IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EL PASO CORPORATION SHAREHOLDER LITIGATION	CONSOLIDATED C.A. No. 6949-CS

VERIFIED CONSOLIDATED CLASS ACTION COMPLAINT

Co-Lead Plaintiffs Pompano Beach Police & Firefighters' Retirement System, Pipefitters Local Union #537 Trust Funds, Saratoga Advantage Trust Energy & Basic Materials Portfolio, and Saratoga Advantage Trust Mid Capitalization Portfolio (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated public shareholders (the "Class") of El Paso Corporation ("El Paso" or the "Company"), by their attorneys, make the following allegations in their Verified Consolidated Class Action Complaint (the "Complaint") against: the members of the board of directors of El Paso (the "El Paso Board" or the "Board"); Kinder Morgan, Inc. ("Kinder Morgan"), Sherpa Merger Sub, Inc., and Sherpa Acquisition, LLC (collectively, the "Kinder Morgan Defendants"); and The Goldman Sachs Group, Inc. ("GS Group") and Goldman, Sachs & Co. (together with GS Group, "Goldman Sachs") (collectively, the "Defendants"). The allegations herein are made in support of Plaintiffs' claims challenging Defendants' conduct with regard to the proposed acquisition of El Paso by Kinder Morgan (the "Proposed Transaction" or "Merger"), and are based on the knowledge of Plaintiffs as to themselves and their own actions, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

INTRODUCTION

1. This stockholder class action seeks to enjoin the Proposed Transaction. Goldman Sachs – which holds a 19.1% equity interest in Kinder Morgan – steered the supine El Paso Board into jettisoning a previously announced spin-off of El Paso's exploration and production ("E&P") business (the "Spin-Off") in favor of a low-premium sale to Kinder Morgan, thereby advancing Goldman Sachs's own interests in seeing its investment in Kinder Morgan increase in value. The Board's actions threaten to deprive El Paso's shareholders – who are slated to vote on the Proposed Transaction pursuant to incomplete and misleading proxy materials – both of their right to receive maximum value for their shares in this change of control transaction and of their right to make a fully informed decision on the Proposed Transaction.

2. In 2006, Richard Kinder ("Kinder") took Kinder Morgan private in a $22 billion transaction. Goldman Sachs co-invested alongside Kinder in the deal, arranged $7 billion in financing for the transaction, and served as the acquiring group's financial advisor.

3. For years, Kinder desired to add El Paso to his growing empire. On several occasions, Kinder approached El Paso's management about a potential merger, but a transaction of this magnitude was not feasible without the ability to use Kinder Morgan stock as acquisition currency.

4. To eliminate this issue, Kinder took Kinder Morgan public in February 2011 (the "IPO"). The IPO was the largest private equity-backed IPO in United States history, and was a boon to Goldman Sachs, which snagged the plum role of lead underwriter, profited from the sale of $950 million of its Kinder Morgan stock, and retained a 19% equity interest and two seats on the Kinder Morgan board.

5. Shortly after the IPO, the El Paso Board retained Goldman Sachs to begin exploring alternatives to boost the Company's stock price. The Board, pursuant to Goldman Sachs's advice, announced in May 2011 that the Company would be spinning-off its E&P business to El Paso shareholders. This announcement was lauded by Wall Street analysts as a great way to unlock value for El Paso shareholders.

6. About one month after the announcement of the proposed Spin-Off (but before it was consummated), Kinder again approached El Paso regarding a potential sale. Instead of terminating the engagement of the clearly conflicted Goldman Sachs, the El Paso Board allowed Goldman Sachs to continue advising the Company in connection with a potential sale to Kinder Morgan. For Goldman Sachs, the opportunity to still receive a lucrative advisory fee while simultaneously positioning itself to push the Board towards a transaction that would advance its own interest was simply too great to pass up.

7. Steered by Goldman Sachs, the Board abandoned the Spin-Off, eschewed a market check, and plowed full steam ahead into a sale of the Company to Kinder Morgan.

8. Two months later, El Paso and Kinder Morgan announced an agreement and plan of merger ("Merger Agreement") for the Proposed Transaction, whereby Kinder Morgan would acquire El Paso for a mix of cash and Kinder Morgan stock worth approximately $26.87 per share. Upon closing, Kinder Morgan's former shareholders are expected to own approximately 68% of the combined company, while El Paso shareholders are expected to own 32%.

9. On November 10, 2011, Kinder Morgan filed with the Securities and Exchange Commission ("SEC") a Preliminary Proxy on Form S-4 (the "Proxy"). The Proxy reveals that the Proposed Transaction is the product of a flawed process. The El Paso Board failed to conduct any meaningful pre-or-post-signing market check, and relied on Goldman Sachs to

advise the Board on whether the Spin-Off would produce better value for the Company than the Proposed Transaction. Among numerous other failings, the El Paso Board did not negotiate for a collar around the stock portion of the consideration, thus subjecting the Company's shareholders to potential adverse movements in Kinder Morgan's stock price. As a result of Kinder Morgan taking on substantial leverage ($11.5 billion) to complete this transaction, real risk of downward pressure exists on the stock price. Moreover, by abandoning the Spin-Off in favor of the Proposed Transaction, the Board has simply transferred to Kinder Morgan the opportunity to spin off or sell the E&P assets, which Kinder Morgan has publicly vowed to do immediately after the Merger in order to defray the debt burden it will assume in the Merger.

10. Having followed a wholly inadequate process in negotiating the Proposed Transaction, the Board arrived at an unfair price. The consideration to be paid to the Company's shareholders in the Proposed Transaction is inadequate in light of: (a) the surge in demand for pipelines, (b) the pricing power Kinder Morgan will garner as a result of the Proposed Transaction, (c) the $350 million in annual synergies that are expected to flow from the Proposed Transaction, (d) the premiums paid in precedent energy deals, and (e) the uncertain value of the Kinder Morgan stock and warrants being offered as part of the mix of consideration.

11. Compounding these failures, the Board has virtually eliminated the prospect of a superior offer for the Company emerging post-signing by agreeing to unreasonable and disproportionate deal protection devices in the Merger Agreement. These deal protections include a prohibition on El Paso soliciting higher offers, a provision granting Kinder Morgan the right to match any superior offer for the Company, a punitive $650 million termination fee payable in the event the El Paso Board attempts to accept a higher offer, and a provision restricting the Board's ability to exercise its fiduciary out in the event of a third party bid for the

Company's E&P division. This panoply of deal protections acts as a severe deterrent to competing bids for El Paso.

12. The members of El Paso's Board will also benefit personally if the transaction closes. El Paso's Chairman, President, and CEO, Douglas L. Foshee ("Foshee"), will realize a payout of approximately $95 million upon the consummation of the Proposed Transaction. The majority, if not all, of the remaining Board members will receive benefits ranging from $450,000 to $3.8 million under El Paso's nonqualified deferred compensation plans for non-employee members of the Board, which amounts will become payable when the Proposed Transaction closes and those directors cease to be members of the El Paso Board. The Spin-Off, by contrast, would have produced none of these personal benefits. Moreover, according to the Proxy, certain members of the Board also benefit from the promise of continued employment post-Merger.

13. In light of the Board's breaches of fiduciary duty in agreeing to the Proposed Transaction, and the aiding and abetting of such breaches by the Kinder Morgan Defendants and Goldman Sachs, Plaintiffs are entitled to enjoin the deal or, alternatively, to recover damages in the event the Proposed Transaction is consummated on its current terms.

THE PARTIES

14. Co-Lead Plaintiff Pompano Beach Police & Firefighters' Retirement System is, and at all relevant times hereto was, an owner of El Paso common stock.

15. Co-Lead Plaintiff Pipefitters Local Union #537 Trust Funds is, and at all relevant times hereto was, an owner of El Paso common stock.

16. Co-Lead Plaintiff Saratoga Advantage Trust Energy & Basic Materials Portfolio is, and at all relevant times hereto was, an owner of El Paso common stock.

17. Co-Lead Plaintiff Saratoga Advantage Trust Mid Capitalization Portfolio is, and at all relevant times hereto was, an owner of El Paso common stock.

18. The Co-Lead Plaintiffs' efforts in this action are supported by other El Paso shareholders, including KBC Asset Management NV, Louisiana Municipal Police Employees' Retirement System, Oklahoma Firefighters Pension and Retirement System, and Victoria Schaev.

19. El Paso Corporation is an energy company that operates in both the natural gas transmission and E&P sectors of the energy industry. El Paso owns North America's largest interstate natural gas pipeline system and is one of North America's largest independent E&P companies. The Company operates in two primary segments: Pipelines and E&P. The Pipelines segment includes the Company's interstate natural gas transmission systems and related operations conducted through eight wholly or majority-owned pipeline systems and two partially-owned systems. The E&P segment focuses on the exploration for and the acquisition, development and production of natural gas, oil and natural gas liquids in the United States, Brazil and Egypt. The Company is incorporated in Delaware and maintains its principal executive offices in Houston, Texas. El Paso trades on the New York Stock Exchange ("NYSE") under the ticker symbol "EP."

20. Defendant Juan Carlos Braniff ("Braniff") has served as a member of the El Paso Board since 1997. He is a member of the Compensation Committee and the Finance Committee.

21. Defendant David W. Crane ("Crane") has served as a member of the El Paso Board since December 2009. He is a member of the Finance Committee and the Governance & Nominating Committee.

22. Defendant Douglas L. Foshee has been Chairman of the El Paso Board since May 2009 and President, Chief Executive Officer, and a director of El Paso since September 2003.

23. Defendant Robert W. Goldman ("R.W. Goldman") has served as a member of the El Paso Board since 2003. He is a member of the Audit Committee and the Governance & Nominating Committee.

24. Defendant Anthony W. Hall, Jr. ("Hall") has served as a member of the El Paso Board since 2001. He is a member of the Audit Committee and the Health, Safety & Environmental Committee.

25. Defendant Thomas R. Hix ("Hix") has served as a member of the El Paso Board since 2004. He is Chairman of the Audit Committee and a member of the Compensation Committee.

26. Defendant Ferrell P. McClean ("McClean") has served as a member of the El Paso Board since 2006. She is Chairperson of the Finance Committee and a member of the Compensation Committee.

27. Defendant Timothy J. Probert ("Probert") has served as a member of the El Paso Board since 2009. He is a member of the Finance Committee and the Health, Safety & Environmental Committee.

28. Defendant Steven J. Shapiro ("Shapiro") has served as a member of the El Paso Board since 2006. He is Chairman of the Compensation Committee and a member of the Audit Committee.

29. Defendant J. Michael Talbert ("Talbert") has served as a member of the El Paso Board since 2003 and the Board's Lead Director since May 2009. He is Chairman of the Governance & Nominating Committee.

30. Defendant Robert F. Vagt ("Vagt") has served as a member of the El Paso Board since 2005. He is Chairman of the Health, Safety & Environmental Committee and a member of the Compensation Committee.

31. Defendant John L. Whitmire ("Whitmire") has served as a member of the El Paso Board since 2003. He is a member of the Governance & Nominating Committee and the Health, Safety & Environmental Committee.

32. Defendants Braniff, Crane, Foshee, R.W. Goldman, Hall, Hix, McClean, Probert, Shapiro, Talbert, Vagt and Whitmire are collectively referred to herein as the "Individual Defendants."

33. Defendant Kinder Morgan, Inc. is a leading pipeline transportation and energy storage company in North America trading on the NYSE under the ticker symbol "KMI." It owns an interest in or operates more than 37,000 miles of pipelines and 180 terminals. Its pipelines transport natural gas, gasoline, crude oil, carbon dioxide and other products, and its terminals store petroleum products and chemicals and handle such products as ethanol, coal, petroleum coke and steel. Kinder Morgan owns the general partner interest of Kinder Morgan Energy Partners, L.P. ("KMP"), one of the largest publicly traded pipeline limited partnerships in America. Combined, KMP and Kinder Morgan constitute the largest midstream energy entity in the United States with an enterprise value of approximately $55 billion. Kinder Morgan is a party to the Merger Agreement and, as discussed herein, aided and abetted the El Paso Board's breaches of fiduciary duty.

34. Defendant Sherpa Merger Sub, Inc. is a Delaware corporation incorporated on October 13, 2011, and is wholly-owned by Kinder Morgan. This entity was created solely for

the purpose of consummating the Proposed Transaction and is named as a defendant because it is a party to the Merger Agreement.

35. Defendant Sherpa Acquisition, LLC is a Delaware limited liability company formed on October 13, 2011, and is wholly-owned by Kinder Morgan. This entity was created solely for the purpose of consummating the Proposed Transaction and is named as a defendant because it is a party to the Merger Agreement.

36. Defendant The Goldman Sachs Group, Inc. is a global investment banking, securities, and investment management company providing a range of financial services to a client base that includes corporations, financial institutions, governments, and high-net-worth individuals. According to the Proxy, GS Group may be deemed to own 134,826,138 shares of El Paso's Class A stock, constituting a 19.1% equity interest, by virtue of the ownership of those shares by various affiliates and subsidiaries of the GS Group. As discussed herein, GS Group aided and abetted the Individual Defendants' breaches of fiduciary duty.

37. Defendant Goldman, Sachs & Co. is a wholly-owned subsidiary of GS Group. Goldman, Sachs & Co. served as a financial advisor to El Paso's Board in connection with both the Spin-Off and the Proposed Transaction. According to the Proxy, Goldman, Sachs & Co., like GS Group, may be deemed to own 134,826,138 shares of El Paso's Class A stock, constituting a 19.1% equity interest, by virtue of its affiliation and management of various entities that own those shares. Two managing directors of Goldman, Sachs & Co., Henry Cornell and Kenneth A. Pontarelli, are members of the Kinder Morgan board of directors.

SUBSTANTIVE ALLEGATIONS

I. El Paso's History

38. Following the discovery of oil in the Permian Basin in the 1920s, Houston attorney Paul Kayser ("Kayser") determined that El Paso, Texas provided a promising market for more cost-effective natural gas. He firmed up supply from several gas wells near Jal, New Mexico, convinced the town's industrial facilities to convert to natural gas, and the El Paso Natural Gas Company was born. Over the next eighty-three years, the Company expanded and grew into one of the country's leading domestic natural gas producers.

39. In 1928, Kayser incorporated the pipeline company in Delaware as "El Paso Natural Gas Company." Soon thereafter, El Paso Natural Gas Company began construction of its first natural gas pipeline, and expanded westward into Arizona, southern New Mexico, and Cananea, Mexico. In 1936, El Paso Natural Gas Company listed its common stock on the NYSE.

40. In 1983, El Paso Natural Gas Company became a wholly-owned subsidiary of Burlington Northern Inc. Burlington Northern subsequently spun off El Paso Natural Gas as part of Burlington Resources Inc. in 1988.

41. In 1992, El Paso Natural Gas was spun off by Burlington Resources and announced an initial public offering of stock.

42. In 1996, the Company acquired the energy business of Tenneco Energy, which extended El Paso's interstate pipeline system from coast-to-coast. El Paso moved its corporate headquarters to Houston, Texas and changed its name to El Paso Energy Corporation to reflect the company's expanding role in the energy industry.

43. In 1999, El Paso merged with Sonat Inc., which had founded its pipeline operations in 1929 as Southern Natural Gas. This merger expanded El Paso's pipeline operations into the southeast United States and initiated the Company's entrance into the E&P business.

44. In 2001, the Company changed its name to "El Paso Corporation" and merged with The Coastal Corporation. The merger brought Colorado Interstate Gas Company and ANR Pipeline Company to the Company's pipeline operations. The merger also significantly increased the size of the Company's E&P business.

45. Today, El Paso is the largest natural gas transmission system in North America.

II. Background Of The Proposed Transaction

A. Richard Kinder Takes Kinder Morgan Private

46. Kinder Morgan was founded in February 1997 when a group of investors led by chairman and CEO Richard D. Kinder and former vice chairman William V. Morgan acquired the general partner of Enron Liquids Pipeline, L.P., a small, publicly-traded pipeline limited partnership.

47. Kinder Morgan began with few assets, 175 employees, and an enterprise value of $325 million. Over the next decade, Kinder Morgan grew into one of the largest publicly-traded limited partnerships in America.

48. In 2006, Richard Kinder spearheaded a $22 billion management-led buyout ("MBO") to take Kinder Morgan private. Co-investors in the MBO included Goldman Sachs Capital Partners (the investment bank's private equity arm), Highstar Capital, and Fayez Sarofim.

49. In connection with the MBO, Goldman Sachs served as financial advisor to the acquisition group and helped arrange roughly $7 billion in financing for the buyout.

50. Morgan Stanley & Co. LLC ("Morgan Stanley") acted as financial advisor to the Special Committee of Kinder Morgan's Board of Directors, and opined as to the financial fairness of the MBO.

B. Kinder Seeks To Expand His Empire Through An Acquisition Of El Paso

51. For years, Richard Kinder wanted to add El Paso to his empire. At various times, Kinder approached El Paso's management about a potential merger, but a transaction of this magnitude was not feasible without any publicly traded Kinder Morgan stock to use as acquisition currency.

52. While Kinder Morgan and El Paso remained in contact over the years, serious talks regarding a merger were put on hold until Kinder Morgan was re-listed on a major securities exchange.

53. To this end, Richard Kinder took Kinder Morgan public in February 2011 in the largest private equity-backed U.S. IPO in history. Kinder Morgan began trading on the NYSE under the ticker symbol "KMI."

54. Goldman Sachs served as the lead underwriter of the IPO of Kinder Morgan. Goldman Sachs Capital Partners sold about $950 million of its shares in the IPO, and upon consummation of the IPO it continued to own roughly 19% of Kinder Morgan's outstanding stock. Moreover, two Goldman Sachs managing directors, Henry Cornell and Kenneth A. Pontarelli (the "Goldman Directors"), now sit on the Kinder Morgan board. A third Kinder Morgan director, Baran Tekkora, was a Vice President at Goldman Sachs from 1995-2006, and

now is a managing director at Riverstone Holdings, which, along with Goldman Sachs, was a member of the acquisition consortium in the MBO.

C. <u>Goldman Advises The Board Regarding A Spin-Off Of The E&P Business</u>

55. While Richard Kinder was in the process of taking Kinder Morgan public, the El Paso Board retained Goldman, Sachs & Co. to begin exploring alternatives to boost the Company's stock price.

56. Beginning in early 2011, El Paso began to consider the Spin-Off. From March 29, 2011 through March 31, 2011, the Board met with Morgan Stanley and Goldman, Sachs & Co. to examine recently announced spin-off transactions, the performance of such spin-offs, and the market's reactions to the announcements. For example, early in 2011, El Paso's rival, Williams Companies Inc. ("Williams"), had announced a split-off of its pipeline and E&P businesses, and a number of other large companies outside the energy sector – including ITT, Fortune Brands, and Sara Lee – had also announced planned breakups.

57. Following these meetings, the Board retained Goldman, Sachs & Co. as El Paso's financial advisor in connection with the potential Spin-Off. El Paso agreed to pay Goldman Sachs a fee of $25 million upon the closing of the Spin-Off.

58. On May 17, 2011, the El Paso Board and management met with Goldman Sachs and Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton"), counsel to El Paso and the Board. At this meeting, representatives from Goldman Sachs presented revised financial analyses of a potential spin-off, and whether El Paso and its E&P division would furnish greater value to shareholders together or as separate companies.

59. A week later, on May 24, 2011, the El Paso Board approved the Spin-Off. The Spin-Off was to occur in a tax-free distribution of shares, with El Paso retaining its pipeline

business, its midstream group, and its interests in El Paso Pipeline Partners. By this time, the Company had paid Goldman Sachs $5 million for the advice it had provided prior to its public announcement of the Spin-Off.

60. Upon publicly announcing the Spin-Off, Foshee touted its benefits, stating:

> We believe that the creation of these two stand-alone public companies will result in ***significant and sustainable value creation***. With the completion of what was an $8 billion pipeline backlog, the elevation of our E&P business to one of the top independent producers, outstanding leadership and employees in each of our businesses, and the accelerated improvement of our balance sheet, we are ready to take this important step. (Emphasis added).

61. Wall Street analysts were extremely bullish on the Spin-Off. In a May 25, 2011 research note, Susquehanna Financial Group LLP ("Susquehanna") noted, "We have been highlighting E&P as a value driver and [El Paso] as our top E&P pick. Freedom from the Corporate parent is likely to unleash new E&P funding tactics (such as offshore asset divestitures) enabling accelerated growth and focus in Texas oil production." Susquehanna added that "we think [El Paso] management is correct in assuming that ***its E&P segment is undervalued in [El Paso] shares***." (Emphasis added). In response to the Spin-Off, Susquehanna increased its price target on El Paso from $24 to $26.

62. In an August 4, 2011 research note, Morgan Stanley, which had met with the Board only a few months earlier to audition for the role of financial advisor, also lauded the Spin-Off. Morgan Stanley stated that the "E&P segment spin-off creates a catalyst to unlock better valuation." Morgan Stanley added that "the E&P segment continues to show more promise" and the "announced break-up will drive increased investor interest in each of the two remaining entities, helping drive significant further valuation uplift." Like Susquehanna,

Morgan Stanley established a base case price target of $26 for El Paso's stock, but Morgan Stanley went one step further, establishing a bull case price target of $32.

63. On August 11, 2011, the Company announced further details of the Spin-Off, including that the new company would be named EP Energy Corp. and would be listed on the NASDAQ Stock Market under the symbol "EPE." At the same time, the E&P unit was also reported to have strengthened, posting profits that had more than doubled since the Company's most recent quarterly results.

D. Kinder Morgan Catches Wind Of The El Paso Spin-Off And Begins Devising A Way To Acquire El Paso

64. Shortly after news of the Spin-Off hit the market, Kinder Morgan renewed its efforts to acquire El Paso.

65. On June 24, 2011, Kinder Morgan representatives met with Kinder Morgan's financial advisor Evercore Group L.L.C. ("Evercore") to hear Evercore's ideas regarding a possible transaction between Kinder Morgan and El Paso. Thereafter, throughout the summer of 2011, representatives of Kinder Morgan, Evercore and Bracewell & Giuliani LLP ("Bracewell"), counsel to Kinder Morgan and its board, continued to analyze and discuss a transaction with El Paso.

66. On August 26, 2011, the Kinder Morgan board discussed with Kinder Morgan management and Evercore the possibility of making an offer of $25.50 per share to acquire El Paso. Recognizing their clear conflict, one of the two Goldman Directors called Richard Kinder to inform him that the Goldman Directors would not be participating in the board discussion given Goldman Sachs's role in advising El Paso in connection with the Spin-Off. While the

Goldman Directors preserved the appearance of propriety by not attending this meeting, they nonetheless received materials prepared by management for the discussion.

67. On August 28, 2011, one of the Goldman Directors informed Kinder Morgan's general counsel that the Goldman Directors would recuse themselves from all of the Kinder Morgan board's El Paso-related discussions. Thereafter, the Goldman Directors supposedly did not participate in any such discussions or meetings, but they did receive the board materials for the October 14, 2011 meeting where the acquisition was ultimately considered for approval.

68. On August 30, 2011, Richard Kinder delivered Kinder Morgan's initial offer to purchase El Paso to Foshee.

E. El Paso, Advised By Goldman Sachs, Jettisons The Spin-Off In Favor Of The Proposed Transaction

69. Up until the end of August 2011, El Paso was, in the words of CEO Foshee, "in position to separate into two outstanding companies by year end. ***We believe that it is a great time to be a shareholder of El Paso***." (emphasis added). As discussed below, those grand Spin-Off plans were shelved once Kinder Morgan arrived on the scene.

70. On August 30, 2011, armed with the necessary acquisition currency in the form of publicly-listed Kinder Morgan stock, Richard Kinder approached his old friend Foshee with an offer to purchase El Paso for $25.50 per share, payable 60% in cash and 40% in Kinder Morgan stock. In extending the offer, Kinder made clear that his company would retain a number of El Paso's executives in important roles within the combined company.

71. Kinder Morgan's acquisition offer created an irreconcilable conflict of interest for El Paso's financial advisor, Goldman Sachs. While Goldman Sachs had recommended the Spin-Off to the Board as a way to maximize shareholder value, a sale of the Company to Kinder

Morgan represented a chance for Goldman Sachs to not only receive a comparable advisory fee, but also to participate on the buy-side of the deal as a 19% equity holder in Kinder Morgan. Goldman Sachs's position as advisor to El Paso's Board in connection with the Spin-Off gave it a unique opportunity to steer El Paso away from the Spin-Off and towards a Kinder Morgan acquisition. It also gave Goldman Sachs perspective and internal valuations of El Paso that were unavailable to other bidders. Goldman Sachs stands to be a roughly 13% owner of the combined company if the Proposed Transaction closes. This significant stake placed its interests firmly in line with the buyer, Kinder Morgan.

72. The El Paso Board recognized this conflict. Incredibly, however, rather than terminate Goldman Sachs's engagement, the Board renewed it. Indeed, in the week following receipt of Kinder Morgan's initial bid on August 30, 2011, El Paso entered into ***another*** engagement letter with Goldman, Sachs & Co., pursuant to which Goldman Sachs agreed to provide El Paso with financial advice and assistance in connection with the possible sale of El Paso, including to Kinder Morgan.

73. Goldman Sachs at the same time agreed to review and analyze El Paso's Spin-Off business plan, purportedly to assist El Paso in its analysis of the Kinder Morgan transaction. For these services, Goldman Sachs would receive a $20 million bounty upon completion of the transaction with Kinder Morgan. These two conflicting engagements effectively tasked Goldman Sachs with advising El Paso as to the relative value of the Proposed Transaction compared to the Spin-Off, despite Goldman Sachs's clear incentive to find the Proposed Transaction superior. As a "precaution" stemming from Goldman Sachs's conflicting roles on both sides of the transaction, Goldman Sachs and El Paso agreed that Goldman Sachs personnel who had previously performed services for Kinder Morgan and its affiliates would not

simultaneously work for Kinder Morgan during the term of the engagement but would remain free to continue to work with El Paso.

74. At some point between August 31, 2011 and September 5, 2011, in a feeble attempt to sanitize the manifest impropriety of Goldman Sachs's advising El Paso in connection with the Proposed Transaction, the Board retained Morgan Stanley to serve as an additional financial advisor and provide it with a fairness opinion.

75. Despite the Board's cognizance of the conflict, it decided to allow Goldman Sachs to continue to provide valuation advice to the Board into October, as El Paso negotiated the price and terms of the Proposed Transaction with Kinder Morgan. Indeed, when El Paso and Kinder Morgan issued the joint press release announcing the Proposed Transaction, they stated that Goldman Sachs had "acted as financial advisor to [El Paso] in connection with its previously announced spin-off transaction and related matters in connection with the [Kinder Morgan] transaction." This continuing advisory role gave Goldman Sachs the platform it needed to steer El Paso away from the Spin-Off and towards a deal with Kinder Morgan. Towards this end, after Kinder Morgan surfaced, Goldman Sachs revised downward its valuation of the E&P assets, making the Spin-Off appear less attractive than it had appeared when it was the only transaction on the table.

76. Meanwhile, even as Goldman Sachs was advising El Paso on the sell-side, Goldman Sachs agreed to vote its entire 19.1% block of stock in the buyer, Kinder Morgan, in favor of the Proposed Transaction.

77. While the Board had spent nine months investigating and pursuing the Spin-Off, it acted much more swiftly with Kinder Morgan, coming to terms on October 16, 2011, a mere six weeks after Kinder approached Foshee. Under the terms of the Proposed Transaction, Kinder

Morgan will acquire El Paso at a nominal purchase price of $26.87 per share based on Kinder Morgan's October 14, 2011 closing price. El Paso's shareholders can elect, subject to proration, to receive their merger consideration in one of three forms:

(a) a Mixed Election option, where each share of El Paso common stock is converted to $14.65 in cash plus a fractional share (0.4187) of Kinder Morgan stock (valued at $11.26 per El Paso share based on Kinder Morgan's October 14, 2011 closing price) and a fractional share of a warrant to purchase Kinder Morgan stock within five years at $40 per share (valued at $0.96 per El Paso share based on Kinder Morgan's October 14 closing price);

(b) a Cash Election option, where each share of El Paso common stock is converted to $25.91 in cash plus a fractional share of a warrant to purchase Kinder Morgan stock within five years at $40 per share (valued at $0.96 per El Paso share based on Kinder Morgan's October 14 closing price); or

(c) a Stock Election option, where each share of El Paso common stock is converted to a fractional share (0.9635) of Kinder Morgan stock (valued at $25.91 per El Paso share based on Kinder Morgan's October 14 closing price) plus a fractional share of a warrant to purchase Kinder Morgan stock within five years at $40 per share (valued at $0.96 per El Paso share based on Kinder Morgan's October 14 closing price).

78. Kinder Morgan has placed a 57% cap on the cash component of the merger consideration, requiring that at least 43% of the consideration be paid in Kinder Morgan common stock. Accordingly, upon closing of the Proposed Transaction, Kinder Morgan's former shareholders are expected to own approximately 68% of the combined company, leaving El Paso shareholders with the remaining 32%. El Paso's former shareholders will also lose

control of the board, as they will have the power to select only two of the eleven Kinder Morgan directors.

79. Special meetings of the shareholders of El Paso and Kinder Morgan are expected to be held in late January 2012 for the purpose of voting on the Proposed Transaction. The boards of both companies have agreed to recommend that the Proposed Transaction be approved by their shareholders. Holders of 75% of the voting power of Kinder Morgan – including Goldman Sachs – have agreed to vote against any alternative transaction or other action that would prevent or materially impede or delay consummation of the Proposed Transaction.

III. The Board Breached Its Fiduciary Duties

A. The Board Relied On Conflicted Advisors

80. Goldman Sachs's service as El Paso's financial advisor as to both the Spin-Off and the Proposed Transaction posed an irreconcilable conflict of interest. Goldman Sachs's 19.1% ownership interest in Kinder Morgan provided the bank with a strong financial incentive to steer the Board away from the Spin-Off and towards a transaction with Kinder Morgan, regardless of the standalone merits of these two competing business strategies. At the same time, as a significant Kinder Morgan shareholder, Goldman Sachs had a strong incentive to make sure that Kinder Morgan did not "overpay" for El Paso. The Board – tasked with the unremitting duty to obtain the maximum price reasonably obtainable for El Paso's shareholders – simply had no business relying upon a financial advisor with such well-known and easily identifiable conflicts of interest. Goldman Sachs's conflicts tainted the entire sales process, preventing the Board from discharging its fiduciary duties to El Paso's shareholders.

81. In addition, Morgan Stanley – the advisor the Board retained in an effort to overcome Goldman Sachs's conflict – itself had a strong financial incentive to recommend

approval of the Proposed Transaction. For its advisory services and rendering of a fairness opinion concerning the Proposed Transaction, Morgan Stanley will receive a fee of $35 million, $28 million of which is payable only if the Proposed Transaction is consummated. The back-loaded, contingent nature of Morgan Stanley's fee unduly incentivizes it to opine that the Proposed Transaction is financially fair.

B. The Board Failed To Shop The Company

82. From the outset, once Kinder Morgan made its offer to purchase El Paso, the Board improperly focused exclusively on a sale to Kinder Morgan and failed to undertake any exploration of interest by other potential purchasers before agreeing to the Proposed Transaction. Indeed, Morgan Stanley, the financial advisor that El Paso hired to render a fairness opinion due to Goldman Sachs's conflicts of interest, expressly stated in that opinion that "we were not authorized to solicit, nor did we solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company or certain of its constituent businesses, nor did we negotiate with any party, other than the Buyer." Proxy at E-3.

83. What scant justification the Company has offered for failing to seek out other bidders is patently inadequate. The "Background of the Transaction" section of the Proxy reveals that, on September 9, 2011, Kinder Morgan conveyed a "threat" that, should El Paso's Board reject a revised proposal to purchase El Paso, Kinder Morgan would release its proposal to El Paso's stockholders and the public. Proxy at 95. In response, on September 16, 2011, the Board determined that "because it was unlikely that a third party would emerge" were it to "publicly disclos[e] Kinder Morgan's proposal or engag[e] with third parties," it was "not worth the risk of losing a potential transaction with Kinder Morgan in order to pursue such actions." *Id.* at 96. This is nonsense for at least two reasons. First, the Proxy articulates no basis for

thinking that shopping the Company would cause Kinder Morgan to retract its offer; in fact, as set forth above, the Proxy shows only that Kinder Morgan threatened to take its offer public, not to yank the offer entirely. Second, the Board's purported fear that shopping the Company was "unlikely" to raise additional third party interest has no basis, and in any event does not excuse the Board from making the effort.

84. Having decided to sell the Company, the Board had an obligation to shareholders to seek the best price reasonably available. It failed to do so.

C. The El Paso Board Agreed To Sell The Company To Kinder Morgan For Inadequate Consideration

85. Having agreed to a change in control transaction, El Paso's Board was required to extract maximum value for the Company's shareholders. The Board failed to discharge this duty, agreeing to a Proposed Transaction that provides grossly inadequate consideration. The agreed-upon consideration is inadequate in light of: (a) the surge in demand for pipelines, (b) the pricing power Kinder Morgan will garner as a result of the Proposed Transaction, (c) the anticipated synergies flowing from the Proposed Transaction, (d) the premiums paid in precedent energy deals, and (e) the uncertain value of the Kinder Morgan equity and warrants being offered to shareholders.

86. Pipeline companies, which get paid for moving natural gas from the field to the market, have been in high demand recently as drillers tap rich new deposits in Pennsylvania, Montana, Utah and other states. According to Dan Spears, a fund manager at Swank Capital LLC in Dallas, more pipelines are needed to move gas to new markets, particularly for power generation, and to accommodate supplies from new gas fields such as the Marcellus Shale and the Eagle Ford Shale. In fact, pipelines are so scant in the Eagle Ford Shale in South Texas that

companies are having to rely on trucks and are building rail terminals to handle the vast field's output. The merger consideration fails to take into account this surge in demand for pipelines.

87. The merger consideration also fails to adequately compensate El Paso shareholders for the dramatic increase in market power that Kinder Morgan will garner as a result of the Proposed Transaction. Following consummation of the deal, Kinder Morgan will likely be able to increase the prices it charges its customers, as recognized by a number of market analysts.

88. Chris Jarvis, president and founder of Caprock Risk Management, stated that "[n]ow that KMP is by far the biggest pipeline distributor of natural gas, that will also give them pricing power over the market, which could lead to price pressure to the upside for natural gas."

89. Robert McFadden, a Houston-based natural gas pipeline consultant, echoed these sentiments, noting that with more pipelines under its control, Kinder Morgan could charge suppliers higher transport fees.

90. Similarly, Ed Hirs, managing director of Hillhouse Resources and a professor of energy economics at the University of Houston, called the deal "a brilliant strategic takeout of a potential competitor." If regulations governing pipelines are weakened, says Hirs, "the Kinder-El Paso combination will have a heckuva competitive advantage and become the monopoly that everyone fears."

91. Additionally, the merger consideration fails to properly account for anticipated synergies flowing from the Proposed Transaction. The combined company anticipates generating $350 million per year in cost savings, or about five percent of the combined companies' EBITDA. As a result of these high synergies, the Proposed Transaction is expected to be immediately accretive to dividend yield for Kinder Morgan holders.

92. Discussing the deal's synergies, Gianna Bern, president of Brookshire Advisory & Research Inc., noted that "the [Proposed Transaction] will establish Kinder Morgan as the pre-eminent pipeline company in the United States and will provide operational savings and increased cash flows."

93. Additionally, the deal price looks inadequate when viewed in light of precedent energy sector transactions. The Proposed Transaction values El Paso at about 13 times the last 12 months' EBITDA of $2.67 billion. That is less than the 14 times EBITDA that Energy Transfer Equity LP ("ETE") agreed in July to pay for Southern Union Co. Tudor Pickering analyst Brad Olsen compared the Proposed Transaction with the ETE/Southern Union deal and noted that "[Kinder Morgan and ETE] have gone out and snagged undervalued pipeline assets."

94. Beyond looking suspect in comparison to the ETE deal, the consideration amounts to a mere fraction of the 27 times EBITDA paid to Kinder Morgan shareholders in the MBO.

95. Finally, part of the consideration offered to shareholders takes the form of Kinder Morgan equity and warrants. The equity component consists of Kinder Morgan Class "P" stock, which has only been public since February 2011 and has a small float. Because Kinder Morgan is a 75% majority-controlled company, it is entirely unclear whether the market price of the stock being offered in the Proposed Transaction accurately reflects the underlying value of Kinder Morgan.

96. Additionally, part of the consideration consists of warrants, which expire in five years and have a strike price of $40 – nearly $12 above Kinder Morgan's current stock price. In pushing these warrants on El Paso's shareholders, Kinder Morgan is effectively forcing them to assume the risk of owning a derivative security with a built-in self-destruct date that may never

be "in the money" or financially worth exercising. Indeed, Morgan Stanley, in its fairness opinion, specifically refused to opine as to "the prices at which the Buyer Common Stock and Buyer Warrants will trade following consummation of the Transactions or at any time." Proxy at E-3.

D. The Board Agreed To A Deal Structure That Cashes El Paso Shareholders Out Of The Majority Of Their Investment

97. Upon consummation of the Proposed Transaction, El Paso's shareholders will hold only a minority interest in the combined company. As set forth above, the caps placed on the cash component of the merger consideration prevent all El Paso shareholders from exiting the company. Those El Paso shareholders who are forced to accept equity will own only a minority stake in the combined company.

E. The El Paso Shareholders Are Subject To The Vagaries Of The Market For Kinder Morgan Shares Until The Deal Closes

98. The structure of the deal consideration poses risks to El Paso shareholders. There is no collar around the stock component of the consideration, thus leaving the ultimate deal price subject to the vagaries of the marketplace. Kinder Morgan's past stock price movements are a source of concern for El Paso shareholders. Since the February IPO at $30 per share, Kinder Morgan's stock price is down over 10%. Indeed, as reflected in the Proxy, Kinder Morgan itself recognizes the volatility of its stock, noting that Class P shareholders "could lose a significant portion of their investments."

99. Moreover, Kinder Morgan has an alarmingly high amount of leverage. Prior to entering the Proposed Transaction, Kinder Morgan's debt was already rated "BB" (*i.e.*, junk) by Standard & Poor's. Kinder Morgan was forced to borrow $11.5 billion from Barclays Capital to

fund the cash portion of the purchase price, threatening to drag down Kinder Morgan's debt rating further.

F. The Board Has Effectively Transferred The Benefits Of The Spin-Off To Kinder Morgan

100. As detailed above, the Spin-Off of El Paso's E&P business was expected to unlock substantial shareholder value. Kinder Morgan has indicated that it plans to spin off or sell the E&P assets itself after the Proposed Transaction closes, to help pay down the debt owed to Barclays. The sale of the highly valuable E&P business, which would have been spun off for the benefit of El Paso's shareholders but for the Proposed Transaction, will effectively subsidize Kinder Morgan's purchase. Because El Paso's shareholders will hold only a minority stake in the combined company, El Paso shareholders will receive only a fraction of the value received in any sale of the E&P business – value they would have received *in toto* had the Board not decided to jettison the Spin-Off in favor of the Proposed Transaction.

G. The Participation Of Interested Board Members Tainted The Sales Process

101. A number of El Paso's Board members stand to gain substantial personal benefits in connection with the Proposed Transaction that they would not receive under the Spin-Off. Notably, El Paso's Chairman, President, and CEO, Foshee—who has no plans to remain with the combined company—stands to receive an exit package under the Proposed Transaction that is worth a whopping $95 million. The *Wall Street Journal* reports that the $95 million severance package "would be one of the largest ever for a CEO following a merger." Were the Spin-Off pursued, however, Foshee would not receive this lucrative payout. Given Foshee's substantial incentive to prefer the Proposed Transaction to the Spin-Off, he should have recused himself from all negotiations with Kinder Morgan. He did not. To the contrary, the Board allowed

Foshee to serve as the key point of contact with Kinder Morgan. Foshee's participation in the negotiations tainted the entire sales process.

102. In addition to Foshee's clear conflict, each remaining Board member stands to receive substantial financial benefits under the Proposed Transaction that they would not have received were the Spin-Off pursued. The Company's Form 14A filed on April 5, 2011 in connection with its 2011 Annual Meeting of Stockholders reveals that each of these Board members holds a substantial number of deferred shares in El Paso that they will be entitled to receive only when they "cease to be a director of El Paso." Upon consummation of the Proposed Transaction the Board members will cease to be directors of El Paso, and stand to receive the value of their deferred shares, ranging from $450,000 to $3.8 million.

H. <u>The Board Failed To Shop The Company</u>

103. From the outset, once Kinder Morgan made its offer to purchase El Paso, the Board improperly focused exclusively on a sale to Kinder Morgan and failed to undertake any exploration of interest by other potential purchasers before agreeing to the Proposed Transaction. Indeed, Morgan Stanley, the financial advisor that El Paso hired to render a fairness opinion due to Goldman Sachs's manifest conflicts of interest, expressly stated in that opinion that "we were not authorized to solicit, nor did we solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company or certain of its constituent businesses, nor did we negotiate with any party, other than the Buyer." (Proxy at E-3.)

104. What scant justification the Company has offered for failing to seek out other bidders is patently inadequate. The "Background of the Transaction" section of the Proxy reveals that, on September 9, 2011, Kinder Morgan conveyed a "threat" that, should El Paso's

Board reject a revised proposal to purchase El Paso, Kinder Morgan would release its proposal to El Paso's stockholders and the public. (Proxy at 95.) In response, on September 16, 2011, the Board determined that "because it was unlikely that a third party would emerge" were it to "publicly disclos[e] Kinder Morgan's proposal or engag[e] with third parties," it was "not worth the risk of losing a potential transaction with Kinder Morgan in order to pursue such actions." (*Id.* at 96.) This is nonsense for at least two reasons. First, the Proxy articulates no basis for thinking that shopping the Company would cause Kinder Morgan to retract its offer; in fact, as set forth above, the Proxy shows only that Kinder Morgan threatened to take its offer public, not to yank the offer entirely. Second, the Board's purported fear that shopping the Company was "unlikely" to raise additional third party interest has no basis, and in any event does not excuse the Board from making the effort.

105. Having decided to sell the Company, the Board had an obligation to shareholders to seek the best price reasonably available. It failed to do so.

I. <u>The Merger Agreement Imposes Impermissible Deal Protections</u>

106. Having failed to maximize shareholder value in agreeing to the Proposed Transaction, the Board has taken unreasonable steps to virtually guarantee consummation of a deal with Kinder Morgan to the detriment of El Paso's shareholders.

1. <u>The Merger Agreement Lacks A Go-Shop Provision</u>

107. The El Paso Board failed to negotiate for a "Go-Shop" provision, despite having negotiated exclusively with Kinder Morgan. While not a perfect substitute for a pre-signing auction, a "Go-Shop" would have at least allowed the Board to canvass the market to determine whether potential suitors were interested in making a competing bid. The failure to insist upon a Go-Shop is inexcusable under these circumstances.

2. **The Merger Agreement Prohibits The Board From Shopping The Company**

108. Compounding its failure to negotiate a "Go-Shop," the El Paso Board agreed to a prohibitive "no solicitation" clause (the "No-Shop") that further limits the Board's ability to entertain superior strategic alternatives and maximize shareholder value. The No-Shop, found in Section 5.3 of the Merger Agreement, severely restricts the Board's ability to enter into discussions and negotiations involving a competing takeover proposal.

109. Section 5.3(a) of the Merger Agreement provides that the Company shall immediately cease any discussions or negotiations with any parties that may be ongoing with respect to a takeover proposal, and also prohibits the Company and its representatives from soliciting, knowingly facilitating (including by furnishing information) or encouraging competing bids for the Company.

110. Further, Section 5.3(c) of the Merger Agreement provides that the Company must promptly notify Kinder Morgan of its receipt of any competing takeover proposals.

3. **The Merger Agreement Grants Kinder Morgan The Right To Match Any Competing Offer**

111. The El Paso Board also granted Kinder Morgan a "Matching Right" in the Merger Agreement that provides Kinder Morgan an opportunity to revise its proposal or persuade the El Paso Board not to change its recommendation on the Proposed Transaction in the face of a proposal from a third-party suitor.

112. Section 5.4(d) of the Merger Agreement provides that El Paso shall give Kinder Morgan five business days to match any superior competing offer that El Paso receives. Specifically, El Paso is required to provide prior written notice to Kinder Morgan should either the Board intend to change its recommendation or the Company receive an unsolicited superior

proposal and intend to terminate the Merger Agreement. This permits Kinder Morgan to adjust the terms of the Proposed Transaction so that Kinder Morgan is able to match the terms of any competing offer, prior to the Board approving or recommending any such superior offer or terminating the Merger Agreement.

113. The Matching Right dissuades other interested parties from making an offer for the Company by providing Kinder Morgan the opportunity to make repeated matching bids to counter any competing offers. Due to the complete absence of a pre-signing market check, no justification exists for the inclusion of the Matching Right and other bid advantages in the Merger Agreement.

4. The Merger Agreement Imposes An Exorbitant Termination Fee

114. The El Paso Board further reduced the possibility of maximizing shareholder value by agreeing to a punitive $650 million Termination Fee. Under Section 7.3 of the Merger Agreement, the Termination Fee is payable if, among other situations, the El Paso Board terminates the Merger Agreement and the Company consummates a transaction with another interested party within twelve months after the date of such termination. Thus, the $650 million Termination Fee will be payable by any potential third-party buyer, driving up the cost of the acquisition and potentially transferring money to Kinder Morgan that otherwise could have been paid to El Paso shareholders as additional merger consideration.

115. The $650 million Termination Fee is unjustifiable by any measure. A termination fee is supposed to serve merely as compensation for an acquirer's investment in pursuing a deal. It is inconceivable that Kinder Morgan will incur transaction costs related to the Proposed Transaction anywhere close to $650 million. The Termination Fee represents 85.8% of El Paso's 2010 net income.

5. **<u>The Merger Agreement Unfairly Limits The Board's "Fiduciary Out"</u>**

116. The Merger Agreement effectively commits the Board to the Proposed Transaction even should a materially more valuable offer emerge to purchase El Paso's E&P assets, or to otherwise acquire less than 50% of El Paso. Sections 5.3(d) and (e) of the Merger Agreement permit the Board to withdraw, modify or qualify its recommendation to El Paso stockholders to vote in favor of the Merger Agreement only in two very limited circumstances: (1) when the Company receives a *bona fide* competing proposal and the Board concludes in good faith, after consultation with outside counsel and financial advisors, that the proposal is or may lead to a "Superior Proposal" (which, by definition, must be a proposal to acquire more than 50% of El Paso's securities or equity) and that the Board's fiduciary duties require it to change its recommendation; or (2) when an "Intervening Event" occurs and the Board, after consultation with outside counsel and financial advisors, concludes that its fiduciary duties require it to change its recommendation. The Merger Agreement defines "Intervening Event" as "a material event or circumstances that arises or occurs after the date of [the Merger Agreement] and was not, prior to the date of the [Merger Agreement], reasonably foreseeable by Company Board," but further states that "in no event shall the receipt, existence or terms of a Takeover Proposal or any matter relating thereto or consequences thereof constitute an Intervening Event." The Merger Agreement defines a Takeover Proposal to be a bid by a party other than Kinder Morgan for 20% or more of the assets or equity of El Paso.

117. Thus, under Sections 5.3(d) and (e), the Board can change its recommendation under certain circumstances in response to a Superior Proposal for more than 50% of the Company, but under no circumstances in response to a Takeover Proposal for between 20% and 50% of the Company. Notably, these provisions would prevent El Paso's Board from

considering a competing offer to buy the Company's E&P business, which constitutes between 20% and 50% of the Company's assets, no matter how favorable that competing offer is to El Paso. In view of the Board's prior touting of the Spin-Off's value to shareholders, this is an unreasonable limitation designed to prevent the Board from pursuing a potentially more fruitful strategy involving a sale of the E&P division to a third party other than Kinder Morgan.

118. By acceding to the foregoing, the Board has tied its own hands and deterred other potential bidders. These devices prevent the Individual Defendants from properly exercising their fiduciary duties to obtain the best available strategic alternative—and resulting maximum value—for El Paso's shareholders.

IV. The Proxy Fails To Disclose Material Information

119. In seeking shareholder approval for the Proposed Transaction, El Paso's Board is required to disclose all information that a reasonable shareholder would consider important in deciding how to vote. In breach of this duty, the Board failed to provide all material information in the Proxy. Were El Paso's shareholders forced to vote on the Proposed Transaction pursuant to the Proxy in its current form, they would suffer the irreparable harm of being forced to vote in the absence of complete information.

120. Some examples of the Proxy's myriad deficiencies are described below.

A. The Proxy Fails To Disclose Material Information Concerning The Value The Board Ascribed To The Proposed Spin-Off And How This Value Compared To The Proposed Transaction

121. The Proxy makes clear that the Board continued to analyze the proposed Spin-Off during its negotiations with Kinder Morgan. *See, e.g.*, Proxy at 96. The Proxy fails, however, to disclose whether the Board ever conducted a side-by-side comparison of these two distinct

business strategies or otherwise attempted to analyze whether El Paso's shareholders would be more likely to benefit from a Spin-Off than from the Proposed Transaction.

122. The Proxy further discloses that, on October 6, 2011 – just over a week before the Board approved the Proposed Transaction – Goldman Sachs provided the Board with a "revised financial analysis" of the Spin-Off. Proxy at 98. The Proxy omits any information concerning this "revised analysis" or what value was projected to inure to shareholders from the Spin-Off. Further, the Proxy contains no information concerning how this analysis compared to previous analyses of the Spin-Off provided by Goldman Sachs – including whether the revised analysis placed a higher or lower value on the Spin-Off than Goldman Sachs had previously articulated to the Board, or the factors accounting for any such changes in the valuation of the Spin-Off. Absent such information, El Paso's shareholders cannot make an informed decision as to whether their interests are better served by approving the Proposed Transaction, or by rejecting it so the Company can proceed with the Spin-Off.

B. The Proxy Fails To Disclose Material Information Relating To The Financial Fairness Of The Proposed Transaction

123. The Proxy also fails to fully and accurately disclose material facts critical to the total mix of information available to the Company's shareholders concerning the financial fairness of the Proposed Transaction. Specifically, the Proxy contains numerous materially misleading statements and omissions concerning the financial analyses underlying the fairness opinions rendered by El Paso's financial advisor, Morgan Stanley.

124. Under the Proposed Transaction, each El Paso shareholder – regardless of whether it makes a Mixed Election, a Cash Election, or a Stock Election – will receive as part of its consideration a fractional share of a warrant to purchase Kinder Morgan stock within five

years at $40.00 per share. The Proxy fails to disclose material information concerning Morgan Stanley's valuation of these warrants, including:

(a) whether Morgan Stanley considered the historical stock price volatilities of Kinder Morgan Energy Partners, L.P. ("KMP"), Kinder Morgan Management, LLC ("KMR"), El Paso, or El Paso Pipeline Partners, L.P. ("EPB") in determining the volatility range to use in the Black-Scholes option model. Such information is critical, as Kinder Morgan derives (or will derive) its value from these entities, such that the volatility of the Kinder Morgan warrants will be directly related to the volatilities of these companies;

(b) the specific factors considered, or analyses employed, by Morgan Stanley to estimate a value of $0.96 from its wide estimated value range of $0.33 to $2.02 per share of El Paso common stock;

(c) what, if any, consideration Morgan Stanley gave to the risks associated with the warrants, including that the market for the warrants may be limited, volatile or sporadic; or if it did not give such consideration, why it did not; and

(d) the reason(s) why the Board initially demanded "dividend protection" for the warrants, but later abandoned that demand.

125. The Proxy fails to disclose material information concerning Morgan Stanley's "*Historical Share Price Analysis*." For example, the Proxy fails to explain:

(a) what, if any, analysis Morgan Stanley performed regarding the trend in the movement of the Kinder Morgan and El Paso stock prices during 2011; or if it did not perform such analysis, why it did not; and

(b) what, if any, analysis Morgan Stanley performed regarding the impact that the presence of a controlling shareholder may have on the historical, present or future trading price of Kinder Morgan, KMP or KMR.

126. The Proxy fails to disclose material information concerning Morgan Stanley's "*Equity Research Future Price Targets*." For example, the Proxy fails to:

(a) provide the factors considered, inputs used, and calculation of the 10.0% and 7.5% discount rates for El Paso and Kinder Morgan, respectively;

(b) identify the "discount rate" as specifically the cost of equity or the cost of capital (*i.e.*, debt and equity taken together); and

(c) explain or justify Morgan Stanley's use of such disparate discount rates for Kinder Morgan and El Paso.

127. The Proxy fails to provide material information concerning Morgan Stanley's "*Comparable Company Sum-of-the-Parts Analysis*" pertaining to El Paso. For example, the Proxy fails to:

(a) describe numerous important details and calculations, including (capitalized terms are as defined in the Proxy):

(i) the calculation of Aggregate Value;

(ii) the calculation of Disaggregated Value;

(iii) the calculation of Adjusted Aggregate Value;

(iv) the calculation of Aggregated EBITDA;

(v) the calculation of Disaggregate EBITDA; and

(vi) for both the Pipeline Segment and the E&P Segment, a table showing a comparison of financial data for El Paso to the financial data of the selected companies, showing, for example:

- historical and projected future revenue, EBITDA, net income;
- cash, total assets, debt, shareholders' equity;
- various metrics regarding proved and unproved reserves; (for the E&P segment)
- various metrics regarding natural gas production (E&P segment) and transmission (Pipeline segment);
- liquidity ratios, profitability ratios, activity ratios, leverage ratios; and
- the calculation of the multiples for each of the selected companies.

(b) explain why Morgan Stanley believed it was appropriate to apply three different ranges of EBITDA multiples, including 9.5x to 11.0x, 10.0x to 12.0x and 12.0x to 14.0x, in valuing El Paso; and

(c) disclose whether Morgan Stanley considered applying a control premium in performing its comparable company sum-of-the-parts analysis, or the reasoning and analysis Morgan Stanley used in deciding not to apply a control premium, if such was the case.

128. The Proxy also fails to disclose material information concerning Morgan Stanley's "*Comparable Company Sum-of-the-Parts Analysis*" pertaining to Kinder Morgan. For example, the Proxy fails to:

(a) explain why Morgan Stanley did not estimate the value per share of Kinder Morgan using an aggregated, as opposed to disaggregated approach;

(b) disclose the companies selected by Morgan Stanley for the "peer group" used to analyze Kinder Morgan;

(c) disclose a table showing a comparison of the financial data for Kinder Morgan to the financial data for selected (unnamed) companies, showing, for example:

(i) historical and projected future revenue, EBITDA, net income;

(ii) cash, total assets, debt, shareholders' equity;

(iii) various metrics regarding proved and unproved reserves;

(iv) various metrics regarding natural gas production and transmission;

(v) liquidity ratios, profitability ratios, activity ratios, leverage ratios; and

(vi) the individually observed multiples for each of the selected companies;

(d) disclose the factors considered, and calculations made, by Morgan Stanley in selecting the "representative range of financial multiples";

(e) disclose, in calculating the value of Kinder Morgan's after-tax General Partner cash flows, the names of the comparable companies; the criteria considered and process used to select them; the definition of the term "yield"; the calculation of the yield of each comparable company; the factors considered and calculations made by Morgan Stanley to determine the range of 5.5% to 4.5%; and

(f) disclose, in estimating General Partner cash flows and after-tax distributions from NGPL, whether Morgan Stanley considered any other source than estimates of equity research analysts for cash flow and distribution data (for example, management projections).

129. The Proxy fails to disclose material information concerning Morgan Stanley's "*Comparable Company Sum-of-the-Parts Analysis*." For example, the Proxy fails to:

(a) provide an explanation or justification for Morgan Stanley's use of different yield ranges for Kinder Morgan (4%-3%) and El Paso (5.5%-4.5%);

(b) disclose whether Morgan Stanley considered, or performed any analysis related to, applying a control premium in estimating the value of El Paso under its comparable company sum-of-the-parts analysis; and

(c) disclose how, if at all, Morgan Stanley considered the value of El Paso's tax assets (*i.e.*, NOLs) in performing its analysis.

130. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Future Equity Value Analysis*" of El Paso. For example, the Proxy fails to:

(a) disclose the financial data which was prepared by El Paso's management and provided to Morgan Stanley;

(b) disclose the financial data which Morgan Stanley sourced from equity research analysts;

(c) disclose various inputs and assumptions used to determine, the calculation of, and the selection of ranges related to:

(i) the "assumed Yield of 3.75% to 5.00%" and "discount rate of 8.0% to 9.0%" (for the Pipeline Segment); and

(ii) the "discount rate of 10.5% to 11.5%," the "assumed next twelve months EBITDA multiple of 3.5x to 4.5x," and the "estimated net debt" (for the E&P segment);

(d) disclose the reasoning or explanation for Morgan Stanley's use of different methods for the Pipeline Segment vs. the E&P segment;

(e) disclose the individual calculated values for the Pipeline and E&P segments;

(f) disclose how, if at all, the value of El Paso's tax assets was considered in this analysis; and

(g) identify whether the "discount rate" is the cost of equity or the cost of capital (*i.e.*, debt and equity taken together).

131. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Future Equity Value Analysis*" of Kinder Morgan. For example, the Proxy fails to:

(a) disclose the financial data which was prepared by Kinder Morgan management and provided to Morgan Stanley, or the financial data which Morgan Stanley sourced from equity research analysts.

(b) disclose the inputs and assumptions used to determine, the calculation of, and the selection of ranges related to the "assumed Yield of 4.5% to 5.5%" or the "discount rate of 7.0% to 8.0%"; and

(c) identify whether the "discount rate" is the cost of equity or the cost of capital (*i.e.*, debt and equity taken together).

132. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Cash Flow Analysis*" using estimates by El Paso's management. For example, the Proxy generally fails to:

(a) disclose the financial data which was prepared by El Paso's management and provided to Morgan Stanley or the financial data which Morgan Stanley sourced from equity research analysts;

(b) depict the actual discounted cash flow analysis, including projected amounts for each income statement line item for each future year and the terminal period, and the calculation of free cash flow in each period;

(c) disclose the different values for each of the segments (*i.e.*, the values for the Pipeline Segment under the aggregated and disaggregated approaches; the value of the E&P Segment; the value for the NOLs); and

(d) disclose the calculation of any amount related to either of the ranges ($22.13 to $30.37 and $18.43 to $26.21), as well as the factors considered or calculations made by Morgan Stanley in selecting the ranges.

133. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Cash Flow Analysis*" of the value of El Paso's Pipeline Segment using estimates of El Paso's management. For example, the Proxy fails to:

(a) disclose, in describing Morgan Stanley's "aggregated approach," the names of the comparable companies selected; the criteria considered and process used to select them; the calculation of the EBITDA of each comparable company; the factors considered and calculations made by Morgan Stanley in selecting the EBITDA exit multiple of 9.25x to 10.75x multiple; the calculations of, or source(s) of, the estimates of the 5.0% to 6.5% weighted average cost of capital for the Pipeline Segment; or the factors considered and calculations made by Morgan Stanley to determine the range of 5.0% to 6.5%;

(b) disclose, in describing Morgan Stanley's "disaggregated approach" regarding the yield of 5.25% to 6.25%, the names of the comparable companies; the criteria considered and process used to select them the calculation of the yield of each comparable company; or the factors considered and calculations made by Morgan Stanley to determine the range of 5.25% to 6.25%; and

(c) disclose, in describing Morgan Stanley's "disaggregated approach" regarding the discount rate of 9.5% to 10.5%, the names of the comparable companies; the criteria considered and process used to select them; the calculations of, or source(s) of, the estimates of the costs of equity of EPB and the comparable companies; or the factors considered and calculations made by Morgan Stanley to determine the range of 9.5% to 10.5%.

134. Regarding Morgan Stanley's "*Discounted Cash Flow Analysis*" of the value of El Paso's E&P segment using estimates of El Paso's management, the Proxy fails to disclose:

(a) with respect to the exit EBITDA multiple of 4.75x to 5.50x, the names of the comparable companies; the criteria considered and process used to select them; the calculation of the multiple for each comparable company; or the factors considered and calculations made by Morgan Stanley to determine the range of 4.75x to 5.50x; and

(b) with respect to the discount rate of 8.0% to 9.5%, the calculations of, or source(s) of, the estimates of the weighted average cost of capital for the E&P Segment and the factors considered and calculations made by Morgan Stanley to determine the range of 8.0% to 9.5%.

135. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Cash Flow Analysis*" of the value of El Paso's NOLs using estimates of El Paso's management. For example, the Proxy fails to disclose, regarding the discount rate of 6.5% to

8.0%, the calculations of, or source(s) of, the estimates of the weighted average cost of capital for El Paso and the factors considered and calculations made by Morgan Stanley to determine the range of 6.5% to 8.0%.

136. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Cash Flow Analysis*" of the value of El Paso's common stock using estimates of equity research analysts. For example, the Proxy fails to disclose:

(a) with respect to the exit EBITDA multiple of 7.0x to 8.5x, the names of the comparable companies; the criteria considered and process used to select them; the calculation of the multiple for each comparable company; or the factors considered and calculations made by Morgan Stanley to determine the range of 7.0x to 8.5x; and

(b) with respect to the discount rate of 6.5 % to 8.0%, the names of the comparable companies; the criteria considered and process used to select them; the calculations of, or source(s) of, the estimates of the weighted average cost of capital for El Paso; or the factors considered and calculations made by Morgan Stanley to determine the range of 6.5% to 8.0%.

137. The Proxy fails to disclose material information concerning Morgan Stanley's "*Discounted Cash Flow Analysis*" of the value of Kinder Morgan Class P common stock using estimates of Kinder Morgan's management and equity research analysts. For example, the Proxy fails to:

(a) disclose the estimates which were prepared by Kinder Morgan's management and provided to Morgan Stanley;

(b) disclose whether the "projections" were contained in the estimates prepared by Kinder Morgan management, or if Morgan Stanley or another party created the projections; and if the latter, the Proxy also fails to disclose the assumptions, methods, inputs and calculations of the projections used by that party in creating the projections;

(c) disclose the estimates which Morgan Stanley sourced from equity research analysts;

(d) depict the actual discounted cash flow analysis, including projected amounts for each income statement line item for each future year and the terminal period, and the calculation of free cash flow in each period;

(e) disclose, with respect to the yield of 4.0% to 5.0%, the names of the comparable companies; the criteria considered and process used to select them; the calculation of the yield of each comparable company; the calculation of the yield for Kinder Morgan; or the factors considered and calculations made by Morgan Stanley to determine the range of 4.0% to 5.0%;

(f) disclose, with respect to the discount rate of 7.0% to 8.0%, the calculations of, or source(s) of, the estimates of the cost of equity for Kinder Morgan and the factors considered and calculations made by Morgan Stanley to determine the range of 7.0% to 8.0%; and

(g) disclose the calculation of any amount related to either of the ranges ($29.74 to $37.11 and $27.92 to $34.79), or the factors considered or calculations made by Morgan Stanley in selecting the ranges.

138. The Proxy fails to disclose material information concerning Morgan Stanley's "*Precedent Transaction Analysis*." For example, the Proxy fails to:

(a) disclose any data regarding the identities of the acquiring companies; the nature of operations for the acquired or acquiring companies; any data regarding the historical financial statements (or projected future results) of the acquired or acquiring companies; the terms of the transactions, including the amount and type of consideration paid;

(b) disclose the date of any of the transactions;

(c) disclose the factors or criteria Morgan Stanley considered, or calculations it employed, in selecting the transactions;

(d) disclose the individual values Morgan Stanley determined for the Pipeline and E&P Segments, and how it combined or reconciled these values in calculating the implied value per share range of $20.21 to $28.60; and

(e) disclose, with respect to Morgan Stanley's precedent transaction analysis of El Paso's Pipeline Segment:

(i) the number of acquired companies for which "next twelve months EBITDA" amounts were available;

(ii) the factors or criteria Morgan Stanley considered, or calculations it employed, in selecting the "representative range" of 11.0x to 12.0x times next twelve months EBITDA;

(iii) why Morgan Stanley applied a "range of premia of 0% to 30%" to the market price of the units of EPB held by El Paso, including the factors Morgan Stanley considered and its rationale for applying such premia;

(iv) the nature of the premia (what they are or what they represent); the source(s) of, or calculations of, the premia; the factors considered and calculations made by Morgan Stanley in selecting the range of 0% to 30%;

(v) why Morgan Stanley applied a "range of multiples of 30x to 50x," including the factors Morgan Stanley considered and its rationale for applying such multiple; and

(vi) the nature of the multiples (what they are or what they represent); the source(s) of, or calculations of, the multiples; the factors considered and calculations made by Morgan Stanley in selecting the range of 30x to 50x;

(f) disclose, with respect to Morgan Stanley's precedent transaction analysis of El Paso's E&P segment:

(i) why Morgan Stanley utilized the *next* twelve months EBITDA multiples in its analysis of the Pipeline Segment but contrastingly utilized the *last* twelve months EBITDA multiples in its analysis of the E&P Segment; and

(ii) the factors or criteria Morgan Stanley considered, or calculations it employed, in selecting the "representative range" of 5.5x to 7.0x times last twelve months EBITDA; and

(g) disclose, with respect to Morgan Stanley's historical premia analysis:

(i) the specific data Morgan Stanley sourced from Thomson Reuters regarding the "precedent transactions" including, for example, the identities of the acquired or acquiring companies; the nature of operations and the industry of the acquired or acquiring companies; any data regarding the historical financial statements (or projected future results) of the acquired or acquiring companies; the terms of the transactions, including the amount and type of consideration paid;

(ii) why Morgan Stanley believed it was appropriate to consider transactions from three different time periods stretching back 20 years; and

(iii) the factors or criteria Morgan Stanley considered, or calculations it employed, in selecting the "representative range" of implied premia of 30% to 40%.

139. The Proxy fails to explain why Morgan Stanley's "Implied Offer Value Analysis" presents nine indications of value, including "Precedent Transactions Premium Paid Analysis" and "Precedent Transactions Analysis," whereas Morgan Stanley's Relative Implied Exchange Ratio Analysis presents only seven indications of value, and fails to include a "Precedent Transactions Premium Paid Analysis" or "Precedent Transactions Analysis."

C. The Proxy Fails To Disclose Material Information Concerning Goldman Sachs's Conflict Of Interest

140. The Board was aware of Goldman Sachs's ownership interest in Kinder Morgan from the outset of the discussions concerning the Proposed Transaction. While Kinder Morgan first submitted an offer for El Paso on August 30, 2011, the Proxy makes clear that the Board continued to receive "tactical advice" from Goldman Sachs regarding the Kinder Morgan proposal until at least September 12, 2011. *See* Proxy at 95 ("[A]fter September 12, 2011, El Paso's board and management relied only on Morgan Stanley for tactical advice in connection with the Kinder Morgan proposal and informed Goldman Sachs that . . . going forward El Paso would not involve Goldman Sachs in any negotiations with Kinder Morgan nor would El Paso be requesting any tactical advice from Goldman Sachs or a fairness opinion from Goldman Sachs in connection with the Kinder Morgan transaction.").

141. The Proxy further states that during a September 5, 2011 meeting, the Board was provided with details about, and discussed, Goldman Sachs's relationship with and ownership interest in Kinder Morgan. Proxy at 94. The Proxy states that the Board nonetheless determined that it was beneficial to continue to receive valuation advice from Goldman Sachs so that the Board could be in the best position to compare all alternatives, specifically including the Spin-Off and related matters. *Id.*

142. The Proxy fails to disclose material information concerning Goldman Sachs's recognized conflict and the steps taken by the Board in light of this conflict. Among other things, the Proxy fails to disclose: (1) the reasons the Board believed it was appropriate to continue receiving advice from Goldman Sachs relating to the Spin-Off at the time the Board was negotiating the Proposed Transaction in light of Goldman Sachs's clear incentive to steer the Board towards the Proposed Transaction over the Spin-Off; (2) the nature of the advice the Board received from Goldman Sachs concerning a potential Kinder Morgan transaction between August 30, 2011 and September 12, 2011; (3) what the term "tactical advice in connection with the Kinder Morgan proposal" means, and the extent to which the Board continued after September 12, 2011 to receive advice – whether deemed "tactical" or "non-tactical" – from Goldman Sachs concerning a possible Kinder Morgan transaction; (4) whether the Board considered retaining a non-conflicted banker to advise it in connection with the proposed Spin-Off; and (5) whether Goldman Sachs, in connection with its engagement to analyze the Spin-Off, was asked to or did provide to the Board any analysis of the value of the Spin-Off vis-à-vis the Proposed Transaction.

143. Further, while the Proxy indicates that El Paso continued to work on the Spin-Off through October 16, 2011, it contains no information regarding Goldman Sachs's role regarding the Spin-Off after October 6, 2011.

D. The Proxy Fails To Disclose Material Information Concerning The Negotiation Of The Proposed Transaction

144. As described above, El Paso's Board conducted a defective sales process, impermissibly negotiating with Kinder Morgan alone. According to the Proxy , the Board discussed whether to approach third parties about a potential transaction with El Paso, but

concluded that "because it was unlikely that a third party would emerge from taking such actions, it was not worth the risk of losing a potential transaction with Kinder Morgan in order to pursue such actions." Proxy at 94, 96. The Proxy does not disclose the basis for the Board's conclusion.

145. Further, the Proxy makes clear that Foshee was the lead negotiator for El Paso with respect to the Proposed Transaction. *See, e.g.*, Proxy at 94-95 (Foshee met with Kinder to discuss Kinder Morgan proposal "on behalf of the board of directors of El Paso"); Proxy at 95 (El Paso's Board met on September 9, 2011 to "receive an update on the status of discussions between Messrs. Kinder and Foshee"). The Proxy, however, fails to disclose whether the Board considered the propriety of having Foshee negotiate directly with Kinder, given Foshee's strong personal interest to prefer the Proposed Transaction over the Spin-Off.

146. Additionally, the Proxy provides no detail concerning the negotiation of the terms of the Merger Agreement, including the Termination Fee, the No-Shop provision, the Matching Right provision, and the restrictions on the Board's fiduciary out under Section 5.3 of the Merger Agreement. The Proxy does not disclose whether the Board or its advisors made any effort to negotiate for the elimination of any of those provisions. Nor does the Proxy disclose whether a Go-Shop period was considered, and if not, why not.

147. In connection with the negotiation of the Proposed Transaction, El Paso and Kinder Morgan also agreed to a mutual "standstill agreement" effective for six months. Proxy at 97. The Proxy fails to disclose why El Paso was willing to agree to a standstill agreement, given its failure to conduct a market check by soliciting bids from other potential buyers, and whether the terms of the standstill agreement impede El Paso's ability to pursue an asset sale or spin-off

of E&P, which El Paso was continuing to consider at the time it entered into the standstill agreement.

CLASS ACTION ALLEGATIONS

148. Plaintiffs bring this action pursuant to Delaware Court of Chancery Rule 23, individually and on behalf of all other holders of El Paso's common stock (except El Paso, Defendants, and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein.

149. This action is properly maintainable as a class action.

150. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of shareholders who are scattered throughout the United States. As of October 13, 2011, there were approximately 771,852,913 shares of El Paso's common stock outstanding.

151. There are questions of law and fact common to the Class including, *inter alia*, whether:

(a) The Individual Defendants breached their fiduciary duties by agreeing to the Proposed Transaction;

(b) The Individual Defendants breached their fiduciary duties by disseminating a misleading Proxy that fails to disclose material information;

(c) Goldman Sachs, as financial advisor to the El Paso Board, aided and abetted the Board's breaches of fiduciary duty, by steering the process towards a transaction that uniquely suited the investment bank's interests;

(d) The Kinder Morgan Defendants aided and abetted the Board's breaches of fiduciary duty;

(e) Plaintiffs and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages; and

(f) Plaintiffs and the other members of the Class will be damaged irreparably by Defendants' conduct.

152. Plaintiffs are committed to prosecuting the action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

153. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class, which would as a practical matter be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

154. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class, as a whole, is appropriate.

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS

155. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

156. The Individual Defendants, as El Paso directors, owe the Class the utmost fiduciary duties of due care, good faith, candor and loyalty. By virtue of their positions as directors and/or officers of El Paso and their exercise of control over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Individual Defendant was required to: (a) use their ability to control and manage El Paso in a fair, just and equitable manner; and (b) act in furtherance of the best interests of El Paso and its shareholders and not their own.

157. The Individual Defendants failed to fulfill their fiduciary duties in connection with the Proposed Transaction. Among other things, the Individual Defendants agreed to a sale of the Company for inadequate consideration, without conducting any auction process or pre-signing market check; agreed to onerous deal protections that preclude any meaningful post-signing market check and unreasonably restrict the Board's ability to fulfill its fiduciary duties; and relied upon advice from Goldman Sachs despite knowing of Goldman Sachs's inherent conflict of interest and financial incentive to favor the Proposed Transaction over the Spin-Off.

158. As a result of the El Paso directors' breaches of fiduciary duty in agreeing to the Proposed Transaction, the Class will be harmed by receiving the inferior consideration offered in the Proposed Transaction.

159. Furthermore, the deal protections adopted by the Individual Defendants and contained in the Merger Agreement impose an excessive and disproportionate impediment to the Board's ability to entertain any other potentially superior alternative offer. The El Paso Board's agreement to the No-Shop, Matching Right and the Termination Fee, and to restrict its own ability to respond to a competing bid for 50% of less of El Paso's assets or securities, constitute a breach of fiduciary duty, especially in light of the Individual Defendants' failure to obtain additional consideration in exchange for these valuable concessions.

160. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

BREACH OF FIDUCIARY DUTY OF CANDOR AGAINST THE INDIVIDUAL DEFENDANTS

161. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

162. The Individual Defendants, as El Paso directors, owe the Class a fiduciary duty of candor when seeking the Class members' approval of the Proposed Transaction.

163. The Individual Defendants failed to fulfill their fiduciary duty of candor by disseminating a Proxy in connection with the Proposed Transaction that contains false and misleading statements and/or omits to state information that is material to El Paso shareholders' decisions regarding the Proposed Transaction.

164. As a result of the El Paso directors' breaches of their fiduciary duty of candor, the Class will be harmed by being forced to vote on Proposed Transaction without accurate and material information.

165. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST KINDER MORGAN, SHERPA MERGER SUB, INC. AND SHERPA ACQUISITION, LLC

166. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

167. Defendants Kinder Morgan, Sherpa Merger Sub, Inc., and Sherpa Acquisition, LLC each knowingly assisted the Individual Defendants in construction of the Proposed Transaction and the related Merger Agreement, and signed the Merger Agreement, which is the product of breaches of fiduciary duty by the Individual Defendants as alleged herein, and which unlawfully restricts the El Paso Board from fully informing itself of all of the Company's strategic alternatives in compliance with its fiduciary duties.

168. Defendant Kinder Morgan, jointly with El Paso, issued the Proxy which fails to adequately and fully inform El Paso's shareholders of information material to their decisions concerning the Proposed Transaction.

169. Based on the foregoing, Kinder Morgan, Sherpa Merger Sub, Inc., and Sherpa Acquisition, LLC aided and abetted the Individual Defendants' breaches of fiduciary duty.

170. As a result of this conduct by Kinder Morgan, Sherpa Merger Sub, Inc., and Sherpa Acquisition, LLC, Plaintiffs and other members of the Class have been and will be damaged by being denied the best opportunity to maximize the value of their investment in the Company.

171. Plaintiffs and the Class have no adequate remedy at law.

COUNT IV

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST GS GROUP AND GOLDMAN, SACHS & CO.

172. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

173. As alleged above, the Individual Defendants breached their fiduciary duties to El Paso's shareholders. Defendants GS Group and Goldman, Sachs & Co. are sued herein for aiding and abetting the Individual Defendants' breaches of fiduciary duty.

174. Defendant Goldman, Sachs & Co. knowingly guided its client, the El Paso Board, to abandon the Spin-Off in favor of a sale to Kinder Morgan, a company in which Goldman Sachs owns a substantial equity stake and, has two representatives on the board of directors, and to which Goldman Sachs has provided substantial investment banking services over the last several years. Defendants Goldman, Sachs & Co. and GS Group also caused their affiliates to enter into a voting agreement whereby they have agreed to vote their 19.1% equity stake in Kinder Morgan in favor of the Proposed Transaction.

175. By steering a sale of the Company to Kinder Morgan at a less-than-value-maximizing price, Goldman Sachs earned larger advisory fees than if El Paso had consummated the Spin-Off, and Goldman Sachs also stands to see its substantial investment in Kinder Morgan increase in value by creating a situation in which Kinder Morgan did not have to pay full value for El Paso.

176. As a result of the conduct by GS Group and Goldman, Sachs & Co., Plaintiffs and the Class have been and will be damaged by being denied the best opportunity to maximize the value of their investments in the Company.

177. Plaintiffs and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment and preliminary and permanent relief, including injunctive relief, in its favor and in favor of the Class and against Defendants as follows:

(a) Holding that this action is properly maintainable as a class action;

(b) Preliminarily and permanently enjoining Defendants from taking any action to consummate the Proposed Transaction or enforce the Merger Agreement until such time as the Individual Defendants have fully complied with their fiduciary duties and taken all readily available steps to maximize shareholder value;

(c) Enjoining the El Paso shareholders' vote on the Proposed Transaction until the Individual Defendants' breaches of the fiduciary duty of candor have been rectified;

(d) Finding the Individual Defendants liable for breaching their fiduciary duties to the Class;

(e) Finding the deal protection provisions in the Merger Agreement to be invalid and unenforceable, or in the alternative, amending those provisions as necessary to ensure a full and fair sale process for the benefit of the Class;

(f) Finding the Kinder Morgan Defendants liable for aiding and abetting the Individual Defendants' breach of fiduciary duty;

(g) Finding GS Group and Goldman, Sachs & Co. liable for aiding and abetting the Individual Defendants' breach of fiduciary duty;

(h) Awarding the Class compensatory damages, together with pre- and post-judgment interest;

(i) Awarding Plaintiffs the costs and disbursements of this action, including attorneys' and experts' fees; and

(j) Awarding such other and further relief as is just and equitable.

Dated: November 29, 2011

/s/ Stuart M. Grant
Stuart M. Grant (#2526)
Megan D. McIntyre (#3307)
Christine M. Mackintosh (#5085)
GRANT & EISENHOFER, P.A.
123 Justison St.
Wilmington, Delaware 19801
(302) 622-7000
Co-Lead Counsel for Plaintiffs

/s/ Christine S. Azar
Christine S. Azar (#4170)
Charles B. Vincent (#5078)
LABATON SUCHAROW LLP
300 Delaware Avenue, Suite 1225
Wilmington, DE 19801
(302) 573-2530
Co-Lead Counsel for Plaintiffs

Of Counsel:

Mark Lebovitch
Amy Miller
Jeremy Friedman
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 554-1400
Co-Lead Counsel for Plaintiffs

MOTLEY RICE LLC
Ann Ritter
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
(843) 216-9000
Additional Counsel for Plaintiffs

MURRAY FRANK LLP
Marvin L. Frank
Brian P. Murray
275 Madison Avenue, Suite 801
New York, NY 10016
(212) 682-1818
Additional Counsel for Plaintiffs

VIANALE & VIANALE LLP
Kenneth J. Vianale
Julie Prag Vianale
2499 Glades Road, Suite 112
Boca Raton, FL 33431
(561) 392-4750
Additional Counsel for Plaintiffs

BERMAN DEVALERIO
Norman Berman
One Liberty Square
Boston, MA 02109
(617) 542-8300
Additional Counsel for Plaintiffs

SARRAF GENTILE LLP
Ronen Sarraf
Joseph Gentile
One Penn Plaza, Suite 2424
New York, NY 10119
(212) 868-3610
Additional Counsel for Plaintiffs