



of KMI, breaches of fiduciary duties including wrongful self dealing and entire fairness against Richard Kinder, Fayez Sarofim, Michael Morgan and the members of Senior Management included in the Buyout Group, aiding and abetting the breaches of fiduciary duties against William V. Morgan, GS Capital Partners V Fund, LP, American International Group, AIG Global Asset Management Holdings Corp., the Carlyle Group L.P., Riverstone Holdings, LLC, and the members of Senior Management included in the Buyout Group. Jurisdiction may be properly exercised by this Court over all Defendants, including over all members of the Buyout Group by virtue, among other things, of its members having entered into the Buyout agreement with KMI, a Kansas corporation.

3. This action seeks, among other things, injunctive relief to enjoin the stockholder vote and any action to effect the acquisition of KMI and its assets by the Buyout Group until a proper process has been undertaken to determine and pursue the best available strategic alternative to maximize value for all of KMI's stockholders and the best available price and premium available on a sale of control of KMI and its assets. Unless and until such a process is instituted and undertaken, the public stockholders face the threat of irreparable harm and the lost opportunity to maximize value.

#### **THE PARTIES**

4. Interim Lead Plaintiff, Robert P. Land, has been the continuous owner of common stock of Defendant KMI and its predecessor since 1965.

5. Interim Lead Plaintiff, Dr. Douglas Geiger, has been the continuous owner of common stock of Defendant KMI since 2003.

6. Plaintiffs Ronald Hodge, Michael Morter, Teamsters Joint Counsel No. 53 Pension Fund, and John Bolton filed constituent actions in this consolidated matter.

7. Defendant KMI is a Kansas corporation with its business headquarters located in Houston, Texas. As of July 31, 2006, KMI had 133,921,582 shares of Common Stock outstanding. KMI's Board of Directors currently includes 12 directors and, pursuant to the Restated Certificate of Incorporation, is classified into three classes.

8. Defendant Richard D. Kinder ("Kinder") is the Chairman of the Board of Directors of KMI and is its Chief Executive Officer. Kinder is a co-founder of KMI and has served as a member of the KMI Board of Directors since 1999. Kinder currently serves as a Class I Director. Kinder, directly or indirectly, owns approximately 24,000,000 shares of KMI common stock, or approximately 17.96% of the outstanding shares. Kinder has served as a Director, Chairman and Chief Executive Officer of KMR since its creation in February of 2001. Further, Kinder is the Chairman and Chief Executive Officer of KMP. Kinder is also the Chairman, Chief Executive Officer, and a Director of Kinder Morgan G.P. and has been since 1997. Kinder also served as President of KMR, Kinder Morgan G.P. and KMI from July 2004 until May 2005. Kinder is the uncle of David Kinder, who holds the positions of Vice President, Corporate Development and Treasurer of KMR, Kinder Morgan G.P. and KMI. Kinder is a member of the Buyout Group and intends to continue in his role as Chairman and CEO of KMI following the transaction.

9. Defendant Fayez Sarofim ("Sarofim") is a member of the KMI Board of Directors and has been a Director since 1999. Sarofim is currently a Class II Director. Sarofim is also President and Chairman of the Board of Fayez Sarofim & Co., an investment

advisory firm based in Houston, Texas, which Sarofim founded in 1958 and a director of Unitrin, Inc. and Argonaut Group, Inc. Sarofim owns approximately 1.72% of the outstanding common stock of the Company. Additionally, Sarofim holds 3.44% of KMP. Sarofim is a member of the Buyout Group.

10. Defendant Michael C. Morgan (“M. Morgan”) is a member of the KMI Board of Directors and has been a Director since 2003. M. Morgan is currently a Class III Director. M. Morgan was previously a KMI executive officer, including having served as President of KMI, KMR, and Kinder Morgan G.P. from 2001 to 2004. Further M. Morgan served as Vice President-Strategy and Investor Relations of KMR from February 2001 to July 2001 and as Vice President-Strategy and Investor Relations of KMI and Kinder Morgan G.P. from January 2000 to July 2001. Additionally, M. Morgan served as Vice President of Corporate Development of Kinder Morgan G.P. from February 1997 to January 2000 and as KMI’s Vice President of Corporate Development from October 1999 to January 2000. M. Morgan currently serves as President of Portcullis Partners, L.P., a private investment partnership, and has since October 2004. M. Morgan is a member of the Buyout Group.

11. Defendant Charles W. Battey (“Battey”) is a member of the KMI Board of Directors and has been a Director of KMI and its predecessor since 1971. Battey is currently a Class II Director. Battey was Chairman of the KMI Board from 1989 to 1996, and KMI’s Chief Executive Officer from 1989 to 1994.

12. Defendant Edward H. Austin, Jr. (“Austin”) is a member of the KMI Board of Directors has been a Director since 1994. Defendant Austin is currently a Class I Director. Defendant Austin has served as a Director and Executive Vice President of Austin, Calvert

& Flavin, Inc., a wholly owned subsidiary of Waddell & Reed Financial, Inc. an investment advisory firm based in San Antonio, Texas since August 1999. Defendant Austin is a member of the Special Committee KMI created to evaluate the Buyout Group's proposed transaction.

13. Defendant Stewart A. Bliss ("Bliss") is a member of the KMI Board of Directors and has served as a Director since 1993. Defendant Bliss is currently a Class III Director. Defendant Bliss has been an Independent Financial Consultant and Senior Business Advisor for the past thirteen years. Additionally, Defendant Bliss served on the Governing Board for the Colorado State University System from 1994 to February 2001 and was President of the Board from 1999 to 2001. Further, Defendant Mr. Bliss served as KMI's Interim Chairman and Chief Executive Officer from July to October of 1999. Defendant Bliss is the Chairman of the Special Committee KMI created to evaluate the Buyout Group's proposed transaction.

14. Defendant Ted A. Gardner ("Gardner") is a member of the KMI Board of Directors and has served as a Director since 1999. Defendant Gardner is currently a Class I Director. Defendant Gardner has been Managing Partner of Silverhawk Capital Partners since June 2005 and has been a private investor since July 2003. Defendant Gardner also served as Managing Partner of Wachovia Capital Partners and a Senior Vice President of Wachovia Corporation from 1990 to 2003. Additionally, Defendant Gardner is a director of Encore Acquisition Company and COMSYS IT Partners, Inc. Defendant Gardner is a member of the Special Committee KMI created to evaluate the Buyout Group's proposed transaction.

15. Defendant William J. Hybl (“Hybl”) is a member of the KMI Board of Directors and has served as a Director of KMI and its predecessor since 1988. Defendant Hybl is currently a Class I Director. Defendant Hybl has served as Chairman, Chief Executive Officer and a Trustee of El Pomar Foundation, a charitable foundation for the past 25 years.

16. Defendant Edward Randall, III (“Randall”) is a member of the KMI Board of Directors and has served as a Director since 1994. Defendant Randall is currently a Class III Director. Defendant Randall served as a Director of EOG Resources, Inc, an independent, non-integrated, oil and natural gas company, from 1990 until 2004.

17. Defendant James M. Stanford (“Stanford”) is a member of the KMI Board of Directors and has served as a Director since 2006. Defendant Stanford is currently a Class II Director. Defendant Stanford has served as President of Stanford Resource Management Inc., a natural resources consulting firm, for the past five years. Additionally, Defendant Stanford is a director of Encana Corporation, Nova Chemicals Corporation and Chairman of the Board of Directors of OPTI Canada Inc., all Canadian corporations.

18. Defendant H.A. True, III (“True”) is a member of the KMI Board of Directors and has served as a Director since 1991. Defendant True is currently a Class II Director. Defendant True has been an owner, officer and director of the True Companies, a family owned businesses dealing with oil and gas exploration, drilling, brokerage, trucking and ranching.

19. Defendant Douglas W.G. Whitehead (“Whitehead”) is a member of the KMI Board of Directors and has served as a Director since 2006. Defendant Whitehead is

currently a Class III Director. Defendant Whitehead serves as President and Chief Executive Officer of Finning International Inc., which sells, rents and services heavy equipment. Defendant Whitehead is a director of Finning International Inc. and Ballard Power Systems, Inc., both Canadian corporations.

20. Defendant William V. Morgan (“W. Morgan”) is a member of the Buyout Group and a co-founder of the Company. He served as Vice Chairman of KMI, KMR, and Kinder Morgan G.P. until 2003. Additionally, W. Morgan Served as President of KMI from 1999 to 2001; as President of KMR from February 2001 until July 2001, and as President of Kinder Morgan G.P. from 1997 to July 2001. W. Morgan aided and abetted the other Defendant’s breaches of fiduciary duties and will profit from the acquisition of KMI at a grossly inadequate and unfair price.

21. Defendant American International Group, Inc. is a member of the Buyout Group, aided and abetted the other Defendants’ breaches of fiduciary duties, and will profit from the acquisition of KMI at a grossly inadequate and unfair price.

22. Defendant AIG Global Asset Management Holdings Corp. is a member of the Buyout Group, aided and abetted the other Defendants’ breaches of fiduciary duties, and will profit from the acquisition of KMI at a grossly inadequate and unfair price.

23. Defendant Riverstone Holdings LLC is a member of the Buyout Group and aided and abetted the other Defendants’ breaches of fiduciary duties and will profit from the acquisition of KMI at a grossly inadequate and unfair price.

24. Defendant GS Capital Partners V Fund, LP is a member of the Buyout Group, aided and abetted the other Defendants’ breaches of fiduciary duties, and will profit from the

acquisition of KMI at a grossly inadequate and unfair price. GS Capital Partners V Fund, LP's investment banking sister entity, Goldman Sachs & Co. has regularly been engaged by the Kinder Morgan family entities, giving it access to valuable information concerning the value of the Company, its assets, and its business, not available to third party buyers. Goldman Sachs provided joint advice with Morgan Stanley to the independent directors of KMPG and KMR in connection with a November 2004 asset sale of TransColorado Gas Transmission Co. from KMI to KMP for a package of \$211 million, \$64 million in KMP units and debt assumption. Goldman Sachs also has a relationship with the Kinder Morgan entities as an underwriter, including an August 2005 sale of KMP units and a November 2004 note offering by KMP. Goldman Sachs & Co. acted as financial advisor to the Buyout Group.

25. Defendant the Carlyle Group, LP is a member of the Buyout Group, aided and abetted the other Defendants' breaches of fiduciary duties, and will profit from the acquisition of KMI at a grossly inadequate and unfair price.

26. Defendant C. Park Shaper ("Shaper") is the current President of KMI. Defendant Shaper is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

27. Defendant Steven J. Kean ("Kean") is Executive Vice President and Chief Operating Officer of KMI. Defendant Kean is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

28. Defendant Kimberly Dang ("Dang") is the current Chief Financial Officer and



Vice President of Investor Relations of KMI. Defendant Dang is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

29. Defendant David Kinder (“D. Kinder”) is the current Vice President of Corporate Development and treasurer of KMI. D. Kinder is also the nephew of Defendant Kinder. Defendant D. Kinder is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

30. Defendant Joseph Listengart (“Listengart”) is currently the Vice President and General Counsel of KMI. Defendant Listengart is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

31. Defendant James Street (“Street”) is currently the Vice President of Human Resources of KMI. Defendant Street is a member of senior management who is also a member of the Buyout Group, as identified in a Schedule 13D filed with the SEC on May 30, 2006.

32. The Defendants named in paragraphs 8 to 19 (the “Director Defendants”), as directors of KMI, are in a fiduciary relationship with Plaintiffs and the other public stockholders of KMI and owe them the highest obligations of good faith, fair dealing, loyalty, due care and candor.

33. The Defendants named in paragraphs 26 to 31 are collectively referred to herein as the “Officer Defendants.”

34. The Defendants named in paragraphs 8 to 10 and paragraphs 26 to 31 are

collectively referred to herein as the “Inside Members of the Buyout Group.”

35. The Defendants named in paragraphs 12 to 14 are collectively referred to herein as the “Special Committee.”

36. The Defendants named in paragraphs 20 to 25 are collectively referred to herein as the “Non-Management Buyout Defendants.”

### **CLASS ACTION ALLEGATIONS**

37. Plaintiffs bring this action individually and as a class action pursuant to K.S.A. §60-223, on behalf of all KMI public stockholders (except Defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) and their successors in interest, who are or will be threatened with injury arising from Defendants' actions as more fully described herein.

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

39. The class of stockholders for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable.

40. There are questions of law and fact which are common to the Class including, inter alia, the following:

- a. whether the Director Defendants have breached their fiduciary duties owed by them to Plaintiffs and the members of the Class;
- b. whether the Inside Members of the Buyout Group have engaged in wrongful self dealing which is not entirely fair to the public stockholders of KMI;
- c. whether Plaintiffs and the other members of the Class will be damaged

irreparably by Defendants' misconduct and failure to undertake a proper process to maximize value for all stockholders; and

- d. whether the Officer Defendants and the Non-Management Buyout Defendants have aided and abetted the breaches of fiduciary duty complained of herein.

41. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. The claims of Plaintiffs 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. Accordingly, Plaintiffs will fairly and adequately represent the Class.

42. No unusual difficulties are likely to be encountered in the management of this action as a class action. Notice can be provided to the Class by various means of communication in the mass media. Moreover, little contact with individual members of the Class will be necessary because the conduct of the Defendants and not the conduct of the Class members, is the primary issue in this litigation.

43. 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 and establish incompatible standards of conduct for the party opposing the Class.

44. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

## **SUBSTANTIVE ALLEGATIONS**

### **A. The Formation of KMI**

45. KMI, formerly KN Energy, was founded in 1936 as Kansas Pipeline and Gas Company which provided natural gas to small communities and rural area of Kansas and Nebraska. KN Energy went public in 1970. KMI was founded by Kinder and Morgan as KC Liquid Holdings to acquire Enron Liquids Pipeline Company on January 8, 1997. On July 8, 1999, KN Energy entered into an Agreement and Plan of Merger with KMI whereby, KN Energy issued approximately 41.5 million shares of KN Energy stock for all outstanding shares of KMI. As a result of this merger KN Energy changed its name to Kinder Morgan, Inc. and Kinder was named the Chairman and Chief Executive Officer of the combined entity. In connection with the formation of KMI, Kinder designated 3 directors and W. Morgan designated one director, himself. The Kinder designees included Defendants Kinder, Sarofim, and Gardner.

### **B. The Intricate Structure of KMI**

#### **1. KMI**

46. KMI is one of the largest energy transportation and storage companies in North America, operating or owning an interest in roughly 43,000 miles of pipelines for natural gas and other products. KMI owns, controls and operates its business segments through a web of affiliated and subsidiary entities, including direct and indirect ownership of operating assets and ownership of 100% of the General Partner interest in a Master Limited Partnership.

47. KMI owns 100% of the stock of Kinder (Delaware), a Delaware corporation. Kinder (Delaware) owns 100% of the stock of Kinder Morgan G. P., Inc. (“KMGP”), which

is a Delaware corporation and the sole general partner of Kinder Morgan Energy Partners, L.P. (“KMP”), which is a Delaware limited partnership. KMP is a Master Limited Partnership which owns and controls a series of operating partnerships and is the largest single source of KMI’s earnings by virtue of cash distributions paid to KMI.

48. In addition to its ownership interest in Kinder (Delaware) KMGP, KMP and KMR, KMI owns substantial other operating assets. KMI’s other operating assets include natural gas pipelines and storage facilities, crude and refined petroleum pipelines and facilities, a retail distribution of natural gas business, and natural gas-fired electric generation facilities.

## **2. KMP – The Key Piece of KMI**

49. KMP, which by its distribution policies is KMI’s largest single source of earnings, has three classes of units of limited partnership interest outstanding, including Common Units, Class B Units and I-Units. As of June 30, 2006, KMP had a total of 157,019,676 Common Units outstanding; 5,313,400 Class B Units outstanding; and 60,009,379 I-Units outstanding. KMI, directly or indirectly, owns approximately 14.3 million Common Units. KMI, directly or indirectly, owns all of the Class B Units. The Class B Units generally have the same rights to voting and distributions as the Common Units, under the KMP Partnership Agreement. I-Units generally have the same voting rights as the Common Units and Class B Units, but, except in certain limited circumstances, distributions to holders of I-Units are made in additional I-Units determined based on the average market trading price of listed Units. KMP is generally prohibited by the KMP Partnership Agreement from issuing any I-Units to any person other than Kinder Morgan

Management LLC (“KMR”). KMR, as more fully discussed below, manages the business of KMP.

50. The General Partner interest of KMP is nominally a 1% interest. The split of distributions of KMP cash required under the terms of the KMP Partnership Agreement, however, entitles the General Partner and thus KMI to far more than a pro rata 1% split. Section 5.3 and 5.4 of the KMP Partnership Agreement requires 100% of KMP’s Available Cash to be distributed as follows:

(a) First, 99% to all Limited Partners, Pro Rata, and 1% to the General Partner until there has been distributed in respect of each Unit Outstanding as of the last day of such quarter an amount equal to the Minimum Quarterly Distribution;

(b) Second, 99% to all Limited Partners, Pro Rata, and 1% to the General Partner until there has been distributed in respect of each Unit Outstanding as of the last day of such quarter an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution;

(c) Third, 85.8673% to all Limited Partners, Pro Rata, and 14.1327% to the General Partner until there has been distributed in respect of each Unit Outstanding as of the last day of such quarter an amount equal to the excess of the Second Target Distribution over the First Target Distribution:

(d) Fourth, 75.7653% to all Limited Partners, Pro Rata, and 24.2347% to the General Partner until there has been distributed in respect of each Unit Outstanding as of the last day of such quarter an amount equal to the excess of the Third Target Distribution over the Second Target Distribution; and

(e) Thereafter, 50.5102% to all Limited Partners, Pro Rata, and 49.4898% to the General Partner

51. Sections 5.4 c, d and e provide substantial incentive distributions to the General Partner once the Second Target Distribution has been met.

52. According to KMP’s form 10-K for the fiscal year ending December 31, 2005, at the 2005 distribution level, KMI received approximately 51% of all of KMP’s quarterly

distributions, of which 42% of the distributions were attributable to KMI's General Partner interests, whereas 9% of the distributions were attributable to KMI's limited partner interests. According to KMI's form 10-K for the same time period, KMI's equity earning in KMP represented approximately 54%, 61% and 60% of KMI's income before interest and taxes in the years of 2005, 2004 and 2003, respectively. Accordingly, KMI received \$567,451,000 from its investment in KMP during 2005, and \$467,996,000 from its investment in KMP during 2004.

53. The KMP Partnership Agreement also confers substantial discretion to the General Partner to issue new or additional units without consent of the existing unit holders, with certain exceptions, and entitles the General Partner to protect itself from dilution of its interest in the event of such issuances.

54. The KMP Partnership Agreement also confers discretion to the General Partner to effect certain amendments to the Partnership Agreement without consent of the unit holders. Further, all amendments require consent of the General Partner. Amendments which require consent of at least 66 2/3% of all units outstanding.

55. Further, removal of the General Partner requires a 66 2/3% vote of the unaffiliated unit holders and the KMP Partnership Agreement prohibits any person or group owning more than 20% of the unaffiliated units from voting. Moreover, if the General Partner of KMP is removed by a vote of the unit holders, the General Partner is entitled to fair market value of the interest and is not limited to 1% equity value.

56. The KMP Partnership Agreement also gives the General Partner the right, which it can assign to KMP or its affiliates, to acquire the outstanding unaffiliated units of

KMP and Listed Shares of KMR at any time when the number of such units and Listed Shares is not more than 20% of the aggregate Listed Shares plus the aggregate number of Common Units. The KMP Partnership Agreement entitles the General Partner to effect the buyout at the greater of market price or the highest price paid in the previous 90 days by the General Partner or its affiliates to acquired units or shares.

57. KMPG, the General Partner of KMP, has a five director Board of Directors that includes Defendants Kinder and Shaper. All directors of KMPG are elected annually by, and may be removed by, Kinder (Delaware) as its sole shareholder, and all directors of KMR are elected annually by, and may be removed by, KMPG as the sole holder of KMR's voting shares. Kinder (Delaware) is a wholly owned subsidiary of KMI. All officers of KMPG serve at the discretion of the Board of Directors of the General Partner. The senior management of KMPG includes: Defendant Kinder, Chief Executive Officer; Defendant Shaper, President; Steven J. Kean, Executive Vice President and Chief Operating Officer; Joseph Listengart, Vice President, General Counsel and Secretary; Scott E. Parker, Vice President and President of Natural Gas Pipelines; Kimberly A. Dang, Vice President, Investor Relations and Chief Financial Officer; Jeffrey R. Armstrong, Vice President and President of Terminals; Thomas A. Bannigan, Vice President and President of Products Pipelines; Richard T. Bradley, Vice President and President of CO<sub>2</sub>; David D. Kinder, Vice President, Corporate Development and Treasurer; James E. Street, Vice President, Human Resources and Administration.

58. Senior management of KMI substantially constitutes senior management of the KMI subsidiaries and operations. The executive officers of KMI are Defendant Kinder,



CEO; Defendant Shaper, President; Steven J. Kean, Executive Vice President and Chief Operating Officer; Joseph Listengart, Vice President, General Counsel and Secretary; and Scott E. Parker, Vice President and President of Natural Gas Pipelines. Each of the KMI executive officers holds an identical position with KMPG and KMR. In addition, Kimberly Dang, David Kinder and James Street all hold identical positions with KMI as they do in KMPG and KMR.

### 3. **KMR**

59. KMR is a Delaware limited liability company. KMR has two classes of shares outstanding. KMR's Listed Shares are non-voting and publicly traded. KMR's Voting Shares are 100% held by KMGP. KMI also owns, directly or indirectly, approximately 10.6 million Listed Shares of KMR.

60. The management of the business and affairs of KMP is delegated to KMR pursuant to the terms of a Delegation of Control Agreement among KMGP, KMR, KMP and several subsidiary operating limited partnerships. The Delegation of Control Agreement irrevocably delegates all of the KMGP power and authority to manage and control the business and affairs of the partnerships to KMR to the fullest extent permitted by the partnership agreements and Delaware law, except that certain actions require approval of KMGP.

61. KMR's Board of Directors consists of the same individuals as KMGP's Board of Directors. All directors of KMR are elected annually by, and may be removed by, KMGP as the sole holder of KMR's voting shares. All officers of KMR serve at the discretion of the board of directors of KMGP. The senior management of KMPG and KMR is identical and

includes: Defendant Kinder, Chief Executive Officer; Defendant Shaper, President; Steven J. Kean, Executive Vice President and Chief Operating Officer; Joseph Listengart, Vice President, General Counsel and Secretary; Scott E. Parker, Vice President and President of Natural Gas Pipelines; Kimberly A. Dang, Vice President, Investor Relations and Chief Financial Officer; Jeffrey R. Armstrong, Vice President and President of Terminals; Thomas A. Bannigan, Vice President and President of Products Pipelines; Richard T. Bradley, Vice President and President of CO2; David D. Kinder, Vice President, Corporate Development and Treasurer; James E. Street, Vice President, Human Resources and Administration.

**C. KMI Business Segments**

62. KMI's business segments include natural gas pipelines and storage, crude and refined petroleum pipelines, retail distribution of natural gas, natural gas-fired electric generation facilities, and equity ownership in KMP and KMR. Throughout its history KMI has consistently followed a growth through acquisition model in order to enter new markets and product lines. KMI's recent acquisition of Terasen Inc. for \$5.7 billion, closed on November 30, 2005 giving them a presence in the retail natural gas market in British Columbia and adding their crude and refined petroleum pipelines segment. When the merger was completed KMI split Terasen Inc. into Terasen Energy Services, Terasen Measurement, Terasen International, Kinder Morgan Canada and Terasen Gas and sold Terasen Water, Terasen Waterworks and Utility Services for \$124 mm.

63. Natural Gas Pipeline of America ("NGPL") is KMI's natural gas and pipeline business. Through NGPL KMI owns and operates approximately 9,800 miles of interstate natural gas pipelines, storage fields, field system lines and related facilities, consisting

primarily of two major pipelines that end in the Chicago metropolitan area. NGPL offers transportation and storage services to third-party natural gas distribution utilities, marketers, producers, industrial end users and other shippers. NGPL has long-term contracts in place for the majority of its pipeline capacity including the Amarillo-Gulf Coast cross-haul which has its entire capacity locked into long-term contracts. For the Fiscal year ended December 31, 2005 NGPL earned \$435.2 mm, accounting for over 38% of KMI's income.

64. KMI's crude and refined petroleum pipelines are operated under the name Kinder Morgan Canada ("KM Canada"). KM Canada is the second largest transporter of crude oil and petroleum in Canada. Through their Trans Mountain, Corridor, Express and Platte pipelines, KM Canada owns and operates over 2,800 miles of pipeline. The Trans mountain pipeline transports petroleum from the oil fields in Alberta and British Columbia, including the highly touted Alberta tar sands that currently contain 175 billion barrels of accessible oil and an estimated 1.6 trillion total barrels of oil, to markets in British Columbia and Washington State (according to numbers reported on February 17, 2005 on [Forbes.com](http://Forbes.com)). Kinder Morgan Canada was only a KMI business for December of 2005 but represented 1% of total KMI income for Fiscal 2005 with income of \$12.5 mm.

65. In a transaction announced on August 1, 2005 and closed on November 30, 2005, KMI acquired Terasen, Inc., a Canadian natural gas and pipeline company, for approximately \$5.7 billion. In the press release issued on August 1, 2005 entitled "Kinder Morgan - Terasen Combine to Create a North American Energy Leader; Kinder Morgan to Purchase Terasen for Approximately US\$5.6 Billion," Defendant Kinder noted that the acquisition adds to the strengths of KMI core pipeline business as "Terasen's pipelines are

well-positioned to transport growing production from the Alberta oil sands, which is expected to become and increasingly important supply source to North America.” He further stated:

The transaction is expected to be approximately 6-8 percent accretive for KMI shareholders on a pro forma basis to recurring earnings per share in 2006, which is expected to be the first year of combined operations. For 2006, recurring earnings per share are expected to be approximately US\$5.00, and cash flow is expected to be almost US\$800 million. (Cash flow is defined as pre-tax income before DD&A, less cash paid for income taxes and sustaining capital expenditures -- see the discussion following.) The annual KMI dividend is expected to be at least US\$3.50 per share in 2006, up from its current rate of US\$3 per share. The strengths of and prospects for the combined company are such that it expects to continue to grow earnings per share and the dividend at approximately 10 percent annually without any acquisitions at KMI or KMP.

66. As of May 28, 2006, KMI’s retail distribution of natural gas segment consisted of Terasen Gas Inc. (“TGI”) and Kinder Morgan Retail (“Retail”). TGI transports and delivers natural gas to approximately 87% of commercial and industrial users of natural gas in British Columbia. TGI distributes to their residential and small commercial and industrial customers mainly on a non-contractual basis, charging them for general services provided. TGI provides services to large commercial and industrial customers on a contract basis and also offers transportation services to customers who arrange for their own gas supply. TGI owns over 23,958 miles of pipelines for natural gas distribution and holds operating agreements with all of the municipalities it serves in the Greater Vancouver and Fraser Valley and franchise or operating agreements with the municipalities it serves in the interior of British Columbia. Although Terasen Gas did not join the KMI family until December of

2005 they contributed \$45 mm in income, accounting for 4% of KMI's total income for the 2005 Fiscal Year.

67. KMI's other retail natural gas segment was sold to GE Energy Financial Services for \$710 mm plus working capital on August 14, 2006. Kinder Morgan Retail delivered natural gas to roughly 245,000 customers in Colorado, Nebraska, and Wyoming through 11,400 miles of pipelines, underground storage fields, field system lines and related facilities. Retail also owned and operated a small natural gas distribution system in Hermosillo, Mexico. For Fiscal 2005 Retail earned \$58mm, representing 5% of KMI's total income.

68. Kinder Morgan Power ("Power") operates KMI's natural gas-fired electric generation facilities. Power has ownership interests in two natural gas-fired electricity generation facilities in Colorado, one in Michigan, and a profit interest in a third facility in Colorado. Power's customers include power marketers and utilities. Power has a long-term power sales agreement and gas supply contract with one of the Colorado facilities and tolling agreements with the other Colorado and Michigan facility that places the market risk associated with increased fuel prices on the customers. Power had earnings of \$19.7 mm which was roughly 2% of KMI's income in 2005.

**D. KMI's Restated Articles of Incorporation**

69. KMI's Restated Certificate provides for a classified Board of Directors. Article Fifth of the Restated Articles of Incorporation of KMI provides that the Board be divided into three classes each made up of numbers nearly as equal as possible. A classified board is

a common defensive tactic that makes it more difficult for minority shareholders or a third party acquiror to gain control of a corporation without dealing directly with the current board and management. Here, the classification is a particularly effective deterrent because Defendant Kinder was reelected to a three year term just prior to making the going-private offer. The 2006 Annual Proxy Statement did not disclose any plans or discussions regarding a Kinder-led buyout.

70. Article Thirteenth of KMI's Restated Articles of Incorporation provides that where a "Related Person," defined as a 10% owner, seeks to enter into one of the transactions, defined by Section Two of Article Thirteenth, and which include, among other things, a merger with KMI, such a transaction is subject to the affirmative vote of the holders of at least 80% of all of the securities of the corporation then entitled to vote in an election of directors. The 80% super-majority provision, which would otherwise apply to the transaction proposed here, can be waived where a resolution approving the transaction is adopted by three quarters of the Board members not affiliated with or associated with the Related Persons.

71. Article Seventh of KMI's Restated Articles of Incorporation requires the affirmative vote of the holders of at least two-thirds of all of the securities of the corporation then entitled to vote at a stockholder meeting for:

- a. the adoption of any agreement for the merger or consolidation of KMI with or into a "person," which term is broadly defined by the Article Seventh;
- b. the sale, lease, exchange, mortgage, pledge or other disposition of substantially all KMI's assets to a person; or

- c. the issuance or transfer of \$5,000,000 of KMI securities for securities or assets of a person,

where the person involved in any of the foregoing owns 5% of KMI's then outstanding securities. Although KMI's Board is able to waive this two-thirds requirement in certain circumstances, none is applicable to the transaction here, and any such waiver or failure to abide would be wrongful here. As such, the Buyout Group's proposed transaction will, by mandate of KMI's Restated Articles of Incorporation require a two-thirds approval vote.

72. Kinder and KMI are parties to an employment agreement under which, among other things, provides that Kinder will not for the period of 12 months and anywhere in the United States, directly or indirectly, own, manage, operate, join, contract or participate in the ownership, management or control of or be employed by or be connected in any manner with any business which is or may be competitive in any manner to the business engaged in as of the date of such termination by the Company or any partnership in which the Company is a general partner or any of the direct or indirect subsidiaries or affiliates of such partnership. The KMI Board expressed belief in the 2006 Annual Proxy Statement that Defendant Kinder's employment agreement contains provisions, including the non-competition clause that are beneficial to KMI and its stockholders. The Buyout, however, puts Kinder's interests in conflict with the public stockholders. Kinder is using his knowledge, expertise and judgment to further his own special interest in securing the value and prospects of KMI's business for himself in direct competition with management's ongoing plan and alternatives to maximize value for all stockholders.

**E. KMI Financial And Stock Performance**

73. For the years 2001 through 2005, and particularly 2002 – 2005, KMI demonstrated a steady pattern of growth in terms of market price for common shares as shown in the following table:

Year	Stock Price Trading Range
2001	\$42.88 - \$60.00
2002	\$30.05 - \$57.50
2003	\$42.25 - \$59.27
2004	\$56.85 - \$73.82
2005	\$69.27 - \$99.97

The trend of growth continued into 2006, reaching an apex of \$103.75 per share on January 20, 2006. Thereafter, the market price of KMI uncharacteristically slumped, reaching a nadir of \$81.00 during trading on May 24, 2006, just days prior to the offer from the Buyout Group. Indeed, the Buyout Group's offer came at a time when the market price of shares had slumped to a level not seen since early July 2005.

74. During the same period, the quarterly dividend paid per KMI common share has been steadily increased in the manner reflected on the chart below:

<u>Quarte</u> <u>r</u>	<u>Dividend/Common Share</u>
1Q01	\$0.05
2Q01	\$0.05
3Q01	\$0.05
4Q01	\$0.05
1Q02	\$0.05
2Q02	\$0.05
3Q02	\$0.10
4Q02	\$0.10
1Q03	\$0.15



2Q03	\$0.15
3Q03	\$0.40
4Q03	\$0.40
1Q04	\$0.5625
2Q04	\$0.5625
3Q04	\$0.5625
4Q04	\$0.5625
1Q05	\$0.70
2Q05	\$0.70
3Q05	\$0.75
4Q05	\$0.75
1Q06	\$0.875
2Q06	\$0.875
3Q06	\$0.875

KMI's dividends have traditionally been approved by the Board during the first month of the quarter and paid at or about the mid-point of the quarter for which the dividend is paid to shareholders of record at the end of the first month of the relevant quarter. For example, in the third quarter of 2006, the KMI board approved a cash dividend on July 19, 2006 and declared the approval in a press release affixed to an 8-K filed that same day. The dividend was payable to stockholders of record as of July 31, 2006 on August 14, 2006. KMP distributions are typically made on the same day KMI's dividends are paid.

75. The trading price slump does not accurately reflect KMI's expansion opportunities. On August 17, 2005, KMI issued a press release entitled "Kinder Morgan and Sempra Energy Unit Team Up for Proposed New Interstate Natural Gas Pipeline." The release stated in part that KMP had agreed with Sempra Energy to pursue development of a natural gas pipeline for the purpose of linking the Rocky Mountain region with the upper Midwest and Eastern U.S. The pipeline would run from Wyoming to Ohio and is projected to be staged into service beginning in late 2008 through 2009.

76. On September 22, 2005, KMI issued a press release entitled “Kinder Morgan Energy Partners Announces Agreements for New LNG Pipeline Projects: Initiates Open Season.” The Press Release Stated in part:

Kinder Morgan Energy Partners, L.P. (NYSE: KMP) today announced the start of a binding open season for its proposed Kinder Morgan Louisiana Pipeline that would provide take-away capacity from the Cheniere Sabine Pass liquefied natural gas (LNG) plant now under construction in Cameron Parish, La. The company plans to invest approximately \$490 million to build a new interstate natural gas pipeline that would originate at the Sabine Pass LNG Terminal and extend approximately 137 miles connecting to various interstate and intrastate pipelines and ending in Evangeline Parish, La.

77. On October 19, 2005, KMI issued an earnings press release entitled “Kinder Morgan, Inc. Third Quarter EPS Up 12 Percent Before Certain Items,” in which Defendant Kinder touted the Rockies Express Pipeline and Louisiana Pipeline Projects as follows:

We also made great strides at KMP towards the realization of two substantial natural gas pipeline projects -- the Rockies Express Pipeline that will deliver Rocky Mountain gas to upper Midwest and Eastern markets and the Louisiana Pipeline that will deliver gas out of LNG facilities along the Gulf Coast (please read the KMP third quarter news release for more detailed information on these projects).

78. On January 18, 2006, KMI issued an earnings press release entitled “Kinder Morgan, Inc. Reports Record Earnings; Increases Dividend By 17 Percent to \$3.50 Annually,” in which Defendant Kinder enthusiastically addressed the prospects for the Rockies Express Pipeline and Louisiana Pipeline Projects as follows:

“We also completed a successful open season on the Rockies Express Pipeline and made significant progress toward bringing this project to fruition, and we entered into contracts with major shippers for all of the capacity on the Kinder Morgan Louisiana Line, which is expected to begin service in early 2009,” Kinder said. Rockies Express will move natural gas eastward out of the Rockies and is expected to become the largest pipeline

built in the United States in over 20 years. The Kinder Morgan Louisiana Line will move gas from liquefied natural gas (LNG) terminals along the Gulf Coast into the country's pipeline network.

79. On April 19, 2006, KMI issued an earnings press release entitled “Kinder Morgan Inc. Reports 29 Percent Increase in EPS From continuing Operations Before Certain Items.” The press release stated in part that KMI reported first quarter earnings from continuing operations, before a non-recurring charge related to the acquisition of Terasen, Inc., of \$208.6 million, or \$1.54 per diluted common share up from to \$148.3 million, or \$1.19 per share, for the comparable quarter in 2005. That was an increase in diluted earnings per share of 29 percent. Income, including the Terasen charge, was \$194.5 million, or \$1.44 per diluted common share, compared to \$145.1 million, or \$1.17 per share, for the same period last year. Commenting on the quarter, Kinder characterized it as “outstanding” and that the success was lead by KMI’s ownership of KMGP, “superb performance” by the Natural Gas Pipeline Company of America and earnings generated by the Terasen acquisition. Kinder also reported that the KMI had recently announced new projects and strategic expansion at KMI and KMP expected to “result in exceptional long-term value for our shareholders.” These projects included the development of Rocky Mountain pipeline and supplier commitments related to that project as well as oil company support of the Kinder Morgan Louisiana Pipeline project. Those two projects are “expected to result in an increase of \$0.50 to \$0.60 in earnings per share at KMI once they are fully completed in 2009, and will be substantially accretive prior to that as certain segments of each project come online.”

80. The April 19, 2006, press release was the first instance in which Defendants

disclosed an estimate of the earnings expected from the Rockies Express Pipeline and Louisiana Pipeline projects. The release, however, did not discuss the factors upon which these earnings estimates were based. KMI did not discuss how these estimates accounted for potential markets, expected market share, potential customers or the effect of increased demand for natural gas storage and transportation due to price volatility.

81. By late May 2006, it was apparent that KMI was positioned to react to the dynamics of the energy industry to exploit expansion opportunities and enrich the shareholders through KMI's control over the energy assets. KMI stock price, however, hit an unexplained and unaccounted for 12 month low of \$81 per share during trading on May 24, 2006.

F. **The Buyout Group Launches a \$100 per Share Proposal Within Days of the Lowest Point of an Aberrant Dip in KMI's Stock Price**

82. On May 29, 2006, KMI issued a press release entitled "Management Group and Investment Partners Propose to Take Kinder Morgan, Inc. Private at \$100 Per Share." The release reported that Kinder had announced that he and the Buyout Group submitted an acquisition proposal to acquire all shares of KMI stock outstanding for \$100. KMI management and participating board members would invest almost \$2.8 billion in the transaction, with the financial sponsors providing the remainder of the required equity. The total value of the purchased equity, together with the debt that would be either refinanced or remain outstanding is approximately \$22 billion.

83. In addition, Goldman Sachs Credit Partners provided a "highly confident" letter regarding the group's ability to raise the required debt. Kinder also announced that "the

senior management team would remain intact to help lead our enterprise into the future, and it would be business as usual for our valued employees, who are responsible for our success.” Moreover, Kinder stated that the \$100 proposal “reflects the confidence that senior management and the sponsors have in the future growth potential of [KMP],” and noted that KMI’s ownership of KMGP “and other partnership interests in, KMP represent KMI’s largest and fastest growing asset.” Kinder said that KMP would benefit from the transaction because the proposed deal would enable a crude oil hedging facility and that following the transaction, the newly private KMI would offer to sell KMP the Trans Mountain Pipeline at “an attractive price.”

84. A letter from Kinder to the Board of Directors described the proposed offer, its participants and sources of funding for the proposed transaction. Kinder’s letter stated:

I would continue as Chairman and CEO following the transaction, and we also expect that the Company’s senior management team would remain in place. We clearly anticipate continuing to run the business in accordance with our current practice and maintaining the Company’s valuable employee base, which we view as one of its most important assets.

85. A letter dated May 28, 2008 from Goldman Sachs & Co. and Goldman Sachs Credit Partners L.P. addressed to Richard Kinder, AIG Global Asset Management Holdings Corp., The Carlyle Group, GS Capital Partners V Fund and Riverstone Holdings LLC stated that the Buyout Group had advised that the proposed transaction would be funded through equity contributed by the Sponsors in cash and the rollover and/or purchase of equity by Richard Kinder and certain other members of management of KMI and debt of approximately \$14.5 billion to be incurred through credit facilities; the sale or placement of

debt securities or, interim financing consisting of additional credit facilities; and/or the assumption of existing debt. Goldman Sachs stated that Goldman Sachs and GS Credit Partners were “highly confident” of their ability to successfully fund the acquisition as proposed through the sale and placement of debt securities and credit facilities.

86. On May 30, 2006 the Associated Press published an article entitled, “Kinder Changes Sides.” The Article provided in relevant part that the \$1 salary that Kinder receives for his management role in the family of Kinder Morgan entities is a gimmick. Kinder’s income is generated principally by virtue of KMI’s ownership of KMGP and the distributions from KMP to which KMI is entitled. Although Kinder’s salary is just one dollar, his income comes as a result of his position as KMI’s largest shareholder. As such, his interests had always been directly aligned with KMI’s public shareholders until making the current proposal. A going-private transaction would enable Kinder and his partners to keep all value of and income generated by KMI. The May 30, 2006 AP article also noted a discrepancy in the numbers as announced stating that while the transaction calls for debt of \$13.5 billion, the press releases issued in connection with the proposal stated that KMI would have \$14.5 billion in debt following close of the transaction. The article speculated that the extra \$1 billion could be earmarked for Kinder.

87. On June 1, 2006, KMI issued a press release announcing that Kinder Morgan Energy Partners, L.P. had completed a \$210 million expansion to its El Paso, Texas to Phoenix, Arizona pipeline. This expansion increased the pipelines capacity by 50 percent from El Paso to Tucson and 80% between Tucson and Phoenix. This and other pipeline

projects that come on line in the following months will continue to increase KMI's value. This value, however, will not be shared by KMI's shareholders.

88. On June 8, 2006, KMP announced that it had undertaken a major expansion project of KMP's Dayton Natural gas storage field, which will more than double the existing capacity. This expansion will cost KMP \$76 million. This value, however, will not be shared by KMI's shareholders.

**G. The Flawed Special Committee Process**

89. On June 13, 2006, KMI filed a form 8K stating that the KMI Board had formed a Special Committee of three directors which had retained legal and financial advisors. Those Directors are Defendants Bliss, Austin and Gardner. Further, Defendant Bliss was named as the Chairman of the Special Committee. For his services as the Chairman of the Special Committee Defendant Bliss will receive \$250,000, while Defendants Austin and Gardner will each receive \$125,000. In addition to those payments, each committee member will be entitled to receive \$2,000 for each meeting personally attended and \$1,000 for each meeting attended telephonically. These payments dwarf historical director compensation for KMI.

90. The Special Committee's financial advisors are Morgan Stanley and Blackstone Group. Morgan Stanley has performed services for the Kinder Morgan family of entities previously. Morgan Stanley recently acted as an underwriter of a sale of additional KMP Common Units in August 2005. Morgan Stanley was also retained to provide a fairness opinion to directors of KMPG and KMR concerning the sale of a KMI asset to KMP in November 2004. In that asset sale, Morgan Stanley worked along side Goldman Sachs (the

private equity arm of which is part of the Buyout Group) in advising the directors. Given the multi-faceted nature of the Kinder Morgan family of entities' businesses and regular capital raising efforts, Morgan Stanley will doubtlessly seek future employment by KMI and its subsidiaries, and Kinder will have primary discretion over such engagements thereby tainting Morgan Stanley and Blackstone Group's joint advice to the Special Committee.

91. The Special Committee is not truly independent. First, the extraordinary compensation taints the disinterest and independence of the Special Committee and undermines any confidence that it will advance the interests of the public stockholders. As alleged above, Defendant Bliss as Chairman will receive \$250,000 for his services on the special committee. Defendants Austin and Gardner will each receive \$125,000, which creates a similar bias to approve the deal.

92. Additionally, Defendant Gardner was hand-picked by Defendant Kinder to serve on the KMI Board pursuant to the 1999 merger. When KN Energy merged with Kinder Morgan, Defendant Kinder designated Defendant Gardner as a KMI board member pursuant to a now-expired governance agreement entered into between Defendant Kinder and KMI. Defendant Gardner is clearly beholden to Defendant Kinder for his position and the substantial financial remuneration he will receive as a result of that position.

93. Moreover, Kinder dominates the management and affairs of KMI and its subsidiaries. Kinder, as the dominant insider, together with the other Inside Members of the Buyout Group, have charted KMI's course and business strategy and have vital expertise, knowledge and judgment regarding KMI's value, prospects and strategic alternatives. With this influence, knowledge and judgment positioned adverse to the interests of the



stockholders in achieving the highest value and obtainable on a sale of control of KMI and its valuable assets, the Special Committee and Board's evaluation of strategic alternatives and negotiation process are substantially impaired.

94. Further, Kinder's and the other Inside Members of the Buyout Group's knowledge enabled the Buyout Group to time the public announcement of the \$100 proposal to take advantage of an uncharacteristic drop in the stock price of KMI in order to cap the market price.

95. Further, the Inside Members of the Buyout Group have used their control over KMI and its affiliates to engage in a series of assets sales, both previous to and contemporaneously with the announcement of the Proposal, in an effort to enhance KMI's status as a target for a leveraged buy-out. Examples of that type of exercise of control:

- a. On May 22, 2006, KMI announced that its wholly owned subsidiary, Terasen Inc., had completed the sale of Terasen Water and Utility Services for roughly \$124 million Canadian dollars. KMI stated that it will use those proceeds to pay down debt. On May 31, 2006, KMI announced that it had completed the sale of its Powder River Gathering System and Painter Unit Fractionation Facility for roughly \$43 million in cash. The proceeds of the asset sale will be used to pay down debt. On August 2, 2006, KMP announced that it had sold certain properties located in the Permian Basin of West Texas for roughly \$27 million. KMP stated that proceeds from the sale will be used to pay down debt.
- b. On August 14, 2006, KMI announced it will sell its natural gas retail

distribution and related operations serving 260,000 customers in Colorado, Nebraska, Wyoming and Hermosillo, Mexico, to GE Energy Financial Services for \$710 million. The transaction is expected to close by the end of the first quarter of 2007. The press release stated that KMI intends to use the proceeds from the sale to retire debt and repurchase KMI stock. Further this sale does not involve Terasen Gas.

- c. Since May 22, 2004, the Insider Defendants, pursuant to their positions of control over KMI, and its affiliates, have caused KMI, and its affiliates, to engage in assets sales to be worth, in aggregate, approximately \$891.91 million dollars (assuming an exchange rate of \$0.9025 for the amounts reported in Canadian Dollars). Considering the structure of the Transaction as a leveraged buy-out, \$891.91 million less debt, or \$891.91 million additional cash on hand, is clearly material to the feasibility and desirability of such a buy-out. The Insider Defendants have used their positions of control to benefit themselves and not the KMI public shareholders going forward.
- d. On or about August 10, 2006, KMP filed a Prospectus Supplement for an offering of up to 5 million Common Units of KMP with an underwriter's option for up to 750,000 additional Common Units at \$44.80 per Common Unit. The Prospectus stated that the net proceeds would be used to repay short-term commercial paper debt. The Prospectus states that KMP, KMR, KMGP and their respective directors and officers, and KMI have

agreed with the underwriters to a lock-up agreement not to, subject to limited exceptions, directly or indirectly, sell, offer, pledge or otherwise dispose of any Common Units, Class B Units or shares of KMR or any substantially similar securities for a period of 45 days without the prior written consent of the lead underwriters.

**H. KMI's Known and Anticipated Future Profits Will Not Be Shared By the Public Shareholders**

96. On June 21, 2006, KMP announced that through its Kinder Morgan Terminals Canada, ULC subsidiary, that it will begin construction on a new crude oil tank farm in Edmonton, Alberta. KMP announced that it had entered into long-term contracts with customers for all the available capacity. This value, however, will not be shared by KMI's shareholders.

97. On July 19, 2006, KMI issued an earnings press release entitled "Kinder Morgan Inc. Reports 11 Percent Increase in EPS From continuing Operations Before Certain Items." The press release stated in part that KMI reported second quarter income from continuing operations before certain items of \$141.7 million, or \$1.05 per diluted common share, compared to \$117.3 million, or \$0.95 per share, for the comparable quarter in 2005, an increase in diluted earnings per share of 11 percent. Kinder characterized the quarter as "excellent" second quarter, and that the success was lead by KMI's ownership of KMGP, "superb performance" by the Natural Gas Pipeline Company of America and earnings generated by the Terasen acquisition. Kinder also reported that KMI and KMP continued to make "good progress" on the Rockies Express Pipeline. During the first two quarters of

2006, KMI generated approximately \$420.3 million of cash flow compared to \$323.7 million for the previous year. KMI's earnings attributable to its ownership of KMGP for the first two quarters of 2006 had also increased as compared to the same period in 2005. KMI's general partner share of KMP's distributions grow as KMP's incremental distributions grow. Natural Gas Pipeline Company of America second quarter earnings grew 21% compared to the same quarter in 2005, and its long-haul transportation and storage capacities are fully contracted (with minor exceptions) through February 2007 and April 2007, respectively. Kinder also stated that "Terasen Gas, which is a low-risk, regulated natural gas distribution company that produces very stable cash flow, is slightly ahead of its financial expectations at the mid-year point,"

98. Only July 25, 2006, the Wall Street Journal published an article entitled, "Cash Machine: In Today's Buyouts, Payday For Firms Is Never Far Away." The Article discussed the circumstances surrounding the acquisition of Burger King Corp by Texas Pacific Group, the private-equity arm of Goldman Sachs Group, Inc. and Bain Capital in 2002. Taking a company private allows the purchasers to structure business operations in a way that pays investors extraordinary management fees and dividends. In February, 2006. Burger King announced an initial public offering. Prior to the IPO, though, the owners caused themselves to receive a \$367 million dividend and a \$30 million fee to terminate their management agreement. In all, the firms were able to extract fees and dividends almost equal to their initial investment, without taking into account the market valuation of their shares following the IPO of approximately \$1.8 billion. The article went on to note that in July 2006, both J.P. Morgan Chase & Co. and Merrill Lynch made large gains from private

equity investments as responsible for significant rises in second-quarter profits. Goldman Sachs, whose private equity arm is a part of the Buyout Group has grown into one of the world's largest private equity investors.

99. In the "Dealbook" feature in the New York Times on July 30, 2006, Andrew Ross Sorkin wrote, in an item entitled "Investors, Watch Your Wallets if Managers Lead the Buyout:"

A review of buyout offers led by or involving managements over the last two years – Richard Kinder's recently proposed \$22 billion offer for example – demonstrate that shareholders in these deals may be horribly shortchanged.

Sorkin correctly observes that management-led buyouts result in such poor deals for public shareholders because the management groups are able to leverage their control of the target company to vitiate the effectiveness of even truly independent special committees formed in connection with the proposals. The committees can either accede to the demands of management to sell at less than the true value of the entity or risk the management buyout group abandoning the company entirely.

100. On August 1, 2006, KMI announced that NGPL was extending its existing transportation and storage contracts with Center Point Energy. NGPL's president, Parker, stated that the extended contract will provide NGPL with "stable, fee-based income." This value, however, will not be shared by KMI's shareholders.

101. According to the Company's latest Form 10-K filed on March 15, 2006, "Natural gas transportation, storage and retail sales accounted for approximately 93%, 92% and 95% of [KMI's] consolidated revenue in 2005, 2004 and 2003, respectively." Therefore, the Rockies Express Pipeline, the Louisiana Pipeline, the Mid-Continent Express, the Gulf

Coast Pipeline, the Amarillo cross-haul line, the Sayre storage field expansion, and other projects, which will significantly increase the Company's natural gas transportation infrastructure, will encompass the lion's share of KMI's earnings in future periods.

**I. The Agreed Upon Buyout**

102. On August 28, 2006, KMI announced approval of a Buyout pursuant to which the Buyout Group will acquire the public shares of KMI for \$107.50 per share, a less than 8% per share increase over the Buyout Group's opening bid of \$100 per share. The insider participants in the Buyout Group, in contrast to the public KMI stockholders, will convert their KMI shares into new shares of KMI keeping all the continuing value. This is the only time the public stockholders will have an opportunity to obtain a control premium for their shares. The Buyout Group is wrongfully depriving the public shareholders of their entitled premium.

103. The Buyout constitutes a sale of control of KMI and its assets, including KMGP, at a price that is just \$23.09 per share higher than the trading price of public shares prior to announcement of the \$100 Buyout proposal. The 27% premium claimed in KMI's August 28, 2006 press release announcing the Buyout is illusory. Defendants took advantage of a trading price at or near KMI's twelve month low in timing the offer.

104. The Buyout constitutes breaches of fiduciary duty including wrongful self dealing and entire fairness by Kinder, Sarofim, Morgan and the other management participants in the Buyout Group. These individuals stand on both side of the transaction and their interests are directly adverse to the interests of the public stockholders in maximizing value for all stockholder and obtaining the best price and control premium

available on a sale of control of KMI and its assets. These individuals, as dominant senior management of KMI, possessed the knowledge, judgment and expertise regarding KMI's value and prospects which should have been employed for the benefit of achieving the best strategic alternative to maximize value for all stockholders. Instead, these individuals employed their knowledge, judgment and expertise to time and effect a leveraged buyout proposal to maximize their own interests at the expense of the public KMI holders.

105. The process which led to the Special Committee's and Board's approval of the Buyout was defective and not independent. The Buyout Group timed the \$100 proposal to coincide with the 12 month low of KMI's trading price. The members of the Special Committee, one of whom was a hand picked designee of Kinder's, were granted extraordinary compensation payments by the Company for service on the committee. Further, by virtue of their participation on the buy-side of the Buyout, key management insiders were effectively unable to participate in the independent and meaningful consideration of alternatives and strategy and to evaluate the value of KMI and its assets, as their interests were directly adverse to the interests of the public stockholders. The \$107.50 per share price approved by the Special Committee and Board does not fairly account for the extraordinary control value of KMI and its assets.

106. The proposed Buyout includes deal protection provisions, including an egregious termination fee in the amount of \$215 million in the event of a termination based on a superior transaction.

107. The Inside Members of the Buyout Group dominate the management and affairs of KMI and its subsidiaries and exercised actual control in the process of determining

strategic alternating to maximize value. The Inside Members of the Buyout Group used their dominance and control to obtain unfairly disparate treatment for themselves at the expense of the public holders in the Buyout through which these Defendants will obtain continuing equity interests in the assets, business and control of KMI. The Buyout and process are not entirely fair.

### **COUNT I**

#### **(Class Claim for Breach of Fiduciary Duties Against the Director Defendants)**

108. Plaintiffs repeat and re-allege the foregoing allegations

109. The Director Defendants violated their fiduciary duties of care, loyalty, good faith, candor, and entire fairness owed to the public shareholders of KMI.

110. The Director Defendants have not undertaken a proper process to investigate and evaluate alterations to maximize value for all of KMI's stockholders and have acceded to Kinder's and the other insiders' domination and self interest in obtaining KMI and its valuable assets at an unfairly low price at the expense of the public holders.

111. Unless the Court enjoins the proposed transaction, the Director Defendants will engage in further breaches of their fiduciary duties to the Company's shareholders and accept the Buyout Group's terms without adequate and truly arms-length negotiation and consummate the transaction on terms beneficial to the Buyout Group and not to the public shareholders of the Company. These actions will result in irreparable harm to the members of the Class.

### **COUNT II**

#### **(Class Claim For Breaches of Fiduciary Duty Including Wrongful Self-Dealing and**



**Entire Fairness Against the Inside Members of the Buyout Group)**

112. Plaintiffs repeat and re-allege the foregoing allegations.

113. The Inside Members of the Buyout Group violated their fiduciary duties of care, loyalty, good faith, candor, and entire fairness owed to the public shareholders of KMI .

114. The proposed acquisition of KMI constitutes wrongful self-dealing by the Inside Members of the Buyout Group because they stand on both sides of the transaction, possess superior knowledge regarding KMI and viewed the value of KMI as significantly higher than \$107.50 per share, and have a right to participate in the Buyout, which is not available to the public stockholders.

115. Unless the Court enjoins the proposed transaction, the Inside Members of the Buyout Group will engage in further breaches of their fiduciary duties to the Company's shareholders, including wrongful self-dealing by using their superior knowledge of KMI to consummate the transaction on terms beneficial to themselves and not the public shareholders of the Company. These actions will result in irreparable harm to the members of the Class.

**COUNT III**

**(Class Claim for Aiding and Abetting Breaches of Fiduciary Duties Against the Officer Defendants and Non-Management Buyout Defendants)**

116. Plaintiffs repeat and re-allege the foregoing allegations

117. The Officer Defendants and Non-Management Buyout Defendants aided and abetted the breaches of fiduciary duties owed to the public shareholders of KMI by the Director Defendants and Officer Defendants.

118. The Officer Defendants and Non-Management Buyout Defendants knowingly participated in the breaches, as they knew the Inside Members of the Buyout Group possessed superior knowledge regarding KMI and viewed the value of KMI as significantly higher than \$107.50 per share.

119. Plaintiffs hereby demand a trial by jury of the claims stated herein.

WHEREFORE, Plaintiffs demand judgment as follows:

A. certifying this case to proceed as a proper class action pursuant to K.S.A. §60-223 with Interim Lead Plaintiffs as class representatives and Interim Lead Counsel as class counsel;

B. enjoining, preliminarily and permanently, the stockholders vote and any sale of the Company unless and until a proper process is undertaken to maximize value for all KMI stockholders;

C. to the extent, if any, that the transaction complained of is consummated prior to the entry of final judgment, rescinding the same or awarding damages to the Class;

D. requiring Defendants to fully disclose all material information regarding the value of KMI and the proposed Merger;

E. directing that Defendants account to Plaintiffs and the Class for all damages caused to them and account for all profits and any special benefits obtained by Defendants as a result of their wrongful conduct;

F. requiring the payment of all dividends accrued prior to the Buyout's closing and payable to Plaintiffs and the Class;

G. enjoin, preliminarily and permanently, any material transactions or changes to

KMI's business and assets unless and until a proper process is conducted to evaluate KMI's strategic alternatives;

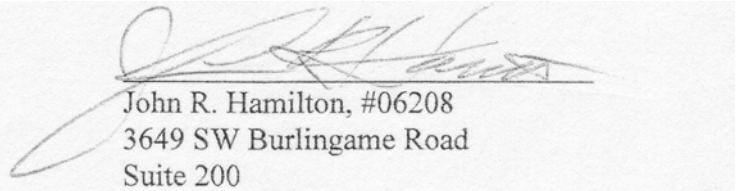
H. awarding Plaintiffs and the Class pre- and post-judgment interest at the statutory rate;

I. awarding to Plaintiffs the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of Plaintiffs' attorneys and experts; and

J. granting such other and further relief as the Court deems appropriate.

Dated: August 28, 2006

HAMILTON, LAUGHLIN, BARKER,  
JOHNSON & WATSON



John R. Hamilton, #06208  
3649 SW Burlingame Road  
Suite 200  
Topeka, KS 66611  
Phone: (785) 267-2410  
E-Mail: [jhamilton@hamiltonlaughlin.com](mailto:jhamilton@hamiltonlaughlin.com)

**Coordinating Liaison Counsel for  
Plaintiffs**

Diane A. Nygaard (KS #10997)  
Susan F. Meagher (KS #21812)  
4501 College Boulevard, Suite 260  
Leawood, Kansas 66211

Phone: (913) 469-5544  
Fax: (913) 469-1561  
E-Mail: [diane@nygaardlaw.com](mailto:diane@nygaardlaw.com)  
[susan@nygaardlaw.com](mailto:susan@nygaardlaw.com)  
and

Jason M. Kueser (MO #57453)  
THE NYGAARD LAW FIRM  
9200 Ward Parkway, Suite 550  
Kansas City, MO 64114  
Phone: (816) 531-3100  
Fax: (816) 531-3600  
E-Mail: [jason@nygaardlaw.com](mailto:jason@nygaardlaw.com)

**Interim Lead Counsel for Plaintiffs**

CHIMICLES & TIKELLIS LLP  
Pamela S. Tikellis (DE #2172)  
Robert J. Kriner, Jr. (DE #2546)  
A. Zachary Naylor (DE #4439)  
Daniel J. Brown (DE #4688)  
One Rodney Square  
P.O. Box 1035  
Wilmington, DE 19899  
Phone: (302) 656-2500  
Fax: (302) 656-9053

**Interim Lead Counsel for Plaintiffs**

HILL, BEAM-WARD, KRUSE  
& WILSON, LLC  
Charles Schimmel  
1101 ½ Massachusetts  
Lawrence, Kansas 66044

THE MILLER LAW FIRM, P.C.  
David H. Fink, Esquire  
The Miller Building  
950 West University Drive  
Suite 300  
Rochester, MI 48307  
Phone: (248) 841-2200  
Fax: (248) 652-2852

BROWER PIVEN  
Charles J. Piven  
401 East Pratt Street, Suite 2525  
Baltimore, MD 21202-3002  
Phone: (410) 332-0030

ROBBINS UMEDA & FINK  
Brian J. Robbins  
Jeffery Fink  
Ben Rozwood  
610 West Ash Street, Suite 1800  
San Diego, CA 92101

WECHSLER HARWOOD LLP  
Robert Harwood  
Samuel Rosen  
Jennifer Hirsh  
488 Madison Ave.  
New York, NY 10022

BARRETT, JOHNSTON & PARSLEY  
Tim Miles  
George Barrett  
217 Second Avenue North  
Nashville, TN 37201

THE WEISER LAW FIRM, PC  
Patricia Weiser  
Debra Goodman  
121 North Wayne Avenue  
Suite 100  
Wayne, PA 19087

SCHIFFRIN & BARROWAY LLP  
Marc Topaz  
Lee Rudy  
Trevan Borum  
280 King of Prussia Road  
Radnor, PA 19087

**Plaintiffs' Counsel**

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Plaintiffs' Consolidated and Amended Class Action Petition was served by email on this 28th day of August 2006, to the following:

Weil Gotshall & Manges LLP  
Joseph Allerhand  
Seth Goodchild  
Bradley R. Aronstram  
767 Fifth Avenue  
New York, New York 10153  
[Joseph.allerhand@weil.com](mailto:Joseph.allerhand@weil.com)  
[Seth.goodchild@weil.com](mailto:Seth.goodchild@weil.com)  
[Bradley.aronstam@weil.com](mailto:Bradley.aronstam@weil.com)

***Counsel for Kinder, Morgan,  
Shaper, Sarofim, and Kean***

Bracewell & Giuliani, LLP  
J. Clifford Gunter, III  
Thomas F.A. Hetherington  
Alana K. Pulaski  
711 Louisiana Street, Suite 2300  
Houston, TX 77002-2770  
[Clifford.gunter@bracewellgiuliani.com](mailto:Clifford.gunter@bracewellgiuliani.com)  
[Tom.hetherington@bracewellgiuliani.com](mailto:Tom.hetherington@bracewellgiuliani.com)  
[Alana.Pulaski@bracewellgiuliani.com](mailto:Alana.Pulaski@bracewellgiuliani.com)

***Counsel for KMI, Battey, Hybl,  
Randall, True, Stanford and  
Whitehead***

Stinson Morrison Hecker  
Kent Sullivan  
Russell Keller  
1201 Walnut, Suite 2900  
Kansas City, MO 64106  
[ksullivan@stinsonmoheck.com](mailto:ksullivan@stinsonmoheck.com)  
[rkeller@stinsonmoheck.com](mailto:rkeller@stinsonmoheck.com)

***Counsel for KMI, Battey, Hybl,  
Randall, True, Stanford and  
Whitehead***

Skadden Arps Slate Meagher & Flom LLP  
Charles W. Schwartz  
Wallis Hampton  
Noelle Reed  
1000 Louisiana, Suite 6800  
Houston, TX 77002  
[cschwartz@skadden.com](mailto:cschwartz@skadden.com)  
[whampton@skadden.com](mailto:whampton@skadden.com)  
[nreed@skadden.com](mailto:nreed@skadden.com)

***Counsel for Bliss, Gardner and Austin***

Berkowitz Oliver et al  
Jim Eisenbrandt  
Kirk A. Peterson  
4121 West 83<sup>rd</sup> Street  
Suite 259  
Prairie Village, KS 66208  
[jeisenbrandt@bouse-law.com](mailto:jeisenbrandt@bouse-law.com)  
[kpeterson@bouse-law.com](mailto:kpeterson@bouse-law.com)

***Counsel for Kinder, Morgan,  
Shaper, Sarofim, and Kean***

Charles German  
Matthew Hammer  
Rouse Hendricks German May P.C.  
1010 Walnut, Suite 400  
Kansas City, MO 64106  
[charleyg@rhgm.com](mailto:charleyg@rhgm.com)  
[matth@rhgm.com](mailto:matth@rhgm.com)

***Counsel for Bliss, Gardner and Austin***

Norris & Keplinger, LLC  
Michael G. Norris  
6800 College Blvd., Suite 630  
Overland Park, KS 66211  
[mnorris@nkfirm.com](mailto:mnorris@nkfirm.com)

***Counsel for Scott Parker and  
Tim Bradley***

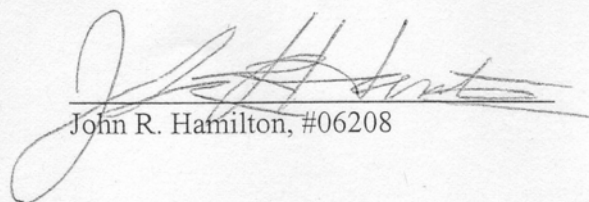
Davis Polk & Wardell  
Amelia T. R. Starr  
Crystal McKellar  
450 Lexington Avenue  
New York, NY 10017  
[amelia.starr@dpw.com](mailto:amelia.starr@dpw.com)  
[crystal.mckellar@dpw.com](mailto:crystal.mckellar@dpw.com)

Armstrong Teasdale LLP  
Thomas Bradshaw  
2345 Grand Boulevard, Suite 2000  
Kansas City, Missouri 64108-2617  
[tbradshaw@armstrongteasdale.com](mailto:tbradshaw@armstrongteasdale.com)

***Counsel for AIG Global Asset  
Management Holdings Corp. and  
American International Group, Inc.***

Blackwell Sanders Peper Martin LLP  
Michael Thompson  
4810 Main Street, Suite 1000  
Kansas City, MO 64112  
[mthompson@blackwellsanders.com](mailto:mthompson@blackwellsanders.com)

***Counsel for Goldman Sachs Capital  
Partners, The Carlyle Group,  
and Riverstone Holdings LLC***



John R. Hamilton, #06208