and the Individual Defendants, individually and in concert, directly and indirectly, by the use of 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, business practices, performance, operations and future prospects of Ashanti as specified herein. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Ashanti's value and performance and substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Ashanti and its business, operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Ashanti securities during the Class Period.

74. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) each of the Individual Defendants was a high-level executive and director at the Company during the Class Period; (ii) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive officer and director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were advised of and had access to other members of the Company's management team, internal reports, and other data and information about the Company's financial condition and performance at all relevant times; and (iv) the Individual Defendants were aware of the Company's dissemination of information to the investing public which they knew or with deliberate recklessness disregarded was materially false and misleading.

75. Individual Defendant Mark B. Keatley signed many or all of the public filings made with the SEC during the relevant time period. For example, he signed the Forms 20-F for the fiscal periods ending December 31, 1996 and December 31, 1998, respectively.

76. These defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with deliberate reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were readily available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or with deliberate recklessness and for the purpose and effect of concealing Ashanti's operating condition, operations, business practices and future business prospects from the investing public and supporting the artificially inflated price of its stock. As demonstrated by

their overstatements and misstatements of the Company's financial condition and performance throughout the Class Period, the Individual Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were deliberately reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

77. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Ashanti's common stock was artificially inflated during the Class Period.

78. In ignorance of the fact that the market price of Ashanti's shares was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or with deliberate recklessness disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiffs and the other members of the Class acquired Ashanti common stock during the Class Period at artificially inflated high prices and were damaged thereby.

79. At the time of said misrepresentations and omissions, plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiffs and the other members of the Class and the marketplace known of the true performance, operations, business practices, future prospects and intrinsic value of Ashanti, which were not disclosed by defendants, plaintiffs and other members of the Class would not have purchased or otherwise acquired their Ashanti securities during the Class Period, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices

which they paid.

80. The artificial inflation continued until the time Ashanti admitted that its hedge portfolio had turned negative and the Company would be required to meet substantial margin calls and these admissions were communicated to, and/or digested by, the securities markets.

81. By virtue of the foregoing, Ashanti and the Individual Defendants each violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

82. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

## **CLAIM II**

### **For Violations Of Section 20(a) Of The 1934 Act, Against Each Individual Defendants**

83. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein.

84. The Individual Defendants were and acted as controlling persons of Ashanti within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and intimate knowledge of the Company's operations and actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiffs contends are false and misleading. Each of the Individual Defendants was provided with or had

unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiffs 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.

85. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had and in fact did have the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

86. As set forth above, Ashanti and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

87. As a direct and proximate result of defendants' wrongful conduct, plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs demand judgment individually and on behalf of the Class as follows:

(a) A determination that the instant action is a proper class action maintainable under the Federal Rules of Civil Procedure;

(b) Awarding plaintiffs and the members of the Class against all defendants, jointly and severally, under the First and Second Claims for relief, damages sustained as a result

of the wrongdoings of defendants, in an amount which may be proven at trial, together with interest thereon;

(c) Awarding plaintiffs and the members of the Class against all defendants, jointly and severally, pre-judgment and post- judgment interest, as well as their reasonable attorneys fees and expert witness fees and other costs;

(d) Awarding such other and further relief as this Court may deem just and proper including any extraordinary equitable and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict the defendants' assets to assure plaintiffs have an effective remedy; and

(e) Such other relief as this Court deems just and appropriate.

**JURY DEMAND**

Plaintiffs demands a trial by jury.

DATED: April 19, 2000

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