

Cause No. _____

REBECCA JOHNSON, On Behalf of Herself
and All Others Similarly Situated,

Plaintiff,

vs.

EL PASO CORPORATION, KINDER
MORGAN, INC., JUAN CARLOS BRANIFF,
STEVEN J. SHAPIRO, DAVID W. CRANE,
J. MICHAEL TALBERT, DOUGLAS L.
FOSHEE, ROBERT F. VAGT, ROBERT W.
GOLDMAN, JOHN L. WHITMIRE,
ANTHONY W. HALL, JR., THOMAS R.
HIX, FERRELL P. McCLEAN and
TIMOTHY J. PROBERT,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION FOR BREACH OF FIDUCIARY DUTY

Plaintiff, by her attorneys, alleges as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, plaintiff would show that discovery is intended to be conducted under Level 3 of this Rule due to the complexity of this case.

SUMMARY OF THE ACTION

2. This is a class action brought by a shareholder of defendant El Paso Corporation (“El Paso” or the “Company”). The action is brought against El Paso, the members of the El Paso Board of Directors (the “Board”) and Kinder Morgan, Inc. (“Kinder Morgan”), arising out of their breaches of fiduciary duty in connection with Kinder Morgan’s proposal to acquire all the outstanding, publicly held shares of El Paso for consideration valued at \$26.87 per El Paso share based on Kinder Morgan’s closing price as of October 14, 2011 (the “Proposed Merger”). This action seeks equitable relief only.

3. El Paso provides natural gas and related energy products in two core businesses—pipelines and exploration and production. El Paso’s Pipeline Group is the nation’s leading interstate natural gas pipeline franchise as measured not only by mileage, but more importantly, by access to key supply regions and major consuming markets as well as by unparalleled connectivity to those markets. El Paso transports more than a quarter of the natural gas consumed in the country each day through its 42,000 mile interstate natural gas pipeline system. El Paso Exploration & Production Company is a leading domestic natural gas producer with a substantial footprint in the emerging shale plays across the United States and international developments in Brazil and Egypt.

4. Kinder Morgan is one of the largest pipeline transportation and energy storage companies in North America with more than 37,000 miles of pipelines and 180 terminals.

5. On October 16, 2011, Kinder Morgan and El Paso jointly announced a definitive agreement whereby Kinder Morgan will acquire all of the outstanding shares of El Paso in a transaction that will create the largest midstream and the fourth largest energy company in North America with an enterprise value of approximately \$94 billion and 80,000 miles of pipelines. The consideration to be received by El Paso shareholders is \$26.87 per El Paso share based on Kinder Morgan's closing price as of October 14, 2011. The offer is comprised of \$14.65 in cash, 0.4187 Kinder Morgan shares (valued at \$11.26 per El Paso share) and 0.640 Kinder Morgan warrants (valued at \$0.96 per El Paso share) based on Kinder Morgan's closing price on October 14, 2011. The warrants will have an exercise price of \$40 and a five-year term. El Paso shareholders will be able to elect, for each El Paso share held, either (i) \$25.91 in cash, (ii) 0.9635 shares of Kinder Morgan common stock, or (iii) \$14.65 in cash plus 0.4187 shares of Kinder Morgan common stock. All elections will be subject to proration and in all cases El Paso shareholders will receive 0.640 Kinder Morgan warrants per share of El Paso common stock. Based on Kinder Morgan's closing price as of October 14, 2011, the Proposed Merger offer is valued at just \$26.87 per El Paso share.

6. The Proposed Merger price of \$26.87 is unfair. According to Thompson/First Call, one analyst has set a target of \$28.00 for El Paso common stock. Moreover, upon closing, El Paso shareholders are expected to own just 32% of the combined company, which is itself evidence of the unfairness of the merger consideration. The transaction is expected to be immediately accretive to Kinder Morgan's earnings and generate \$350 million a year in cost savings, or about 5% of the combined companies' earnings before interest, taxes, depreciation and amortization. Furthermore, variable natural gas prices can yield profitable trades. Natural gas may sell for \$3.60 per mmBTU on NYMEX, but it is worth less in remote places where there are not enough pipelines to transport it. Traders can profit by, for instance, buying this cheaper natural gas, and then selling it at a premium

into Florida or New York. Thus the effect of the Proposed Merger will be to create a gas-trading powerhouse.

7. As further evidence of the Company's real value, El Paso recently reported (i) that second quarter 2011 adjusted diluted earnings per share ("EPS") rose 14% from the second quarter of 2010 to \$0.25; and (ii) as stated by defendant Douglas L. Foshee ("Foshee"), El Paso's Chairman, President and CEO, when commenting on these second quarter 2011 results: "On the financial front, we continue to make excellent progress, improving our balance sheet primarily through drop downs to El Paso Pipeline Partners. *This progress has put us in position to separate into two outstanding companies by year end. We believe this is a great time to be a shareholder of El Paso.*"

8. Far from being fair to El Paso and its public shareholders, the proposed transaction would benefit Kinder Morgan by removing a competitor. Consequently, the Proposed Merger price is surprisingly low, undervalues the Company and fails to compensate El Paso shareholders, especially given that Kinder Morgan will become the largest midstream and the fourth largest energy company in North America, with an enterprise value of approximately \$94 billion and 80,000 miles of pipelines, and given the access Kinder Morgan will gain to expensive and strategic natural gas pipelines at a time when natural gas prices are still recovering from historic lows and as the energy industry is making a fundamental "green" shift from coal to natural gas. Moreover, the combination creates the:

- Largest owner and operator of natural gas pipelines and storage assets in North America and pipelines connected to many important natural gas shale plays, including Eagle Ford, Marcellus, Utica, Haynesville, Fayetteville and Barnett.
- Largest provider of contracted natural gas treating services and significant other midstream gathering assets.
- Largest independent transporter of petroleum products in the United States, transporting approximately 1.9 million barrels per day of gasoline, jet fuel, diesel, natural gas liquids and crude oil through more than 8,000 miles of pipelines.
- Largest transporter of Co2 in the United States, transporting 1.3 billion cubic feet per day. Carbon dioxide is used in enhanced oil recovery projects.

- Second largest oil producer in Texas, producing over 50,000 barrels per day.
- Largest independent terminal owner/operator in the United States. Liquids terminals have capacity of 107 million barrels and store refined petroleum products, ethanol and more. Dry bulk terminals are expected to handle over 100 million tons of materials in 2011, including products like coal.
- Only oil sands pipeline serving the West Coast. The Trans Mountain pipeline system transports 300,000 barrels of crude oil per day to Vancouver, B.C., and Washington state.

9. The Proposed Merger is the product of a hopelessly conflicted process designed to ensure the sale of El Paso to Kinder Morgan. Primary beneficiaries of this deal will be the natural gas traders of Kinder Morgan, Goldman Sachs (*which owns 19% of Kinder Morgan and served as one of El Paso's financial advisers* in this deal) and Barclays (which is *providing \$11.5 billion in loans* for the deal and served as one of Kinder Morgan's financial advisors), who will be in a position to enjoy better knowledge of the pricing differentials of gas produced in America's various basins. Goldman Sachs was also a financial adviser for El Paso's recently reported plan (as told to the market by defendant Foshee just two months ago) to split the Company in two by the end of December 2011. That Goldman Sachs-advised plan to split El Paso's business in two (and spin off the exploration and production business to shareholders) was disrupted when Goldman Sachs-advised Kinder Morgan approached El Paso in late August 2011 about a possible takeover.

10. While Morgan Stanley served as El Paso's "lead" adviser in the sale to Kinder Morgan, and Morgan Stanley provided a fairness opinion to the Company, it was highly conflicted as it has been reported that the Proposed Merger will be a fee "bonanza" for the banks. It is estimated that Morgan Stanley and Goldman Sachs will split between \$55 and \$80 million in fees that are largely contingent on the success of the Proposed Merger. The Proposed Merger will also permit Goldman Sachs and Morgan Stanley to retain their No. 1 and No. 2, respectively, global deal adviser rankings.

11. The Company's insiders pushed through the Proposed Merger in an attempt to lock in their gains. Through the Proposed Merger, these Company insiders are attempting to complete their personal stock sales and achieve immediate vesting of otherwise long-term illiquid restricted shares. Additionally, management stands to gain extremely lucrative "change of control payments" just for negotiating the Proposed Merger and selling out the Company's public shareholders. These benefits of "change of control" payments and immediate vesting of restricted shares are not shared by the Company's non-insider public stockholders.

12. Moreover, the Kinder Morgan offer fails to adequately protect El Paso shareholders as it does not contain a collar or a provision providing for increased compensation in the event Kinder Morgan's share price decreases between the announcement and eventual consummation of the deal.

13. Furthermore, the terms of the Proposed Merger are designed to ensure the sale of El Paso to one buyer, and one buyer only – Kinder Morgan – on terms preferential to Kinder Morgan, and to subvert the interests of plaintiff and the other public stockholders of El Paso. As part of the Merger Agreement, defendants agreed to several onerous, preclusive deal protection devices that effectively prevent other bidders from making successful topping bids for the Company. Specifically, defendants agreed to:

(a) a termination fee of \$650 million that must be paid to Kinder Morgan in the event that El Paso's Board chooses to accept a superior proposal;

(b) a no shop/no talk clause that prevents defendants from communicating with or providing Company information to competing bidders unless an unsolicited superior proposal is made; and

(c) recurring unlimited matching rights that allow Kinder Morgan to match any superior proposal.

14. In essence, the Proposed Merger is solely designed to ensure that Kinder Morgan completes the Proposed Merger even though the offer price called for in the Proposed Merger is highly unfair to the shareholders of the Company. In pursuing the unlawful plan to sell El Paso pursuant to a defective sales process, defendants have breached their fiduciary duties of loyalty, due care, independence, candor, good faith and fair dealing. Plaintiff seeks to enjoin the Proposed Merger.

JURISDICTION AND VENUE

15. This Court has jurisdiction over each defendant, because they conduct business in, reside in, and/or are citizens of the State of Texas. This action is not removable.

16. Venue is proper in this county because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, and because Harris County is the county of El Paso's principal office in this state.

PARTIES

17. Plaintiff Rebecca Johnson is, and at all times relevant hereto was, an El Paso shareholder.

18. Defendant El Paso is a publicly traded Delaware corporation based in Houston, Texas. El Paso's principal executive offices are located at 1001 Louisiana Street, Houston, Texas 77002. El Paso may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

19. Defendant Kinder Morgan is a Delaware corporation based in Houston, Texas. Kinder Morgan's principal offices are located at 500 Dallas St., Suite 1000, Houston, Texas 77002.

Kinder Morgan may be served with process by serving its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201.

20. Defendant Juan Carlos Braniff (“Braniff”) is and at all material times hereto has been a director of El Paso. Defendant Braniff may be served with process at 452 East Lionshead Circle, Unit 3B, Vail, Colorado 81657.

21. Defendant Steven J. Shapiro (“Shapiro”) is and at all material times hereto has been a director of El Paso. Defendant Shapiro may be served with process at 432 Flint Point Drive, Houston, Texas 77024.

22. Defendant David W. Crane (“Crane”) is and at all material times hereto has been a director of El Paso. Defendant Crane may be served with process at 3071 Lawrenceville Road A, Lawrence Township, New Jersey 08648.

23. Defendant J. Michael Talbert (“Talbert”) is and at all material times hereto has been a director of El Paso. Defendant Talbert may be served with process at 2 Crestwood Drive, Houston, Texas 77007.

24. Defendant Douglas L. Foshee (“Foshee”) is and at all material times hereto has El Paso’s Chairman, President and CEO. Defendant Foshee may be served with process at 3743 Ingold Street, Houston, Texas 77005.

25. Defendant Robert F. Vagt (“Vagt”) is and at all material times hereto has been a director of El Paso. Defendant Vagt may be served with process at 1418 Beechwood Boulevard, Pittsburgh, Pennsylvania 15217.

26. Defendant Robert W. Goldman (“Goldman”) is and at all material times hereto has been a director of El Paso. Defendant Goldman may be served with process at 13 Dupont Circle, Sugar Land, Texas 77479.

27. Defendant John L. Whitmire (“Whitmire”) is and at all material times hereto has been a director of El Paso. Defendant Whitmire may be served with process at 3519 Robinhood Street, Houston, Texas 77005.

28. Defendant Anthony W. Hall, Jr. (“Hall”) is and at all material times hereto has been a director of El Paso. Defendant Hall may be served with process at 3709 Rio Vista Street, Houston, Texas 77021.

29. Defendant Thomas R. Hix (“Hix”) is and at all material times hereto has been a director of El Paso. Defendant Hix may be served with process at 2213 Brun Street, Houston, Texas 77019.

30. Defendant Ferrell P. McClean (“McClean”) is and at all material times hereto has been a director of El Paso. Defendant McClean may be served with process at 7939 SE Golfhouse Drive, Hobe Sound, Florida 33455.

31. Defendant Timothy J. Probert (“Probert”) is and at all material times hereto has been a director of El Paso. Defendant Probert may be served with process at 14842 Bramblewood Drive, Houston, Texas 77079.

32. The defendants named in ¶¶20-31 are collectively referred to herein as the “Individual Defendants.”

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on her own behalf and as a class action on behalf of all holders of El Paso shares who are being and will be harmed by defendants’ actions described below (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

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

35. The Class is so numerous that joinder of all members is impracticable. There are more than 770 million common shares of El Paso issued and outstanding.

36. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) whether the Individual Defendants have breached their fiduciary duties of undivided loyalty, independence, or due care with respect to plaintiff and the other members of the Class;

(b) whether defendants are engaging in self-dealing;

(c) whether defendants are unjustly enriching themselves and other insiders or affiliates of El Paso;

(d) whether the Individual Defendants have breached any of their other fiduciary duties to plaintiff and the other members of the Class in connection with their failure to maximize shareholder value, including the duties of good faith, diligence, candor and fair dealing;

(e) whether defendants, in bad faith and for improper motives, have impeded or erected barriers to discourage other offers for the Company or its assets; and

(f) whether plaintiff and the other members of the Class would suffer irreparable injury were the transactions complained of herein consummated.

37. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff does not have any interests adverse to the Class.

38. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

39. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

40. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

41. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FACTUAL ALLEGATIONS

42. El Paso provides natural gas and related energy products in two core businesses—pipelines and exploration and production. El Paso's Pipeline Group is the nation's leading interstate natural gas pipeline franchise as measured not only by mileage, but more importantly, by access to key supply regions and major consuming markets as well as by unparalleled connectivity to those markets. El Paso transports more than a quarter of the natural gas consumed in the country each day through its 42,000 mile interstate natural gas pipeline system. El Paso Exploration & Production Company is a leading domestic natural gas producer with a substantial footprint in the emerging shale plays across the United States and international developments in Brazil and Egypt.

43. Kinder Morgan is one of the largest pipeline transportation and energy storage companies in North America with more than 37,000 miles of pipelines and 180 terminals.

44. On October 16, 2011, Kinder Morgan and El Paso jointly announced a definitive agreement whereby Kinder Morgan will acquire all of the outstanding shares of El Paso in a transaction that will create the largest midstream and the fourth largest energy company in North

America with an enterprise value of approximately \$94 billion and 80,000 miles of pipelines. The press release announcing the Proposed Merger states in pertinent part:

Kinder Morgan to Purchase El Paso for Approximately \$38 Billion

Combination Will Form Largest Natural Gas Pipeline Network and Largest Midstream Energy Enterprise in North America

... Kinder Morgan, Inc. and El Paso Corporation today announced a definitive agreement whereby KMI will acquire all of the outstanding shares of EP in a transaction that will create the largest midstream and the fourth largest energy company in North America with an enterprise value of approximately \$94 billion and 80,000 miles of pipelines. The total purchase price, including the assumption of debt outstanding at El Paso Corporation and including the debt outstanding at El Paso Pipeline Partners, L.P. is approximately \$38 billion.

The combined enterprise, including the associated master limited partnerships, Kinder Morgan Energy Partners, L.P. and EPB, will represent the largest natural gas pipeline network in the United States, the largest independent transporter of petroleum products in the United States, the largest transporter of CO₂ in the United States and the largest independent terminal owner/operator in the United States.

“This once in a lifetime transaction is a win-win opportunity for both companies,” said Kinder Morgan Chairman and CEO Richard D. Kinder. “The El Paso assets are primarily regulated interstate natural gas pipelines that produce substantial, stable cash flow and have access to key supply regions and major consuming markets. The natural gas pipeline systems of the two companies are very complementary, as they primarily serve different supply sources and markets in the United States. The transaction is expected to produce immediate shareholder value (upon closing) through strong cash flow accretion and offers significant future growth opportunities.”

The consideration to be received by the EP shareholders is valued at \$26.87 per EP share based on KMI's closing price as of Oct. 14, 2011, representing a 47 percent premium to the 20-day average closing price of EP common shares and a 37 percent premium over the closing price of EP common shares on Oct. 14, 2011. The offer is comprised of \$14.65 in cash, 0.4187 KMI shares (valued at \$11.26 per EP share) and 0.640 KMI warrants (valued at \$0.96 per EP share) based on KMI's closing price on Oct. 14, 2011. The warrants will have an exercise price of \$40 and a five-year term. EP shareholders will be able to elect, for each EP share held, either (i) \$25.91 in cash, (ii) 0.9635 shares of KMI common stock, or (iii) \$14.65 in cash plus 0.4187 shares of KMI common stock. All elections will be subject to proration and in all cases EP shareholders will receive 0.640 KMI warrants per share of EP common stock. The receipt of shares and warrants by EP shareholders in the transaction is intended to be tax free for U.S. federal income tax purposes. Upon

closing, KMI shareholders are expected to own approximately 68 percent of the combined company and EP shareholders are expected to own the remaining 32 percent.

“El Paso’s board and management have been highly focused on delivering value for our shareholders, and we believe that our agreement with Kinder Morgan will provide even greater value for our shareholders than we expected through the planned spin-off of our exploration and production business,” said Doug Foshee, chairman, president and chief executive officer of El Paso Corporation. “We are very pleased to become a significant part of this combined enterprise and offer our shareholders the opportunity to participate in what we believe will be North America’s preeminent infrastructure company.”

The transaction has been approved by each company’s board of directors. KMI has a commitment letter from Barclays Capital underwriting the full amount of cash required for the transaction. Prior to closing, the transaction will require approval of both KMI and EP shareholders. The transaction is expected to close in the second quarter of 2012 and is subject to customary regulatory approvals.

“We believe that natural gas is going to play an increasingly integral role in North America,” stated Kinder. “With the recent development of shale resources, there are now abundant domestic supplies of natural gas, which are being used increasingly to generate electricity and are environmentally friendly. If America is serious about reducing carbon emissions to benefit the environment, and reducing its dependence on foreign oil, natural gas is absolutely the best readily available option. We are delighted to be able to significantly expand our natural gas transportation footprint at a time when it seems likely that domestic natural gas supply and demand will grow at attractive rates for years to come.”

The transaction is expected to be immediately accretive to dividends per share at KMI, distributions per unit at KMP, dividends per share at Kinder Morgan Management (NYSE: KMR) and distributions per unit at EPB. Part of these benefits will be driven by cost savings, which are expected to be approximately \$350 million per year, or about 5 percent of the combined system’s EBITDA.

45. The Proposed Merger price of \$26.87 is unfair. According to Thompson/First Call, one analyst has set a target of \$28.00 for El Paso common stock. Moreover, upon closing, El Paso shareholders are expected to own just 32% of the combined company, which is itself evidence of the unfairness of the merger consideration. The transaction is expected to be immediately accretive to Kinder Morgan’s earnings and generate \$350 million a year in cost savings, or about 5% of the combined companies’ earnings before interest, taxes, depreciation and amortization. Furthermore,

variable natural gas prices can yield profitable trades. Natural gas may sell for \$3.60 per mmBTU on NYMEX, but it is worth less in remote places where there are not enough pipelines to transport it. Traders can profit by, for instance, buying this cheaper natural gas, and then selling it at a premium into Florida or New York. Thus the effect of the Proposed Merger will be to create a gas-trading powerhouse.

46. As further evidence of the Company's real value, El Paso recently reported (i) that second quarter 2011 adjusted diluted EPS rose 14% from the second quarter of 2010 to \$0.25; and (ii) as stated by defendant Foshee, El Paso's Chairman, President and CEO, when commenting on these second quarter 2011 results: "On the financial front, we continue to make excellent progress, improving our balance sheet primarily through drop downs to El Paso Pipeline Partners. *This progress has put us in position to separate into two outstanding companies by year end. We believe this is a great time to be a shareholder of El Paso.*"

47. Far from being fair to El Paso and its public shareholders, the proposed transaction would benefit Kinder Morgan by removing a competitor. Consequently, the Proposed Merger price is surprisingly low, undervalues the Company and fails to compensate El Paso shareholders, especially given that Kinder Morgan will become the largest midstream and the fourth largest energy company in North America with an enterprise value of approximately \$94 billion and 80,000 miles of pipelines, and given the access Kinder Morgan will gain to expensive and strategic natural gas pipelines at a time when natural gas prices are still recovering from historic lows and as the energy industry is making a fundamental "green" shift from coal to natural gas. Moreover, the combination creates the:

- Largest owner and operator of natural gas pipelines and storage assets in North America and pipelines connected to many important natural gas shale plays, including Eagle Ford, Marcellus, Utica, Haynesville, Fayetteville and Barnett.
- Largest provider of contracted natural gas treating services and significant other

midstream gathering assets.

- Largest independent transporter of petroleum products in the United States, transporting approximately 1.9 million barrels per day of gasoline, jet fuel, diesel, natural gas liquids and crude oil through more than 8,000 miles of pipelines.
- Largest transporter of Co2 in the United States, transporting 1.3 billion cubic feet per day. Carbon dioxide is used in enhanced oil recovery projects.
- Second largest oil producer in Texas, producing over 50,000 barrels per day.
- Largest independent terminal owner/operator in the United States. Liquids terminals have capacity of 107 million barrels and store refined petroleum products, ethanol and more. Dry bulk terminals are expected to handle over 100 million tons of materials in 2011, including products like coal.
- Only oil sands pipeline serving the West Coast. The Trans Mountain pipeline system transports 300,000 barrels of crude oil per day to Vancouver, B.C., and Washington state.

48. The Proposed Merger is the product of a hopelessly conflicted process designed to ensure the sale of El Paso to Kinder Morgan. Primary beneficiaries of this deal will be the natural gas traders of Kinder Morgan, Goldman Sachs (*which owns 19% of Kinder Morgan and served as one of El Paso's financial advisers* in this deal) and Barclays (which is *providing \$11.5 billion in loans* for the deal and served as one of Kinder Morgan's financial advisors), who will be in a position to enjoy better knowledge of the pricing differentials of gas produced in America's various basins. Goldman Sachs was also a financial adviser for El Paso's recently reported plan (as told to the market by defendant Foshee just two months ago) to split the Company in two by the end of December 2011. That Goldman Sachs-advised plan to split El Paso's business in two (and spin off the exploration and production business to shareholders) was disrupted when Goldman Sachs-advised Kinder Morgan approached El Paso in late August 2011 about a possible takeover.

49. While Morgan Stanley served as El Paso's "lead" adviser in the sale to Kinder Morgan, and Morgan Stanley provided a fairness opinion to the Company, it was highly conflicted as it has been reported that the Proposed Merger will be a fee "bonanza" for the banks. It is estimated that Morgan Stanley and Goldman Sachs will split between \$55 and \$80 million in fees that are largely contingent on the success of the Proposed Merger. The Proposed Merger will also

permit Goldman Sachs and Morgan Stanley to retain their No. 1 and No. 2, respectively, global deal adviser rankings.

50. The Company's insiders pushed through the Proposed Merger in an attempt to lock in their gains. Through the Proposed Merger, these Company insiders are attempting to complete their personal stock sales and achieve immediate vesting of otherwise long-term illiquid restricted shares. Additionally, management stands to gain extremely lucrative "change of control payments" just for negotiating the Proposed Merger and selling out the Company's public shareholders. These benefits of "change of control" payments and immediate vesting of restricted shares are not shared by the Company's non-insider public stockholders.

51. Moreover, the Kinder Morgan offer fails to adequately protect El Paso shareholders as it does not contain a collar or a provision providing for increased compensation in the event Kinder Morgan's share price decreases between the announcement and eventual consummation of the deal.

52. Furthermore, the terms of the Proposed Merger are designed to ensure the sale of El Paso to one buyer, and one buyer only – Kinder Morgan – on terms preferential to Kinder Morgan, and to subvert the interests of plaintiff and the other public stockholders of El Paso. As part of the Merger Agreement, defendants agreed to several onerous, preclusive deal protection devices that effectively prevent other bidders from making successful topping bids for the Company. Specifically, defendants agreed to:

(a) a termination fee of \$650 million that must be paid to Kinder Morgan in the event that El Paso's Board chooses to accept a superior proposal;

(b) a no shop/no talk clause that prevents defendants from communicating with or providing Company information to competing bidders unless an unsolicited superior proposal is made; and

(c) recurring unlimited matching rights that allow Kinder Morgan to match any superior proposal.

53. In essence, the Proposed Merger is solely designed to ensure that Kinder Morgan completes the Proposed Merger even though the offer price called for in the Proposed Merger is highly unfair to the shareholders of the Company. In pursuing the unlawful plan to sell El Paso pursuant to a defective sales process, defendants have breached their fiduciary duties of loyalty, due care, independence, candor, good faith and fair dealing. Plaintiff seeks to enjoin the Proposed Merger.

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

54. By reason of the Individual Defendants' positions with the Company as officers and/or directors, said individuals are in a fiduciary relationship with the Company and its shareholders, and owe the Company and its shareholders a duty of highest good faith, fair dealing, loyalty, and full, candid and adequate disclosure.

55. The claims are brought under Delaware state law, which requires every corporate director to act in good faith, in the best interests of the partnership and the partnership's shareholders, and to act with such care, including reasonable inquiry, as would be expected of an ordinarily prudent person. Where the officers and/or directors undertake a transaction that will result in either (i) a change in partnership control, (ii) a breakup of the partnership's assets, or (iii) sale of the partnership, the directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the partnership's shareholders, and if such transaction will result in a change

of corporate control, the shareholders are entitled to receive a significant premium. To diligently comply with their fiduciary duties, the directors and/or officers may not take any action that:

- (a) adversely affects the value provided to the partnership's shareholders;
- (b) contractually prohibits them from complying with or carrying out their fiduciary duties;
- (c) discourages or inhibits alternative offers to purchase the partnership or its assets; or
- (d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the partnership's shareholders.

56. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of El Paso, are obligated to refrain from:

- (a) participating in any transaction where the directors' or officers' loyalties are divided;
- (b) participating in any transaction where the directors or officers receive or are entitled to receive a personal financial benefit not equally shared by the public shareholders of the partnership;
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders; and/or
- (d) unjustly entrenching themselves as managers and/or officers of the Company by failing to give adequate consideration to legitimate bids for the Company.

57. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Merger, are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith and independence owed to the Company. The Individual

Defendants stand on both sides of the transaction, are engaging in self-dealing and abusing their control of El Paso, and are obtaining for themselves personal benefits, including personal financial benefits, to the detriment of the Company.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

58. In committing the wrongful acts alleged herein, defendants have pursued, or joined in the pursuit of, a common course of conduct, and acted in concert with and conspired with one another, in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, defendants further aided and abetted and/or assisted each other in breach of their respective duties as herein alleged.

59. Each of the defendants herein aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions, as particularized herein, to substantially assist the commission of the wrongdoing complained of, each defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his overall contribution to, and furtherance of, the wrongdoing. The defendants' acts of aiding and abetting included, *inter alia*, the acts each of them are alleged to have committed in furtherance of the conspiracy, common enterprise and common course of conduct complained of herein.

FIRST CAUSE OF ACTION

Claim for Breach of Fiduciary Duties Against the Individual Defendants

60. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

61. The Individual Defendants are violating the fiduciary duties of care, loyalty, good faith and independence owed to the public shareholders of El Paso and are acting to put their personal interests ahead of the interests of El Paso's shareholders.

62. By the acts, transactions, and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, are unfairly depriving plaintiff and other members of the Class of the true value inherent in and arising from El Paso.

63. The Individual Defendants are violating their fiduciary duties by failing to consider the effect of the transaction on El Paso's shareholders.

64. As demonstrated by the allegations above, the Individual Defendants are failing to exercise the care required, and breaching their duties of loyalty, candor good faith, and independence owed to the shareholders of El Paso because, among other reasons:

(a) they are failing to take steps to maximize the value of El Paso to its public shareholders;

(b) they are failing to properly value El Paso and its various assets and operations;
and

(c) they are ignoring or not protecting against the numerous conflicts of interest resulting from the Individual Defendants' own interrelationships or connection with the Proposed Merger.

65. By the acts, transactions and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, are attempting to unfairly deprive plaintiff and other members of the Class of the true value of their investment in El Paso.

66. The Individual Defendants have violated their fiduciary duties by entering into the Proposed Merger without regard to the fairness of the transaction to El Paso shareholders.

67. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence owed to the shareholders of El Paso because, among other reasons, they failed to ensure a fair process and maximization of shareholder value.

68. Because the Individual Defendants dominate and control the business and corporate affairs of El Paso, and have access to private corporate information concerning El Paso's assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of El Paso which makes it inherently unfair for them to pursue and recommend the Proposed Merger from which they will reap disproportionate benefits to the exclusion of maximizing shareholder value.

69. By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants are failing to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiff and the other members of the Class.

70. The Individual Defendants are engaging in self-dealing, are not acting in good faith toward plaintiff and the other members of the Class, and are breaching their fiduciary duties to the members of the Class.

71. As a result of the actions of defendants, plaintiff and the other members of the Class have been and will be irreparably harmed in that they will not receive their fair portion of the value of El Paso's assets and operations.

72. Unless the Proposed Merger is enjoined by the Court, defendants will continue to breach their fiduciary duties owed to plaintiff and the other members of the Class, will not engage in arm's-length negotiations on the Proposed Merger's terms, and will not supply to El Paso shareholders sufficient information to enable them to make informed decisions regarding the sale of

their shares in connection with the Proposed Merger, and may consummate the Proposed Merger, all to the irreparable harm of the members of the Class.

73. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the Class be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

74. Plaintiff asks this Court to exercise its equitable powers and enjoin the Proposed Merger.

SECOND CAUSE OF ACTION

Claim for Aiding and Abetting Breaches of Fiduciary Duty Against El Paso and Kinder Morgan

75. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

76. The Individual Defendants owe to plaintiff and the members of the Class certain fiduciary duties as fully set out herein.

77. By committing the acts alleged herein, the Individual Defendants are breaching their fiduciary duties owed to plaintiff and the members of the Class.

78. El Paso and Kinder Morgan are colluding in or aiding and abetting the Individual Defendants' breaches of fiduciary duties, and are active and knowing participants in the Individual Defendants' breaches of fiduciary duties owed to plaintiff and the members of the Class.

79. El Paso and Kinder Morgan are participating in the breaches of the fiduciary duties by the Individual Defendants for the purpose of advancing their own interests. Kinder Morgan will obtain both direct and indirect benefits from colluding in or aiding and abetting the Individual Defendants' breaches. Kinder Morgan will benefit, *inter alia*, from the acquisition of the Company at an inadequate and unfair consideration if the Proposed Merger is consummated.

80. Plaintiff and the members of the Class shall be irreparably injured as a direct and proximate result of the aforementioned acts.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands injunctive relief, in plaintiff's favor and in favor of the Class and against defendants, as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Enjoining defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Merger, unless and until the Company adopts and implements a procedure or process to obtain the highest possible value for shareholders;
- C. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of El Paso shareholders and to refrain from entering into any transaction until the process for the sale or merger of the Company is completed and the highest possible value is obtained;
- D. Rescinding, to the extent already implemented, the Proposed Merger or any of the terms thereof;
- E. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- F. Granting such other and further equitable relief as this Court may deem just and proper.

DATED: October 17, 2011

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