

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Waste Management, Inc., for itself
and as successor to Eastern
Environmental Services, Inc.
1001 Fannin Street
Houston, Texas 77002

Plaintiff,

v.

Louis D. Paolino, Jr., Gregory
M. Krzemien, Robert M. Kramer,
Ronald R. Pirollo, Louis D. Paolino, Sr.,
Joseph Paolino III, Matthew J.
Paolino, and John Does 1-20

Defendants.

Case No. 99-930(GMS)

Trial by Jury Demanded

AMENDED COMPLAINT

COMES NOW the Plaintiff, Waste Management, Inc. ("Waste Management"), for itself, and as successor to Eastern Environmental Services, Inc. ("Eastern"), and for its Complaint against the Defendants Louis D. Paolino, Jr., Gregory M. Krzemien, Robert M. Kramer, Ronald R. Pirollo, Louis D. Paolino, Sr., Joseph Paolino III, Matthew J. Paolino, and John Does 1-20, alleges as follows:

INTRODUCTION

I. The subject of this lawsuit is Waste Management's \$1.3 billion acquisition of Eastern. The acquisition closed on December 31, 1998. Before the acquisition, Eastern was a non-hazardous solid waste management company specializing in the collection,

transportation, and disposal of residential, industrial, commercial, and special waste in the United States.

2. This lawsuit alleges that several of Eastern's former officers engaged in a fraud to entice a buyer to purchase Eastern at inflated prices. The circumstances leading up to the fraud began in and around October 1995. At that time, Louis D. Paolino, Jr. (hereinafter referred to as "Paolino" unless otherwise indicated), then a vice President of *USA Waste* inc. ("USA Waste"), officials of Sanders Morris Mundy, Inc. ("SMM"), a Houston-based investment firm, and John E. Drury ("Drury"), Chairman and Chief Executive Officer of USA Waste, began a joint effort to secure control of Eastern, the common stock of which was then traded on the NASDAQ. They secured that control in June 1996. Paolino, along with other Eastern officers, then acquired in rapid succession scores of small waste management companies, and executed a systematic accounting fraud which caused the operating performance of Eastern to be regularly and materially overstated. The scheme was a classic "pump and dump" effort to raise Eastern's market value artificially by rapid acquisitions and fraudulent accounting and then to sell Eastern to a large buyer.

3. This lawsuit alleges that Defendants Paolino, Gregory M. Krzemien, Robert M. Kramer, and Ronald R. Pirollo (collectively the "Paolino Defendants") conspired to and did in fact systematically misrepresent Eastern's financial condition through the creation and submission of fraudulent financial and accounting documents, including documents submitted to the United States Securities and Exchange Commission ("SEC").

4. To further the scheme, Paolino and Drury agreed that USA Waste would eventually acquire Eastern in the future. Paolino also created financial incentives for

Drury and Rodney R. Proto ("Proto"), then-President of USA Waste, to encourage them to cause USA Waste to purchase Eastern.

5. On December 31, 1998, Waste Management purchased Eastern at a hugely inflated price.

6. The lawsuit also alleges that shortly before the merger was consummated in December 1998 and subsequent to the merger, Paolino engaged in myriad acts of self-dealing for his own personal enrichment, at the expense of Eastern (and, in turn, Waste Management) and in violation of his fiduciary duties.

7. One example of this self-dealing involved Eastern's sale of two of its subsidiaries, Soil Remediation of Philadelphia, Inc. ("SRP") and Allied Waste Services, Inc. ("Allied"), on December 30, 1998, one day before Waste Management formally acquired Eastern. Paolino and others caused Eastern to sell SRP and Allied on December 30, 1998 for approximately \$1.4 million to Brass Investment Co. ("Brass"), a company owned entirely by Paolino, his father, and his two brothers. One week later, on January 7, 1999, Paolino caused Brass, whose main assets were SRP and Allied, to execute a contract with U.S. Plastic Lumber Corp. ("USPL") to sell Brass for approximately \$13.5 million - a nearly ten-fold profit.

8. This lawsuit alleges that, through their fraudulent activities and acts of self-dealing, Defendants violated the federal securities laws and their fiduciary duties and wasted corporate assets.

9. The Factual Allegations in this Complaint are broken down into four basic sections. Section I sets forth the background facts. Section II discusses Defendants'

accounting fraud. Section III describes the Merger Agreement between Eastern and Waste Management. And Section IV details Defendants' post-Agreement misconduct.

THE PARTIES

Plaintiffs

10. Waste Management is a Delaware corporation with its principal place of business at 1001 Fannin Street, Suite 4000, Houston, Texas 77002. It is a publicly traded company. It brings this lawsuit in its own capacity and as a successor to Eastern. Under Delaware law, Waste Management has succeeded to any claims or causes of action that Eastern or its shareholders had, have, or may have had against Defendants for injury caused to Eastern or its shareholders.

Defendants

11. Louis D. Paolino, Jr. was Chairman, President, and Chief Executive Officer of Eastern from June 1996 through December 1998, and was a Vice President of USA Waste from September 1993 through June 1996. Paolino currently is Chairman, President, and Chief Executive Officer of Mace Security International, Inc. ("Mace"). Mace operates its headquarters at 1000 Crawford Place, Suite 400, Mount Laurel, New Jersey 08054, the former headquarters of Eastern. Paolino holds an approximate 34% beneficial ownership interest in Mace and an approximate 6% beneficial ownership interest in USPL. On information and belief, Paolino is also currently Chairman of USPL. On information and belief, Paolino resides at 500 E. Mantua Avenue, Wenonah, New Jersey 08090 or 2626 Delmar Place, Fort Lauderdale, Florida 33301, and he is a citizen of New Jersey or Florida.

12. Gregory M. Krzemien ("Krzemien") served as Chief Financial Officer and Treasurer of Eastern from August 1992 until December 1998. Krzemien currently serves

as Chief Financial Officer and Treasurer of Mace. Krzemien currently resides at 109 Burrell Boulevard, Allentown, Pennsylvania 18104, and he is a citizen of Pennsylvania.

13. Robert M. Kramer ("Kramer") served as Eastern's General Counsel, Executive Vice President, and Secretary until December 1998. Kramer currently serves as a director of Mace as well as its Executive Vice President and General Counsel. Kramer's current business address is Robert M. Kramer & Associates, 1150 First Avenue, Suite 900, King of Prussia, Pennsylvania 19406, and he is a citizen of Pennsylvania.

14. Ronald R. Pirollo served as Eastern's corporate Controller from July 1997 until December 1998. Pirollo currently serves as Chief Accounting Officer and Controller of Mace. Pirollo currently resides at 360 Sturgis Road, Harleysville, Pennsylvania 19438, and he is a citizen of Pennsylvania.

15. Louis D. Paolino, Sr. ("Paolino, Sr.") is the father of Louis D. Paolino, Jr., and was the President of Joseph M. Paolino & Sons. Paolino, Sr. also controlled and substantially owned Southern States Equipment Corporation, a company that did business with Eastern. Paolino, Sr. currently resides at 550 Roberts Road, Bryn Mawr, Pennsylvania 19110, and he is a citizen of Pennsylvania.

16. Joseph Paolino III ("Joseph Paolino III") is the brother of Louis D. Paolino, Jr. He served as the general manager of SRP, an Eastern subsidiary. Joseph Paolino III currently resides at 9 Kenney Circle, Broomall, Pennsylvania 19008, and he is a citizen of Pennsylvania.

17. Matthew J. Paolino ("Matthew Paolino") is the brother of Louis D. Paolino, Jr. He served as Vice President of the Risk Management, Asset Management, and Special Waste Divisions of Eastern from June 1996 through December 31, 1998. He served as a

director of Eastern from May 1998 until December 1998. He also served as a Vice President of the Soil Remediation Division of USA Waste from 1993 to 1996. Matthew Paolino currently resides at 4 Green Briar Lane, New town Square, Pennsylvania I 9073, and he is a citizen *of* Pennsylvania.

18. John Does 1-20 are unknown individuals who may have conspired with, aided, or assisted the aforementioned Defendants in effectuating the accounting fraud set forth herein. On information and belief, John Does 1-20 are believed to have assisted in perpetrating the accounting fraud described herein, and to have received ill-gotten gains from the self-dealing described herein.

JURISDICTION AND VENUE

19. Jurisdiction and venue are predicated on 15 U.S.C. § 78aa; 28 U.S.C. § 1331; 28 U.S.C. § 1367(a); 28 U.S.C. § 1332(a); 28 U.S.C. § 1391; and Del. Code Ann. tit. 10, §§ 3104,3114.

20. Certain counts herein arise under federal law and the others emanate from the same nucleus of operative facts such that they form part of the same case or controversy. Additionally, the matter in controversy is between citizens of different states, and the relief requested herein exceeds \$75,000.

FACTUAL ALLEGATIONS

I. Background

21. This Complaint concerns events from on or about September 1990 through the present.

22. In or about September 1990, Paolino formed SRP, a company specializing in the remediation and treatment of petroleum contaminated soils. Not until July 1992 did SRP obtain the necessary environmental permits to begin operations.

23. In or about September 1993, after Paolino had operated SRP for one year, USA Waste purchased SRP for approximately \$9.6 million. In addition, immediately upon and in conjunction with the purchase of SRP, USA Waste repaid approximately \$9 million of SRP's debt owed to Paolino-owned or affiliated entities. Thus, the total acquisition price paid by USA Waste for SRP in or about September 1993 was approximately \$18.6 million.

24. After the SRP acquisition, Paolino joined USA Waste as a Vice President. Drury became Chief Executive Officer of USA Waste in May 1994. From 1991 through 1994, Drury had been Managing Director of SMM. When he became Chief Executive Officer of USA Waste, Drury became a director of SMM, a position he held into 1999.

25. In October 1995, Paolino, Drury, and SMM officials began a six-step process by which they would acquire control of Eastern. First, SMM entered into a financial advisory agreement with the then Chief Executive Officer of Eastern. Second, Drury then invested approximately \$1 million in January 1996 in the Environmental Opportunities Fund L.P. ("EOF"), a fund organized and managed by SMM to invest in waste management-type companies. Third, Paolino, while still a Vice President of USA Waste, and with Drury's assent, began to negotiate for Eastern's acquisition of five waste management-type companies: Eastern Waste of Philadelphia, Inc. (including Tri-County Disposal and Recycling, Inc. and National Ecosystems, Inc.), Allied Waste Services, Inc., K Hydraulic Truck Services, Inc., R&A Bender, Inc., and Super Kwik, Inc. Fourth, Paolino,

the EOF, a second SMM-managed fund, and others acquired control of Eastern in June 1996 by, inter alia, purchasing 500,000 shares of Eastern stock. Fifth, Paolino then resigned his position with USA Waste and immediately became Chairman, President, and Chief Executive Officer of Eastern in June 1996. And sixth, Paolino thereafter proceeded to acquire the five companies with which he had previously negotiated while still employed by USA Waste. Between June 1996 and August 1998, Eastern acquired approximately 50 additional companies.

26. In August 1996, Paolino caused Eastern to issue 2.5 million shares of stock in a private placement. On information and belief, George Moorehead, the EOF, a second SMM-managed fund, and other affiliates acquired a significant portion of those shares, as did SMM and many of SMM's principals and their family members. SMM, which was affiliated with the EOF and the second fund, acted as the placement agent and received a warrant for 156,250 shares of Eastern's stock at \$5 per share, as well as a fee of \$650,000. An employee of SMM, Kenneth Leung, became a director of Eastern. Leung also was, and remains, the Chief Investment Officer of the EOF.

27. On or about August 20, 1997, Eastern acquired SRP from USA Waste in a stock-for-stock exchange. The purchase price was approximately \$4.2 million based on the value of Eastern's stock at \$15.625 per share. (Thus, having sold SRP to USA Waste in or about September 1993 for \$18.6 million, Paolino purchased it back four years later for approximately \$14.4 million less. One year later, Paolino would cause Eastern to sell SRP and Allied to himself for \$1.4 million, and he then would sell it a week later for \$13.5 million.)

28. On information and belief, during the period from approximately July 1996 until July 1998, as Eastern was acquiring company after company, Paolino and Drury discussed the possibility of USA Waste acquiring Eastern. On information and belief, Paolino informed Drury that he would receive *personal* financial benefits if USA Waste acquired Eastern. Drury also stood to benefit from a USA Waste acquisition of Eastern because he had invested significantly in Eastern through the EOF. On information and belief, during this time period, Paolino also informed companies that Eastern was seeking to acquire that Eastern's stock would eventually become valuable USA Waste stock.

29. In or about July 1998, Waste Management merged into USA Waste, and USA Waste changed its name to Waste Management, Inc. Drury and Proto had been Chief Executive Officer and President, respectively, of USA Waste. After the merger, Drury continued as Chairman and Chief Executive Officer of the merged company and Proto continued as President and Chief Operating Officer of the merged company.

30. During the period from the Fall of 1997 through August 1998, Eastern discussed potential business combinations with a number of publicly-traded companies. During this period, defendants Paolino, Krzemien, Kramer, and Pirollo committed multiple acts of accounting fraud to inflate the market value of Eastern's stock in order to entice potential suitors to acquire Eastern.

II. Eastern's Accounting Fraud

31. The Paolino Defendants caused Eastern to file financial statements by electronic transmission with the SEC on Forms 10-K and 10-Q for each annual and quarterly reporting period from at least September 30, 1996 through September 30, 1998 (the "financial statements"). See Exhibits A-J. Each statement contained false and

misleading financial information, *including* but not limited to: overstated earnings, including net income and earnings per share; overstated assets; overstated merger costs resulting from excess reserves; the manipulation of reserves to inflate reported earnings; and the failure to disclose accounting policies that were not in accordance with Generally Accepted Accounting Principles ("GAAP").

A. Fraudulent "Acquisition Accounting"

32. On information and belief, the Paolino Defendants' scheme to grow Eastern's stock price and market capitalization employed various fraudulent acquisition accounting techniques to manipulate Eastern's earnings. First, the Paolino Defendants systematically overstated accruals that were recorded upon the purchase of subsidiaries, causing Eastern to create reserves totaling over \$35 million for the approximately 60 companies that Eastern acquired from June 1996 through December 1998. These reserves were known as "Accrued Transaction and Transition" ("AT&T") costs. Of that \$35 million, approximately \$21.7 million was incorrectly established as AT&T reserves for items such as collection vehicle refurbishment, container refurbishment, and equipment refurbishment.

33. For Eastern's acquisitions that were accounted for as poolings of interests, recording the AT&T reserves would result in a one-time charge to earnings classified as "merger costs." Merger costs are routinely ignored by Wall Street analysts in valuing a company, because such costs purportedly represent one-time, non-recurring charges. Under the accounting regulations, merger costs may be excluded from the pro forma financial statements filed with the SEC. The Paolino Defendants did in fact cause Eastern to exclude these merger costs from Eastern's proforma financial statements filed with the

SEC during the period from July 1, 1996 through December 31, 1996. See, e.g., Exhibit K (no mention of merger costs).

34. Throughout Eastern's acquisition spree from June 1996 through December 1998, the Paolino Defendants fraudulently utilized such excess or "cookie-jar" reserves to inflate earnings falsely and to create the impression that Eastern was consistently meeting or exceeding analysts' consensus earnings estimates. Because of Eastern's rapid pace of acquisitions, it was virtually impossible to detect the Paolino Defendants' fraud or track any activity in the reserve accounts in Eastern's financial statements.

35. The Paolino Defendants knowingly caused Eastern to overstate the AT&T account that was recorded upon the acquisition of Eastern subsidiaries on each of Eastern's quarterly and annual financial statements filed during the period covering at least September 30, 1996 through September 30, 1998. See, e.g., Exhibit A at 4; Exhibit B at 4; Exhibit C at 4; Exhibit D at 70; Exhibit E at 5; Exhibit F at 4; Exhibit G at F-4; Exhibit H at 4; Exhibit I at 4; Exhibit J at 3. The original amounts established in the AT&T account were overstated by approximately \$21.7 million, with the following amounts overstated in the following quarters: approximately \$636,000 was overstated in the quarter ended September 30, 1996; approximately \$369,000 was overstated in the quarter ended December 31, 1996; approximately \$873,000 was overstated in the quarter ended March 31, 1997; approximately \$1.98 million was overstated in the quarter ended June 30, 1997; approximately \$1.5 million was overstated in the quarter ended September 30, 1997; approximately \$2.56 million was overstated in the quarter ended December 31, 1997; approximately \$3.08 million was overstated in the quarter ended March 31, 1998; approximately \$5.75 million was overstated in the quarter ended June 30, 1998;

approximately \$3.75 million *was* overstated in the *quarter* ended September 30,1998; and approximately \$1.17 million was overstated in the quarter ended December 31, 1998.

36. The reserve for refurbishing waste collection vehicles and collection containers was an abuse of the AT&T account. GAAP does not allow the use of an AT&T reserve for routine repairs and maintenance of garbage trucks and containers. Amounts that the Paolino Defendants accrued as refurbishment should have been classified under *GAAP* as operating expenses or capitalized expenditures in the periods in which they were incurred.

37. Of the total \$21.7 million that the Paolino Defendants caused Eastern to accrue improperly during the period from approximately July 1,1996 through December 31, 1998, the Paolino Defendants caused Eastern, in its financial statements, to place approximately \$12.5 million in the AT&T reserve for refurbishing collection vehicles and approximately \$5.9 million in the AT&T reserve for refurbishing collection containers.

38. For example, when Eastern acquired Big T Disposal, Inc. on April 11,1997, the Paolino Defendants caused \$124,770 to be placed improperly in Eastern's AT&T reserve for refurbishing collection vehicles and containers. See Exhibit L.

39. In some instances, the amounts that the Paolino Defendants caused to be reserved for Property, Plant, and Equipment ("~PP&E") refurbishment were greater than the book value of the assets acquired. For instance, the AT&T reserve related to PP&E refurbishment for Berkely Carting, a company that Eastern acquired in 1996, was approximately \$100,000, although Berkely's PP&E balance when it was acquired was only \$40,000. Thus, the Paolino Defendants caused the Berkely AT&T reserve for PP&E refurbishment to be more than twice the book value of Berkely's PP&E assets.

40. The Paolino *Defendants* caused Eastern to utilize these excess reserves in order to inflate future earnings. By recording recurring operating expenditures against this acquisition-related reserve account instead of reporting those expenditures as current expenses offsetting income, the Paolino Defendants inflated reported income from current operations. The types of expenditures that were charged against the AT&T reserve that should have been recorded as current expenses or capitalized as assets from July 1, 1997 through December 31, 1998 included, but were not limited to:

- a) Approximately \$7.5 million in collection vehicle refurbishment;
- b) Approximately \$2 million in container refurbishment;
- c) Approximately \$860,000 in building refurbishment;
- d) Approximately \$340,000 in equipment refurbishment;
- e) Approximately \$245,000 in indirect payroll;
- f) Approximately \$122,000 in computer costs;
- g) Approximately \$86,000 in write-offs for investments of acquired companies, including a write-off for a landfill project and a recycling project; and
- h) Approximately \$81,000 in landfill maintenance.

41. On information and belief, on June 30, 1998, Ernst & Young LLP ("E&Y"), Eastern's independent auditor, concluded its audit work on Eastern's December 31, 1997 financial statements. In connection with its audit, E&Y notified Eastern that some of its accounting practices were not in accordance with GAAP, including Eastern's practice of portraying repair and maintenance costs as truck, container, equipment, and building refurbishment within the AT&T reserve account. As a result of E&Y's notification, the

Paolino Defendants caused Eastern ostensibly to reverse the unutilized portion of the AT&T reserve related to these refurbishment costs in the approximate amounts of \$2.2 million and \$5.5 million for the quarterly periods ended March 31,1998 and June 30,1998, respectively. These reversals caused Eastern to amend and refile with the SEC its Form 10-Q for the quarterly period ended March 31,1998.

42. During the second half of 1998, however, Paolino actively pursued potential buyers for Eastern such as Waste Management. To prevent Eastern's apparent earnings from declining during this period, the Paolino Defendants subsequently caused Eastern to ignore E&Y's professional opinion and maintained their scheme of recording improper expenditures against the AT&T reserve. First, during the quarterly period from July 1,1998 through September 30,1998, the Paolino Defendants caused Eastern to reverse the \$5.5 million AT&T reserve adjustment required by E&Y as of June 30,1998. After reestablishing the improper accrual, the Paolino Defendants continued to charge improperly \$2.7 million of operating expenses and capital expenditures relating to refurbishment items against the reestablished AT&T reserve during the third quarter of 1998, in violation of GAAP.

43. Furthermore, the Paolino Defendants caused Eastern to establish improperly AT&T reserves related to refurbishment costs for the acquisitions it closed in the third quarter of 1998. As a result, the unutilized portion of the AT&T reserve related to these refurbishment costs actually increased, from approximately \$5.5 million as of June 30, 1998 to approximately \$5.9 million as of September 30,1998. The Paolino Defendants also caused Eastern to reverse temporarily this \$5.9 million balance as of September 30,1998, in an attempt to make its Form 10-Q comply with GAAP. For the quarterly period from October 1, 1998 through December 31, 1998, the Paolino Defendants caused Eastern to

reestablish once again the unutilized portion of the AT&T reserve related to refurbishment items by reversing the \$5.9 million adjustment recorded as of September 30,1998. Throughout the fourth quarter of 1998, the Paolino Defendants caused Eastern to continue to establish reserves in connection with acquisitions in the aggregate amount of \$4.1 million, and to charge approximately \$3.9 million of operating expenses and capital expenditures relating to the refurbishment items against the AT&T reserve.

44. The Paolino Defendants caused Eastern to increase the AT&T accruals on several of Eastern's previously-acquired subsidiaries during the last six months of 1998 in order to show increased earnings. During the quarter ended December 31,1998, Eastern improperly increased reserves on previously acquired subsidiaries by approximately \$2.5 million (net of decreases), of which approximately \$500,000 related to acquisitions which had been closed for at least six months.

45. On information and belief, the Paolino Defendants' repetitive use of this fraudulent accounting resulted in Eastern reporting higher profits, which in turn resulted in Eastern continually meeting or exceeding financial analysts' earning estimates, in turn resulting in higher stock prices.

B. Violations of GAAP

46. In addition to the aforementioned practices, the Paolino Defendants also caused Eastern to engage in additional accounting practices that violated GAAP in all of its financial statements filed during the period from at least July 1, 1997 through December 31, 1998. The accumulation of various abuses allowed Eastern to meet analysts' earnings estimates as explained in sub-sections (1) through (5) below.

1) Deferred Acquisition Costs

47. The Paolino Defendants knowingly caused Eastern to violate GAAP when accounting for Deferred Acquisition Costs. Specifically, in all of Eastern's financial statements tiled during the period from at least July 1, 1997 through September 30, 1998, the Paolino Defendants caused Eastern to inflate Deferred Acquisition Costs, which were reflected as "other assets." See, e.g., Exhibit E at 4; Exhibit F at 4; Exhibit G at F-3; Exhibit H at 3; Exhibit I at 4; Exhibit J at 2. This scheme resulted in an approximate overstatement of assets (and a related impact on earnings) reported in Eastern's Financial Statements as follows: assets were overstated by approximately \$654,000 in Eastern's December 1997 financial statements, by approximately \$843,000 in Eastern's March 1998 financial statements, by approximately \$555,000 in Eastern's June 1998 financial statements, by approximately \$613,000 in Eastern's September 1998 financial statements, and by approximately \$370,000 in Eastern's December 1998 financial statements.

48. The Paolino Defendants' improper treatment of Deferred Acquisition Costs included, but was not limited to:

1. Capitalizing amounts as Deferred Acquisition Costs that were not directly related to any of Eastern's target acquisitions. For example, in February 1998, \$13,849 was capitalized to the Deferred Acquisition Account, even though it related to a Coopers & Lybrand compensation study for Eastern's executives and had nothing to do with any acquisition. See, e.g. Exhibit M.

b) Failing to allocate properly invoice costs between Deferred Acquisition Costs and operating expenses. For example, in April ~1998, an E&Y invoice for \$32,500 was recorded in the Deferred Acquisition Account, even though a portion of the invoice was for operating expenses such as research on "EPS" (earnings per share) calculations. See,

e.g., Exhibit N. This misallocation overstated earnings by understating operating expenses.

c) Failing timely to expense at least \$253,000 in costs that had been incurred by Eastern in direct pursuit of acquisition candidates upon termination of negotiations with the candidates.

d) Capitalizing items to the Deferred Acquisition Account for which there was not sufficient documentation. For example, in July 1997, a \$75,482 reimbursement of alleged business expenses to Paolino was capitalized to the Deferred Acquisition Account. See Exhibit O. There was little or no documentation provided by Paolino (such as business receipts) to (i) substantiate the alleged business expense, and (ii) document how and why the alleged business expense related to an acquisition. The \$75,482 payment to Paolino was arbitrarily allocated to three proposed acquisitions on a 25%-25%-50% basis, with no supporting documentation or rationale. On information and belief, there are numerous similar examples.

e) Improperly recording costs to the Deferred Acquisition Account without allocating costs to a specific acquisition candidate. The Paolino Defendants instead caused Eastern to record these unallocated costs as "miscellaneous" within the Deferred Acquisition Account. In December 1998, approximately \$244,000 of such miscellaneous costs were allocated to acquisitions that had already been completed by Eastern, resulting in an overstatement of earnings. These miscellaneous costs should have been expensed as charges against earnings.

2) Deferred Offering Costs

49. In May 1998, Eastern commenced a public stock offering through which it issued approximately 8.125 million shares of stock and raised over \$200 million in capital. GAAP requires a company to capture costs associated with such an offering and to net those costs against the resulting proceeds as a reduction to shareholders' equity. The Paolino Defendants caused over \$1.1 million of operating expenses to be recorded as "Deferred Offering Costs," thereby understating operating costs and overstating income by approximately \$276,000 and \$860,000 for the quarterly periods ended March 31,1998 and June 30,1998, respectively. The improper treatment of Deferred Offering Costs included, but was not limited to:

a) Capitalizing amounts as Deferred Offering Costs that were not directly related to the May 1998 offering. For example, in May 1998, the Paolino Defendants caused \$87,250 to be capitalized as Deferred Offering Costs, even though it related to Deloitte & Touche's audit of Atlantic Waste Disposal, Inc., a SAS 71 review, and consent issuances for Form 8-K and Form S-3 filings. See, e.g., Exhibit P. These costs were unrelated to the May 1998 offering and should not have been capitalized in this account.

b) Falling to allocate properly costs between Deferred Offering Costs and operating expenses. For example, in June 1998, Krzemien's entire expense report was recorded in Deferred Offering Costs, even though a portion of his expense report related to operating expenses, such as his purchase of flowers for Secretary's Day on or about April 23,1998. See Exhibit Q.

c) Capitalizing items as Deferred Offering Costs for which there was not sufficient support. For example, an accrual of \$200,000 for accounting and legal costs was

included even though specific legal and accounting charges were paid and already included.

3) Waste Management Merger Costs

50. In August 1998, Waste Management announced its merger with Eastern. Shortly thereafter, Waste Management established an Accrued Merger Costs Account for Eastern that would capture costs incurred by Eastern associated with the merger. The Paolino Defendants caused approximately \$1.04 million of operating expenses to be recorded as Accrued Merger Costs, thereby understating operating expenses and overstating income by approximately \$35,000, \$36,000, \$930,000, and \$38,000 for the quarterly periods ended September 30, 1998, December 31, 1998, March 31, 1999, and June 30, 1999, respectively. The improper treatment of Accrued Merger Costs included, but was not limited to:

a) Capitalizing amounts as Accrued Merger Costs that were not directly related to the merger between Waste Management and Eastern. For example, the Paolino Defendants caused \$6,925 to be capitalized to the Accrued Merger Costs Account, even though it related to compensation consulting provided by PriceWaterhouseCoopers LLP from June 16, 1998 to August 15, 1998. See Exhibit R. These costs, which were incurred prior to the announcement of the merger, were unrelated to the merger and should not have been capitalized to this account.

b) Failing to allocate properly costs between Accrued Merger Costs and operating expenses. For example, in December 1998, more than half of an E&Y invoice was recorded in the Accrued Merger Costs Account, even though most of the amount related to advance billing for services related to the 1998 year-end audit. See Exhibit S.

c) Capitalizing items to the Accrued Merger Costs Account for which there was not sufficient support. For example, in March 1999, the balances on Paolino and Krzemien's American Express cards see Exhibit T, were recorded in the Accrued Merger Costs Account even though there was no support to justify these amounts and they appeared to be personal in nature.

4) Misstatement of Expenses as Assets

51. The Paolino Defendants also caused Eastern to record operating expenses as capital assets to avoid reporting the amounts as a decrease to current earnings. Specifically, in the quarterly periods ended March 31,1998, June 30,1998, September 30, 1998, and December 31,1998, the Paolino Defendants caused Eastern to treat as capital assets approximately \$45,000, \$53,000, \$32,000, and \$28,000, respectively, of repair and maintenance expenses. Eastern incurred those expenses for repairs and maintenance, and they should have been expensed as operating expenses.

52. The Paolino Defendants, through the aforementioned fraudulent practices and violations of GAAP, caused Eastern to overstate earnings in each of its financial statements from at least July 1, 1997 through September 30,1998, thereby enabling Eastern to meet or exceed analysts' earnings estimates. This fraudulent accounting resulted in an inflated stock price and inflated market capitalization for Eastern.

5) Efforts to Evade an Audit

53. The Paolino Defendants escalated their accounting fraud in 1998. Their strategy was to sell Eastern to a larger company as a means of avoiding the collapse of their scheme, which could not be maintained indefinitely. During 1998, the Paolino Defendants pursued several companies to discuss acquiring Eastern, including Allied

Waste Services, Inc. ("Allied Waste") (unrelated to the Eastern subsidiary of the same name) and Waste Management. Defendants' plan was to sell Eastern before the end of 1998 so that their accounting fraud would not be discovered in a separate company 1998 audit. In fact, the Eastern/Waste Management merger just met the accounting deadline by closing on December 31, 1998.

54. The Paolino Defendants also caused Eastern to change its fiscal year-end from June 30 to December 31. On information and belief, Paolino, Krzemien, Kramer, and Pirollo made this change in 1998 (effective December 31, 1997) to prevent Eastern from being audited in the final 12 months prior to closing a merger by year-end 1998. Therefore, the last audit of Eastern's financial statements was made as of December 31, 1997, and Eastern's schemes throughout 1998 were never subjected to a stand-alone audit by an independent accountant.

III. **Merger With Waste Management**

A. Merger Discussions

55. During the period from approximately June 1998 through July 1998, Eastern engaged in merger negotiations with Allied Waste.

56. On or about August 10, 1998, Paolino contacted Drury, who was then Chairman and Chief Executive Officer of Waste Management (formerly USA Waste) about a potential merger. On or about August 11, 1998, Drury and Earl E. DeFrates, then the Chief Financial Officer of Waste Management, commenced discussions with Eastern that continued throughout the following day. During this period, Paolino provided Waste Management with fraudulent financial and other due diligence information. See, e.g., Exhibits AA.

57. From approximately August 13, 1998 until August 16, 1998, Waste Management continued merger discussions with Eastern. More fraudulent financial and due diligence information was provided by the Eastern team to the Waste Management team. The merger discussions were substantially completed on August 16, 1998. Definitive terms for this \$1.3 billion transaction were thus agreed upon within five days.

58. During the course of merger discussions, Waste Management relied upon the fraudulent financial information and other misrepresentations provided to it by the Paolino Defendants. Specifically, Waste Management relied on the fraudulent financial statements, see, e.g., Exhibits A-I, to assess the financial condition of Eastern when analyzing it as an acquisition candidate. On information and belief, the Paolino Defendants also knowingly caused Eastern to utilize inflated and inaccurate historical earnings to create a financial projection for fiscal 1999 and beyond. This projection had a fraudulent implicit internal growth rate for the Eastern subsidiaries from 1998 to 1999 of greater than 25%.

59. Waste Management also relied on fraudulent financial information from the Paolino Defendants to perform financial due diligence on Eastern prior and subsequent to conclusion of the merger discussions with Eastern and to determine the appropriate exchange ratio for the shares in the merger between Waste Management and Eastern.

60. On August 13, 1998, Eastern engaged Salomon Smith Barney, Inc. ("Salomon") to serve as financial advisor in its discussions with Waste Management. On August 16, 1998, only three days after it had been retained, Salomon provided Eastern with a fairness opinion with respect to the proposed exchange of one share of Eastern stock for .6406 shares of Waste Management stock. Salomon's opinion was based on

numerous assumptions with respect to industry performance, business, market, and economic conditions, and the fraudulent financial information that Eastern had provided to Salomon that misstated Eastern's financial condition.

61. On August 14, 1998, Waste Management officially retained Donaldson, Lufkin & Jenrette ("DLJ") to serve as its financial advisor with respect to the proposed acquisition of Eastern by Waste Management. On August 16, 1998, DLJ provided Waste Management with a fairness opinion with respect to the proposed exchange of one share of Eastern stock for .6406 shares of Waste Management stock. DLJ's opinion was based upon the assumed accuracy, completeness, and fairness of all financial and other information provided by Eastern to Waste Management, as well as representations made by Eastern.

62. On August 16, 1998, Waste Management's Board voted to approve the Merger Agreement. The Board's decision was based upon the fraudulent financial information provided by the Paolino Defendants, and upon DLJ's fairness opinion, which also was based upon the fraudulent financial information provided by the Paolino Defendants.

63. On information and belief, during the merger discussions, Paolino informed Drury and Proto that they would receive board positions and equity stakes in various Paolino-controlled entities if Waste Management acquired Eastern.

B. The Merger Agreement

64. On the evening of August 16, 1998, the Eastern and Waste Management teams finalized and executed the Merger Agreement (the "Merger Agreement"). That Agreement provided that, inter alia:

a) Waste Management would purchase Eastern for \$1.3 billion in Waste Management stock. The offer constituted a 5.5% premium over the closing price of Eastern stock as of August 14, 1998. The transaction was to be considered a pooling of interests for financial accounting purposes.

b) Eastern warranted to Waste Management that it had delivered or made available an annual 10-K report for the year ended June 30, 1997 and a transition 10-K report for the six-month period ended on December 31, 1997. Eastern also warranted that Eastern's tax returns and SEC filings, including the Registration Statement and Proxy Statement, "did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading." Merger Agreement, § 5.5. Eastern also warranted that "[t]he audited consolidated financial statements of the Company . . . have been prepared in accordance with generally accepted accounting principles applied on a consistent basis" and "fairly present the financial position of the Company and its subsidiaries as of the dates thereof and the results of their operations and changes in financial position for the periods then ended." Merger Agreement, § 5.5.

c) Eastern also warranted to Waste Management that, "[since the date of the most recent Company SEC report that contains consolidated financial statements of the Company, there has not been any material adverse change in the business, operations, properties, assets, liabilities, condition (financial or other), or results of operations of the Company and its subsidiaries, taken as a whole, except for changes

that affect the industries in which Eastern and its subsidiaries operate generally." Merger Agreement, § 5.7.

65. In addition to the foregoing warranties, Eastern made, inter alia, the following warranties to Waste Management with respect to the conduct of its business pending the merger scheduled for December 1998:

a) Eastern warranted that it would not "take any action that would jeopardize the treatment of the Merger as a pooling of interests under Opinion No.16 of the Accounting Principles Board." Merger Agreement, § 6.1 (d) (iii).

b) Eastern warranted that, with the exception of SRP, it would not sell, pledge, dispose of or encumber any material assets or businesses other than... sales of businesses with aggregate 1997 revenues less than \$5.0 million." Merger Agreement, § 6.1 (d) (vi). In fact, through its sale of Allied to Brass, Paolino caused Eastern to violate this covenant, as Allied's 1997 revenues exceeded \$5 million.

c) Eastern warranted that it would not "make any acquisition of any assets or businesses other than. expenditures for fixed or capital assets in the ordinary course business." Merger Agreement, § 6.1 (d)(v). The Agreement permitted Eastern to proceed with enumerated pending acquisitions.

d) Eastern warranted that it would not "issue, sell, pledge or dispose of any options, warrants, or rights of any kind to acquire any shares of [its] I capital stock" unless otherwise disclosed. Merger Agreement, § 6.1(c).

e) Eastern warranted that it would "use all reasonable efforts to preserve intact [its] business organizations and goodwill." Merger Agreement, § 6.1(e).

IV. Defendants' Post-Agreement Conduct

A. The Self-Dealing Sale of SRP

66. On December 30, 1998, one day before closing the Eastern/waste Management merger, Paolino, in a conspiracy with the other Defendants, caused Eastern to sell SRP and Allied for approximately \$1.4 million to Brass, a company owned by Paolino and members of his immediate family, including his father, Paolino, Sr., and his brothers, Matthew Paolino and Joseph Paolino III.

67. One week later¹ on or about January 7, 1999, Paolino contracted to sell Brass to USPL for approximately \$13.5 million - a tenfold profit. That figure consisted of the following components: \$4.5 million in cash, \$7.3 million in the form of² million shares of USPL stock at \$3.65 per share (USPL shares currently trade at approximately \$11 per share), approximately \$104 million in the form of 500,000 warrants to Brass shareholders, and approximately \$725,000 in USPL's assumption of a Brass note owed to Eastern. On or about March 23, 1999, USPL closed the Brass acquisition. On information and belief, SRP and Allied constituted all or substantially all of Brass' assets at the time of the sale to USPL.

68. On information and belief, Defendants knowingly and intentionally concealed from Waste Management the fact that Paolino and his family members owned Brass. Waste Management did not know or have reason to know that Paolino and his family members owned Brass.

**B. Equipment Transactions Involving SRP,
Southern States, and Import Auto Warehouse**

69. On April 8, 1998, Paolino caused Eastern to purchase equipment from a company named Alex Lyon & Son for \$1,545,400. The invoice allegedly presented by Alex Lyon & Son did not reflect a detailed description of the equipment, but rather indicated only the balance due.

70. On information and belief, Matthew Paolino subsequently created a more detailed listing of equipment purporting to represent the items purchased by Eastern from Alex Lyon & Son.

71. Only \$563,650 of the equipment purchased from Alex Lyon & Son was either physically or financially transferred to Eastern field locations or subsidiaries. The remaining \$981,750 of equipment was physically transferred to SRP's site for "storage" but remained on Eastern's corporate books. On information and belief, Matthew Paolino instructed that the equipment held at SRP be kept in inventory until needed by other Eastern subsidiaries.

72. In December 1998, prior to the closing of the Eastern/Waste Management merger and the sale of SRP to Brass, the Paolino Defendants caused Eastern to transfer the SRP-stored equipment from Eastern's corporate books to SRP's books. As a result, SRP was provided a "gift" of these valuable assets immediately prior to the sale of SRP to Brass. The value of this gifted SRP equipment (\$981,750) alone comprised approximately 70% of the \$1.4 million purchase price that Brass paid to Eastern for SRP and Allied. By transferring the equipment to SRP, the Paolino Defendants wasted Eastern's assets and personally enriched themselves.

73. In connection with the original purchase of equipment by Eastern from Alex Lyon & Son, Eastern paid a 10% commission (\$154,540) to Southern States Equipment,

Inc. ("Southern States"), a company owned by Paolino, Sr. On information and belief, Southern States did not provide any service to Eastern or Alex Lyon & Son.

74. On December 18, 1998, two weeks prior to the closing of Eastern's merger with Waste Management, the Paolino Defendants caused Eastern to purchase equipment from Import Auto Warehouse ("Import") in the amount of \$39,415. Import is owned by Paolino family members and is located at 3246 South 61st Street, Philadelphia, PA. That is the same business address at which Premier Concrete, another Paolino family-owned business, is located.

75. This \$39,415 of equipment purportedly was purchased for the Eastern location known as Chesser Island Landfill. This equipment was never physically received by the landfill and its whereabouts are unknown.

C. Unapproved Acquisition of Corporate Airplane

76. Section 6.1(a) of the Merger Agreement states that Eastern shall "conduct their respective businesses in the ordinary and usual course of business and consistent with past practice." Section 6.1 (d)(v) of the Merger Agreement states that Eastern shall not "make any acquisition of any assets or businesses other than... expenditures for fixed or capital assets in the ordinary course of business."

77. On or around September 15, 1998, one month after the Merger Agreement between Eastern and Waste Management but before the merger was consummated, Paolino caused Eastern to purchase a Citation VII airplane for approximately \$10.2 million. The purchase of the Citation VII airplane by Eastern was not in the ordinary course of business and was not a reasonable expenditure, particularly given Eastern's pending merger with Waste Management. Upon closing the merger and discovering Paolino's

extravagant purchase, Waste Management sold the airplane in April 1999 for approximately \$9.08 million, resulting in a loss of at least \$1,120,000.

78. At or around the time of Eastern's purchase of the Citation VII airplane, Paolino established a company named Air Eastern. On information and belief, Air Eastern invoiced Eastern for Eastern's use of its own airplane. This scheme was a ruse to divert funds from Eastern to Paolino through his alter ego, Air Eastern. For example, on November 10, 1998, Air Eastern billed to Eastern \$5,250 for "airplane fares to New Jersey and New York". That invoice was approved by Krzemien and bears a stamp of Paolino's signature.

79. In connection with the operation of its Citation VII airplane, Eastern retained the management services of a company named Aero Enterprises. Throughout the remainder of 1998, Paolino caused approximately \$100,000 to be paid to Aero Enterprises and other providers for operating expenses related to the Citation VII airplane. These amounts were improperly recorded by Eastern as "Other Assets-Deposits," as opposed to operating expenses and, as a result, Paolino caused Eastern to overstate income for the quarterly period ended December 31, 1998. The amounts paid in advance to Aero Enterprises were applied to Eastern's account with Aero Enterprises for services that were rendered.

80. In December 1998, Paolino caused Eastern to pay the Citation VII airplane's two pilots \$4,000 in bonuses and caused the payments to be capitalized improperly as Deferred Acquisition Costs.

81. After the Eastern/Waste Management merger became effective on December 31, 1998, Paolino refused to relinquish possession and control to Waste

Management of the Citation VII airplane owned by Eastern. Paolino made numerous unauthorized trips during 1999 in the Citation VII airplane, and he knowingly and intentionally charged at least \$27,577 in unauthorized, airplane-related expenses to corporate credit card accounts, the balances of which were paid by Waste Management Paolino's personal use of Eastern's Citation VII airplane and the corresponding charges were not related to Eastern or Waste Management business, and they were unauthorized.

82. Paolino also caused Eastern (and therefore Waste Management) to pay \$124,779 in other operating costs (primarily related to Aero Enterprises) during 1999. Paolino attempted to hide these costs from Waste Management by improperly charging them against the Waste Management Merger Costs accrual, as described in paragraph 50, supra.

D. The Savino Acquisition

83. On May, 18,1998, the Paolino Defendants caused Eastern to enter into an agreement with Frank and Joseph Savino to acquire five companies. These acquisitions were known collectively as the "Savino" acquisition. The acquisition closed on August 20, 1998. This acquisition was recorded as a pooling of interests which, inter alia, required the companies to be combined on an "as-is" basis.

84. The Paolino Defendants failed to disclose to Waste Management that they had also entered into a side agreement with Frank and Joseph Savino that provided for certain assets to be sold to the Savirios at nominal values several months after the closing date of the Savino acquisition. The assets that were subject to the side agreement included approximately 93,000 shares of the common stock of Stericycle, Inc., a warehouse in Hoboken, New Jersey, and other property in New Jersey. The Stericycle

stock that the Savinos would buy was valued at \$33,000 under the side agreement despite the *fact* that this stock had a fair market value of approximately \$1.4 million at the time of the side agreement.

85. The side agreement and the timing of its fulfillment were designed to disguise the true nature of the acquisition agreement and to allow the Paolino Defendants to claim falsely that the transaction qualified as a pooling of interests.

E. Drury and Proto's Unauthorized Board Positions in Paolino Entities

86. In or about May 1999, Drury joined USPL's Board of Directors. Drury also received equity interests in USPL worth over \$1 million and received the right to invest in Mace. Waste Management's By-Laws required Board approval for such action, which was denied. Drury joined USPL's Board notwithstanding that vote and without Waste Management's consent.

87. On or about March 26, 1999, Proto joined Mace's Board of Directors and received options to purchase 25,000 shares of Mace stock, worth over \$1 million. Proto also received the right to invest in USPL. Waste Management's Bylaws required Board approval for such action, which was denied. Proto joined Mace's Board notwithstanding that vote and without Waste Management's consent.

F. Other Acts of Self-Dealing and Graft

1) Pre-merger Self-dealing

88. On information and belief, in addition to the unlawful conduct set forth above, individual Defendants have engaged in numerous acts of unlawful self dealing,

misappropriation, conversion, and wasting of corporate assets to the detriment of Waste Management, Eastern, and their shareholders.

89. For example, on information and belief, in July 1998, after entering into negotiations to sell Eastern, Paolino caused Eastern to purchase from Premier Concrete, a company controlled and substantially owned by members of Paolino's family, a 5.34 acre parcel of land located at 2701 South 58th Street in Philadelphia, Pennsylvania for \$500,000 cash, plus \$116,956 in back taxes and other obligations, for a total purchase price of \$616,956. Paolino caused Eastern to purchase this property after he entered into negotiations to sell Eastern.

90. On information and belief, this property is located in a low-income and high-crime area that requires high security for business operations and has poor access to major roadways. On information and belief, the purchase price for this property was grossly inflated and was structured for the benefit of Premier Concrete and Paolino family members, and to the detriment of Eastern. On information and belief, the appraised value of the land for tax purposes is less than half of the amount that Paolino caused Eastern to pay for it

91. In causing the property at 2701 South 58th Street to be purchased at a grossly inflated price, Paolino intended to bestow on himself and his family members personal gain from the transaction, in violation of his fiduciary duties to Eastern.

92. In causing the property at 2701 South 58th Street to be purchased at a grossly-inflated price, Paolino knowingly and intentionally wasted and made a gift of Eastern's assets.

93. In July 1996 Paolino caused Eastern to negotiate a five-year lease agreement with Bluepointe, Inc. ("Bluepointe"). Paolino controlled and substantially owned Bluepointe. Bluepointe is the owner of an office building in Mt. Laurel, New Jersey in which Eastern (and now Mace) maintained its corporate headquarters.

94. In early August 1998, having entered into definitive negotiations to sell Eastern, Paolino, in conspiracy with Defendants Krzemien, Kramer, and Pirollo, caused Eastern to amend the August 1997 lease agreement with Bluepointe. The August 1998 lease addendum provided terms favorable to Bluepointe and detrimental to Eastern including, inter alia expanded rental space and providing Bluepointe with the right to possess all furnishings presently located or subsequently brought upon both the old and expanded space upon expiration or termination of the lease. On information and belief, the additional floor space was neither needed nor utilized by Eastern. On information and belief, Mace, a company controlled by Paolino, currently occupies the space that is the subject of the lease, as amended. Bluepointe continued to demand and received rental payments from Waste Management through August 1999.

95. In causing Eastern's lease to be renegotiated and executed on terms favorable to Bluepointe and detrimental to Eastern, Paolino intended to derive personal gain from the transaction through his ownership of Bluepointe, in violation of his fiduciary duties to Eastern.

96. In causing Eastern's lease to be renegotiated and executed on terms favorable to Bluepointe and detrimental to Eastern, Paolino knowingly and intentionally wasted and made a gift of Eastern's assets.

97. In causing Mace to occupy the space that is the subject of the renegotiated lease agreement and that is paid for by Waste Management, Paolino knowingly and intentionally misappropriated Waste Management's assets by using them for an unauthorized, improper, and unlawful purpose.

98. Paolino caused the August 1998 lease amendment between Bluepointe and Eastern to be signed after he decided to merge Eastern with either Allied Waste or Waste Management, in an effort to derive personal benefit from the amended lease terms, such as the property forfeiture clause.

2) Post-Merger Graft

99. On information and belief, from January through May 1999, Paolino and his son, *Louis Paolino III*, knowingly, intentionally, and unlawfully charged to a corporate cellular telephone service account paid by Waste Management approximately \$10,192 of their personal cellular telephone expenses. These charges were not related to the performance of business services requested by Waste Management and were unauthorized.

100. On information and belief, from January through May 1999, Paolino knowingly, intentionally, and unlawfully charged to corporate credit cards paid by Waste Management approximately \$38,084 in personal, non-business related expenses. On information and belief, these unauthorized charges included items such as gifts, clothing, and meals at a New Jersey country club which were not related to Paolino's performance of business services requested by Waste Management.

101. On December 31, 1998, at the time of the Eastern/Waste Management merger, the 1996 Land Rover owned by Eastern that Paolino drove while employed by

Eastern was listed as an asset on Eastern's corporate books and records. Paolino nonetheless has failed to return Eastern's 1996 Land Rover or to remit to Waste Management any proceeds from the sale or disposition of that vehicle.

102. Under Delaware law, Waste Management has succeeded to any claims or causes of action that Eastern or its shareholders had, have, or may have had against Defendants for injury caused to Eastern or its shareholders. The Counts enumerated below are based on injuries suffered by Waste Management, Eastern, and their respective shareholders.

COUNT I

(Violation of Section 10(b) of the
Securities Exchange Act of 1934; Violation of
Delaware Blue Sky Law, 6 Del. C. § 7323)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

103. Paragraphs 1-102 are incorporated herein and made a part of this Count.

104. As more fully set forth in paragraphs 31-65, the Paolino Defendants materially misrepresented to Waste Management, through affirmative falsehoods and omissions, the value of Eastern's assets and caused Eastern to engage in accounting fraud in financial information and data provided to Waste Management, thus inflating Eastern's stock and purchase price.

a) For example, the Paolino Defendants caused Eastern to file financial statements with the SEC on Forms 10-K and 10-Q for each of the reporting periods between at least July 1, 1996 and September 30,1998 see Exhibits A4, containing false and misleading financial information including, but not limited to: (i)

overstated earnings, including net income and earnings per share; (ii) overstated assets; (iii) overstated merger costs resulting in excess reserves; (iv) utilization of reserves to manipulate its reported earnings in an effort to mislead investors, potential acquirers of Eastern, and potential acquirers of Eastern; and (v) failure to disclose accounting policies that were not in accordance with GAAP. Eastern's SEC filings were signed by Defendants Paolino, Krzemien, and Pirollo.

b) The Paolino Defendants' fraud included, but was not limited to, the following. In each of Eastern's financial statements filed for the period from at least July 1, 1996 through September 30, 1998, see Exhibits A-J, the Paolino Defendants caused Eastern to (i) overstate earnings by improperly accounting for Deferred Acquisition Costs; (ii) overstate AT&T costs and record recurring operating expenditures against acquisition-related reserve accounts, thereby intentionally causing analysts and investors to disregard recurring costs and instead incorrectly view such costs as unique merger-specific costs; and (iii) commit substantial and systematic violations of GAAP by, inter alia, recording expenses as capital assets to avoid reporting the amounts as a decrease to current earnings.

c) Further, on information and belief, the Paolino Defendants utilized Eastern as a conduit for various self-dealing schemes, none of which was disclosed to Eastern or Waste Management. For example, Paolino caused Eastern to purchase at a grossly-inflated price a Paolino family-owned property on terms substantially unfavorable to Eastern. In so doing:

(i) The Paolino Defendants, directly or indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, employed devices, schemes, and artifices to defraud Waste Management.

(ii) The Paolino Defendants, directly or indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, made materially false and misleading statements and omitted facts necessary to make the statements made not misleading in the light of the circumstances under which they were made.

(iii) The Paolino Defendants, directly or indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged in acts, practices, and a course of business that operated as a fraud or deceit on Waste Management.

105. The Paolino Defendants materially misrepresented the value of Eastern's assets and knowingly and intentionally engaged in accounting fraud. The Paolino Defendants were high-level Eastern officials who effectively controlled Eastern and who knowingly and intentionally prepared, approved of, and submitted the false and misleading materials regarding Eastern's true worth for the purpose of inducing Waste Management to merge with Eastern and to pay an artificially-inflated price for Eastern. On information and belief:

a) The Paolino Defendants - experienced, sophisticated businessmen expert in the waste industry and acquisitions - were fully aware from the inception of their scheme that their conduct was fraudulent and violated GAAP. At all relevant times, the Paolino Defendants were aware of their fraud and intended to perpetrate it. For instance, but for knowledge of the fraud and an intent to defraud,

the Paolino Defendants would not have caused Eastern to classify personal expenditures as "other assets" and to record routine costs as unique stock offering-specific costs. Nor would the Paolino Defendants have used Eastern as a conduit for undisclosed self-dealing.

b) Even after receiving advice from Eastern's independent auditor, E&Y, that certain of Eastern's accounting practices were not in accordance with GAAP, the Paolino Defendants continued to cause Eastern to violate CAAP, thus inflating earnings and assets.

c) To evade detection of the fraud in 1998, the Paolino Defendants caused Eastern to change its fiscal year-end from June 30 to December 31. In so doing, the Paolino Defendants prevented Eastern from being audited in the final 12 months before its merger with Waste Management.

d) The Paolino Defendants' motive in perpetrating this knowing and intentional fraud was the sale of Eastern. Through such a sale, the Paolino Defendants hoped to conceal their systematic fraudulent conduct with respect to Eastern and to avoid self-destruction by exiting Eastern.

106. The Paolino Defendants made such materially false and misleading statements and omissions in connection with the purchase or sale of a security, in that Waste Management exchanged its stock for Eastern's stock and thus merged with Eastern.

107. The Paolino Defendants intended to induce, and did in fact induce, justifiable reliance by Waste Management. Waste Management believed the Paolino Defendants' representations to be accurate and to reflect Eastern's true worth and was

ignorant of the fact that the Paolino Defendants had materially misrepresented the value of Eastern's assets, engaged in accounting fraud, and materially overstated Eastern's true worth. In determining whether to consummate the merger with Eastern and in determining the fair value of Eastern, Waste Management justifiably relied on the accounting data and other information provided to it by the Paolino Defendants.

a) Waste Management, like Wall Street analysts, reasonably and justifiably relied on Eastern's form publicly-filed financial documents that were subject to SEC reporting requirements. In the Merger Agreement, Eastern warranted that all such documents filed with the SEC contained no untrue statements of material fact and that none omitted a material fact that was required to be stated.

b) Waste Management reasonably and justifiably relied on DLJ's fairness opinion which, unbeknownst to DLJ or Waste Management, was based on fraudulent information provided by Eastern.

c) Waste Management did not know of and was not reasonably able to discover the fraud perpetrated by the Paolino Defendants. On information and belief, the Paolino Defendants concealed their fraud in multiple ways, including but not limited to: (i) causing Eastern to engage in accounting fraud; (ii) causing Eastern to embark on an intensive acquisition scheme, thus rendering it virtually impossible to track the activity in Eastern's reserve accounts or otherwise to uncover the Paolino Defendants' fraud; and (iii) causing Eastern to change its fiscal year-end to avoid a stand-alone audit of many of the Paolino Defendants' schemes, which had escalated in 1998.

108. Waste Management's reliance proximately caused its injury.

a) Waste Management reasonably and justifiably relied on Eastern's fraudulent financial statements and other misrepresentations: (i) to assess the financial condition of Eastern when analyzing it as an acquisition candidate; (ii) to perform financial due diligence on Eastern before and after merger discussions with Eastern; and (iii) to determine the appropriate exchange ratio for the shares in the merger between Waste Management and Eastern.

b) The effective price of Eastern, as reflected by the exchange ratio, was based substantially on the fraudulent financial statements and other misrepresentations that the Paolino Defendants caused Eastern to make.

c) The exchange ratio, which was based substantially on the fraudulent financial statements and other misrepresentations, did not reflect the true value of Eastern, but a substantially and artificially inflated value. Thus, as a result of the Paolino Defendants' fraud, Waste Management paid a price for Eastern significantly above its true market value.

109. If Waste Management had been aware that the Paolino Defendants had materially misrepresented Eastern's true worth, Waste Management would not have consummated a merger with Eastern or, at a minimum, would have paid a lower price for Eastern.

110. As a result of the Paolino Defendants' material misrepresentations, Waste Management suffered damages in excess of at least \$500 million, the difference between the price Waste Management paid for Eastern and the approximate fair market value of Eastern at the time of the transaction.

111. The foregoing conduct violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder. The foregoing conduct also violated 6 Del. C. § 7323(a)(2).

112. The Paolino Defendants are liable as primary violators of Section 10(b) and Rule 10b-5 and under 6 Del. C. § 7323(a)(2) because (a) in derogation of Eastern's best interest, they engaged in self-interested tortious conduct, and (b) they used Eastern as a vehicle for their personal enrichment and the interests of justice require that the corporate veil be pierced.

113. Alternatively, Defendants are liable as controlling persons within the meaning of Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a), and within the meaning of 6 Del. C. § 7323(b).

COUNT II

(Violation of Section 18 of the Securities Exchange Act of 1934)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

114. Paragraphs 1-113 are incorporated herein and made a part of this Count.

115. As more fully set forth in paragraphs 31-52, the Paolino Defendants caused Eastern to file documents pursuant to the Securities Exchange Act - i.e., all of Eastern's financial statements filed during the period covering at least July 1, 1996 through September 30, 1998, see Exhibits A4 - that contained statements that were, at the time and in the light of the circumstances under which they were made, false and misleading with respect to several material facts.

116. The false and misleading statements and omissions were material in that a reasonable investor would consider such facts important in deciding whether to purchase the security offered.

117. The Paolino Defendants caused Eastern to make such false and misleading statements knowingly and intentionally.

118. Waste Management did not know or have reason to know that such statements were false and misleading at the time they agreed to and entered into the merger with Eastern.

119. Waste Management justifiably relied on such false and misleading statements in deciding whether to enter into the merger with Eastern.

120. Such false and misleading statements substantially affected the price at which Waste Management purchased Eastern in that such statements artificially inflated the worth of Eastern.

121. But for such false and misleading statements, Waste Management would not have entered into the Merger Agreement or, at a minimum, would have purchased Eastern at a lower price.

122. Waste Management suffered injury as a direct result of the false and misleading statements because it entered into an unprofitable merger and paid a substantially higher price than it would have had it been aware of the misrepresentations and concealed facts.

123. The conduct described in paragraphs 115-117 of this Count, including paragraphs 31-52 incorporated in this Count, violates Section 18 of the Securities Exchange Act, 15 U.S.C. § 78r, and the Paolino Defendants are personally liable under Section 18 for such conduct.

124. By reason of the Paolino Defendants' violation of Section 18 of the Securities Exchange Act, 16 U.S.C. §78r, Waste Management suffered injury in an

amount in excess of at least \$500 million, the difference between the price Waste Management paid for Eastern and the approximate fair market value of Eastern at the time of the transaction.

COUNT III

(Fraud and Civil Conspiracy to Defraud)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

125. Paragraphs 1-1 24 are incorporated herein and made a part of this Count.

126. On information and belief, as set forth in paragraphs 31-54 above, the Paolino Defendants engaged in accounting fraud that misrepresented and concealed the true financial worth of Eastern, which was substantially less than what was reflected in the accounting and financial information and data provided to Waste Management and in documents filed with the SEC. The Paolino Defendants engaged in such accounting fraud for the purpose of fraudulently inducing the acquisition of Eastern, including at an artificially inflated price.

127. On information and belief, as set forth in paragraphs 31-54 above, the Paolino Defendants knowingly and intentionally prepared, approved of, and caused Eastern to submit to Waste Management Eastern's financial information and data, which the Paolino Defendants knew to be false and misleading. The false and misleading information and data substantially, materially, and erroneously inflated Eastern's value.

128. On information and belief, as set forth in paragraphs 31-65 above, the Paolino Defendants knowingly and deliberately concealed material facts about the value of Eastern. The concealed material facts, if revealed, would have shown that

Eastern's value was substantially less than what the Paolino Defendants represented it to be.

129. On information and belief, the Paolino Defendants intended to induce, and did in fact induce, Waste Management's justifiable reliance on the false and misleading misrepresentations and omissions regarding the value of Eastern.

130. The Paolino Defendants' fraud was not discoverable through reasonable diligence.

131. Had Waste Management known the true facts about Eastern's value, it would not have entered into the Merger Agreement with Eastern or, at a minimum, would have paid a lower price for Eastern.

132. In engaging in the conduct discussed in paragraphs 31-65, the Paolino Defendants entered into a civil conspiracy to defraud Waste Management. Each Defendant named in this Count conspired with every other Defendant named in this Count to induce Waste Management, through fraudulent misrepresentations and omissions, to enter into a Merger Agreement with Eastern pursuant to which Waste Management paid an artificially-inflated price for Eastern.

133. The Paolino Defendants agreed to achieve, and did in fact achieve, this scheme to defraud Waste Management.

134. The Paolino Defendants' fraud and conspiracy to defraud violated Delaware common law.

135. As a result of the fraud and the civil conspiracy to defraud perpetrated by the Paolino Defendants, Waste Management suffered an injury in an amount in excess of \$500 million.

COUNT IV
(Usurpation of Corporate Opportunity)
(Defendant Paolino)

136. Paragraphs I - 135 are incorporated herein and made a part of this Count.

137. As set forth in paragraphs 27 and 66-68, on information and belief, Defendant Paolino engaged in a self-interested purchase and almost immediate re-sale of SRP and Allied through Brass, a company owned entirely by Paolino, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III.

138. On December 30,1998, Paolino caused Eastern to sell SRP and Allied to Brass for \$1.4 million.

139. On January 7,1999, Paolino caused Brass to be sold to USPL for at least \$13.5 million.

140. On information and belief, SRP and Allied were all or substantially all of Brass' assets on or about January 7,1999.

141. In engaging in this self-interested transaction, Defendant Paolino usurped Eastern's corporate opportunity to sell SRP and Allied for the substantially higher price that USPL paid for those assets. The usurped opportunity was in Eastern's line of business, to Eastern's practical advantage, and one in which Eastern had an interest.

142. In so doing, Defendant Paolino violated Delaware common law.

143. In so doing, Defendants Paolino, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III improperly enriched themselves at the expense of Eastern shareholders by approximately \$12.1 million.

COUNT V

(Aiding and Abetting the Usurpation of Corporate Opportunity)
(Defendants Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III)

144. Paragraphs 1-143 are incorporated herein and made a part of this Count.

145. As set forth in paragraphs 27 and 66-68, on information and belief, Defendants Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino 111 aided and abetted the usurpation of Eastern's corporate opportunity by Defendant Paolino.

146. As set forth in paragraphs 66-68, Defendant Paolino usurped Eastern's corporate opportunity by engaging in the self-interested sale of SRP and Allied.

147. As set forth in paragraphs 27 and 66-68, Defendants Krzemien, Kramer, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III knew that Defendant Paolino, by engaging in the improper, self-interested sale of SRP and Allied, would wrongly be usurping Eastern's corporate opportunity. Despite such knowledge, Defendants Krzemien, Kramer, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III knowingly and intentionally encouraged, induced, and assisted Defendant Paolino by facilitating the improper sale of SRI? and Allied.

148. In so doing, Defendants violated Delaware common law.

149. Defendants must disgorge any and all profits and assets derived, whether directly or indirectly, through any act that, whether standing alone or in combination with other acts, aided and abetted a breach of fiduciary duty.

150. Through Defendants Krzemien, Kramer, Pirollo, Paolino, Sr., Matthew Paolino, and Joseph Paolino III's acts of aiding and abetting Defendant Paolino's

usurpation of Eastern's corporate opportunity, Waste Management suffered damages in excess of \$12.1 million.

COUNT VI

(Waste of Corporate Assets)

(Defendants Paolino, Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III)

151. Paragraphs 1 - 150 are incorporated herein and made a part of this Count.

152. As set forth in paragraphs 27 and 66-68, on information and belief, Defendants Paolino, Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III caused Eastern to sell SRP and Allied to Brass for a fraction of their fair market value.

153. Such sale constituted a waste of Eastern's former subsidiaries in that Eastern received as consideration for SRP and Allied a fraction of the price that the subsidiaries were worth. The consideration that Eastern received for these subsidiaries is so inadequate in value that no person of ordinary, sound business judgment would deem such consideration worth what Eastern had sold.

154. As set forth in paragraphs 69-72, the Paolino Defendants caused Eastern to transfer to SRP's corporate books from Eastern's corporate books equipment purchased from Alex Lyon & Son and stored at SRP. As a result, SRP was provided a "gift" of these valuable assets immediately prior to the sale of SRP to Brass, and the value of the "gifted" equipment (\$981,750) alone comprised approximately 70% of the \$1.4 million purchase price that Brass paid to Eastern.

155. Such conduct constitutes a waste of Eastern's assets in that Eastern received no consideration for the transfer of its equipment to SRP.

156. As set forth in paragraph 73, the Paolino Defendants caused Eastern, in connection with Eastern's purchase of equipment from Alex Lyon & Son, to pay a 10% commission (\$154,540) to Southern States., a company owned by Paolino, Sr. Southern States did not provide any service to Eastern or Alex Lyon & Son in connection with this purchase of equipment

157. This diversion of funds constitutes a waste of Eastern's financial assets in that Eastern received no service in return for its payment of \$154,540.

158. As set forth in paragraphs 74-75, the Paolino Defendants caused Eastern to purchase equipment from import Auto Warehouse on or about December 18, 1998 in the amount of \$39,415. import is owned by Paolino family members and is located at 3246 South 61st Street.

159. This equipment purportedly was purchased for the Eastern location known as Chesser Is land Landfill. This equipment was never physically received by the landfill and its whereabouts are unknown.

160. Such conduct constitutes a waste of Eastern's financial assets in that Eastern received no consideration in return for its payment of \$39,415.

161. As set forth in paragraphs 88-92, on information and belief, Defendants Paolino, Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III caused Eastern to purchase from Premier Concrete, a Paolino-controlled entity, a 5.34 acre parcel of land at more than double its assessed tax value.

162. Such conduct constitutes a waste of Eastern's financial assets in that the real property that Eastern received in return for its payment is so inadequate in value that no person of ordinary, sound business judgment would deem it worth what Eastern paid.

163. As set forth in paragraphs 93-98, on information and belief, the Paolino Defendants caused Eastern to enter into and subsequently to renegotiate with Bluepointe, a company that Paolino controlled, ~ lease for rental property that Eastern neither needed nor used.

164. Such conduct constitutes a waste of Eastern's financial assets in that the rental property that Eastern received is so inadequate in value that no person of ordinary, sound business judgment would deem it worth what Eastern paid.

165. The foregoing conduct injured Waste Management in excess of \$20 million, the difference between the amount paid out by Defendants for the assets or services and the fair market value of those assets or services.

COUNT VII

(Conversion; Misappropriation; Graft)
(Defendant Paolino)

166. Paragraphs I - 165 are incorporated herein and made a part of this Count.

167. As set forth in paragraphs 76-82, 93-98, and 101, Defendant Paolino converted various assets belonging to Eastern/Waste Management, including but not limited to an aircraft, automobile, and office rental space.

168. Following the merger with Eastern, Waste Management became the exclusive owner of such property. By virtue of its acquisition of Eastern, Waste Management acquired ownership of all property previously owned by Eastern.

169. In contravention of Waste Management's exclusive interest in Eastern's property, Defendant Paolino assumed unauthorized possession and control of Eastern's property inconsistent with the rights of Waste Management.

170. As set forth in paragraphs 78-82, and 99-i 00, Defendant Paolino mis appropriated and skimmed Eastern/Waste Management corporate funds. Defendant Paolino knowingly and intentionally used Eastern/waste Management moneys for improper and unauthorized personal expenses and improperly charged expenses to Eastern/Waste Management

171. Every such incident of misappropriation, conversion, and graft violated Delaware common law.

172. As a result of Defendant Paolino's wrongful conversion, misappropriation, and skimming, Waste Management suffered damages in excess of \$1 million, the value of the property converted or misappropriated.

COUNT VIII

(Breach of Contract and Warranty)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

173. Paragraphs 1-172 are incorporated herein and made a part of this Count.

174. Pursuant to the Merger Agreement, Eastern was precluded from making certain acquisitions prior to closing. More specifically, pursuant to Sections 6.1(a) and 6.1 (d)(v) of the Merger Agreement, Eastern was precluded from making any acquisitions of assets unless such acquisitions were "in the ordinary course of business."

175. As set forth in paragraph 77, in violation of this provision, the Paolino Defendants caused Eastern to purchase a Citation VII airplane on or about September 15, 1998 for approximately \$10.2 million. The acquisition of that airplane was neither a reasonable expenditure nor one made in the ordinary course of business.

176. As set forth in paragraph 78, in so doing, Defendant Paolino, with the assistance of Defendants Krzemien, Kramer, and Pirollo, improperly diverted funds to

himself through his alter ego, Air Eastern, a company that Defendant Paolino established at the same time as he caused Eastern to purchase the airplane.

177. Pursuant to § 6.1(d)(vi) of the Merger Agreement, Eastern was also precluded from "sell[ing], pledg[ing], or [dispos]ing" of any business with aggregate 1997 revenues greater than \$5 million.

178. As set forth in paragraphs 65-68, in violation of this provision, the Paolino Defendants caused Eastern to sell Allied, a company with aggregate 1997 revenues greater than \$5 million, to Brass on or about December 31, 1998.

179. The Paolino Defendants are personally liable because, in derogation of Eastern's best interest, the Paolino Defendants engaged in self-interested tortious conduct and, in light of the Paolino Defendants' use of Eastern as a vehicle for their personal enrichment, the interests of justice require that the corporate veil be pierced.

180. As a result of the Paolino Defendants' breaches of contract and warranty, Waste Management suffered a loss of at least \$6 million.

COUNT IX

(Breach of Implied Covenant of Good Faith and Fair Dealing)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

181. Paragraphs 1-180 are incorporated herein and made a part of this Count. The Merger Agreement contained an implied covenant of good faith and fair dealing.

182. The merger Agreement contained an implied covenant of good faith and fair dealing.

183. The Paolino Defendants breached this covenant by engaging in the conduct set forth above, including without limitation the conduct set forth in paragraphs 31-63, 66-85, and 88-101.

184. As a result of the Paolino Defendants' breach of the implied covenant of good faith and fair dealing, Waste Management suffered a loss of at least \$6 million.

COUNT X

(Tortious Interference with Contractual Relations)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

185. Paragraphs 1-184 are incorporated herein and made a part of this Count.

186. The Paolino Defendants negotiated on behalf of Eastern the Merger Agreement with Waste Management.

187. As set forth in paragraphs 65-68, and 77, the Paolino Defendants intended to interfere with the Merger Agreement. The Paolino Defendants caused Eastern to purchase the Citation VII airplane in violation of Sections 6.1(a) and 6.1 (d)(v) of the Merger Agreement, and they caused Eastern to sell Allied, a company with aggregate 1997 revenues greater than \$5 million, in violation of Section 6.1(d) (vi).

188. The Paolino Defendants are personally liable in that they tortiously interfered with Eastern's contract with Waste Management by exceeding the scope of their corporate authority and causing the Merger Agreement to be breached.

189. As a result of the Paolino Defendants' tortious interference with the Merger Agreement, Waste Management suffered a loss of at least \$6 million.

COUNT XI

(Implied Contract/Unjust Enrichment)
(Defendant Paolino)

190. Paragraphs 1-1 89 are incorporated herein and made a part of this Count.

191. As set forth in paragraphs 76-82, and 93-101, Defendant Paolino's wrongful conversion, misappropriation, and graft of Waste Management's corporate assets worked an unjust enrichment in that Defendant Paolino was unjustly enriched by the value of the

assets he converted, misappropriated, or skimmed; Waste Management was unjustly impoverished in this same amount; and Defendant Paolino's conduct lacked any justification.

192. By operation of law, a contract should be implied requiring Defendant Paolino to compensate Waste Management for the full value of the assets he converted, misappropriated, or skimmed in an amount not less than \$6 million.

COUNT XII

(Breach of Fiduciary Duty)
(Defendants Paolino, Krzemien, Kramer, and Pirollo)

193. Paragraphs 1-192 are incorporated herein and made a part of this Count.

194. Under the law of Delaware, the Paolino Defendants owed fiduciary duties to the shareholders of Eastern, including duties of due care, loyalty, good faith, disclosure, and candor.

195. None of the Defendants named herein was disinterested or independent with respect to the transactions that form the basis of this Complaint. All of the Defendants named herein stood to derive a personal gain adverse to the shareholders to whom they owed fiduciary duties with respect to the transactions that form the basis of this Complaint. Therefore, none of the Defendants named herein is entitled to invoke the business judgment rule.

196. The Paolino Defendants repeatedly and systematically breached their fiduciary duties to the Eastern shareholders by using their corporate offices to advance their undisclosed personal interests to the detriment of the Eastern shareholders and by

failing to exercise due care in recommending, promoting, and effectuating various transactions by Eastern.

197. The Paolino Defendants breached their fiduciary duties to Eastern shareholders through each act of fraud and conspiracy to defraud, as set forth in paragraphs 31-63.

198. The Paolino Defendants breached their fiduciary duties to Eastern shareholders by usurping Eastern's corporate opportunities, as set forth in paragraphs 27 and 66-68.

199. The Paolino Defendants breached their fiduciary duties to Eastern shareholders by wasting corporate assets, as set forth in paragraphs 27,66-75, and 88-98.

200. The Paolino Defendants breached their fiduciary duties to Eastern shareholders by unjustly enriching themselves at the expense of Eastern's shareholders, as set forth in paragraphs 76-82 and 93-101.

201. As set forth in paragraphs 27 and 66-68, on information and belief, Defendants Paolino, with whom Defendants Krzemien, Kramer, Pirollo, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III conspired, breached fiduciary duties to Eastern shareholders by causing Eastern to sell SRP and Allied at a price substantially below fair market value to Brass, a company in which Paolino, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III had an undisclosed interest at the time of the transaction.

202. The Paolino Defendants' multiple and systematic breaches of their duties violated Delaware common law.

203. The Paolino Defendants must disgorge any and all profits and assets derived, whether directly or indirectly, from any act that, whether standing alone or in combination with other acts, constitutes a breach of fiduciary duty.

204. As a result of the Paolino Defendants' multiple and systematic breaches of their fiduciary duties, Waste Management suffered damages in excess of \$20 million.

COUNT XIII

(Aiding and Abetting a Breach of Fiduciary Duty)

(Defendants Louis 9. Paolino, Sr.,

Matthew Paolino, and Joseph Paolino III)

205. Paragraphs 1-204 are incorporated herein and made a part of this Count

206. As set forth in paragraphs 27, 66-68, 73-74, and 89-92, Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III aided and abetted the breaches of fiduciary duties by the Paolino Defendants. As set forth in paragraph 194, the Paolino Defendants owed fiduciary duties to the shareholders of Eastern, including duties of due care, loyalty, good faith, disclosure, and candor. As set forth in paragraphs 27, 31-62, 66-75, and 88-101, the Paolino Defendants systematically breached their fiduciary duties. Defendants Louis 9. Paolino, Sr., Matthew Paolino, and Joseph Paolino III knew of the fiduciary duties owed by the Paolino Defendants to Eastern's shareholders. Despite such knowledge, Defendants Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III knowingly and intentionally encouraged, induced, and assisted the Paolino Defendants to breach those duties by, inter alia, creating companies to be acquired by Eastern to conceal its true financial worth, selling real estate owned by Premier Concrete (a Paolino family-owned business) at a grossly inflated price, and facilitating the improper sale of SRP and Allied.

207. Defendants must disgorge any and all profits and assets derived, whether directly or indirectly, through any act that, whether standing alone or in combination with other acts, aided and abetted a breach of fiduciary duty.

208. Because of Defendants Louis D. Paolino, Sr., Matthew Paolino, and Joseph Paolino III's acts that aided the Paolino Defendants' breaches of fiduciary duties owed to Eastern, Waste Management suffered damages in excess of \$20 million.

COUNT XV

(DECLARATORY JUDGMENT)

(Defendants Louis 9. Paolino, Jr., Gregory M Krzemien, Robert M. Kramer, Ronald R. Perillo, Louis 9. Paolino, Sr., Joseph Paolino, III and Matthew J. Paolino)

209. Paragraphs 1-208 are incorporated herein and made a part of this Count.

210. As set forth in the preceding paragraphs, defendants engaged in a host of conduct that was intentional, was not undertaken in good faith, and was opposed to the best interests of Eastern and Waste Management.

211. By virtue of their misconduct, including but not limited to their fraudulent misrepresentations, defendants are not entitled to indemnification or advancement of fees or expenses incurred in defense of this litigation.

212. An actual controversy has arisen between Waste Management and certain defendants concerning their purported indemnification rights. Certain defendants have asserted indemnification rights, and Waste Management contends that defendants have no indemnification or advancement rights by virtue of their misconduct.

213. Waste Management desires a judicial determination of defendants' indemnification and advancement rights, and a declaration that defendants are not entitled to indemnification or advancement of fees or expenses incurred in defense of this litigation.

PRAYER FOR RELIEF

WHEREFORE, Waste Management requests as follows:

214. For judgment in favor of Waste Management for all damages proven, together with interest thereon, at the legal rate;

215. For an Order awarding Waste Management compensatory and punitive damages against all Defendants for their intentional and systematic breaches of fiduciary duties to Waste Management and Eastern;

216. For an Order awarding Waste Management compensatory and punitive damages against the Paolino Defendants for intentionally and systematically aiding and abetting the other Defendants' breaches of fiduciary duties to Waste Management;

217. For an Order awarding Waste Management compensatory and punitive damages against Defendants Paolino, Krzemien, Kramer, and Pirollo for defrauding

Waste Management, for perpetrating fraudulent acts upon Waste Management, and for conspiring to defraud Waste Management;

218. For an Order awarding Waste Management compensatory damages against Defendants Paolino, Krzemien, Kramer, and Pirollo based on their usurpation of Eastern's corporate opportunities;

219. For an Order awarding Waste Management compensatory damages against Defendants Paolino, Krzemien, Kramer, and Pirolo for the waste of Eastern's and Waste Management's corporate assets;

220. For an Order requiring an accounting of all profits traceable to Defendants' improper and unlawful conduct, and for an Order imposing a constructive trust on all assets and profits traceable to Defendants' improper and unlawful conduct and to conduct by which Defendants were unjustly enriched. On information and belief, the ill-gotten gains from Defendants' improper and unlawful conduct are in the possession of all of the Defendants;

221. For an Order requiring all Defendants to disgorge all assets and profits derived from their improper and unlawful conduct;

222. For an Order requiring rescissionary damages and restitution by all Defendants;

223. For a declaration that defendants are not entitled to indemnification or advancement of fees or expenses incurred in defense of this litigation;

224. For an Order requiring Defendants to pay Waste Management's reasonable attorneys' fees, costs, and expenses, including fees paid to accountants and other experts, incurred in bringing and maintaining this action, pursuant to applicable law; and

225. For such other and further relief as the Court may deem just and proper.

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