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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re **MAGNESIUM CORPORATION OF AMERICA, et al.,** **Debtors.**	**Chapter 11 Case No.** **01 B 14312 (REG)** **(Jointly Administered)**
LEE E. BUCHWALD, as Trustee for Magnesium Corporation of America and Related Debtor, Renco Metals, Inc., Plaintiff, vs. THE RENCO GROUP, INC., a Delaware corporation; SABEL INDUSTRIES, INC.; K. SABEL HOLDINGS, INC., an Alabama corporation; KPMG PEAT MARWICK LLP; DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION; HOULIHAN LOKEY HOWARD & ZUKIN; CADWALADER, WICKERSHAM & TAFT, LLP; IRA	Adversary No._____ **ADVERSARY COMPLAINT** **(Jury Trial Requested)**

LEON RENNERT; ROGER L. FAY; JUSTIN W. D'ATRI; DENNIS A. SADLOWSKI; MICHAEL C. RYAN; MICHAEL H. LEGGE; RON L. THAYER; TODD R. OGAARD; LEE R. BROWN; HOWARD I. KAPLAN; KEITH SABEL; UNIDENTIFIED TRUSTEES of Trusts Established By Ira Leon Rennert; and DOES I through XX,

Defendants.

Plaintiff Lee E. Buchwald, by and through counsel undersigned, alleges as follows:

I. PARTIES

1. Plaintiff Lee E. Buchwald is duly the appointed Trustee for Renco Metals, Inc. and its wholly owned subsidiary, Magnesium Corporation of America. Mr. Buchwald's principal place of business is Buchwald Capital Advisors LLC, 420 Lexington Avenue, Suite 300, New York, New York 10170. On April 14, 2003, the Bankruptcy Court entered an Order confirming the selection of Plaintiff Lee E. Buchwald as Chapter 11 Trustee for Magnesium Corporation of America and Renco Metals, Inc., pursuant to 11 U.S.C. § 1104.

2. Non-party and a Debtor herein, Renco Metals, Inc. ("Metals") is a corporation organized under the laws of the State of Delaware having, as of this date, its principal place of business at 30 Rockefeller Plaza, New York, New York 10112. During times at issue in this litigation, Renco Metals, Inc. was and continues to be a wholly owned subsidiary of The Renco Group, Inc., a Defendant in this action.

3. Non-party and a Debtor herein, Magnesium Corporation of America ("MagCorp") is a corporation organized under the laws of the State of Delaware having, as of this date, its principal place of business at 238 North 2200 West, Salt Lake City, Utah 84112. Magnesium Corporation of America has been a wholly owned subsidiary of Renco Metals, Inc. since August 1993.

4. Defendant The Renco Group, Inc. ("Group") is a corporation organized under the laws of the State of New York having, as of this date, its principal place of business at 30 Rockefeller Plaza, Suite 4225, New York, New York 10112. Group owns 100% of the outstanding stock of Metals.

5. Defendant Sabel Industries, Inc. ("Sabel Industries") is a corporation and, on information and belief, is organized under the laws of the State of Alabama having, as of this date, its principal place of business at 749 North Court Street, Montgomery, Alabama 36103. Sabel Industries was formed in 1987 as an indirect wholly owned subsidiary of Group. From August 4, 1993, when Group contributed Sabel to Metals, until its sale on December 4, 2000, Sabel was one of two wholly owned operating subsidiaries of Metals. On or about December 4, 2000 all of the stock of Sabel Industries was sold to Defendant K. Sabel Holdings, Inc.

6. Defendant K. Sabel Holdings, Inc. ("Sabel Holdings") is a corporation organized under the laws of the State of Alabama having, as of this date, its principal place of business at 749 North Court Street, Montgomery, Alabama 36103. On or about December 4, 2000, Sabel Holdings acquired all of the stock of Sabel Industries from Metals.

7. Defendant KPMG Peat Marwick, LLP ("KPMG") is a limited liability partnership which conducts business in and has offices located in New York, New York. KPMG is currently one of the five largest accounting firms in the United States. KPMG audited the financial statements of Metals, MagCorp and Sabel Industries as of and for fiscal years 1993, 1994, 1995, 1996, 1997, 1998 and 1999. KPMG also audited those financial statements contained in Metals' public offering of $150 million in high-yield notes in July 1996 (the "1996 Offering").

8. Defendant Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ") is currently a subsidiary of Credit Suisse Group, a corporation having its principal place of business in New York, New York. DLJ acted as the underwriter of Metals' 1996 Offering. DLJ conducts business within the State of New York and maintains an office in New York, New York.

9. Defendant Houlihan Lokey Howard & Zukin ("Houlihan Lokey") is a corporation with offices throughout the United States, including New York. Houlihan Lokey, an investment banking firm, served as financial advisor to Metals at various times relevant to this litigation and provided a solvency opinion in connection with Metals. Houlihan Lokey conducts business within the State of New York and maintains an office in New York, New York.

10. Defendant Cadwalader, Wickersham & Taft, L.L.P. ("Cadwalader") is a limited liability partnership law firm with its principal offices located in New York, New York. Cadwalader represented Metals as legal advisor in connection with the 1996

Offering and before and after the 1996 Offering. During times at issue in this litigation Cadwalader also represented Group and acted as counsel to Defendant Ira Leon Rennert.

11. Defendants KPMG, DLJ, Houlihan Lokey and Cadwalader are sometimes collectively referred to in this Complaint as the "Professional Defendants."

12. Defendant Ira Leon Rennert ("Rennert"), whose address is 625 Park Avenue, New York, New York 10021, is the beneficial owner of Group, owning all of the outstanding capital stock of Group directly and/or indirectly through trusts established by him for the benefit of himself and members of his family (the "Rennert Trusts"). During times at issue in this litigation Rennert and the Rennert Trusts owned between 95.8% and 100% of Group. Rennert has been Chairman of the Board, Chief Executive Officer and a Director of Group since 1975; the Sole Director of Metals since its inception in 1993; and the Sole Director of MagCorp since 1989. During times at issue in this litigation Rennert exercised direct control over Group, Metals and MagCorp. Furthermore, upon information and belief which come from an Answer filed by Rennert in his capacity as Trustee of the Ira Leon Rennert Revocable Trust in *United States v. Magnesium Corporation of America, et al*., Civil Action No. 2:01-CV-0040B (United States District Court for the District of Utah), Rennert serves as a trustee or co-trustee for one or more trusts established by him for the benefit of himself and members of his family ("the "Rennert Trusts"), including, *inter alia*, the Ira Leon Rennert Revocable Trust and the Ira Leon Rennert Grantor Retained Annuities Trusts. Upon information and belief, one or more of such trusts hold or ultimately receive stock of Group. Rennert is being sued individually and in his capacity as a Director, Officer and Controlling

Shareholder of the aforementioned corporations for the acts complained of herein, and in his capacity as a Trustee of one or more of the Rennert Trusts that were ultimate transferees of fraudulent conveyances complained of herein.

13. Defendant Roger L. Fay ("Fay") serves or served as Director of Group since its inception and a Vice President of Group since 1983; Vice President of Finance for Metals since its inception; and as a Vice President of MagCorp since 1989. Fay is being sued individually and in his role as a Director and Officer of the aforementioned corporations for the acts complained of herein.

14. Defendant Justin W. D'Atri ("D' Atri") is an attorney who practiced law in the State of New York from 1952 until his retirement in 1996. D'Atri serves or served as Director and the Secretary of Group since its inception; Secretary of Renco Metals, Inc. since its inception; Secretary of Magnesium Corporation of America since its inception; and a Director and Secretary of Sabel Industries during times at issue in this litigation. Furthermore, upon information and belief which come from an Answer filed by Rennert in his capacity as Trustee of the Ira Leon Rennert Revocable Trust in *United States v. Magnesium Corporation of America, et al*., Civil Action No. 2:01-CV-0040B (United States District Court for the District of Utah), D'Atri serves as a trustee or co-trustee for one or more of the Rennert Trusts. D'Atri is being sued individually and in his role as a Director and Officer of the aforementioned corporations for the acts complained of herein, and in his capacity as Trustee of one or more of the Rennert Trusts that were ultimate transferees of fraudulent conveyances complained of herein.

15. Defendant Michael C. Ryan ("Ryan") is a member of the Cadwalader law firm and served as an Assistant Secretary of Group, Assistant Secretary of Metals; Assistant Secretary of MagCorp; and Assistant Secretary of Sabel Industries during times at issue in this litigation. Ryan is being sued individually and in his role as an Officer of the aforementioned corporations for the acts complained of herein.

16. Defendant Dennis A. Sadlowski ("Sadlowski") is an attorney licensed to practice law in the State of New York who serves or served as the Vice President of Legal Affairs for Group; Assistant Secretary of Metals; Assistant Secretary of MagCorp; and Assistant Secretary of Sabel Industries during times at issue in this litigation. Sadlowski is being sued individually and in his role as an Officer of the aforementioned corporations for the acts complained of herein.

17. Defendants Rennert, Fay, D'Atri, Ryan and Sadlowski are sometimes collectively referred to in this Complaint as the "Director and Officer Defendants."

18. Defendant Michael H. Legge ("Legge") served as the President and Chief Executive Officer of MagCorp beginning January 1, 1993. Legge occupied several managerial and technical positions prior to 1993 after joining NL Industries, Inc., a predecessor of MagCorp, in 1979. Legge is being sued individually and in his role as an Officer of MagCorp for the acts complained of herein, and as a transferee of certain fraudulent conveyances complained of herein.

19. Defendant Ron L. Thayer ("Thayer") served as Vice President of Operations of MagCorp between 1993 and 2001, and serves or served as the Chief Operating Officer beginning in 2001. Thayer occupied several managerial and technical

positions prior to 1993, after joining AMAX Magnesium, Inc., a predecessor of MagCorp, in 1989. Thayer is being sued individually and in his role as an Officer of MagCorp for the acts complained of herein, and as a transferee of certain fraudulent conveyances complained of herein.

20. Defendant Todd R. Ogaard ("Ogaard") served as Vice President of Finance of MagCorp from 1995 until his departure in 2003. A certified public accountant, Ogaard was a Senior Manager with KPMG prior to joining MagCorp in 1994. Ogaard is being sued individually and in his role as an Officer of MagCorp for the acts complained of herein, and as a transferee of certain fraudulent conveyances complained of herein.

21. Defendant Lee R. Brown ("Brown") has served as Vice President of Human Resources of MagCorp from 1989 until 1999, and served as Vice President of Public and Governmental Affairs beginning in 1999. Brown joined NL Industries, Inc., a predecessor of MagCorp, in 1978. Brown is being sued individually and in his role as an Officer of MagCorp for the acts complained of herein, and as a transferee of certain fraudulent conveyances complained of herein.

22. Defendant Howard I. Kaplan ("Kaplan") served as Vice President of Sales and Marketing for MagCorp from 1993 until 1998, after joining MagCorp's predecessor, AMAX Magnesium, Inc., in 1981. Kaplan is being sued individually and in his role as an Officer of MagCorp for the acts complained of herein, and as a transferee of certain fraudulent conveyances complained of herein.

23. Defendant Keith Sabel ("Keith Sabel") is a Director of Sabel Industries and has served as its President and Chief Executive Officer since 1990. Keith Sabel also is a

Director and Chief Executive Officer of Sabel Holdings, which acquired all of the stock of Sabel Industries from Metals in December 2000. Keith Sabel is being sued individually and in his role as a Director of Sabel Industries and of Sabel Holdings for the acts complained of herein and as a transferee of certain fraudulent conveyances complained of herein.

24. Defendants Keith Sabel and Justin W. D'Atri are sometimes collectively referred to in this Complaint as the "Sabel Director Defendants."

25. Defendants Legge, Thayer, Ogaard, Brown and Kaplan and are sometimes collectively referred to in this Complaint as the "MagCorp Officer Defendants."

26. Defendants Unidentified Trustees of Trusts Established by Ira Leon Rennert (the "Unidentified Trustees") are trustees or co-trustees of one or more trusts established by Defendant Ira L. Rennert for the benefit of himself and members of his family including, *inter alia*, the Ira Leon Rennert Revocable Trust and The Ira Leon Rennert Grantor Retained Annuities Trusts ("the "Rennert Trusts"). Upon information and belief, certain such trusts hold or ultimately receive stock of Group and were transferees of fraudulent conveyances complained of herein. Once the true identities of these Defendants are discovered, Plaintiff will seek leave to amend the Complaint to state their names.

27. Defendants Does are the fictitious names of persons or entities who have committed acts giving rise to other common law claims for damages to Plaintiff named herein. Once the true identity of these fictitious Defendants are discovered, Plaintiff will seek leave to amend the Complaint to state the true identity of the Defendants who have

participated in the named-Defendants' wrongful conduct or aided and abetted the named-Defendants.

II. JURISDICTION AND VENUE.

28. This action is a civil proceeding related to a case under Title 11 of the United States Code. This Court has jurisdiction over this matter including, but not limited to, jurisdiction pursuant to 28 U.S.C. § 1334.

29. The Trustee is authorized by the Bankruptcy Code to assert claims and causes of action which are the property of the Debtors' respective bankruptcy estates. The causes of action for fraudulent transfer, aiding and abetting breach of fiduciary duty, negligence, negligent misrepresentation, conspiracy, breach of contract, and state statutory claims are all claims by Debtors arising under state law which are the property of their respective bankruptcy estates. These state law claims are non-core proceedings but "related to" this Court's jurisdiction.

30. This Court has jurisdiction over the parties because each of them has substantial contacts within the State of New York, or caused acts to occur in the State of New York which form the basis of this action. Upon information and belief, each of the corporate Defendants maintained or continues to maintain offices within the State of New York, or caused acts to occur in the State of New York which form the basis of this action. Upon information and belief, each of the Professional Defendants maintained or continues to maintain offices within the State of New York, or caused acts to occur in the State of New York which form the basis of this action. Upon information and belief, each of the Defendants Rennert, D'Atri and Sadlowski was at all times relevant to this

litigation a Director and/or Officer of Group, which maintained or continues to maintain its principal place of business in New York, New York, or caused acts to occur in the State of New York which form the basis of this action. Upon information and belief, certain of the Director and Officer Defendants reside in the State of New York, or caused acts to occur in the State of New York which form the basis of this action.

31. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a). Furthermore, many of the acts comprising the fraudulent conveyances complained of herein, including the preparation and dissemination of false and misleading information to the Securities and Exchange Commission and the investing public, occurred in this jurisdiction. Certain of the Defendants named herein resided and/or worked in this jurisdiction at all times relevant to the matters asserted herein, and performed or caused to be performed within this jurisdiction many of the acts complained of herein.

III. STATUTE OF LIMITATIONS/FRAUDULENT CONVEYANCE.

32. Renco Metals, Inc. and its wholly owned subsidiary, Magnesium Corporation of America (such entities alternatively referred to as the "Debtors"), each commenced a case in this Court under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on August 2, 2001 (the "Commencement Date").

33. This Complaint states claims for fraudulent conveyance and fraudulent transfer under the laws of the State of New York, which provide for a statute of limitation of six years. The statute of limitation on such claims had not expired prior to the Commencement Date. Pursuant to 11 U.S.C. § 108(a), the applicable statute of limitations period is extended two years from the Commencement Date.

34. This Complaint also states claims for fraudulent conveyance and fraudulent transfer under the laws of the State of Alabama. Upon information and belief, the laws of the State of Alabama provide for a statute of limitation of two years for such claims, which period had not expired prior to the Commencement Date. Pursuant to 11 U.S.C. § 108(a), the applicable statute of limitations period is extended two years from the Commencement Date.

35. The United States of America is a claimant and a creditor of the Debtors and was an existing creditor at the time of the fraudulent conveyances in 1996 by virtue of certain environmental liability claims which have been asserted by the United States and filed in Debtors' bankruptcy cases. The United States government, acting in its sovereign capacity, has authority to assert fraudulent conveyance and fraudulent transfer actions under the laws of various states of the United States, and is not subject to any statute of limitations by virtue of its sovereign immunity. The Debtors are entitled to stand in the shoes of the United States of America and assert that claim on behalf of all creditors.

IV. GENERAL ALLEGATIONS

A. Holding Company Structure

36. In 1993 Metals was formed as a wholly owned subsidiary of Group, a holding company that, in turn, wholly owned MagCorp and Sabel Industries. At all times at issue in this litigation, Rennert was the sole Director and Chief Executive Officer of Metals.

37. Group was and is a privately held corporation. Upon information and belief, 100% of the stock of Group is owned collectively by Rennert and the Rennert Trusts, including the Ira Leon Rennert Revocable Trust which, upon information and belief, is the holder of 75%. At all times relevant to this litigation, and continuing to this date, Rennert was and continues to be the Chairman and Chief Executive Officer of Group, and serves as a Director.

38. Metals is a holding company that conducts no business operations of its own. From August 1993, Metals' income was generated exclusively by its wholly owned operating subsidiaries, MagCorp and, until December 2000, Sabel Industries, Inc. ("Sabel").

39. On August 31, 1989 RenMag, Inc. ("RenMag"), a wholly owned indirect subsidiary of Group, acquired the stock of AMAX Magnesium Corporation ("AMAX"). Shortly thereafter, AMAX changed its name to Magnesium Corporation of America, and is referred to herein as "MagCorp." On August 4, 1993, Group caused the stock of RenMag (and hence, that of its subsidiary, MagCorp) to be contributed to the newly formed Metals. Metals subsequently merged RenMag into MagCorp leaving MagCorp as a direct subsidiary of Metals.

40. On June 24, 2002, pursuant to an Order of this Court, substantially all of the assets of MagCorp were sold to U.S. Magnesium, L.L.C., a limited liability company organized under the laws of the State of Delaware and a subsidiary of Group. Prior to this sale, and at all times relevant to this litigation, MagCorp was engaged in the production of magnesium extracted from the brine of the Great Salt Lake in Utah.

41. Sabel Industries was engaged in diversified steel service operations, which included the processing and sale of scrap metal, distribution of hot-rolled and cold-rolled carbon steel and structural steel products, and fabrication of customized reinforcement bar for use in building and highway construction. Sabel Industries was formed in 1987 as an indirect subsidiary of Group, to acquire the net assets of Sabel Steel, Inc. at the instance of Group, the stock of Sabel Industries was contributed to the newly formed Metals in 1993. On or about December 4, 2000, the stock of Sabel Industries was sold to Sabel Holdings, a corporation owned and/or controlled by Defendant Keith Sabel, the Chief Executive Officer and a member of the board of directors of Sabel Industries.

B. MagCorp's Operations

42. MagCorp's magnesium production operations were conducted at a facility near Rowley, Tooele County, Utah, adjacent to the southwestern shore of the Great Salt Lake (the "Rowley Facility"). The Rowley Facility was one of three magnesium plants in the United States and one of the largest magnesium producers in the world. It was able to produce roughly 45,000 tons per year of magnesium and magnesium alloys. In addition to the magnesium production, the Rowley Facility produced certain mineral feedstocks unique to its processing operations, including ferrous and ferric chloride, calcium chloride, liquid chlorine and hydrochloric acid.

43. The Rowley Facility was constructed in 1972 under the ownership of National Lead, Inc. Amax Magnesium, Inc. purchased the facility in 1980 and operated it through its subsidiary, Amax Magnesium Corporation, until it was sold in 1989 to RenMag.

44. The Rowley Facility included solar evaporating ponds and concentrator tanks, a boron removal unit, a calcium chloride plant, spray dryers, a calcium chloride operation, melt cells, electrolytic cells, a foundry referred to as the "cast house," and a ferrous and ferric chloride processing plant.

45. The operations at the facility used a unique anhydrous (i.e., waterless) process to extract the mineral from the magnesium-rich brine of the Great Salt Lake. Water drawn from the lake was concentrated in solar evaporating ponds and in concentrator tanks, crystallizing the minerals. The concentrated brine was treated to remove potassium, boron and sulfates, and then spray-dried to produce a magnesium chloride powder that contained magnesium oxide impurities.

46. The powder was melted in an induction/arc furnace and charged with chlorine gas. The reaction with the chlorine gas converted the magnesium oxide impurities therein into magnesium chloride. This process was referred to as the "purification" or "melt/reactor process."

47. The molten magnesium chloride was then introduced in batches to electrolytic cells that separated the chlorine from the magnesium metal. An electric current was applied to the molten magnesium chloride, causing it to separate into magnesium metal and chlorine gas. The separated magnesium was vacuumed from the surface of the electrolytic cell bath. This process was referred to as the "electrolytic process."

48. The molten magnesium metal was then conveyed to a foundry for casting.

C. Wastes Generated At the Rowley Facility

49. Chlorine and hydrogen chloride are classified as hazardous air pollutants by the Federal Clean Air Act. *See* 42 US.C. §7412(b).

50. Chlorine gas was emitted in both the melt/reactor and the electrolytic processes, through separate stacks at the plant. It was therefore necessary to "scrub" the emissions from the melt/reactor and the electrolytic cells before they were discharged into the atmosphere.

51. During the 1980s several Orders were issued by the State of Utah Division of Air Quality (the "UDAQ") setting chlorine emission limits for the melt/reactor stack and the cathode (electrolytic) stack at the Rowley Facility.

52. In order to meet the melt/reactor stack emissions limit set by the UDAQ, chlorine off-gas from the melt/reactor process was captured and passed through a series of scrubbers that removed pollutants. The chlorine gas was then transported to a chlorine plant where it was converted into liquid chlorine and hydrochloric acid. Wastewater was generated at several steps in this process, as follows:

1) Ducon Scrubbers – Chlorine off-gas from the melt/reactor process was sent to a series of Ducon scrubbers that captured and removed particulates. A waste called "scrubber underflow" was a by-product of this process. In a response to a survey conducted by the United States Environmental Protection Agency ("EPA") in the late 1980s, MagCorp estimated that 1,000,000 metric tons of wastes were generated annually from the Ducon scrubbers.

2) Chlorine Reduction Burner – The scrubbed chlorine gas was piped to a Chlorine Reduction Burner, which converted the gas into hydrogen chloride gas. A waste commonly referred to as "blowdown" resulted. In the 1989 survey response, MagCorp estimated that 5,000,000 metric tons of Chlorine Reduction Burner Waste was generated annually.

3) High Energy Scrubber – From the Chlorine Reduction Burner the hydrogen chloride gas passed through a series of scrubbers to remove pollutants (mostly ash). A High Energy Scrubber was several steps downstream from the Chlorine Reduction Burner. This unit removed hydrochloric acid. High Energy Scrubber Waste was estimated at 44,200 metric tons annually.

53. During the electrolytic process, an electric current was passed through the molten magnesium chloride. Magnesium separated and formed in the cathode compartment, while chlorine gas formed in the anode compartment. In order to meet the cathode stack limit for emissions, chlorine off-gas from the electrolytic process was captured and passed through a series of scrubbers that removed pollutants. Wastewater was generated at several steps in this process.

1) Cathode Scrubbers – During the electrolytic process small amounts of chlorine gas leaked into the cathode compartment. This gas exited the cathode end of the electrolytic cells into cathode scrubbers

where it was cleaned, generating an estimated 276,000 metric tons of "scrubber liquor" annually.

2) Chlorine Plant Water Wash Column – The chlorine gas from the anode end of the electrolytic cells was captured and piped to the Chlorine Plant, where it was cleaned and converted into liquid chlorine. The first unit in the Chlorine Plant was the Water Wash Column, which annually generated an estimated 11,500 metric tons of waste. The liquid chlorine was re-used for charging the melt/reactor or was sold. Chlorine Plant tail gas (*i.e.*, chlorine gas that could not be liquefied) was sent to the Chlorine Reduction Burner.

54. The Rowley Facility also generated various solid wastes. As chlorine gas from the electrolytic phase traveled to the anode heater system and the Chlorine Plant, particulates known as "anode dust" or "pentapure solids" settled on the floor of the ductwork. The hydrochloric acid produced by the Chlorine Reduction Burner was conveyed to the Ferric Chloride Plant, where it was reacted with scrap iron, producing ferrous and ferric chloride solid wastes. A residue containing low levels of barium was formed during the casting of the magnesium metal.

55. The liquid and solid wastes generated at the Rowley Facility contained such hazardous constituents as hexachlorobenzene, dioxin, polychlorinated biphenyls, furans, lead, arsenic, chromium and barium, described below.

56. Hexachlorobenzene ("HCB") is a white crystalline organic solid widely used in making other organic compounds such as rubber, dyes and wood preservatives, and as a fungicide on grains, especially wheat. It is a byproduct of industrial chemicals, chemical interactions in waste streams of chloralkali and wood-preserving plants, and burning of municipal waste. The United States Department of Health and Human Services (the "DHHS") has determined that hexachlorobenzene may reasonably be anticipated to be a human carcinogen. The United States Environmental Protection Agency (the "EPA") has concluded that hexachlorobenzene is a probable human carcinogen.

57. Dioxin refers to a toxic chemical compound, 2,3,7,8-tetrachlorodibenzo-*p*-dioxin ("TCDD"). The plural term "dioxins" refers to a class of closely related toxic chemical compounds that includes the chlorinated dibenzo-*p*-dioxins ("CDDs"), chlorinated dibenzofurans ("CDFs" or "furans"), and certain polychlorinated biphenyls ("PCBs"). Dioxins are produced as a result of the incineration of organic chemicals and plastics that contain chlorine. The DHHS has determined that 2,3,7,8-TCDD may reasonably be anticipated to cause cancer.

58. Arsenic (periodic symbol = As) is a naturally occurring semi-metallic element widely distributed in the earth's crust. It is usually found in the environment combined with other elements such as oxygen, chlorine, and sulfur to form organic and inorganic arsenic compounds. Arsenic occurs when smelters heat ores containing sulfides; the arsenic enters the air as a fine dust and collects in the flues as a byproduct. Several studies have shown that the inorganic arsenic components can increase the risk of

lung cancer, skin cancer, bladder cancer, liver cancer, kidney cancer, and prostate cancer. The DHHS and the EPA have determined that inorganic arsenic is a human carcinogen.

59. Chromium (periodic symbol = Cr) is a naturally occurring element found in rocks, animals, plants, soil, and in volcanic dust and gases. Chromium is present in the environment in several different forms. The most common forms are chromium(0), chromium(III), and chromium(VI). Although chromium(III) is an essential nutrient that helps the body use sugar, protein and fat, the DHHS has determined that certain chromium(VI) compounds are known to cause cancer in humans. Ingesting large amounts of chromium(VI) can cause convulsions, kidney and liver damage, and even death.

60. Barium (periodic symbol = Ba) is a silvery-white metal found in nature. It occurs combined with other chemicals such as sulfur or carbon and oxygen. A barium compound (barium sulfate) is sometimes used by doctors to perform medical tests and to take barium-rays of the stomach. Although the DHHS and the EPA have not classified barium as to its human carcinogenicity, those barium compounds that dissolve well in water may cause harmful health effects in people.

61. Lead (periodic symbol = Pb) is a naturally occurring metal found in small amounts in the earth's crust. It is a highly toxic metal that may cause a range of health effects, from behavioral problems and learning disabilities, to seizures and death. Exposure to excessive levels of lead can cause brain damage. Lead also damages kidneys and the reproductive system.

62. At MagCorp's Rowley Facility thousands of gallons per day of liquid and solid wastes were commingled and disposed of through a series of pipes and ditches that collected drainage from the various processes. Two of the ditches, known as the "Chlorine Plant Ditch" and the "Central Ditch," flowed into a third ditch, the "Red River," so named because of its color and content. A number of pipes also discharged wastewater directly into the Red River. Anode dust and waste from the High Energy Scrubber were disposed into a collection tank, which in turn fed into pipes that discharged into the Red River. Laboratory waste containing arsenic, barium and other metals was disposed in a sump outside of MagCorp's laboratory building and, until 1997, was also conveyed to the Central Ditch.

63. The Red River, which was approximately 2,000 feet long, 10 to 20 feet deep and 10 to 40 feet wide, in turn discharged into a 400-acre pond on the site.

64. Neither the ditches nor the pond were lined to prevent infiltration of liquids into the ground and groundwater.

65. The Chlorine Plant Ditch primarily collected wastewater from the Chlorine Plant and discharged it into the Red River. The Chlorine Plant Ditch was approximately one-half mile long, 10 to 15 feet deep and 10 to 12 feet wide. During various inspections, the EPA identified one source of the wastewater in the Chlorine Plant Ditch as the Chlorine Plant Water Wash Column.

66. The Central Ditch was approximately one-half mile long, 10 to 15 feet deep and 10 to 20 feet wide. Wastewaters from the electrolytic and hydrochloric acid production areas were disposed in the Central Ditch. Chlorine Reduction Burner Waste

and seal leg water from equipment associated with the Chlorine Reduction Burner and/or the Absorber Scrubber were also discharged into the Central Ditch.

67. Spent solids from the manufacture of ferrous and ferric chloride were disposed in an on-site industrial landfill. Other solid wastes, including the residue from the casting of the magnesium metal, a sludge residual from the electrolytic cells, and cell salts were disposed in unlined, uncovered piles.

68. The Rowley Facility had numerous sumps, or pits. Anode dust was watered down to form a slurry that was disposed in the Central Ditch and, ultimately, to the Red River and the 400-acre pond.

69. Until 1985, MagCorp disposed of wastewaters in a 1,200-acre pond adjacent to the shore of the Great Salt Lake. In that year, naturally rising lake waters overflowed the banks of the 1,200-acre pond, causing the pond's contents to empty into the Great Salt Lake.

70. As a result of the processes employed at its Rowley Facility, MagCorp, at all times relevant herein, emitted some 85% of the United States' total of point-source chlorine gas emissions and approximately 90% of the State of Utah's total toxic pollution.

71. Throughout the 1980s and 1990s MagCorp's Rowley Facility ranked at the top, or near to the top, of the EPA's annual Toxic Release Inventory for total emissions.

72. During the same period, MagCorp's Rowley Facility annually emitted some 60 million pounds of chlorine gas and approximately 6 million pounds of hydrogen

chloride gas into the open air. The Rowley Facility was, from an environmental standpoint, one of the worst industrial operations in the United States.

D. The Statutory and Regulatory Scheme for Mineral Processing Waste

73. In 1976, Congress enacted the Resource Conservation and Recovery Act ("RCRA" or "1976 Act"), 42 U.S.C. §§6901, *et seq*., to address the generation, management and disposal of solid wastes. Subtitle C of RCRA required the United States Environmental Protection Agency ("EPA") to promulgate a regulatory structure applicable to facilities that generate, transport, treat, store and dispose hazardous wastes. Together, Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260-272, comprise the Federal Hazardous Waste Program.

74. In the 1976 Act, Congress directed the EPA to identify and list hazardous wastes that would be subject to the provisions of RCRA Subtitle C. Pursuant to that direction, in December 1978 the EPA published "Proposed Guidelines And Regulations And Proposal On Identification And Listing" of hazardous waste.

75. In seeking to identify hazardous wastes, the EPA acknowledged that it had very little information regarding the health or environmental hazards posed by certain high volume wastes with low toxicity ("high volume/low hazard wastes"), including processing wastes generated by the mining industry ("mineral processing wastes"). Identifying these as "special wastes," the EPA stated that it would address the standards for their treatment, storage and disposal in a later rule making. In the interim, the EPA exempted all facilities that handled special wastes from the storage, treatment and disposal standards under Subtitle C. During the temporary exemption, however, these

wastes were subject to regulation under Subtitle D of RCRA, a less stringent regulatory program than Subtitle C.

76. Congress amended the RCRA in 1980, adding a number of provisions, including two that are jointly referred to as the "Bevill Amendment." The Bevill Amendment deferred regulation of "solid wastes from the extraction, beneficiation and processing of ores and minerals" – that is, mineral processing wastes -- until after the EPA had conducted a comprehensive study to determine whether regulation was appropriate for any or all of those wastes. The EPA was directed to submit a report to Congress on the results of those studies and issue a regulatory determination based on the same.

77. In response to the Bevill Amendment, the EPA issued an interim final rule temporarily excluding from RCRA Subtitle C regulation wastes "uniquely associated" with mineral extraction, beneficiation and processing.

78. The EPA failed to complete the required studies, report to Congress and issue a regulatory determination by the statutory deadline in 1983. In *Environmental Defense Fund v. Environmental Protection Agency*, 852 F.2d, 1316 (D.C. Cir. 1988), the Court ordered the EPA to make a final determination (after notice and comment) by February 15, 1989 which processing wastes should be permanently excluded as high volume/low hazard special wastes. The Court also ordered the agency to complete the studies of any processing wastes that remained conditionally retained under the Bevill Amendment (i.e., non-high volume/low hazard) and submit its report to Congress by July

31, 1989. The EPA was ordered to make its final regulatory determination with respect to the latter category of processing wastes within six months of the Report to Congress.

79. In April 1989 the EPA noted that it lacked sufficient data to determine whether the mineral processing wastes nominated by the mining industry met the "low toxicity" criterion. The agency indicated that while it conducted the study required by the Bevill Amendment, it would also conduct waste sampling to determine whether the candidate wastes met the "low hazard" standard. As part of its study, the EPA visited the Rowley Facility in June 1989 to evaluate the wastes and collect additional information. During the visit the EPA collected and tested samples of wastewater.

80. On September 1, 1989, the EPA issued its final rule setting forth criteria for the high volume/low hazard standard. According to the rule, a mineral processing waste qualifies for exclusion from Subtitle C regulation if it satisfies all of the following criteria:

1) The waste must originate from mineral processing operations, which the EPA defines as those that "destroy the physical structure of the mineral." The regulation specifically includes electrolysis as well as operations that use heat to alter the chemical composition of the mineral, such as raising the temperature of a mineral above its melting point;

2) The waste must meet the high volume threshold (for aqueous wastes, one million metric tons annually); and

3) The waste must meet the low hazard criterion, that is, it must have a pH greater than 1 and less than 13.5 (1<pH>13.5) and pass a toxicity and mobility test.

81. In the September 1, 1989 rule the EPA determined that 20 wastes nominated by the mining industry appeared to the meet the "special waste" criteria, and therefore it conditionally retained these 20 mineral processing wastes pending its study, the Report to Congress and further regulatory determination. With this conditional exception, all other mineral processing wastes lost their Bevill excluded status as of September 1, 1989.

82. One of the wastes the EPA conditionally retained in its September 1, 1989 rule was "process wastewater from primary magnesium processing by the anhydrous process." The Rowley Facility was the only magnesium processing facility in the United States that used the anhydrous process.

83. In introductory language to the September 1, 1989 rule, the EPA stated that pollution control residuals must independently meet the high-volume/low-toxicity criteria to be excluded.

84. In its July 31, 1990 Report to Congress, the EPA identified two mineral processing wastes from primary magnesium processing that should remain excluded from hazardous waste regulation:

1) Melt/Reactor Cell Ducon Scrubber Underflow, and

2) Electrolytic Cell (Cathode) Scrubber Liquor

85. These two distinct wastes occurred only at MagCorp's Rowley Facility. The Melt/Reactor Cell Ducon Scrubber Underflow identified in the 1990 Report to Congress refers to the byproduct described above. The Electrolytic Cell (Cathode) Scrubber Liquor identified in the 1990 Report to Congress refers to the byproduct described above.

86. The EPA held public hearings on the Report to Congress and held a public comment period.

87. By rule dated June 13, 1991, the EPA issued its final regulatory determination under the Bevill Amendment. The final regulatory determination affirmed that "process wastewater from primary magnesium processing by the anhydrous process" merited retention under the Bevill Amendment. *See* 56 Fed. Reg. 27300, 40 C.F.R. § 261.4(b)(7)(ii)(O). The final regulatory determination, however, provides no definition of the term "process wastewater from primary magnesium processing by the anhydrous process."

88. RCRA § 3006, 42 U.S.C. § 6926, allows the EPA to authorize a state to administer its own hazardous waste program in lieu of the federal program when the EPA deems the state program to be equivalent to the federal program. When a state obtains such authorization, state requirements (which substantially incorporate the federal regulatory scheme) will apply in lieu of the federal requirements.

89. The EPA authorized the state of Utah to administer its hazardous waste program in lieu of the federal program on October 10, 1984, effective October 24, 1984. Pursuant to such authorization, the State of Utah through its Department of

Environmental Quality ("UDEQ") administers the core RCRA Hazardous Waste Program through its Solid and Hazardous Waste Act, Utah Code Ann. §§ 19-6-101, *et seq.*, and rules and regulations promulgated thereunder.

90. Although the State of Utah has independent enforcement authority, the EPA retains the right to conduct inspections under § 3007 of RCRA, 42 U.S.C. § 6927, and to take enforcement actions under §§ 3008, 3013 and 7003 of RCRA, 42 U.S.C. §§ 6928, 6934 and 6973, regardless of whether the State of Utah has acted. The United States may enforce the federally authorized Utah Hazardous Waste Program by filing a civil action in the United States District Court for injunctive relief and civil penalties.

91. The EPA and that Utah Hazardous Waste Programs regulate hazardous waste primarily through a permitting process. Both programs require the owner or operator of a facility that treats, stores or disposes of hazardous waste to have a permit or plan approved. Both programs prohibit the treatment, storage or disposal of hazardous waste except in accordance with the permit.

92. The RCRA Subtitle C regulations contain numerous requirements regulating all aspects of the treatment, storage and disposal hazardous wastes. Violation of each requirement of the regulatory scheme constitutes a separate violation.

93. Each day of noncompliance with the RCRA Subtitle C regulations constitutes a separate violation.

The maximum civil penalty for each violation is $25,000.00 per day of noncompliance occurring on or before January 30, 1997, and $27,500.00 per day for each day of noncompliance occurring after January 30, 1997.

E. Beginning in 1992 the EPA and the State of Utah Asserted that MagCorp Was Violating the RCRA Regulations

94. MagCorp never applied for nor obtained any permit for the treatment, storage or disposal of hazardous waste at the Rowley Facility in compliance with the RCRA Subtitle C regulations and the Utah Solid and Hazardous Waste Act and regulations thereunder.

95. During the spring of 1992, the EPA and the Utah Division of Solid and Hazardous Waste conducted a series of compliance inspections of the Rowley Facility. The inspections occurred on March 17, 1992, April 1, 1992 and May 6, 1992. Following the inspections, the EPA advised MagCorp that only the two waste streams specifically identified in the 1990 Report to Congress were Bevill excluded wastes.

96. In the Inspection Report following the March 17, 1992 visit, the EPA documented the following exchange:

> "Tripp [G. Thomas Tripp, MagCorp's Environmental Manager] stated that he believes all wastewaters discharged into the surface impoundment are Bevill-exempt.
>
> * * *
>
> The EPA inspector explained that the exempt mineral processing wastes were specifically defined in the July 1990 EPA Report to Congress, and the definition did not include all wastewaters at the facility."

97. In numerous memoranda and letters between 1992 and 1999 the EPA documented its position. In a memorandum dated July 9, 1993, the EPA stated:

> "EPA restricted the exemption to a literal reading of the exemption as codified. EPA restricted the mineral processing wastestream exclusion to only the scrubber liquor from the cathode scrubbers, and the scrubber underflow from the fume scrubbers."

98. In a memorandum dated March 23, 1994, the EPA stated:

> "EPA intended that only two wastestreams – scrubber underflow process wastewater and scrubber liquor process wastewater – from the MagCorp Facility specifically qualify as exempt mineral processing wastes."

99. In an EPA memorandum dated March 19, 1999, EPA stated:

> "[EPA's Office of Solid Waste] has stated numerous times that only two wastestreams – scrubber underflow process wastewater and scrubber liquor process wastewater – from the MagCorp Facility specifically qualify as exempt mineral processing wastes."

100. The EPA sent a letter to the Utah Department of Environmental Quality on August 4, 1992, setting forth its position that only the two waste streams identified in the 1990 Report to Congress were Bevill are excluded:

> "The only wastes which were considered for the final mineral processing exclusion were those that met the 'high volume/low hazard' criteria established by EPA. Two wastewater streams were identified at MagCorp which satisfied the high-volume, low-hazard criteria: a scrubber underflow from a hydrochloric acid purification operation (fume scrubbers), and a scrubber liquor from a gas purification process (cathode scrubbers). These are the only two wastewater streams at MagCorp which are eligible for the mineral processing waste exclusion."

101. The EPA has consistently maintained that RCRA regulatory status affixes at the point where a waste is first generated, so that waste from pollution control devices qualify as Bevill excluded only so long as the materials the pollution control device receives is derived wholly from mineral processing operations. Thus, pollution control residuals qualify as mineral-processing waste only if the influent is derived wholly from

mineral processing operations, defined as operations that "destroy the physical structure of the mineral."

102. Correspondence between MagCorp personnel and the Utah Division of Solid and Hazardous Waste demonstrates that, from at least 1992, MagCorp was fully aware that the EPA and the State of Utah had determined that MagCorp's treatment, storage, and disposal of waste at its Rowley Facility violated RCRA and the Utah Solid and Hazardous Waste Act.

103. Notwithstanding that MagCorp had actual notice beginning in 1992 that the EPA and the State of Utah considered only two waste streams at the Rowley Facility as Bevill excluded, MagCorp made the decision that it would not seek to obtain any permit based on its unilateral interpretation that the Bevill Amendment reached all wastes generated at its operations.

104. In August 1992, the UDEQ issued a Notice of Violation and Compliance Order to MagCorp. The alleged violations included operating a hazardous waste treatment, storage or disposal facility without a permit, disposing of acids listed as hazardous wastes in a surface impoundment without a permit, and numerous other violations of the RCRA hazardous waste regulations.

105. Although the Notice of Violation and Compliance Order was settled in March, 1997, the enforcement action did not resolve the regulatory status of the waste streams in question.

106. In 1999 the State of Utah formally requested the EPA to take enforcement action against MagCorp.

F. MagCorp's Failure to Comply With RCRA Regulations Culminated in Legal Action Commenced By the United States

107. On January 16, 2001, the United States brought an action on behalf of the EPA seeking injunctive relief and $900 million in civil penalties for violations occurring over a period of at least five years preceding January 2000. The action, filed in the United States District Court for the District of Utah, as amended, named as defendants MagCorp, Metals, Group, the Ira Leon Rennert Revocable Trust, Rennert and US Mag.

108. The United States made the following allegations concerning the defendants therein (numbering corresponds to the paragraph numbering in the Second Amended Complaint):

> "6. *MagCorp, whose business address was 238 North 2200 West, Salt Lake City, Utah 84116, is a corporation organized under the laws of the State of Delaware*.
>
> *"7. MagCorp is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(b).*
>
> "8. *MagCorp was the "owner" and "operator" of a "facility," as those terms are defined in 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(b), whose waste management activities, including "treatment," "storage," and/or "disposal" of hazardous wastes at the facility, were and are subject to regulation under RCRA.*
>
> "9. *MagCorp was a "generator," within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(B), which produced and produces waste regulated as hazardous under RCRA.*
>
> "10. *MagCorp is or was a wholly-owned subsidiary of Renco Metals. Group is a holding company that owns or owned, inter alia, 100% of Renco Metals' stock*.

"11. *In August, 2001, MagCorp and Metals filed for bankruptcy in the Southern District of New York. In June 2002, substantially all of MagCorp's assets were sold to USM.*

"12. *USM, whose business address is 238 North 2200 West, Salt Lake City, Utah 84116, is a limited liability corporation organized under the laws of Delaware.*

"13. *USM is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(b).*

"14. *USM is the "owner" and "operator" of a "facility," as those terms are defined in 40 C.F.R. § 260.10, and Utah Admin. R. R315-1-1(B), whose waste management activities, including "treatment," "storage," and/or "disposal" of hazardous wastes at the facility, were and are subject to regulation under RCRA.*

"15. *USM is a "generator," within the meaning of 40 C.F.R.§ 260.10 and Utah Admin. R. R315-1-1(b), which produced and produces waste regulated as hazardous under RCRA.*

"16. *Group, whose business address is 30 Rockefeller Plaza, Suite 4225, New York, NY 10012, is incorporated under the laws of the State of New York as a Subchapter S corporation.*

"17. *Group is a "person " within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and Utah Admin. R. R 315-1-1(b).*

"18. *After reasonable opportunity for further investigation and discovery, the evidence is likely to show that Group is the "operator" a "facility," as those terms are defined in 40 C.F.R.§ 260.10, and Utah Admin. R. R315-1-1(b), whose waste management activities, including "treatment," "storage," and/or "disposal" of hazardous wastes at the facility, were and are subject to regulation under RCRA.*

"19. *After reasonable opportunity for further investigation and discovery, the evidence is likely to show*

that Group is a "generator," within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b), which produced and produces waste regulated as hazardous under RCRA.

"1. [sic – paragraph misnumbered] Mr. Ira Leon Renner, whose address is 625 Park Avenue, New York, NY 10021, is or was Chairman of the Board of Group, Metals and MagCorp. Rennert is or was the sole director of Metals and also is or was the Chief Executive Officer of Group and Metals.

"2. Rennert established a series of trusts, including the Ira Leon Rennert Revocable Trust (hereinafter "Trust"), for the benefit of himself and members of his family. After a reasonable opportunity for further investigation or discovery, the evidence is likely to show that the Trust is located in New York.

"3. The Trusts own 100% of Group. The Revocable Trust owns 75% of Group. As a Subchapter S corporation, Group's profits and losses are attributed to its owners for income tax purposes. In addition to owning Metals, Group also owns numerous other concerns in the United States and abroad.

"4. Metals, whose business address is 238 North 2200 West, c/o MagCorp, Salt Lake City, Utah 84116, is incorporated under the laws of the State of Delaware. Metals is a holding company with no independent operations of its own. MagCorp became a wholly-owned subsidiary of Metals in 1993, as did a second company, Sabel Industries, Inc. ("Sabel"). From the time of Metals' incorporation in 1993 to early December, 2000 Metals' income was generated by MagCorp and Sabel. Sabel was sold to K. Sabel Holdings, Inc. in December, 2000, for $8 million cash. Prior to this sale, Sabel accounted for approximately 25% of Metals' income.

109. The United States made the following allegations concerning the statutory and regulatory framework of RCRA:

"5. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and on the Hazardous

and Solid Waste Amendments Act ("HSWA"), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act.

"6. RCRA's Subchapter III (RCRA §§ 3001 – 3023,42 U.S.C §§ 6921 – 6940) (also known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store and dispose hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 2732, comprise EPA's RCRA hazardous waste program. RCRA Subtitle C also required that EPA promulgate regulations governing recycled oil and setting forth standards for the management, including storage, of used oil, both of which are hazardous wastes. RCRA § 3014, 42 U.S.C. § 6935. EPA's used oil regulations are codified at 40 C.F.R. Part 279.

"7. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program. Where a state obtains such authorization, state requirements will apply in lieu of the federal requirements.

"8. EPA authorized the State of Utah to administer its hazardous waste program in lieu of the federal program on October 10, 1984, effective October 24, 1984, and has authorized numerous revisions to the Utah program since then. Pursuant to such authorizations, the State of Utah, through its Department of Environmental Quality ("UDEQ"), has administered the core RCRA hazardous waste program in the STATE through enactment of its Solid and Hazardous Waste Act, Utah Code Ann. §§ 19-6-101, *et seq*., and rules and regulations promulgated thereunder, set forth at Utah Admin. R. Title R315. EPA authorized Utah to administer its used oil program on January 13, 1999, effective March 15, 1999. Utah's used oil regulations are set forth at Utah Admin. R. R315-15.

"9. While Utah has independent enforcement authority, EPA retains the right to conduct inspections under Section 3007 of RCRA, 42 U.S.C. § 6927, and to take enforcement actions under Sections 3008, 3013 and 7003 of

RCRA, 42 U.S.C. §§ 6928, 6934 and 6973, regardless of whether Utah has acted. *See* 49 Fed. Reg. 41036 (October 19, 1984); 51 Fed. Reg. 37729 (October 24, 1986); 54 Fed. Reg. 20847 (May 15, 1989); 56 Fed. Reg. 21601 (May 10, 1991) and 59 Fed. Reg. 16568 (April 7, 1994).

"10. Pursuant to Sections 3006(g), 3008(a), (g) and (h) of RCRA, 42 U.S.C. §§ 6926(g), 6928(a), (g) and (h), the United States may also enforce the federally-authorized Utah hazardous waste program (as well as federal regulations promulgated pursuant to HSWA until EPA authorizes the State to enforce the Utah program), by filing a civil action in United States District Court for injunctive relief and civil penalties.

"11. In July, 2000, Utah codified a new numbering system for sections within Utah Admin. R. Subtitles R315-5, R315-6 and R315-3. As EPA has not yet authorized these new regulations, this Complaint seeks enforcement only of the earlier regulations. However, as the new regulations are more readily accessible, for convenience, this Complaint cites to both the earlier (authorized) regulations and the new (renumbered) regulations, where applicable.

"12. Under RCRA and the Utah program, a waste is "hazardous," first, if it is a "solid waste," which term includes, *inter alia*, a liquid, semisolid, or contained gaseous material; and second, if it is either listed as a hazardous waste, or exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity. RCRA §§ 1004(5), 1004(27) and 3001, 42 U.S.C. §§ 6903(5), (27) and 6921, and 40 C.F.R. Part 261; Utah Code Ann. 19-6-102(9), and 19-6-102(17)(a), Utah Admin. R. R315-2. Generally, a waste exhibits the characteristic of corrosivity if it either has a pH less than or equal to 2; or is a liquid and corrodes steel at a rate greater than 6.35 mm per year at a test temperature of 55 degrees Celsius. 40 C.F.R. § 261.22; Utah Admin. R. R315-2-9(e). A waste exhibits the characteristic of toxicity if it leaches contaminants at concentrations greater than specified values. 40 C.F.R. § 261.24; Utah Admin. R. R315-2-9(g).

"13. The federal and Utah hazardous waste programs primarily regulate hazardous waste management facilities through a permitting process. The programs require each person owning or operating a hazardous waste treatment,

storage, or disposal facility ("TSD facility") to have a permit or plan approved, and prohibit the treatment, storage or disposal of hazardous waste except in accordance with the permit. Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. Parts 264, 268 and 270 and Utah Code Ann § 19-6-108, Utah Admin. R315-8, R315-13 and R315-3. The federal and State programs also provide that a hazardous waste facility in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirements to have a permit, may qualify for "interim status" to continue operating until final action is taken by EPA or the State with respect to the facility's permit application, so long as the facility satisfies specified conditions. Section 3005(e) of RCRA, 42 U.S.C § 6925(e) and 40 C.F.R. Part 265; Utah Code Ann. § 19-6-108(3)(f), Utah Admin. R. R315-7.

"14. In addition banning "disposal" of hazardous waste except in accordance with a permit, EPA and Utah also ban what is known as "land disposal" of specified hazardous wastes, unless such hazardous wastes are first treated incompliance with specified treatment levels or methods known and "land disposal restrictions," or "LDRs." RCRA Section 3004(d), 40 C.F.R. Part 268, and Utah Admin. R. R315-13-1. The federal and authorized Utah LDRs are set forth in 40 C.F.R. Part 268, and Utah Admin. R. R315-13, respectively.

"15. Under the federal and Utah programs, "land disposal," when used with respect to a specified hazardous waste, includes any placement of such waste in a landfill or surface impoundment. RCRA § 3004(k), 42 U.S.C. § 6924(k); Utah Admin. R. R315-13-1. A "surface impoundment" is "a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made material), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well." 40 C.F.R. § 260.10 and Utah Admin. R R315-1-1(b). A "landfill' is "a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not … a surface impoundment … or a corrective action management unit." 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

"16. The federal and Utah programs also regulate generation of hazardous waste, whether or not a facility also treats, stores or disposes hazardous waste or is otherwise required to obtain a permit or interim status. The programs require, *inter alia*, that each person properly store, label, manifest, and inspect hazardous waste it generates. Section 3002 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. Part 262; and Utah Admin. R. R315-5.

"17. The federal and Utah programs also generally require that TSDs seeking permits perform corrective action for all releases of hazardous wastes or constituents (as that term is used in 40 C.F.R. § 261.11(a)(3), Utah Admin. R. R315-2-9(C)(1)(iii)) from any solid waste management unit at the facility and beyond the facility boundary, regardless of the time at which waste was placed in such unit. RCRA §§ 3004(u) and (v), 42 U.S.C. § 6924(u), (v), 40 C.F.R §§ 264.552-554; Utah Code Ann. § 19-6-105(d), Utah Admin. R. R315-8-21, R315-7-8.1(b). EPA authorized Utah to implement certain corrective action requirements on March 15, 1999. In addition, whenever EPA or Utah determine there has been a release of hazardous waste into the environment from a facility that has interim status, that once had interim status, or that should have had interim status, they may commence a civil action for appropriate relief, including an injunction requiring a defendant to take corrective action necessary to protect human health and the environment. RCRA § 3008(h), 42 U.S.C. § 6928(h); Utah Code Ann. § 19-6-112.

"20. [sic – paragraph misnumbered] The *federal and Utah programs also authorize regulators' taking action to abate the potential for imminent and substantial endangerment to public health or the environment posed by hazardous or solid wastes. RCRA § 7003*.

110. The United States made the following allegations concerning the wastes at MagCorp's Rowley Facility:

"18. *The facility is the largest producer of magnesium in the United States, and the third largest magnesium producer in the world. It is able to produce roughly 40,000 tons per year of magnesium and magnesium*

alloys. It also produces liquid chlorine, hydrochloric acid, ferrous and ferric chloride, calcium chloride, and potassium-containing salts.

"19. *The facility was constructed in 1972, under the ownership of National Lead, Inc. ("NL"). In 1980, AMAX, Inc. purchased the facility from NL, and operated it through its subsidiary, AMAX Magnesium Corp. In 1989, RENMAG, Inc. purchased the stock of AMAX Magnesium Corp. and changed its name to Magnesium Corporation of America, or MagCorp. The facility occupies 4,525 acres of land in the Tooele County desert west of the Great Salt Lake*.

"21. [sic – paragraph misnumbered] In *June, 2002, MagCorp's assets, including the facility, were sold to USM. USM is continuing to operate the facility as did MagCorp and/or Group*.

"20. *Manufacturing operations generally include removing minerals from, inter alia*, Great Salt Lake surface waters and groundwater brines by concentrating the waters in solar evaporating ponds and in concentrator tanks which utilize waste heat from other facility processes; treating the concentrated brine to remove potassium, boron and sulfates; spray drying the brine to produce an impure anhydrous magnesium-rich powder; melting and chlorinating the powder to convert magnesium oxide therein into magnesium chloride; separating the molten magnesium metal from chlorine gas by electrolysis; casting the magnesium into desired products; and capturing, and recycling or selling, chlorine gas and hydrochloric acid generated in the electrolytic refining process.

"21. Manufacturing facilities include solar evaporation ponds; a boron plant; a calcium chloride plant; spray dryers; melt cells; electrolytic cells; a chlorine plant; hydrochloric acid manufacturing plant; a cast house; and a ferrous and ferric chloride processing plant.

"22. Thousands of gallons per day of liquids and solids are commingled and disposed through a series of pipes and underground ditches that collect drainage from the facility. Two of the ditches, which employees call the "Chlorine Plant Ditch" and the "Central Ditch," flow into a third ditch, which employees call the "Red River" because of

its color and contents. A number of pipes also discharge waste from the facility directly into the Red River. Anode Dust and High Energy Scrubber waste are disposed into one or a series of collection tanks, which in turn feed into pipes that discharge into the Red River. EPA sampling of the Anode Dust shows that it is hazardous (or toxic) because of its chromium and/or arsenic content. EPA sampling of the High Energy Scrubber waste shows that this is hazardous (or corrosive) because it has a pH of less than 2. The Red River, which is approximately 2000 feet long, 10 20 feet deep, and 20 – 40 feet wide, in turn, discharges into a 400 – Acre Pond. EPA sampling of the Red River shows that its contents have a pH of 2, rendering these contents hazardous for corrosivity.

"23. Each of the Ditches and the 400-Acre Pond, collectively or singularly, constitute a "surface impoundment" within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b). Neither the Ditches, nor the Pond, are lined to prevent infiltration of liquids into the ground. There is a hydrogeologic connection between the 400-Acre Pond and the Great Salt Lake. EPA sampling of the 400-Acre Pond shows that the contents have a pH of less than 2, rendering them hazardous for corrosivity.

"24. The Chlorine Plant Ditch, which employees also call the "White Ditch" because of the whitish-greenish cake-like solids and liquids therein, primarily collects waste flows from the Chlorine Plant, and discharges these to the Red River. The Chlorine Plant Ditch is approximately one-half mile long, 10 – 15 feet deep, and 10 – 20 feet wide. At least 2 pipes, which employees call "Outfall 1" and "Outfall 2," discharge Chlorine Plant wastes into the Ditch. During its inspections, EPA identified wastes generated at the Chlorine Plant as coming form the Chlorine Plant Water Wash Column. EPA sampling of the Chlorine Plant Water Wash Column shows that this waste has a pH of less than 2, rendering it hazardous for corrosivity.

"25. The Central Ditch, which also discharges to the Red River, is also approximately one-half mile long, 10 – 15 feet deep, and 10 – 20 feet wide. At least 3 pipes discharge wastes from the electrolytic, melt reactor, and hydrochloric acid production areas into the Central Ditch. Chlorine Reduction Burner Waste and seal leg water from equipment

associated with the Burner and/or the Absorber Scrubber is discharged through one or more of these pipes into the Central Ditch. EPA sampling of the Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber shows that these have a pH of less than 2, rendering them hazardous for corrosivity.

"26. EPA sampling of spent solids in a pit in which Ferrous and Ferric Chloride are manufactured, which are or were disposed in the on-site industrial landfill, show that the Ferrous and Ferric Chloride Soldis are hazardous because of their chromium or arsenic content. The landfill constitutes a "Landfill" within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

"27. EPA sampling shows the presence of numerous hazardous constituents, including hexachlorobenzene ("HCB") in the Anode Dust at 360 parts per million ("ppm"). HCB leaching in amounts exceeding 0.13 ppm render a waste hazardous. HCB is also a hazardous constituent. EPA sampling also shows the presence of HCB in Chlorine Plant Water Wash Column Waste, and in Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, as well as in packing tower residues, Central Ditch contents and sediments, smut piles, and solids in the 400-Acre Pond.

"22. [sic – paragraph misnumbered] MagCorp *and/or Group disposed waste in a 1200-Acre pond immediately adjacent to the shores of the Great Salt Lake until 1986, when the lake's waters rose and the walls of the 1200-acre pond were breached, causing the pond' contents to empty into the Great Salt Lake. The 1200-acre pond constitutes a solid waste management unit, that was never properly closed, as is required by 40 C.F.R. §§ 264.110 and 265.110 and Utah Admin. R. R315-8-7 and R315-7-14, and that is subject to corrective action requirements under RCRA § 3004(u), (v), and Utah Code Ann. § 19-6-105(d), and Utah Admin. R. R315-8-21, and R315-7-8.1(b).*

"28. *Solid wastes, including casthouse residue, sludge residual from the electrolytic cells (which employees call "smut"), and cell salts*, are disposed in unlined, uncovered residual piles. Sampling to date shows that these

piles contain hazardous constituents, including dioxin, HCB, lead, arsenic, chromium, barium and magnesium hydroxide.

"29. The facility has numerous sumps, or pits. Anode Dust is or was stored in a series of sumps in the electrolytic cell area. MagCorp and/or Group had disposed waste from the laboratory (containing arsenic, barium, and other metals) in a sump outside its laboratory building. The sump conveyed the lab waste to the Central Ditch, and ultimately, to the Red River/400-Acre Pond. *As of March 25, 1997, upon MagCorp's payment of a $2,500 penalty, and entry into a settlement with Utah resolving Utah's 1992 enforcement action, MagCorp and/or Group ceased disposing metal-bearing laboratory waste in its Ditches and Ponds. The violations which were the subject of the Utah enforcement action were and are different in time and substance from those alleged in this complaint*.

"30. The smut piles, sumps, and units into which MagCorp, USM, and/or Group formerly disposed hazardous waste, or presently disposes hazardous constituents, constitute solid waste management units, and are subject to the corrective action requirements set forth in RCRA § 3004(u), (v) and Utah Code Ann. § 19-6-105(d), and Utah Admin. R. R315-8-2, and R315-7-8.1(b).

"31. Neither MagCorp, USM, nor Group has ever sought a permit to treat, store or dispose hazardous wastes under RCRA and the authorized Utah hazardous waste program.

"32. Neither MagCorp nor Group has ever sought interim status to treat, store or dispose hazardous wastes under RCRA and the authorized Utah hazardous waste program.

111. The United States made the following allegations concerning the regulatory status of the wastes generated at MagCorp's Rowley Facility:

"33. The Bevill Amendment temporarily excluded from RCRA Subtitle C Regulation solid wastes generated by the extraction, beneficiation, and processing of ores and minerals, pending EPA's provision of a report to Congress and decision whether regulation of such wastes was

warranted. RCRA §§ 3001 (b)(3)(A)(ii), 8002(f); 42 U.S.C. §§ 6921 (b)(3)(A)(ii), 6982(f), and Utah Code Ann. § 19-6-102(17)(b)(iv).

"34. In September, 1989, EPA promulgated a rule that removed all mineral processing wastes from the Bevill exclusion, with the exception of certain wastes which would be permanently retained within the exclusion, and certain other such wastes which would be conditionally retained pending further analysis by EPA in accordance with RCRA § 8002(p), 42 U.S.C. § 6982(p).

"35. Mineral processing wastes which lost their Bevill excluded status automatically became subject to Utah hazardous waste regulation on December 13, 1994, upon the effective date of EPA's authorizing Utah to implement subtitle C requirements as to such wastes (59 Fed. Reg. 52084 (October 14, 1994)); and became subject to the further treatment requirements set forth in EPA's "Phase IV LDR' regulation on August 24, 1998 (63 Fed. Reg. 28566 (May 26, 1998)), the effective date of the EPA rule. At present, enforcement of such treatment requirements is solely EPA's responsibility through the federal regulation, since Utah is not yet authorized to implement such treatment requirements.

"36. One of the wastes EPA had conditionally retained for further analysis, as set forth in its 1989 rule, was "process wastewater from primary magnesium processing by the anhydrous process." 54 Fed. Reg. 36592 (September 25, 1989). That waste occurred and still occurs only at the Rowley, Utah facility.

"37. In July 31, 1990, EPA reported to Congress that two "mineral processing" wastes – first, a "scrubber underflow," generated through processing of hydrochloric acid formed when the impure magnesium powder is melted and chlorinated to convert magnesium oxide in the powder into the chloride salt; and second, a "scrubber liquor," generated from processing gas created when electrolysis is used to separate the molten magnesium chloride into magnesium and chlorine gas – should remain excluded from hazardous waste regulation under the Bevill Amendment.

"38. EPA solicited public comment on the Report to Congress and its underlying data on August 7, 1990 (55 Fed. Reg. 37540).

"39. By rule dated June 13, 1991, EPA codified its exclusion of "process wastewater from primary magnesium processing by the anhydrous process" under the Bevill Amendment. 56 Fed. Reg 27300 (June 13, 1991). 40 C.F.R. § 261.4(b)(7)(ii)(O); Utah Admin. R. R315-2-4(b)(7)(ii)(O).

"40. None of the wastes that are the subject of this Complaint constitute "process wastewater from primary magnesium processing by the anhydrous process." Rather, they constitute wastes generated in the facility's manufacture of chlorine gas, hydrochloric acid, and ferrous and ferric chloride.

"41. In the alternative, some of the wastes are mineral processing wastes, but were not identified by EPA in its July, 1990 Report to Congress, and do not constitute melt cell hydrochloric acid scrubber underflow or electrolytic cell chlorine gas scrubber liquor.

"42. None of the wastes that are the subject of this complaint are "Bevill-excluded" wastes. Rather, they are subject to federal and Utah hazardous waste regulation.

"43. At the request of UDEQ, EPA inspected the facility in 1997 and 1998. EPA concluded that the facility was incorrectly characterizing its waste streams as excluded from RCRA and Utah hazardous waste regulation by the Bevill Amendment.

"44. On March 5, 1999, UDEQ requested that EPA assume lead agency status in enforcing hazardous waste requirements at the facility.

112. The United States made the following allegations regarding piercing the corporate veil of MagCorp:

"45. *Rennert, individually or through the Trusts created by him, controls or controlled Group, Metals, and MagCorp.*

"46. MagCorp is or was a wholly owned subsidiary of Metals. Metals is or was a wholly owned subsidiary of group, and Group is 75% owned by the Trust.

"47. MagCorp is or was a closely held corporation that is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. MagCorp's sales in 1999 were nearly $150 million, but as of April, 2000, MagCorp had a negative equity of approximately $14 million.

"48. Metals is or was a closely held corporation that is undercapitalized, insolvent on a balance sheet basis, and unable to pay its debts to the United States. As of January, 2001, Metals had a negative equity of approximately $50 million.

"49. Group's sales in 1999 were approximately $2.5 billion.

"50. Due to its ownership of all the capital stock of Metals, Group directs and controls or directed and controlled the managements and policies of Metals, including mergers, sales of assets, debt transactions, designation of Metals' board of directors and officers, and other corporate activities which, but for the control of Group and therefore of Rennert and the Trust, would be conducted by Metals. Metals has paid excessive dividends to Group, which resulted in burdening MagCorp with excessive debt and contributing to its insolvency.

"51. Metals' 1990 Annual Report to the Securities Exchange Commission ('SEC'), states:

> All of [Metals'] issued and outstanding capital stock is owned by [Group,] which is owned by [the Trusts] established by Mr. Ira Leon Rennert, the Chairman and Chief Executive Officer of [Metals] and Group, for himself and members of his family. As a result of such ownership, Mr. Rennert controls [Metals] and its subsidiaries [then MagCorp and Sabel].

"23. [sic – paragraph misnumbered] Rennert is or was the sole director of Metals, a holding company with no

independent operations of its own. Rennert exercises or exercised significant control over Metals' officers by, inter alia, determining compensation for Metals' executive officers, which is or was fixed by negotiations between those officers and Rennert, with Rennert acting on behalf of Group.

"24. *As a result of transactions directed by Rennert, MagCorp is insolvent on a balance sheet basis and unable to pay its debts owed to the United States. Such transactions include, but are not limited to, significant indebtedness incurred in 1996, when Metals sold Senior Notes ("Notes") worth $150 million, payable in 2003. To effectuate the sale, Metals pledged the net assets of MagCorp and Sabel as collateral, and committed significant cash flow from them to service the debt. Such guarantee obliged MagCorp and Sabel unconditionally and fully, jointly and severally, to pay semi-annual interest payments of more than $8 million, and to redeem the Notes when they become due. Metals used the proceeds from the 1996 sale largely to (a) help pay an $88.9 million dividend to Group, (b) retire Metals' preferred stock (which entailed paying Group another $8.5 million, as Group was the preferred stockholder), and (c) make certain compensation payments to officers of MagCorp. Sabel is no longer a subsidiary of Metals, and is no longer a guarantor of the Notes. As of December, 2000, MagCorp is the sole guarantor of the Notes*.

"25. *These 1996 and 2000 actions, along with other transactions resulting in the transfer of significant assets of MagCorp to Metals, Group, and the officers of MagCorp had the effect of substantially reducing the assets of MagCorp, leaving the corporation undercapitalized or insolvent on a balance sheet basis*.

"26. *The above-described incurrence of debt and simultaneous payments of dividends, as well as other transactions, constitute siphoning of MagCorp's, and Metals' corporate funds by Group, Rennert and the Trusts*.

"27. *Metals' June 25, 1996 SEC Second Amended Registration Statement provides*:

> Under federal or state fraudulent conveyance laws, the Senior Notes might, under certain circumstances, be subordinated to existing or

> future indebtedness of [Metals] or found not to be enforceable in accordance with their terms. Under these statutes, if a court were to find that (i) the Senior Notes were incurred or the guarantees (the "Guarantees") of the Guarantors [then MagCorp and Sabel] were entered into with the intent of hindering, delaying or defrauding creditors or that [Metals] received less than a reasonably equivalent value or fair consideration for the Senior Notes and (ii) [Metals] or the Guarantors were insolvent immediately prior to the time the Senior Notes were issued and the Guarantees were incurred, as the case may be, were engaged in a business or transaction for which the assets remaining with [Metals] or the Guarantors constituted unreasonably small capital, or intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they matured, such court could void [Metals'] and the Guarantors' obligations under the Senior Notes, or subordinate the Senior Notes and the Guarantees to all other indebtedness of [Metals] and the Guarantors, as the case may be … Nor can there be any assurance that a court would not determine, regardless of whether [Metals] or the Guarantors were insolvent on the date the Senior Notes were issued, that the payments constituted fraudulent transfers on another ground.

"28. Some of Metals' annual reports to the SEC (forms 10-Ks) filed with regard to its 1996 incurrence of debt include explanations of and amendments to compensation agreements with certain of MagCorp's officers. The 10-Ks stated that, in anticipation of its incurrence of the $150 million indebtedness, which was projected to leave Metals with a negative equity of $150 million, MagCorp would pay certain officers bonuses exceeding $1 million each, consistent with its employee participation agreements. Payments pursuant to such agreements, in conjunction with incurring debt, furthered MagCorp's and Metals' insolvencies.

"29. *Rennert, the Trusts, Group and Metals have so dominated and controlled the activities and assets of MagCorp that they have failed to respect MagCorp's separate existence. Disregarding MagCorp's separate existence and making the corporation insolvent by transfer of its assets to at least Group and Metals perpetuates a fraud or visits an injustice or an inequity on the United States*.

"30. *Rennert's dealings with the assets of MagCorp constitutes or constituted a pattern of activity engaged in by Rennert with other corporations controlled by him of transferring the assets of a corporation to make the corporation insolvent and defraud its creditors, including the Untied States*.

"31. *Rennert controls or controlled the Trusts, Group, Metals and MagCorp as if they were one entity. Rennert, the Trusts, Group and Metals are or were MagCorp's alter egos. Rennert, the Trusts, Group and Metals are liable for the acts and omissions of MagCorp*.

113. The United States made the following claims for relief (numbers correspond to the paragraph numbers in the Second Amended Complaint):

"FIRST CLAIM FOR RELIEF

(Failure to Make Hazardous Waste Determinations As Generator)

"34. MagCorp was a person who 'generates' solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R R315-1-1(b).

"35. USM is a person who "generates" solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R R315-1-1(b).

"36. Group was person who generated and is a person who"generates" solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R R315-1-1(b).

"37. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.11; Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.1.10(c) (2000)), Utah Admin. R. R315-5-2 (renumbered as

R315-5-1.1 (2000)), a person who generates solid waste must determine if that waste is a hazardous waste prior to making any decisions as to how to manage such waste, first by determining if the waste is excluded from regulation under 40 C.F.R. § 261.4 and Utah Admin. R. R315-2-4; then by determining if the waste is listed as a hazardous waste in 40 C.F.R. Part 261, Subpart D, and Utah Admin. R. R315-2-10; then, by either applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used, or by testing the waste using specified sampling methods, determining if the waste is a characteristic hazardous waste under 40 C.F.R. Part 261, Subpart C and Utah Admin. R. R315-2-9.

"38. Neither MagCorp, USM or Group has ever characterized Anode Dust, Chlorine Plant Waster Wash Column, Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, High Energy Scrubber Waste, or Ferrous and Ferric Chloride Solids.

"39. *Each failure to make hazardous waste determinations as required by 40 C.F.R. § 262.11 and Utah Admin. R. R315-5-2 (renumbered as R315-5-1.11 (2000)), constitutes a separate violation of the regulations for each solid waste, for which MagCorp, USM and Group are subject to injunctive relief, and civil penalties not to exceed $25,000 per day for each day of violation on or prior to January 30, 1997, and $27,500 per day for each such violation occurring after January 30, 1997.*

"SECOND CLAIM FOR RELIEF
(Violation of Standards Pertaining to Hazardous Waste Generators)

"41. MagCorp and/or Group is or was a person who "generates" solid waste, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

"42. A person who generates hazardous waste may accumulate hazardous waste on-site for up to 90 days without a permit or interim status, provided that such person complies with certain standards, including, *inter alia*, the following:

a. Personnel Training, Emergency Planning and Procedures Planning and Prevention, and Land Disposal Restriction Notices

"43. Pursuant to 40 C.F.R. § 262.10(c) and Utah Admin. R. R315-5-1(c) (renumbered as R315-5-5-1.10(c) (2000)); and 40 C.F.R. § 262.34(a)(4), Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, the person complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subpart C and Utah Admin. R. R315-7-10; 40 C.F.R. Part 265, Subpart D and Utah Admin. R. R315-7-11; 40 C.F.R. § 265.16 and Utah Admin. R. R315-7-9.7; and 40 C.F.R. § 268.7(a)(4) and Utah Admin. R. R315-13-1, pertaining to personnel training, emergency planning and procedures, preparedness and prevention, and land disposal restriction notices.

"44. MagCorp and/or Group generated and accumulated hazardous waste for at least the last five years, but on at least one occasion has failed to prepare a complete contingency plan, in violation of 40 C.F.R. § 265.52(a) and Utah Admin. R. R315-7-11.3(a); on at least one occasion, has failed to submit an updated contingency plan to local emergency response teams, in violation of 40 C.F.R. § 265.53 and Utah Admin. R. R315-7-11.4; on at least one occasion, has failed to provide an adequate training program for its employees, in violation of 40 C.F.R. § 265.16(a) and Utah Admin. R. R315-7-9.7(a); on at least one occasion, has failed to adequately document that its employees have taken the required training, in violation of 40 C.F.R. § 265.16(d)(3) and Utah Admin. R. R315-7-9.7(d)(3); and has failed to maintain documentation in compliance with land disposal restrictions for at least 4 shipments of its hazardous wastes, in violation of 40 C.F.R. § 268.7(a)(8) and Utah Admin. R. R315-13.

b. Standards Pertaining to Hazardous Waste Manifests

"45. Pursuant to 40 C.F.R. §§ 262.10(c), 262.10(h) and 262.20 and Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)), R315-5-1(h) (renumbered as R315-5-1.10(h) (2000)) and R315-4-2(a) – (d), (1) (renumbered as

R315.5-2.20 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, that person, when shipping hazardous waste from its facility, complies with requirements pertaining to, *inter alia*, record-keeping, and preparation and maintenance of copies of hazardous waste manifests. MagCorp and/or Group shipped hazardous waste from its facility, but failed to properly complete at least 5 manifests, in violation of 40 C.F.R. § 262.20 and Utah Admin R. R315-4-2(a) – (d), (1) (renumbered as R315-5-2.20 (2000)); and failed to properly retain at least 1 manifest, during the time period from September 1995 through April 1999, in violation of 40 C.F.R. § 262.40 and Utah Admin. R. R315-5-5 (renumbered as R315-5-4.40 (2000)).

c. Standards Pertaining to Inspections

"46. Pursuant to 40 C.F.R. § 262-10(c) and 262.34(a)(1)(i); Utah Admin R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, inter alia, the person complies with the requirements set forth in 40 C.F.R. Part 265, Subpart I, Utah Admin. R. R315-7-16.1 pertaining to conduct of weekly inspections.

"47. MagCorp and/or Group generated and accumulated hazardous waste on-site, but failed to conduct at least 5 weekly inspections during the time period from September 1995 through April 1999, in violation of 40 C.F.R. §§ 262.34(d)(2) and 265.174; Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)) and R315-7-16.5.

d. Failure to Properly Manage Hazardous Waste in Containers

"48. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.34(a)(1)(i); Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a person who generates hazardous waste may accumulate such waste on-site for 90 days or less without a permit or without having interim status, provided that such person complies with, inter alia, the requirements pertaining

to use and management of containers set forth in 40 C.F.R. Part 265, Subpart I; Utah Admin. R. R315-7-16.

"49. 40 C.F.R. § 265.173 and Utah Admin. R. R315-7-16.4 require that containers holding hazardous waste be closed during storage, except when necessary to add or remove waste.

"50. 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b) define a container as any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"51. *During an April, 1999 inspection, an EPA inspector observed* that MagCorp and/or Group stored at least 1 drum of carbon tetrachloride waste in its 90-day storage yard; stores or stored materials containing Anode Dust in 3 open sumps; stored Ferrous and Ferric Chloride Solids on an open roll-off; and that one of MagCorp's and/or Group's carbon tetrachloride drums had a hole in the bung cap, in violation of 40 C.F.R.§ 265.173 and Utah Admin. R. R315-7-16.4.

e. Violation of Requirements Pertaining to Treatments in Containers

"52. Pursuant to 40 C.F.R. §§ 262.10(c) and 262.34(a)(1)(i); Utah Admin. R. R315-5-1(c) (renumbered as R315-5-1.10(c) (2000)) and R315-5-10 (renumbered as R315-5-3.34 (2000)), a generator may treat hazardous waste it accumulates on-site for 90 days or less without a permit or without having interim status provided that, inter alia, it complies with the requirements set for the in 40 C.F.R. Part 262, and Part 265, Subpart I; Utah Admin. R. R315-5 and R315-7-16.

"53. MagCorp and/or Group has acknowledged that it treats carbon tetrachloride in containers in its 90-day yard prior to shipment.

"54. During the last five years, MagCorp and/or Group has failed to maintain the containers in which it is treating the carbon tetrachloride in good condition, and keep the containers closed, as required by 40 C.F.R. Part 265, Subpart I and Utah Admin. R. R315-7-16.

"55. During the last five years, MagCorp and/or Group has treated carbon tetrachloride in a container in violation of the regulations allowing treatment for 90 days without a permit and without interim status. 40 C.F.R. §§ 262.34(a)(1)(i) and 268.7(a)(5); Utah Admin. R. R315-5-10 (renumbered as R315-5-3.34 (2000)), R315-13-1.

"56. Each day which MagCorp and/or Group has violated the above-enumerated requirements for each solid waste constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day for each day of violation on or prior to January 30, 1997, and $27, 500 per day for each such violation occurring after January 30, 1997.

THIRD CLAIM FOR RELIEF
(Violation of Standards Pertaining to Generators of Used Oil)

"58. MagCorp and/or Group are or were generators of "used oil," within the meaning of 40 C.F.R. § 279.20(a) and Utah Admin. R. R315-15-2(a).

"59. 'Used oil' is defined in 40 C.F.R.§ 260.10 and Utah Admin R. R315-1-1(b) to mean 'any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.'

"60. Pursuant to 40 C.F.R. § 279.22 and Utah Admin. R. R315-15-2.3, generators of used oil must, among other things, store used oil in containers that are in good condition and that are clearly marked and labeled 'Used Oil.'

"61. *During an April, 19, 1999 inspection, an EPA inspector observed that MagCorp and/or group had failed to label a 500-gallon used oil tank, in violation of 40 C.F.R. § 279.22(c)(1) and Utah Admin R. R315-15.2.3(c)(1).*

"62. *The failure to properly label an above-ground used oil tank, in violation of 40 C.F.R. § 279.22(c)(1) and Utah Admin. R. R315-15-2.3(c)(1),* constitutes a violation of the regulations, subjecting the violator to injunctive relief, and for civil penalties not to exceed $27,500 for the violation occurring on April 19, 1999.

FOURTH CLAIM FOR RELIEF
(Illegal treatment of Hazardous Waste)

"64. RCRA sections 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), 40 C.F.R. §§ 270.1(c) and § 270.71(a); and Utah Code Ann. § 19-6-108(3), Utah Admin. R. R315-3-3(m) – (n) (renumbered as R315-3-1.1(a) (2000)), R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), prohibit a person from treating hazardous waste without first obtaining a permit or interim status.

"65. MagCorp, USM, and/or Group manage or managed Anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber and High Energy Scrubber Waste at the facility. EPA sampling shows that each of these are hazardous wastes.

"66. RCRA Section 1004(34) and 40 C.F.R. §§ 260.10, 270.2 and Utah Admin. R. R315-1-1(b), R315-1-1(d), generally define treatment, when used in connection with hazardous waste, as including any method, technique, or process designed to change the physical, chemical, or biological character or composition of the hazardous waste so as to render the waste non-hazardous, amenable for storage, or reduced in volume.

"67. By disposing liquid hazardous wastes in the Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond, MagCorp, USM and/or Group used or are using evaporation, and/or seepage into the groundwater, to reduce their volume. These activities constitute treatment.

"68. By commingling non-exempt and exempt hazardous liquid wastes in the Chlorine Plant Ditch, Central Ditch, and/or Red River/400-Acre Pond, MagCorp, USM and/or Group diluted or are diluting hazardous wastes at the facility, which activity constitutes treatment pursuant to 40 C.F.R. § 268.3 and Utah Admin. R. R315-15-1.

"69. Neither MagCorp, USM or group has ever sought or obtained a permit from EPA and/or the State of Utah to treat hazardous waste at the facility, nor did MagCorp or Group qualify for interim status.

"70. Each day MagCorp, USM and/or Group treats or has treated each hazardous waste without a permit or without qualifying for interim status in the Chlorine Plant Ditch, Central Ditch, Red River/4000-Acre Pond constitutes a separate violation of RCRA Section 3004, 42 U.S.C. § 6925, 40 C.F.R.§§ 270.1(c) and 270.71(a), and Utah Code Ann § 19-6-108, Utah Admin. Rule R315-3-3(m) – (r) (renumbered as R315-3-1.1(a) (2000)) and R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997, in accordance with Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

FIFTH CLAIM FOR RELIEF
(Illegal Disposal of Hazardous Waste)

"71. RCRA Sections 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. §§ 270.1(c) and 270.71(a); and Utah Code ann. 19-6-108, Utah Admin. R. R315-3-3(m) – (r) (renumbered as R315-3-1.1(a) (2000)) and R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), prohibit a person from disposing hazardous without first obtaining a permit or interim status.

"72. RCRA Section 1004(3) and 40 C.F.R. §§ 260.10 and 270.2 and Utah Admin. R. R315-1-1(b), R315-1-1(d), generally define disposal as the discharge, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"73. MagCorp, USM and/or Group dispose or have disposed wastes that EPA sampling shows are hazardous, including Chlorine Plant water Wash Column, in the Chlorine Plant Ditch.

"74. MagCorp, USM and/or Group dispose or have disposed wastes that EPA sampling shows are hazardous, including Chlorine Reduction Burner Waste and seal leg

water from equipment associated with the Burner and/or the Absorber Scrubber, in its Central Ditch.

"75. *MagCorp, USM and/or Group disposed or have disposed wastes that EPA sampling shows are hazardous, including Anode Dust and High Energy Scrubber Waste, and/or in the Red River.*

"76. MagCorp, USM and/or Group dispose or have disposed each of the above-listed hazardous wastes in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

"77. MagCorp, USM and/or Group dispose or have disposed Ferrous and Ferric Chloride Solids, which EPA sampling shows are hazardous, in the Landfill.

"78. Disposal of hazardous wastes in the Chlorine Plant Ditch, Central Ditch, Red River/400-Acre Pond, and Landfill constitutes disposal of hazardous waste without a permit or without qualifying for interim status.

"79. Neither MagCorp, USM nor Group has ever sought or obtained a permit from EPA or the State of Utah to dispose hazardous waste at the facility, nor did MagCorp and/or Group qualify for interim status.

"80. Each day they dispose or disposed each hazardous waste without a permit or without qualifying for interim status in the Chlorine Plant Ditch, Central Ditch, the Red River/400-Acre pond, and/or Landfill constitutes a separate violation of RCRA Section 3005, 42 U.S.C. § 6925, 40 C.F.R. §§ 270.1(c) and 270.71(a), and Utah Code Ann. § 19-6-108, Utah Admin. R. R315-3-3(m)-(r) (renumbered as R315-3-1.1(a) (2000)) and R315-3-30(a) (renumbered as R315-3-7.2(a) (2000)), for which they are subject to injunctive relief, and civil penalties not to exceed *$25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997, in accordance with Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).*

SIXTH CLAIM FOR RELIEF
(Failure to Comply with Standards for treatment, Storage and Disposal of Hazardous Waste in Surface Impoundments)

"83. MagCorp, USM and/or Group treat, store or dispose, or treated, stored or disposed, hazardous wastes in the Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond, each of which constitute a surface impoundment within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

"84. RCRA Section 3004(o) and 40 C.F.R. §§ 264.220, 265.220; Utah Admin. R. R315-8-11.1, R315-7-18.1, prohibit them from treating, storing or disposing certain hazardous wastes in the Chlorine Plant Ditch, the Central Ditch, or the Red River/400-Acre Pond unless these units meet specified design requirements, including double liners, and groundwater monitoring.

"85. The Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond are unlined, and do not have groundwater monitoring systems.

"86. Each day which MagCorp, USM and/or group owned and operated or own and operate the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond in violation of each of the above-specified requirements constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

SEVENTH CLAIM FO RELIEF
(Failure to Close Surface Impoundments)

"88. Under RCRA § 3005(a), 42 U.S.C. § 6925(a), 40 C.F.R. §§ 264.113(a) and/or 265.113(a) and Utah Admin. R. R315-8-7 and R315-7-14, a facility which has neither interim status nor a permit for its management of hazardous wastes in a surface impoundment is required to cease management of hazardous wastes in that impoundment, and close it immediately or within 90 days of the date upon which interim status or a permit was to be obtained.

"89. MagCorp, USM and/or Group were and are required to obtain a permit or comply with interim status requirements to treat, store, and/or dispose Anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, and High Energy Scrubber Waste in the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond. They failed to cease management of Anode Dust, Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, High Energy Scrubber Waste and Chlorine Plant Water Wash Column in the Chlorine Plant Ditch, Central Ditch, and/or the Red River/400-Acre Pond, or to close those units, in violation of RCRA § 3005(a), 42 U.S.C. § 6925(a), 40 C.F.R. §§ 264.113(a) and 265.113(a) and Utah Admin. R. R315-8-7 and R315-7-14.

"90. Each day which MagCorp, USM and/or Group own and operate or owned and operated the Chlorine Plant Ditch, the Central Ditch, and/or the Red River/400-Acre Pond without closing these units constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of non compliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

EIGHTH CLAIM FOR RELIEF
(Failure to Comply with Standards for Treatment, Storage and Disposal of Hazardous Waste in Landfills)

"92. MagCorp, USM and/or Group dispose or disposed Ferrous and Ferric Chloride Solids in the on-site industrial Landfill.

"93. The Landfill constitutes a 'Landfill,' within the meaning of 40 C.F.R. § 260.10 and Utah Admin. Code R. R315-1-1(b).

"94. RCRA Section 3004(o) and 40 C.F.R. §§ 264.300 and 265.300; Utah Admin. R. R315.8-14.1 and R315-7-21.1, prohibit a person from treating, storing or disposing certain hazardous wastes in Landfills unless these

units meet specified design requirements, including liners and leachate collection and removal systems.

"95. The Landfill is unlined, and has no leachate collection or removal system.

"96. Each day MagCorp, USM and/or group owned and operated or own and operate the Landfill in violation of each of the above-specified requirements constitutes a separate violation of the regulations, subjecting them to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

NINTH CLAIM FOR RELIEF
(Illegal Land Disposal)

"98. RCRA Section 3004(k), 42 U.S.C. § 6924(k) and 40 C.F.R. § 268.2(c); Utah Admin. R. R315-13-1, generally define "land disposal" as the placement of hazardous waste in or on the land, including, but not limited to, placement in a landfill or a surface impoundments.

"99. MagCorp, USM and/or Group place or placed Chlorine Plant Water Wash Column, which EPA sampling shows is hazardous, in the Chlorine Plant Ditch.

"100. MagCorp, USM and/or Group place or placed Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, which EPA sampling shows is hazardous, in the Central Ditch.

"101. MagCorp, USM and/or Group place or placed Anode Dust and High Energy Scrubber Waste which EPA sampling shows are hazardous, in the Red River.

"102. MagCorp, USM and/or Group place or placed each of the above-listed hazardous wastes in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

"103. MagCorp, USM and/or group place or placed Ferrous and Ferric Chloride Solids, which EPA sampling shows are hazardous, in the Landfill.

"104. The Chlorine Plant Ditch, Central Ditch, Red River/400-Acre Pond, and/or Landfill constitute land-disposal units within the meaning of RCRA Section 3004(k), 42 U.S.C. § 6924(k) and 40 C.F.R. § 268.2(c); Utah Admin. R. R315-13-1.

"105. RCRA Section 3004(m), 42 U.S.C § 6924(m) and 40 C.F.R. §§ 268.40 to 268.44; Utah Admin. R. R315-13-1, prohibit certain hazardous wastes from being land-disposed unless specified treatment requirements are met.

"106. MagCorp, USM and/or Group are and have been prohibited from land-disposing Anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water form equipment associated with the Burner and/or the Absorber Scrubber, High Energy Scrubber Waste and Ferrous and Ferric Chloride Solids, unless these wastes were first pre-treated to meet specified treatment requirements set forth in 40 C.F.R. § 268 and Utah Admin. R R315-13.

"107. MagCorp, USM and/or Group have not pre-treated Anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, High Energy Scrubber waste or Ferrous or Ferric Chloride Solids before land-disposing them in the Ditches, 400-Acre Pond, and Landfill.

"108. Each day which MagCorp, USM and/or Group illegally land-dispose or have illegally land-disposed each hazardous waste by failing to treat each to meet specified treatment requirements constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

TENTH CLAIM FOR RELIEF
(Violation of Groundwater Monitoring Requirements
Applicable to Owner/Operators)

"110. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, 315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

"111. MagCorp, USM, and/or Group have accumulated hazardous waste for more than ninety days without an extension. Thus, they are subject to regulation under 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"112. Pursuant to 40 C.F.R. §§ 264.1, 264.90, 265.1 and 265.90, and Utah Admin. R. R315-8-1, R315-8-6.1, R315-7-8, and R315-7-13.1, as the owner/operator of a facility that treats, stores or disposes of hazardous waste, MagCorp, USM and/or Group are or were required to, *inter alia*, implement a groundwater monitoring program to detect, characterize, and respond to releases from all solid waste management units and specified regulated units, including surface impoundments and landfills, into the uppermost aquifer underlying the impoundments.

"113. MagCorp, USM and/or Group treat, store or dispose and have treated, stored or disposed, the Chlorine Plant Water Wash Column, which EPA sampling shows is hazardous, in the Chlorine Plant Ditch.

"114. MagCorp, USM and/or Group treat, store or dispose and have treated, stored or disposed, the Chlorine Reduction Burner Waste and seal leg water from equipment associated with the Burner and/or the Absorber Scrubber, which EPA sampling shows is hazardous, in the Central Ditch.

"115. *MagCorp, USM and/or Group treat, store or dispose or have treated, stored or disposed, Anode Dust and*

High Energy Scrubber Waste, which EPA sampling shows are hazardous, in the Red River.

"116. MagCorp, USM and/or Group treat, store or dispose or have treated, stored or disposed, each of the above-mentioned hazardous wasted in the Red River/400-Acre Pond. EPA sampling of Pond contents shows that the Pond contains hazardous wastes.

"117. MagCorp, UM and/or Group dispose or have disposed spent Ferrous and Ferris Chloride Solids, which EPA sampling shows are hazardous, in the Landfill.

"118. The Chlorine Plant Ditch, Central Ditch, and Red River/400-Acre Pond are surface impoundments, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).

"119. *The Landfill meets the definition of a landfill, within the meaning of 40 C.F.R. § 260.10 and Utah Admin. R. R315-1-1(b).*

"120. Until 1986, MagCorp and/or Group disposed hazardous waste in the 1200-acre pond. MagCorp and/or Group dispose, and for at least five years disposed, hazardous constituents in its sumps and smut piles. The smut piles, sumps, and units into which MagCorp, USM and/or Group dispose and disposed hazardous waste constitute solid waste management units, and are subject to the corrective action requirements set for the in RCRA § 3004(u), (v), 40 C.F.R. § 264.552-552; Utah Code Ann. § 19-6-105(d), and Utah Admin. R. R315-8-21, and R315-7-8.1(b).

"121. MagCorp, USM and/or Group do not or have not had a groundwater monitoring program.

"122. Each day which they owned and operated or own and operate the facility without the required groundwater monitoring program constitutes a separate violation of the regulations for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

ELEVENTH CLAIM FOR RELIEF
(Violation of Requirement that Owner/Operators File Closure Plans)

"124. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000).

"125. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. Thus, they are subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"126. Pursuant to 40 C.F.R. §§ 264.1, 264.112, 265.1 and 265.112 and Utah Admin. R. R315-8-1, R315-8-7, R315-7-8, R315-7-14, as the owner/operator of a facility that treats, stores or disposes hazardous wastes, MagCorp, USM and/or Group are or have been required to have a written closure plan or plans meeting the requirements of 40 C.F.R. §§ 264.112(b) and 264.112(b) and Utah Admin. R. R315-8-7 and R315-7-14.

"127. MagCorp, USM and/or Group treat, store or dispose or treated, stored or disposed, anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water form equipment associated with the Burner and/or the absorber Scrubber, High Energy Scrubber Waste, and Ferrous and Ferric Chloride Solids, each of which EPA sampling shows are hazardous, at its facility.

"128. MagCorp, USM and/or Group do not have and have not had a written closure plan or plans for the facility.

"129. Each day which they owned and operated or owns and operates the facility without the required closure plan constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30,

1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

TWELFTH CLAIM FOR RELIEF
(Violation of Requirement that Owner/Operators Provide Financial Assurances)

"131. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b) provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

"132. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. Thus, they are subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"133. MagCorp, USM and/or Group treat, store or dispose or treated, stored or disposed Anode Dust, Chlorine Plant Water Wash Column, Chlorine Reduction Burner Waste and seal leg water form equipments associated with the Burner and/or the Absorber Scrubber, High Energy Scrubber Waste, and Ferrous and Ferric Chloride Solids, each of which EPA sampling shows are hazardous, at its facility.

"134. Pursuant to 40 C.F.R. §§ 264.1, 264.140, 265.1, and 265.140 and Utah admin. R. R315-8-1, R315-8-8, R315-7-8.1(b) and R315-7-158, as the owner/operator of a facility that treats, stores or disposes hazardous waste, as of October 24, 1984, MagCorp and/or Group were required to provide financial assurance for closure and post-closure care for its facility.

"135. *40 C.F.R. §§ 264.142, 265.142 and Utah Admin. R. R315-8-8 and R315-7-15 require that the owner or operator of a facility have a detailed written estimate, in current dollars, of the cost of closing the facility at the point in the facility's active life when the closure would be most expensive.*

"136. *40 C.F.R. §§ 264.123, 265.143 and Utah Admin. R. R315-8-8 and R315-7-15 require that the owner or operator of the facility establish financial assurance for closure of the facility in accordance with the written estimate discussed above.*

"137. *Neither MagCorp, USM nor Group has ever provided assurance that they can finance closure of the facility if closure becomes necessary.*

"138. Each day which MagCorp, USM and/or Group owned or operated or own and operate the facility without providing the required financial assurances constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

THIRTEENTH CLAIM FOR RELIEF
(Violation of Requirement That Owner/Operators Minimize Releases)

"140. *40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Pats 264,265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, inter alia, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).*

"141. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. Thus, they are subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"142. *40 C.F.R. §§ 264.31, 265.31 and Utah Admin. R. R315-8-3.2, R315-7-10.2 require owners and operators of hazardous waste management facilities, inter alia, to maintain and operate their facilities to minimize the possibility of a fire, explosion, or any unplanned sudden or*

non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

"143. *In 1986, the 1200-Acre surface impoundment washed out, and into the Great Salt Lake. MagCorp, USM and/or Group did not and have not operated the 400-Acre Pond, or other solid waste management units, in a manner so as to prevent future migration.*

"144. *Each day which MagCorp, USM and/or Group owned and operated or own and operate the facility without minimizing the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents constitutes a separate violation of the regulations, for which they are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1007.*

FOURTEENTH CLAIM FOR RELIEF
(Violation of Requirement that Owner/Operators Maintain Operating Records)

"146. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-3.34 (2000)).

"147. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. Thus, they are subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"148. Pursuant to 40 C.F.R. §§ 264.1, 264.73, 265.1 and 265.73 and Utah Admin. R. R315-8-1, R315-8-5.3, R315-7-8.1(b), and R315-7-12.4, as of October 10, 1984, USM and/or MagCorp were and are required to keep written operating records that, *inter alia*, describe the quantity of each

hazardous waste at the facility, the location of each, the results of waste determinations, results of inspections, and sampling and analytical results.

"149. USM, MagCorp and/or Group have failed to maintain operating records.

"150. Each day which they owned and operated or own and operate the facility without maintaining the required operating records constitutes a separate violation of the regulations, for which MagCorp, USM and/or Group are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

FIFTEENTH CLAIM FOR RELIEF
(Violation of Requirement that Owner/Operators Analyze Hazardous Wastes)

"151. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

"152. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. Thus, they are subject to 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3.

"153. 40 C.F.R. §§ 264.13 and 265.13 and Utah Admin. R. R315-8-2.4 and R315-7-9.4, generally require that an owner or operator of a hazardous waste facility analyze hazardous waste before treating, storing, or disposing it, as often as necessary to ensure that the analyses are accurate.

"54. [sic – paragraph misnumbered] Neither MagCorp, USM nor Group have ever had a formal waste monitoring or sampling program.

"154. Each day for which they owned and operated or own and operate the facility without a waste analysis program constitutes a separate violation of the regulations, for which MagCorp and/or USM are subject to injunctive relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

SIXTEENTH CLAIM FOR RELIEF
(Failure to Comply with General Facility Standards Applicable to Owners/Operators)

"156. 40 C.F.R. §§ 264.1 and 265.1, Utah Admin. R. R315-8-1, R315-7-8.1(b), provide that an owner or operator of a facility which treats, stores or disposes of hazardous waste is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270, Utah Admin. R. R315-8, R315-7 and R315-3, unless, *inter alia*, the person complies with the requirements of 40 C.F.R. §§ 262.34(a) and Utah Admin. R. R315-5-10 (renumbered as Utah Admin. R. R315-5-3.34 (2000)).

"157. MagCorp, USM and/or Group have accumulated hazardous wastes for more than ninety days without an extension. They are violating or have violated the requirements of 40 C.F.R. Parts 264 and/or 265 and 270, and Utah Admin. R. R315-8 and/or R315-7 and R315-3, applicable to owner/operators, including the following:

a. Preventing Entry of Persons or Livestock

"158. 40 C.F.R §§ 264.14 and 265.14 and Utah Admin. R. R315-8-2.5 and R315-7-9.5, generally require that an owner or operator of a hazardous waste facility prevent the entry of persons or livestock onto the active portion of his facility unless he can demonstrate that the persons or livestock will not come in contact with hazardous waste in such portion.

"159. MagCorp and/or Group granted permission for cattle grazing on facility property. MagCorp, USM and/or Group have never demonstrated that livestock will not come in contact with hazardous waste in active portions of the facility.

b. 100-Year Floodplain

"160. 40 C.F.R. §§ 264.18(b) and Utah Admin. R. R315-8-2.9, generally require that a facility located in a 100-year floodplain be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

"161. In 1986, the 1200-acre impoundment was washed out, when the waters of the Great Salt Lake rose. The new 400-Acre impoundment is located next to the 1200-acre impoundments, in a 100-year floodplain.

"162. MagCorp, USM and/or Group have failed to design, construct, maintain and operate the new 400-acre impoundments so as to prevent washout of any hazardous waste by a 100-year flood.

c. Construction Quality Assurance Program

"163. 40 C.F.R. §§ 264.19 and 265.19 and Utah Admin. R. R315-8-2.10 and R315-7-9.10, generally require a construction quality assurance program for all surface impoundments, waste piles, and landfill units that will include, *inter alia*, observations, inspections, tests and measurements sufficient to ensure structural stability and integrity of such units, and proper construction of liners, leachate collection and removal systems, and leak detection systems for such units. The regulations also prohibit, inter alia, receipt of waste in such units until the owner or operator has submitted a certified construction quality assurance program to EPA.

"164. MagCorp, USM and/or Group have never provided quality assurance for units which receive hazardous waste.

"165. Failure to demonstrate that livestock will not come in contact with hazardous waste in active portions of the facility; failure to design, construct, maintain and operate the new 400-acre impoundment so as to prevent washout of any hazardous waste by a 100-year flood; and failure to provide quality assurance for units which receive hazardous waste constitute separate violations of the regulations, for which MagCorp, USM and/or Group are subject to injunctive

relief, and civil penalties not to exceed $25,000 per day of noncompliance for each such violation which occurred on or prior to January 30, 1997, and $27,500 per day for each such violation which occurred after January 30, 1997.

114. The United States' Complaint prayed for the following relief:

> "WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:
>
> (a) Assess civil penalties in an amount not to exceed Twenty Five Thousand Dollars ($24,000) for each day of each violation on or prior to January 30, 1997 and not to exceed Twenty Seven Thousand and Five Hundred Dollars ($27,500) for each day of each violation after January 30, 1997 … .
>
> * * *
>
> (c) Pierce the corporate veil to hold Metals, Group, the Trusts, Rennert, and the Ira Leon Rennert Revocable Trust liable for the debts and liabilities of MagCorp … ."

G. <u>The 1996 Offering and Fraudulent Transfers to Group, The Rennert Trusts and The MagCorp Officer Defendants.</u>

115. In 1996 Metals and MagCorp engaged in a series of transactions which constituted and/or resulted in fraudulent transfers. As further described below, Rennert, Metals and other Defendants caused Metals to incur $150 million in debt offered to the public, and simultaneously caused Metals to pay approximately $90,000,000 to Group in the form of dividends and stock redemptions. Additionally, Group obligated MagCorp to make nearly $5.3 million in bonus compensation payments to the MagCorp Officer Defendants. These transfers rendered Metals and MagCorp insolvent, yet Group and its shareholders, Rennert and the Rennert Trusts, benefited enormously, as did the MagCorp Officer Defendants who received the bonuses: Defendants Legge, Thayer, Ogaard, Brown and Kaplan.

116. Shortly after its incorporation, on August 4, 1993, Metals privately sold $75 million of 12% Senior Notes due 2000 (the "Old Notes"). Metals also issued 8,500 shares of 10% preferred stock, par value $1,000, to its sole shareholder, Group. The preferred shares were redeemable by Metals at its option, subject to compliance with long-term debt covenants, at any time after January 1, 1994 at par value.

117. By mid-1996, MagCorp was the third largest producer of pure magnesium and magnesium alloys in North America and the fourth largest producer in the world outside the Commonwealth of Independent States ("CIS") and the Peoples Republic of China ("PRC"). MagCorp accounted for 21% of calendar year 1995 North American production and 16% of global production of magnesium, excluding the CIS and PRC, according to statistics published by the International Magnesium Association and estimates of MagCorp's management.

118. In 1995, magnesium prices rose to historic high levels. The increase in list prices for magnesium during 1995 was attributable to increases in demand while there were no corresponding significant increases in the supply of magnesium. However, a new facility located in Israel was expected to begin production in early 1997.

119. In 1996, Group was 95.8% owned by Rennert and the Rennert Trusts. Due to its ownership of all of the outstanding stock of Metals, Group was able to direct and control the policies of Metals and Metals' subsidiaries, MagCorp and Sabel. Rennert was the sole Director of Metals.

120. As of April 30, 1996, Metals' debt included approximately $18.4 million borrowed on a revolving credit facility and $75 million in outstanding Old Notes.

121. During the six-month period ending April 30, 1996, Metals' consolidated operating activities generated net income of approximately $17.3 million. Of this amount, $9.8 million was paid to Group as dividends in December 1995. In April 1996, Metals declared an additional $4.1 million cash dividend, which was paid to Group on or about May 16, 1996.

122. Under the control of Group, on May 24, 1996, Metals commenced a tender offer to purchase all of the Old Notes at a premium of 112.75% of their principal amount, plus accrued interest.

123. On the same date, Metals, MagCorp and Sabel Industries filed with the United States Securities and Exchange Commission ("SEC") a Form S-1 Registration Statement (subsequently amended on June 13, 1996 and June 25, 1996) in connection with the public offering of 11½% Senior Notes due 2003 (the "New Notes"). This offering is referred to as the "1996 Offering."

124. In a Prospectus dated June 28, 1996, Metals disclosed that the net proceeds from the 1996 Offering (approximately $143.5 million), together with an estimated $34.8 million in available cash, would be used to: (1) retire the Old Notes at a premium; (2) redeem the outstanding 10% preferred stock from Group for $8.5 million (the "Stock Redemption"); (3) pay to Group a $75.7M Dividend on the outstanding common stock held by Group (the "$75.7M Dividend"); and (4) make payments totaling approximately $5.3 million to five executives of MagCorp under certain net worth appreciation agreements.

125. The Prospectus reflected that Metals' total stockholder equity prior to the issuance of the New Notes was $11.8 million. The Prospectus further disclosed that, after giving effect to the 1996 Offering and the transfers to Group and the MagCorp Officer Defendants, Metals would have a deficit in equity exceeding $81 million.

126. The New Notes were issued thereafter in July 1996.

H. The Net Worth Appreciation Agreement Payments.

127. Metals had no Compensation Committee. According to the Prospectus, the compensation for executive officers, including the five MagCorp Officer Defendants, was fixed by negotiation with Defendant Rennert acting on behalf of Group.

128. The five MagCorp Officer Defendants were each parties to Net Worth Appreciation Agreements (the "NWAP Agreements") with the Company. Under the NWAP Agreements, each of these Defendants was entitled to receive a fixed percentage of the increase in the net worth of MagCorp from August 1, 1996 until the date of termination of his employment. The NWAP Agreements also provided that, if the Company paid any cash dividend on its common stock, the Company would make a cash payment to the executive officer based upon his fully vested participation percentage.

129. In conjunction with Metals' dividends to Group declared between October 31, 1995 and the date of the Prospectus, which dividends totaled $13.9 million, an aggregate of $974,505 was paid to the MagCorp Officer Defendants.

130. In conjunction with the $75.03 million dividend paid in conjunction with the 1996 Offering, the MagCorp Officer Defendants received further payments totaling

approximately $5.3 million pursuant to the NWAP Agreements (the "NWAA Payments").

131. In 1997 and 1998, the MagCorp Officer Defendants received further NWAA Payments aggregating $462,000 and $504,000, respectively.

I. The 1996 Prospectus and SEC Filings Failed to Disclose MagCorp's Environmental Problems.

132. The Environmental Disclosures set forth in the Prospectus were grossly misleading and fraudulent in that they failed to disclose the true extent of the enormous environmental liabilities facing MagCorp, Metals and Group and arising from the operations at MagCorp's Rowley Facility.

133. In the section of the Prospectus entitled "Risk Factors" the following inadequate and misleading discussion appeared at page 10:

> "ENVIRONMENTAL MATTERS
>
> The Company and its operations are subject to a variety of federal, state and local environmental laws and regulations. Such laws relate to, among other things, the discharge of contaminants into water and air and into and onto land and the disposal of waste. The Company's cost of compliance with environmental laws and remediation obligations under such laws has been and is expected to continue to be significant. Magcorp plans to spend approximately $40 million of its capital budget by the year 2000 directly or indirectly to the environmental regulatory requirements by purchasing new electrolytic cell technology that will reduce chlorine emissions at the source. See 'Business – MagCorp – Environmental Matters.'"

134. In the section of the Prospectus setting forth Management's Discussion of the financial condition and results of operations, the following inadequate and misleading statement was included at page 17:

"ENVIRONMENTAL MATTERS

The Company and its operations are subject to an increasing number of federal, state, and local environmental laws and regulations governing, among other things, air emissions, wastewater discharge, and solid and hazardous waste disposal.

Environmental laws and regulations continue to change rapidly and it is likely that the Company will be subject to increasingly stringent environmental standards. Compliance with such laws and regulations is a significant factor in the Company's operations as it is with all domestic industrial facilities. The Company believes that it has to date materially complied with all federal, state, and local environmental regulations and is committed to maintaining its compliance with these laws. See 'Business – Environmental Matters.'"

135. Management's Discussion in the Prospectus also contained the following inadequate statement at page 22:

"Management has developed a capital improvement program totaling approximately $46 million which encompasses the installation of new electrolytic cell technology, as well as the installation of a magnesium caster. The new electrolytic cells are expected to reduce operating costs and improve manufacturing efficiencies resulting from reductions in: (i) electricity consumption, (ii) manufacturing labor requirements, (iii) magnesium metal losses in a manufacturing process and (iv) chlorine emissions. Additionally, the magnesium caster is expected to improve product quality, reduce labor requirements and permit the Company to produce some of the various sizes, shapes and weights of magnesium ingots at lower costs.

"The electrolytic cell conversion will commence in early 1997 with the installation of a prototype cell and, assuming its successful operation, the conversion of remaining cells is expected to be completed by 1999. As a result, the associated cost reductions and related manufacturing efficiencies are expected to be realized in the Company's operating results beginning in fiscal year 1999. Management estimates that the caster will be installed in fiscal year 1997.

> "With respect to chlorine emissions, the electrolytic cell conversion is expected to significantly reduce the Company's emissions thereby addressing anticipated regulations imposed under amendments to the Clean Air Act of 1990 (the "Clean Air Act"). See '—Environmental Matters.'"

136. Management's Discussion in the Prospectus also contained a description of the production process at the Rowley Facility. In the discussion of MagCorp's production process, Management made the following inadequate and misleading statement at page 23:

> "As part of MagCorp's production of magnesium, MagCorp produces by-products such as chlorine, calcium chloride and iron chlorides which MagCorp sells into commercial markets for incremental revenue and cost reduction. By-products not sold are disposed of pursuant to environmental regulations.

137. The Prospectus contained the following inadequate and misleading discussion in a section entitled "Environmental Matters" at page 24:

> "MagCorp's most significant long-term environmental issue is compliance with the Clean Air Act. Title III of the Clean Air Act will establish, on a published schedule, new emission standards for previously unregulated air toxins. These national emission standards for hazardous air pollutants ("NESHAPS") will be technology based and will be designed to achieve the maximum control as determined by a comparison of installations at similar facilities in specific industry categories.
>
> "It is expected that MagCorp will be required to make substantial reductions in its chlorine and hydrogen chloride emissions to meet NESHAPS for primary magnesium refineries that will be promulgated by the year 2000. In response to the anticipated regulations imposed under amendments to the Clean Air Act, MagCorp is planning on acquiring new electrolytic cell technology that will reduce

> chlorine emissions at the source. … With respect to hydrogen chloride, MagCorp will install scrubbers to reduce emissions.
>
> MagCorp plans to spend $40 million of its capital budget, including the capital required for the prototype cell, by the year 2000 directly or indirectly to meet environmental regulatory requirements, primarily for NESHAPS, and for anticipated other future requirements. MagCorp believes that these expenditures required to comply with environmental standards are substantial."

138. As described above in this Complaint, the primary focus of the disclosures relating to environmental matters was MagCorp's *future* compliance with air pollution abatement regulations under the Clean Air Act of 1990. The Prospectus contained only the following discussion of MagCorp's environmental issues relating to its management of solid and hazardous wastes under RCRA and the Utah Solid and Hazardous Waste Act at pages 24 and 25:

> "MagCorp will close its existing landfill and will open a new landfill in time to comply with new regulations anticipated to be in effect in three to five years. The estimated cost of closing the existing landfill and opening the new landfill is $450,000 given MagCorp's present interpretation of what the new regulations would require.
>
> "In August 1994, the Utah Solid and Hazardous Waste Control Board presented a Proposed Stipulation and Consent Order to MagCorp for resolution of a Notice of Violations and Compliance Order (the "NOVCO") issued in August 1992 concerning certain alleged violations of the Utah Solid and Hazardous Waste Act and the Utah Administrative Code. MagCorp has contested the NOVCO and has requested a hearing on the alleged violations. Among the issues to be resolved is whether the wastes being sent to the Rowley facility's industrial wastewater pond are subject to regulation by the State of Utah, and if so, whether a waste management plan, groundwater management plan and closure plan for the pond must be developed and implemented. In addition, an issue exists as to whether piles of material generated in the

> electrolytic process, which cover an extensive land area at the Rowley facility, can be classified as a hazardous or solid waste, and if so, what measures might be required to investigate and address these piles. If these wastes are ultimately deemed subject to State regulation and corrective action is required, the costs of compliance could be material."

139. The Prospectus also included the Independent Auditors' Report of KPMG for the fiscal years 1994 and 1995. Note 2(e) to the Consolidated Financial Statements contained the following:

> "Environmental Compliance Costs
>
> Industrial companies such as MagCorp and Sabel have in recent years become subject to increasingly demanding environmental standards imposed by federal, state, and local environmental laws and regulations. It is the policy of the Company, to endeavor to comply with applicable environmental laws and regulations. The Company considers current information, environmental laws and regulations and adjusts its related accruals as considered necessary."

140. At the time of the 1996 Offering, senior management at MagCorp and Renco were fully aware that MagCorp was at risk for enormous environmental liabilities arising from civil penalties accruing at $25,000.00 per day arising out of existing facts as later described in the discussion of the EPA's enforcement action, as well as the costs of remediation for years of hazardous waste disposal at the Rowley Facility.

141. At the time of the 1996 Offering, Defendants knew or, absent a reckless disregard for the truth should have known, that MagCorp was the largest emitter of chlorine gas in the United States and that the by-products of its pollution abatement processes included solid and liquid wastes with toxic and/or corrosive qualities.

142. At the time of the 1996 Offering, Defendants knew or, absent a reckless disregard for the truth should have known, that MagCorp had for years disposed of toxic solid and liquid wastes at the Rowley Facility in violation of federal and state law.

143. At the time of the 1996 Offering, Defendants knew or, absent a reckless disregard for the truth should have known, that beginning in 1992 the EPA and the State of Utah sought to require MagCorp to comply with the RCRA Subchapter C and the Utah Administrative Code regulations governing management of hazardous wastes.

144. In preparing the Prospectus and other SEC filings and public documents, Defendants knew or, absent a reckless disregard for the truth, should have known, that the EPA and the Utah Department of Environmental Quality had notified MagCorp that the Bevill Amendment exclusions applied only to the scrubber underflow and the cathode scrubber liquor, and did not extend to the other toxic wastes and waste streams generated at the facility.

145. In light of the risk of enormous liabilities that MagCorp faced as a result of its refusal and failure to comply with the RCRA Subtitle C regulations, the disclosures made in the Prospectus and other filings with the SEC and in public documents were grossly inadequate.

146. Defendants knew, or absent a reckless disregard for the truth should have known, that MagCorp and Metals should have established a substantial reserve for environmental liabilities. But Defendants failed to establish or cause to be established such a reserve, leaving MagCorp and Metals severely exposed and unprepared to contend with any such environmental exposure.

J. The 1997 and 1998 Dividends and NWAA Payments.

147. At the close of fiscal 1996, Metals had a shareholder deficit in excess of $74 million.

148. During fiscal year 1997, Group caused Metals to pay further dividends totaling $6.6 million. In conjunction with the payment of such dividends, MagCorp paid an aggregate of $462,000 in 1997 to the MagCorp Officer Defendants.

149. At the close of fiscal year 1997, Metals had a shareholder deficit of $68.9 million.

150. During fiscal year 1998, Group caused Metals to pay further dividends totaling $7.2 million. In conjunction with the payment of such dividends, MagCorp paid an aggregate of $504,000 in 1998 to the MagCorp Officer Defendants.

K. Sabel's Release From Its Guarantee of the New Notes.

151. Metals' obligations under the New Notes were fully guaranteed by its subsidiaries, MagCorp and Sabel Industries.

152. On December 4, 2000, the stock of Sabel Industries was sold to Defendant Sabel Holdings. As consideration for such sale, Sabel Holdings paid to Metals $8 million in cash and assumed the liability of Sabel Industries under its revolving credit facility. Upon information and belief, such outstanding borrowings were no greater than $3 million.

153. Sabel Industries' Guarantee of Metals' obligation under the New Notes was released effective as of the date of the sale of Sabel Industries to Sabel Holdings.

154. On the date that Sabel was released from its Guarantee of the New Notes, Metals and MagCorp were insolvent.

155. The release that Metals was caused to grant to Sabel Industries was given without fair consideration and for less than reasonable equivalent value. The consideration Metals received, namely $8 million, was received in exchange for all or substantially all of the assets of Sabel Industries, as well as for the release from the Guarantee of $150 million of New Notes.

156. MagCorp remained a guarantor of the New Notes.

V. THE ROLES OF THE DEFENDANTS

A. Group

157. The June 28, 1996 Prospectus contained the following statement:

> "CONTROL BY GROUP
>
> The Company is a wholly owned subsidiary of Group, which is 75.8% owned by Mr. Ira Leon Rennert and by trusts established by him for members of his family. Due to its ownership of all the capital stock of the Company, Group will be able to direct and control the policies of the Company, including mergers, sales of all or substantially of the Company's assets and similar transactions, which transactions may result in a Change of Control under the Indenture governing the Senior Notes. *See* 'Description of Senior Notes – Change of Control.' The Company's board of directors has been, and is expected to continue to be, comprised entirely of designees of Group. Currently, Mr. Rennert is the sole director of the Company."

158. Group, as the controlling shareholder of Metals, owed fiduciary duties to Metals and its subsidiaries. These duties included the duties of due care, good faith and loyalty.

159. Group, as the sole shareholder of Metals, and therefore as the controlling shareholder of MagCorp, owed fiduciary duties to its subsidiaries. Such duties include the duties of due care, good faith and loyalty.

160. Group exercised dominion and control over Metals as to the 1996 Offering of New Notes, the $80 million plus dividends and stock redemption transfers to Group, NWAA Payments to the MagCorp Officer Defendants, and subsequent dividends and NWAA Payments in 1997 and 1998. On information and belief, the release of Sabel Industries from its Guarantee of the New Notes was also made at the instance of Group.

161. Group caused Metals to incur substantial indebtedness by issuing $150 million in New Notes. Inasmuch as Metals already had $75 million of outstanding Old Notes, the sole purpose of the 1996 Offering was to finance the $75.7M Dividend to Group, the $8.5 million redemption of the preferred stock held by Group, and the $5.3 million in NWAA Payments to the MagCorp Officer Defendants.

162. Group caused Metals to dissipate assets in that (1) a premium of approximately $12 million was paid unnecessarily to retire the Notes, (2) $6 million in underwriters' fees were paid to DLJ, and (3) additional costs and fees in a substantial but as yet unascertained amount were incurred in connection with the 1996 Offering.

163. In fiscal 1996, Group caused Metals to pay an aggregate $88.95 million in dividends to Group, including $75.03 million (the actual amount of the dividend paid in July 1996) paid in conjunction with the New Notes. Group also caused Metals to redeem its outstanding preferred stock at a cost of $8.5 million, all of which was paid to Group. Additionally, the dividend payments caused Metals to pay $6.23 million to the MagCorp

Officer Defendants as NWAA Payments, including $5.3 million triggered by the $75.03 million dividend to Group.

164. In fiscal 1997, Group caused Metals to make further dividend payments of $6.6 million to Group, requiring MagCorp to make further payments of $462,000 to the MagCorp Officer Defendants as NWAA Payments.

165. In fiscal 1998, Group caused Metals to make further dividend payments of $7.2 million to Group, requiring MagCorp to make further payments of $504,000 to the MagCorp Officer Defendants as NWAA Payments.

166. On December 4, 2000, Group caused Metals to sell Sabel Industries to Sabel Holdings, for which Metals received $8 million. In connection with this sale, Group caused Metals to release Sabel Industries from its Guarantee of $150 million in New Notes.

167. Group caused Metals to prepare false and misleading financial statements and disclosures which Group knew or, absent a reckless disregard for the truth should have known, did not disclose the enormous probable future environmental liabilities of MagCorp.

168. Group knew that the 1996 dividend, stock redemption and NWAA Payments would render Metals insolvent in that Metals' stated liabilities (even without giving effect to the probable environmental liabilities) exceeded its assets.

169. Group knew, on the basis of the financial projections for Metals and MagCorp, that even without giving effect to the probable environmental liabilities of

MagCorp, Metals would be unable to retire the Old Notes when they became due in 2003.

170. Group knew or should have known that the 1996 Offering of New Notes would cause the deepening insolvency of Metals. Group knew, or should have known, that the above-described transactions brought about by Group subsequent to the 1996 Offering deepened the insolvency of MagCorp and Metals.

171. Group knew that the $75.7M Dividend, the Stock Redemption and the NWAA Payments in 1996 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration.

172. Group knew that the dividends and the NWAA Payments in 1997 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration, and that said dividend deepened the insolvency of MagCorp and Metals.

173. Group knew that the dividends and the NWAA Payments in 1998 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration, and that said dividend deepened the insolvency of MagCorp and Metals.

174. Group knew that the sale of Sabel Industries for $8 million in 2000, which included granting Sabel Industries a release from its Guarantee of the $150 million in New Notes and which provided Metals with no actual benefit whatever, was made with Metals receiving less than reasonably equivalent value and less than fair consideration.

This transaction was not in the best interests of Metals and resulted in Metals giving up valuable causes of action in return for nothing of benefit.

B. KPMG

1. The Audited Financial Statements

175. KPMG was engaged by Metals to audit the consolidated financial statements of Metals and its subsidiaries. KPMG was aware that such audited financial statements would be included in filings with the SEC, including the quarterly Form 10-Q, the annual Form 10-K, and Form S-1 Registration Statements.

176. KPMG audited the financial statements of Metals and its subsidiaries for each of the fiscal years ended October 31, 1993, 1994, 1995, 1996, 1997, 1998 and 1999. KPMG issued unqualified audit certifications ("clean opinions") as to each of the aforementioned financial statements.

177. The financial statements and SEC filings were grossly misleading and fraudulent with regard to the true extent of MagCorp's environmental liabilities, existing and potential.

178. In order to obtain the work as Metals' independent certified public accountant, KPMG sent to Metals written engagement terms to act as Metals' independent certified public accountant. Metals agreed to conduct its audits in accordance with generally accepted accounting standards ("GAAS") with the objective of expressing an opinion as to whether the presentation of the financial statements, taken as a whole, conformed to generally accepted accounting principles ("GAAP"). KPMG

breached its engagement contract because KPMG did not conduct its audits in accordance with GAAS as described more fully elsewhere herein.

179. KPMG also agreed, in conducting the audits, to perform tests of the accounting records and such other procedures as it considered necessary in the circumstances to provide a reasonable basis for its opinion on the financial statements. KPMG also promised to assess the accounting principles used and significant estimates made by management, as well as to evaluate the overall financial statement presentation. KPMG breached its engagement contract because KPMG failed to perform tests of the accounting records to provide a reasonable basis for its opinion on Metals' financial statements.

180. KPMG also agreed to make specific inquiries of management about the representations embodied in the financial statements and the effectiveness of the internal control structure.

181. In preparing for the financial year-end audits, KPMG knew to investigate the issues relating to environmental liabilities. Nevertheless, KPMG failed to adequately investigate and properly report the liabilities, known and potential, for environmental compliance and remediation costs.

182. The consolidated balance sheets for fiscal year ended October 31, 1993 did not contain any line item for environmental liabilities. Note 2(d) to the consolidated financial statements pertaining to "Other Liabilities" reflected the following discussion of "Environmental Compliance Costs":

> "Industrial companies such as MagCorp and Sabel had in recent years become subject to increasingly demanding

> environmental standards imposed by Federal, State and local environmental laws and regulations. It is the policy of the Company to endeavor to comply with applicable environmental laws and regulations. As part of the accounting for the acquisition of MagCorp under the purchase method of accounting, liabilities were established for allowance, which the Company believed were adequate, based on information made available, to cover the costs of remedial actions likely to be required to comply with existing environmental laws and regulations. The Company continues to consider current information, environmental laws and regulations in adjusting related accruals as considered necessary."

(Emphasis added.)

183. The consolidated balance sheet for fiscal year ended October 31, 1994 similarly failed to disclose the contingent environmental liabilities. As with the prior years' balance sheets, there was no line item specifically identifying environmental liabilities. Rather, such liabilities were reflected with "Other Liabilities," which were stated at $1,204,000. Note 2(e) to the consolidated financial statement for 1994 pertaining to "Other Liabilities" contained a discussion of "Environmental Compliance Costs" that was identical to the discussion in the Notes to the 1993 financial statement.

184. The combined balance sheet for fiscal year ended October 31, 1995 similarly failed to disclose the contingent environmental liabilities. Note 2(e), pertaining to "Other Liabilities," contained an abbreviated statement addressing "Environmental Compliance Costs:"

> "Industrial companies such as MagCorp and Sabel have in recent years become subject to increasingly demanding environmental standards imposed by federal, state and local environmental laws and regulations. It is the policy of the Company to endeavor to comply with applicable environmental laws and regulations. The Company considers

> current information, environmental laws and regulations, and adjusts related accruals as considered necessary."

185. Note 12(e), relating to "Commitments and Contingencies," contained the following discussion:

> "Environmental Matters
>
> The Company and its operations are subject to an increasing number of federal, state and local environmental laws and regulations governing, among other things, air emissions, wastewater discharge, and solid and hazardous waste disposal. It is expected that MagCorp will be required to make substantial reductions in chlorine and hydrogen chloride emissions to meet regulations expected to be promulgated by the year 2000. MagCorp is exploring several options at this time to reduce such emissions, including the development of new electrolytic cell technology to reduce chlorine emissions from the use of scrubbers for hydrogen chloride emissions. Dependent on the final form of the standards and the outcome of the cell technology development program, MagCorp plans to spend between $30 and $40 million of its capital budget by the year 2000 directly or indirectly to meet environmental regulatory requirements, and for estimates of other future requirements. MagCorp believes that these expenditures to comply with environmental standards are substantial and to that degree will affect its earnings."

The audited financial statement, however, contained no discussion of the costs associated with compliance and remediation under existing environmental regulatory requirements, and no reserves or grossly inadequate reserves were established to meet such liabilities.

186. KPMG breached its engagement contract because KPMG failed to make specific inquiries of management about the representations in the financial statements, and when KPMG did make specific inquiries, KPMG failed to independently verify the representations made by management, as required by GAAS, to determine their reasonableness and accuracy.

187. KPMG falsely represented to Metals that the consolidated financial statements in each fiscal year 1993 through 1999 presented Metals' financial position, result of operations, changes in stockholders' equity, and cash flows in conformity with GAAP, and that KPMG had in fact examined Metals' financial statements in accordance with GAAS.

188. With respect to each of the financial statements for fiscal years 1993 through 1999, KPMG represented that:

a. They were independent;

b. They conducted the audits in accordance with generally accepted accounting standards;

c. The financial statements *presented fairly, in all material respects*, the combined financial position of Metals and its subsidiaries and;

d. The statements were in conformity with generally accepted accounting principles.

189. None of these statements was true. Had KPMG properly accounted for all of the probable environmental liabilities, both existing and potential, that MagCorp faced, Metals would have been deemed insolvent from its formation in 1993. Metals' balance sheet failed to account for or disclose the potentially enormous environmental liabilities flowing from the federal and state regulators' determination that much of the waste generated at the Rowley Facility was deemed hazardous under RCRA Subtitle C. Despite the fact that KPMG purported to possess expertise in accounting for

environmental liabilities, and despite its knowledge that industrial companies such as MagCorp were subject to stringent environmental standards imposed by federal and state environmental laws and regulations, it nonetheless failed to follow GAAP-based accounting procedures that mandate accounting for both compliance costs and remediation costs.

190. KPMG knew, or was reckless in not discovering through inquiries of management, that MagCorp was on actual notice beginning in 1992 that there was a significant and substantial risk that MagCorp was in violation of the RCRA and the Utah Solid and Hazardous Waste Act.

191. KPMG knew, or was reckless in not discovering through inquiries of management, that MagCorp was faced with the significant and substantial risk of enormous liabilities as a consequence of its noncompliance with the federal and state hazardous waste regulatory schemes.

2. Audit Standards

192. KPMG in its audit opinions represented that the audits were conducted in accordance with GAAS. Those standards required KPMG to plan and perform the audits to obtain reasonable assurance about whether the financial statements were free of material misstatements. The audit opinions represented that KPMG examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements.

193. The audit opinions represented that KPMG assessed the accounting principles used and significant estimates made by management.

194. The audit opinions represented that KPMG evaluated each year's financial statement presentations.

195. SAS No. 1, Section 210 specifies, "The independent auditor encounters a wide range of judgment on the part of management, varying from true objective judgment to the occasional extreme of deliberate misstatement." It further states that the auditor "must have acquired the ability to consider objectively and to exercise independent judgment with respect to the information recorded in books of account or otherwise disclosed by his audit."

196. With respect to the independence of mental attitude that must be maintained by the auditor, SAS No. 1 Section 220 states, "However, independence does not imply the attitude of a prosecutor but rather a judicial impartiality that recognizes an obligation for fairness not only to management and owners of a business but also to creditors and those who may rely (in part at least) upon the independent auditor's report, as in the case of prospective owners or creditors."

197. KPMG was also required to exercise "Due Professional Care." For example, SAS No. 1, Section 230, Paragraph .06 states, "Gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence. Professional skepticism should be exercised throughout the audit process." Paragraph .10 states, "The exercise of due professional care allows the auditor to obtain reasonable assurance that the financial statements are free of material misstatements, whether caused by error or fraud." Finally, Paragraph .11 states, "The

independent auditor's objective is to obtain sufficient evidential matter to provide him or her with a reasonable basis for forming an opinion."

198. KPMG knew that Metals was required to file its financial statements with the SEC and that those financial statements were required to be audited by an independent certified public accountant and to comply with SEC regulations for reporting.

199. KPMG's audit certification to the board of directors and shareholder of Metals and subsidiaries, dated December 13, 1993, with respect to Metals' October 31, 1994 financial statements was unqualified. It stated:

> "We have audited the accompanying consolidated balance sheets of Renco Metals, Inc. and subsidiaries as of October 31, 1992 and 1993, and the related consolidated statements of operations, stockholder's equity (deficit), and cash flows for each of the years in the three-year period ended October 31, 1993.
>
> ***
>
> We conducted our audits in accordance with generally accepted auditing standards.
>
> ***
>
> We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Renco Metals, Inc. and subsidiaries as of October 31, 1992 and 1993 and the results of their operations and their cash flows for each of the years in the three-year period ended October 31, 1993, in conformity with generally accepted accounting principles."

200. The audit certifications for the 1994 through 1999 financial statements also were unqualified and contained nearly identical representations.

3. Overview of KPMG's Breaches of Its Duties of Care

201. KPMG owed a duty to Metals to disclose all material facts concerning the true liabilities and financial condition of Metals and its subsidiaries.

202. KPMG's duty to disclose to Metals arose from its (a) relationship with Metals, (b) knowledge that material adverse facts must be disclosed to Metals in order to prevent previous misstatements or partial or ambiguous statements of fact from being misleading and (c) knowledge that the existence of material adverse facts would make untrue or misleading representations to Metals concerning the financial condition of Metals and its subsidiaries.

203. KPMG's audits of Metals' financial statements were not conducted in accordance with GAAS.

204. KPMG planned and performed its audits in a manner that failed to detect material misstatements and deficiencies in Metals' financial statements.

205. Listed below are some of KPMG's intentional, reckless and/or negligent failures to properly perform GAAS audits for the 1993 through 1999 audits of Metals' consolidated financial statements. For example, KPMG failed to:

a. Obtain sufficient, competent evidential matter through inspection, observation, inquiries and confirmations in order to afford a reasonable basis for opinions regarding the financial statements under examination;

b. Require proper disclosures in the financial statements;

c. Require the financial statements to be presented fairly in accordance with GAAP;

d. Provide reasonably adequate informative disclosures in the financial statements;

e. Adequately analyze Metals and its subsidiary's assets, liabilities, income, expenses and equity for these time periods;

f. Recognize that the stated liabilities and contingent liabilities were severely understated as represented on the respective balance sheets;

g. Maintain independence;

h. Insist upon adequate disclosure in the June 28, 1996 Prospectus for the New Notes;

i. Recognize that the 1996 Offering and related transfers rendered the company insolvent and that said insolvency deepened in succeeding years; and

j. Correct errors and withdraw its previously issued certifications and/or require that Metals restate previously issued financial statements.

206. Listed below are some of the GAAP violations that KPMG intentionally, recklessly and/or negligently failed to report while misrepresenting the fair presentation of Metals' 1992 through 2000 financial statements. The violations of GAAP included, at a minimum, the following:

a. Contingent liabilities associated with the alleged violations of RCRA and the Utah Solid and Hazardous Waste Act; and

b. Metals' financial statements misrepresented its solvency

207. Defendant KPMG was retained by Metals and MagCorp to provide independent accounting services and other services. Based on this relationship, KPMG owed contractual and common law duties to Metals and MagCorp to act with reasonable and ordinary care in conducting audits for Debtors and issuing unqualified audit certifications on Metals' consolidated financial statements. KPMG breached the duties of care and loyalty by, among other things, providing Metals and MagCorp with false, unsound and negligent professional advice, substantially assisting Group in misrepresenting the true extent of the potential environmental liabilities, participating and/or substantially assisting in the preparation of false and misleading financial information, and failing to disclose materially adverse information to the investing public. KPMG thereby substantially assisted other Defendants in perpetuating their misconduct, allowing Metals and MagCorp to become increasingly insolvent.

208. The materially false and misleading financial statements and reports certified by KPMG grossly distorted and misrepresented Metals' true financial condition.

209. KPMG knew, or, absent a reckless disregard for the truth, should have known, that by preparing and allowing the dissemination of false and misleading financial statements, KPMG was rendering substantial assistance to Group in misrepresenting the true financial condition of Metals, thereby participating in causing Metals to incur additional indebtedness and to make the transfer transactions to Group

and artificially prolong Metals and MagCorp's lives. Had KPMG properly discharged it contractual and common law duties to Metals and MagCorp, Group and the director defendants could not have successfully concealed their mismanagement and misconduct.

210. KPMG did not maintain independence.

211. KPMG, as auditor of Metals and its subsidiaries, failed to exercise due care.

212. KPMG, in the exercise of independence and due professional care, knew or should have known that MagCorp faced the prospect of enormous environmental liabilities for costs of compliance and remediation under RCRA Subchapter C. As such, KPMG should have disclosed in a timely manner that MagCorp and its parent, Metals, was insolvent and/or reflected a going concern qualification. KPMG's failure to do so helped cause Metals to incur additional debt in relation to the Offering of New Notes in the transfer transactions. Despite its promise to do so, KPMG failed to identify and/or disclose, on a timely basis, critical information regarding the contingent environmental liabilities. Had it done so, KPMG would have the information necessary to disclose to all the users of the financial statements, including the SEC and the Note Holders, that MagCorp was insolvent or at risk of deepening insolvency. Early disclosure of this risk of deepening insolvency would have minimized losses.

C. Houlihan Lokey

213. Defendant Houlihan Lokey was engaged by Metals' Board of Directors (which consisted solely of Defendant Rennert) and MagCorp's Board of Directors (which consisted solely of Defendant Rennert) to render a written opinion regarding the solvency of MagCorp and Metals in connection with the 1996 Offering and simultaneous $75.7M

Dividend, Stock Redemption and NWAA Payments. Pursuant to this engagement, Houlihan Lokey was to conduct due diligence and prepare a solvency analysis for both Metals and MagCorp that included (1) an analysis to determine whether the value of Metals' and MagCorp's assets exceeded their pro forma liabilities; (2) an analysis to determine whether Metals and MagCorp would have adequate capital to conduct their business on an ongoing basis after giving affect to the pro forma capital structure; and (3) an analysis to determine whether Metals and MagCorp would be able to pay their debts as they became due and mature with respect to the period from 1996 through 2001.

214. Houlihan Lokey is a registered investment advisor. Houlihan Lokey was founded in Los Angeles, California in 1970 and remains incorporated in California. Houlihan Lokey also has an office at 685 Third Avenue, 15th Floor, New York, New York 10017, as well as offices throughout the United States.

215. By letter dated May 24, 1996 addressed to the Board of Directors of Metals and Board of Directors of MagCorp, Houlihan Lokey stated that it had completed a significant portion of its due diligence and was prepared to render a Solvency Opinion for both Metals and MagCorp.

216. On July 3, 1996, Houlihan Lokey provided a written solvency opinion (the "Solvency Opinion") jointly to the Boards of Directors of Metals and MagCorp and to DLJ. In that Solvency Opinion, Houlihan Lokey represented that it had "value[d] [MagCorp] as a going concern (including goodwill), on a pro forma basis, immediately after and giving effect to the Transaction and the associated indebtedness."

217. In that opinion, Houlihan Lokey defined "identified contingent liabilities" as "the stated amount of contingent liabilities identified to us and valued by responsible officers of the Company [MagCorp], upon whom we have relied upon without independent verification." "Able to pay its debts as they become absolute and mature" was defined with reference to MagCorp's financial forecasts for the period 1996-2003, which purportedly indicated positive cash flows and which included the payment of all debt during that time, including (and after giving effect to) the payment of interest installments due under the New Notes.

218. In the Solvency Opinion, Houlihan Lokey repeatedly stated that it had not performed any independent investigation and that it had relied upon information identified to it by senior management at Metals and MagCorp without independent verification. In particular, the letter stated:

> "The term 'identified contingent liabilities' shall mean the stated amount of contingent liabilities identified to us and valued by responsible officers of the Company, upon whom we have relied upon without independent verification; no other contingent liabilities will be considered."

219. The Solvency Opinion went on to state:

> "Being 'able to pay its debts as they become absolute and mature' shall mean that, assuming the Transaction has been consummated as proposed, the Company's financial forecasts prior to the payment of any dividends for the period 1996-2003 indicate positive cash flow for such period, including (and after giving effect to) the payment of installments due under loans made pursuant to the indebtedness incurred in the Transaction, as such installments are scheduled at the close of the Transaction."

The Solvency Opinion then stated:

> "In connection with this Opinion, we have made such reviews, analysis and inquiries as we have deemed necessary and appropriate under the circumstances. Among other things, we have:
>
> * * *
>
> "(4) met with or held discussions with certain members of the Senior Management of [Metals] and [MagCorp] to discuss the operations, financial condition, future prospects and projected operations and performance of [Metals] and [MagCorp], and held discussions with [Metals'] and [MagCorp's] counsel to discuss certain matters;
>
> "(5) visited certain facilities and business offices of the Company located in Salt Lake City, Utah;
>
> "(6) reviewed forecasts and projections prepared by [Metals'] and [MagCorp's] management with respect to the Company for the years ended 1996 through 2003 … ."

Finally, the Solvency Opinion stated:

> "We have relied upon and assumed, without independent verification, that the financial forecasts and projections provided to us have been reasonably prepared and reflect the best currently available estimates of the future financial results end condition of the Company. … We have not independently verified the accuracy and the completeness of the information supplied to us with respect to [Metals] or [MagCorp] and do not assume any responsibility with respect to it. We have not made any physical inspection or independent appraisal of any of the properties or assets of the Company."

220. Houlihan Lokey employed, at the time it performed its Solvency Opinion, more than 100 professionals.

221. Houlihan Lokey had complete access to Metals and MagCorp documents, people and information and purportedly engaged in the following due diligence in connection with its analysis:

1) Reviewed Metals' 10-Ks for the three fiscal years ended October 31, 1995 and 10-Q for quarter ended April 30, 1996;

2) Reviewed MagCorp's financial statements for the five fiscal years ended October 31, 1995 and interim financial statements for the six month period ended April 30, 1996;

3) Reviewed copies of the Registration Statements for the New Notes and the tender offer to purchase the Old Notes;

4) Met with certain members of Senior Management at Metals and MagCorp;

5) Visited certain facilities and business offices located in Salt Lake City, Utah;

6) Reviewed forecasts and projections prepared by Metals' and MagCorp's Management for 1996 to 2003;

7) Reviewed historical market prices and trading volumes for Metals' publicly traded securities;

8) Reviewed other publicly available financial data for Metals and MagCorp and other companies deemed comparable to Metals and MagCorp;

9) Reviewed a draft term sheet for MagCorp's and Sable's revolving credit facilities; and

10) Conducted such other studies, analyses and investigations as Houlihan Lokey deemed appropriate.

222. Houlihan Lokey represented that it had analyzed MagCorp's solvency under three tests to conclude that:

a. On a pro forma basis, the fair value and present fair saleable value of MagCorp's assets would exceed its stated liabilities and identified contingent liabilities (the Balance Sheet Test);

b. MagCorp should be able to pay its debts as they became absolute and mature (the Cash Flow Test); and

c. The capital remaining in MagCorp after the Offering and related transactions would not be unreasonably small for the business in which MagCorp was engaged (the Reasonable Capital Test).

223. Houlihan Lokey, however, qualified its Solvency Opinion in the following manner:

> We have assumed that any available cash flow from both [Metals] and [MagCorp] is used first to retire the indebtedness from the New Notes and only after such debt retirement is such cash flow used to pay dividends to shareholders. However, if [Metals] pays dividends to the extent permitted by the indenture governing the New Notes and the Revolving Credit Facilities of MagCorp and Sabel, it will be necessary to refinance the New Notes on or before the maturity date of the New Notes.

224. The Solvency Opinion failed to address the obvious fact that the proposed transactions actually contemplated that Metals would be left with negative equity, a fact that even the June 28, 1996 Prospectus disclosed. Under Houlihan Lokey's analyses, it should have been clear, *inter alia*, that the proposed transactions failed the first of the three solvency tests.

225. The Solvency Opinion failed to address the issue that the $75.7 million Dividend, the Stock Redemption and the NWAA Payments that were contemplated might be deemed fraudulent conveyances *per se* under federal and/or state law.

226. In Houlihan Lokey's promotional brochure entitled "Fraudulent Conveyance Overview," it notes that one of the prime considerations in securing a Solvency Opinion is to protect against claims of fraudulent transfer. For example, the brochure claims that, "A Solvency Opinion is most useful in mitigating the risk of potential liability in bankruptcy for all parties related to the original transaction." The brochure goes onto state that "a Solvency Opinion rendered at the time of the transaction cost-effectively assists in dissipating future fraudulent conveyance claims."

Accordingly, Houlihan Lokey proposed that:

> "These constituents can take steps to protect their interest before the close of the transaction.
>
> The most important of these steps is a thorough and rigorous analysis of the effect of the proposed transaction on the financial health of the Company by an independent third party at the time of the transaction."

227. However, Houlihan Lokey did not engage in a thorough and rigorous analysis of the effect on Metals of the proposed doubling of its long-term debt and simultaneously making transfers in excess of $95 million, as it purported to do.

228. As a result of the foregoing, Houlihan Lokey breached its contract with Metals and MagCorp, aided and abetted one or more fraudulent conveyances, and aided and abetted other Defendants in the breach of their fiduciary duties to the Debtors.

D. DLJ

229. DLJ was the underwriter in the 1996 Offering. At the 4% underwriter's discount, KPMG generated revenues for itself of $6 million as a result of the 1996 Offering.

230. In its financial analysis of the proposed 1996 Offering, DLJ analyzed Metals and its subsidiaries on a pro forma basis following the Offering and the proposed $75.7M Dividend, Stock Redemption and the NWAA Payments.

231. DLJ was aware that Metals' shareholder equity would decrease from positive $11.8 million before the 1996 Offering to negative $81 million dollars after giving affect to the New Notes, the $75.7M Dividend, the Stock Redemption, the NWAA Payments, and related transaction costs and fees.

232. DLJ purported to conduct due diligence in the course of its advisor duties to Metals in connection with the 1996 Offering.

233. DLJ was aware that MagCorp had a capital expenditure program focused on bringing the Rowley Facility into compliance with future regulations under the Clean Air Act of 1990. In the course of conducting its due diligence, DLJ knew or should have known of the generation and disposal of liquid and solid hazardous wastes at the Rowley Facility in addition to the emissions into the air of chlorine gas and hydrogen chloride gas.

234. DLJ knew or should have known, while conducting its due diligence in the course of its advisor duties to Metals, of the environmental issues raised by these hazardous wastes.

235. DLJ knew or should have known, while conducting its due diligence in the course of its advisor duties to Metals, of the statutory and regulatory requirements for compliance under the RCRA and the Utah Solid and Hazardous Waste Act. Had DLJ fulfilled its obligations to Metals as Metals' financial advisor, DLJ would have, and should have, discovered the magnitude of the environmental liabilities facing MagCorp.

236. However, DLJ failed to perform the type of due diligence and financial analysis necessary to understand and appreciate the environmental liabilities. In analyzing the financial condition of Metals and its subsidiaries, DLJ conducted discussions with members of the senior management and analyzed the projected capital structures, cash flows and results of operations. DLJ did no independent analysis, however, to confirm the accuracy and completeness of the forecasted financial information. It merely relied upon information furnished by Group, the Director and Officer Defendants, and the MagCorp Officer Defendants. In so doing, DLJ erroneously believed that MagCorp's environmental spending to install the enhanced electrolytic cell technology would be adequate.

237. Had DLJ fulfilled its obligations to Metals as Metals' financial advisor, DLJ would have and should have discovered the full magnitude of the environmental liabilities facing MagCorp.

238. DLJ was in a position to understand and appreciate that the environmental liabilities were vastly understated.

239. DLJ was in a position to understand and appreciate that the $75.7M Dividend, the Stock Redemption and the NWAA Payments that were contemplated in

connection with the 1996 Offering constituted fraudulent conveyances *per se* under federal and/or state law.

240. DLJ was provided with a copy of the Solvency Opinion prepared by Houlihan Lokey. DLJ was aware, therefore, that the Solvency Opinion which was qualified in that it assumed that all available cash flow from Metals and MagCorp would be used to retire the indebtedness before paying dividends to Group. DLJ knew that Houlihan Lokey had concluded that if dividends were paid to Group to the extent permitted by the indenture governing the New Notes and the revolving credit facilities, Metals would be unable to pay the New Notes when they became mature and due.

241. Despite DLJ's role as financial advisor to Metals, at no time during the 1996 Offering did DLJ advise the Board of Directors of Metals that Metals should not refinance the Old Notes and incur additional indebtedness by issuing the New Notes. Furthermore, in carrying its role as financial advisor and consultant to Metals, DLJ should have advised the Board of Directors of Metals that the $75.7M Dividend, the Stock Redemption and the NWAA Payments constituted fraudulent conveyances *per se* and would leave Metals and its subsidiaries severely undercapitalized. DLJ should have strongly recommended to the Board that such transfers were not in the best interest of Metals and should not be made.

242. DLJ should have insured that the Prospectus in connection with the 1996 Offering fully disclosed all material financial information concerning Metals and its subsidiaries, including the full extent of the environmental liabilities potentially faced by MagCorp.

243. DLJ's silence and complicity allowed Group, Rennert and the Director and Officer Defendants to cause Metals to take on an additional $75 million in indebtedness while simultaneously transferring in excess of $88.8 million to Group and the MagCorp Officer Defendants.

244. DLJ, which realized $6 million in underwriters' fees in connection with the 1996 Offering, acted in its own interests rather than in the interest of Metals, MagCorp and then-subsidiary Sabel.

E. Cadwalader

245. Cadwalader was retained by Metals in 1996 in connection with the offering of the New Notes. This retention was done at the behest and forced upon Metals by Group, which had been represented by Cadwalader. Upon information and belief, Cadwalader had also represented Defendant Rennert and the Rennert Trusts.

246. Attorneys for Cadwalader purported to advise Metals with respect to the 1996 Offering and the related transfers to Group and the MagCorp Officers Defendants, including advising of the consequences and the legal ramifications thereof.

247. In representing Metals, Cadwalader undertook fiduciary and professional duties to Metals to act in Metals' best interest and to advise Metals in a competent professional manner as to the risks and consequences of these transactions. Cadwalader's duties were those of a fiduciary and of professional attorneys.

248. Metals did in fact rely on Cadwalader for professional legal advice and counsel in connection with the 1996 Offering, the $75.7M Dividend, the Stock Redemption and the NWAA Payments to the MagCorp Officer Defendants.

249. Cadwalader had an actual and non-waivable conflict of interest with respect to its representation of Metals and these other Defendants.

250. At all times related to the 1996 Offering and simultaneous transfer transactions, Cadwalader acted in the best interests of Group, Rennert and the Rennert Trusts and to the detriment of Metals in facilitating the fraudulent transfers to Group and the MagCorp Officer Defendants, and otherwise facilitating and assisting in the completion of these fraudulent transfers.

251. In providing advice and counsel, Cadwalader knew or should have known at the time: (1) that Cadwalader had actual non-waivable conflicts of interest in connection with the 1996 Offering and related dividend and stock redemption transfers; (2) that the $75.7M Dividend and the redemption of the preferred stock were not in the best interest of Metals and would harm Metals financially; (3) that MagCorp's environmental liabilities were understated on the consolidated financial statement of Metals and its subsidiaries; (4) that the disclosures in the Prospectus relating to the environmental liabilities were inadequate and misleading so as to mislead prospective investors in the New Notes; and (5) that Group had intentionally timed the 1996 Offering and remitted transfers so as to coincide with the temporary upswing in Magnesium prices to give the false prospect of MagCorp's future success.

252. Cadwalader assisted Rennert in breaching his fiduciary duties as sole Director and CEO of Metals. Cadwalader also assisted Rennert and the other Director and Officer Defendants herein in breaching their fiduciary duties to Metals and assisting

in the fraudulent transfer of more than $90 million to Group and the MagCorp Officer Defendants.

253. In fact, Cadwalader had a duty, based on the knowledge and information which Cadwalader had available to it, to advise Metals against entering into the 1996 Offering and making the $75.7M Dividend, redeeming its preferred stock, and making the NWAA Payments. Cadwalader, in fact, had a duty and obligation to advise that entering into such transactions would be harmful to Metals and could ultimately result in the demise of Metals. Cadwalader further failed to insure that Metals was acting independently was fully informed, and that Metals was not being controlled or manipulated by Group in connection with the 1996 Offering and simultaneous and related dividend and stock redemption.

254. Each of these actions by Cadwalader constituted a breach of Cadwalader's fiduciary duty, constituted professional malpractice, constituted aiding and abetting a breach of fiduciary duty by Rennert and the other Director and Officer Defendants, Group and the Professional Defendants named herein, and further constituted aiding and abetting of fraudulent transfers.

F. Rennert

255. Rennert, as controlling shareholder of Group, and as sole Director and CEO of Metals and MagCorp, exercised dominion and control over Debtors. As such, Rennert owed fiduciary duties to Metals and its subsidiaries. Such fiduciary duties include the duties of due care, good faith and loyalty to the corporations.

256. Upon information and belief, Rennert and the Rennert Trusts were the ultimate repositories of the dividends and other transfers made by Metals to its parent, Group. Rennert and the Rennert Trusts stood to gain, and did gain, millions of dollars each time that Metals declared and paid dividends to Group and redeemed stock held by Group. Therefore, Rennert had substantial motivation to cause Metals to declare and pay the maximum allowable dividends under the debt covenants of the Indenture Trust for the New Notes and the revolving credit facilities.

257. As controlling shareholder of Group, and as sole Director of Metals, Rennert caused Metals to declare and pay more than $13 million in dividends to Group between December 1995 and May 1996. Furthermore, Rennert caused Metals to refinance the Old Notes in order to free itself of the debt covenants that prohibited further dividends to be paid in fiscal year 1996. Rennert caused Metals to make the 1996 Offering as to the issuance of New Notes, and simultaneously to make additional dividend and stock redemption transfers to Group in 1996 that exceeded $88.8 million dollars.

258. Rennert caused Metals to incur substantial indebtedness by issuing $150 million in New Notes. Inasmuch as Metals already had $75 million of outstanding Old Notes, the sole purpose of the 1996 Offering was to finance a $75.7M Dividend to Group, an $8.5 million redemption of the preferred stock held by Group, and the $5.3 million in NWAA Payments to the MagCorp Officer Defendants that would be triggered by the dividends.

259. In 1997 and 1998, Rennert caused Metals to declare and pay further dividends totaling nearly $15 million.

260. Rennert breached his fiduciary duties to Metals and its subsidiaries.

261. Rennert caused Metals to dissipate assets in that (1) a premium of approximately $12 million was paid unnecessarily to retire the Notes, (2) $6 million in underwriters' fees were paid to DLJ, and (3) additional costs and fees in a substantial but as yet unascertained amount were incurred in connection with the 1996 Offering.

262. Rennert caused Metals to make fraudulent transfers of (1) $75.7 million to Group in the form of a dividend, (2) $8.5 million to Group to redeem all of the outstanding preferred stock, and (3) $5.3 million to the MagCorp Officer Defendants in the form of NWAA Payments triggered by the payment of dividends to Group.

263. In fiscal 1997, Rennert caused Metals to make further fraudulent transfers of $6.6 million in dividends to Group, and $462,000 to the MagCorp Officer Defendants as NWAA Payments.

264. In fiscal 1998, Rennert caused Metals to make further fraudulent transfers of $7.2 million in dividends to Group, and $504,000 to the MagCorp Officer Defendants as NWAA Payments.

265. On December 4, 2000, Rennert caused Metals to sell Sabel Industries to Sabel Holdings in exchange for $8 million. In connection with this sale, Sabel Industries was released from its Guarantee of $150 million in New Notes.

266. Rennert caused Metals to prepare false and misleading financial statements and disclosures which Rennert knew, or should have known, did not fairly disclose the

financial results of MagCorp and Metals and did not disclose the extent of the enormous probable environmental liabilities of MagCorp.

267. Rennert knew or should have known that Metals was insolvent at the time of the 1996 Offering and the related dividend, Stock Redemption and NWAA transfers.

268. Rennert knew, on the basis of the financial projections for Metals and MagCorp, that even without giving effect to the probable environmental liabilities of MagCorp, Metals would be unable to retire the New Notes when they became due in 2003.

269. Rennert knew or should have known that the 1996 Offering would cause the deepening insolvency of Metals.

270. Rennert knew that the $75.7M Dividend, the Stock Redemption and NWAA Payments would render Metals insolvent in that Metals' stated liabilities (even without giving effect to the probable environmental liabilities) would exceed its assets.

271. Rennert knew that the $75.7M Dividend, the Stock Redemption and the NWAA Payments in 1996 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration. Furthermore, Rennert knew that such transfers would render Metals insolvent or further insolvent.

272. Rennert knew that the dividends and the NWAA Payments in 1997 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration. Furthermore, Rennert knew that Metals was insolvent and would be rendered insolvent or further insolvent.

273. Rennert knew that the dividends and the 1998 NWAA Payments in 1998 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration. Furthermore, Rennert knew that Metals was insolvent and would be rendered insolvent or further insolvent.

274. Rennert knew that the sale of Sabel Industries for $8 million in 2000, which included granting Sabel Industries a release from its Guarantee of the $150 million New Notes and which provided Metals with no actual benefit whatsoever, was made with Metals receiving less than reasonably equivalent value and less than fair consideration. This transaction was not in the best interest of Metals and resulted in Metals giving up valuable rights in return for nothing of benefit. Furthermore, Rennert knew that Metals was insolvent and would b rendered insolvent or further insolvent.

G. The Director and Officer Defendants

275. Defendants Fay, D'Atri, Sadlowski and Ryan were Directors and/or Officers of Group (collectively, the "Director and Officer Defendants").

276. As Directors and Officers they had fiduciary duties which included the duties of due care, good faith and loyalty to Group, as well as to the subsidiaries that Group controlled, including Metals, MagCorp and Sabel Industries.

277. The Director and Officer Defendants breached their duties when they caused Metals to incur substantial indebtedness by issuing $150 million in New Notes. Inasmuch as Metals already had $75 million of outstanding Old Notes, the sole purpose of the 1996 issuance was to finance a $75.7M Dividend to Group, an $8.5 million

redemption of the preferred stock held by Group, and the $5.3 million in NWAA Payments to the MagCorp Officer Defendants.

278. The Director and Officer Defendants breached their duties when they caused Metals to dissipate assets in that (1) a premium of approximately $12 million was paid by Metals unnecessarily to retire the Old Notes, (2) $6 million in underwriters' fees were paid to DLJ, and (3) additional costs and fees were incurred in connection with the 1996 Offering.

279. In fiscal 1996, the Director and Officer Defendants knowingly or recklessly caused Metals to make fraudulent transfers of (1) $88.95 million in dividends to Group, including $75.03 million paid in conjunction with the New Notes, (2) $8.5 million to Group in redemption of the outstanding preferred stock, and (3) $6.23 million to the MagCorp Officer Defendants as NWAA Payments, including $5.3 million triggered by the $75.03 million dividend to Group.

280. In fiscal 1997, the Director and Officer Defendants knowingly or recklessly caused Metals to make further fraudulent transfers of $6.6 million in dividends to Group, and $462,000 to the MagCorp Officer Defendants as NWAA Payments.

281. In fiscal 1998, the Director and Officer Defendants knowingly or recklessly caused Metals to make further fraudulent transfers of $7.2 million in dividends to Group, and $504,000 to the MagCorp Officer Defendants as NWAA Payments.

282. On December 4, 2000, the Director and Officer Defendants knowingly or recklessly caused Metals to sell Sabel Industries to Sabel Holdings in exchange for $8

million. In connection with this sale, Sabel Industries was released from its Guarantee of $150 million in New Notes.

283. The Director and Officer Defendants caused Metals to prepare false and misleading financial statements and disclosures which they knew, or should have known, did not disclose the enormous probable environmental liabilities of MagCorp.

284. The Director and Officer Defendants knew or should have known that Metals was insolvent at the time of the 1996 Offering and the related dividend, stock redemption and NWAA transfers.

285. The Director and Officer Defendants knew, on the basis of the financial projections for Metals and MagCorp, that even without giving effect to the probable environmental liabilities of MagCorp, Metals would be unable to retire the New Notes when they became due in 2003.

286. The Director and Officer Defendants knew or should have known that the 1996 Offering and related transfers, and the 1997 and 1998 payments described above would cause the deepening insolvency of Metals.

287. The Director and Officer Defendants knew that the $75.7M Dividend, the Stock Redemption and the NWAA Payments in 1996 would render Metals insolvent in that Metals' stated liabilities (even without giving effect to the probable environmental liabilities) exceeded its assets.

288. The Director and Officer Defendants knew that the $75.7M Dividend, the Stock Redemption and the NWAA Payments in 1996 were made without Metals

receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration.

289. The Director and Officer Defendants knew that the dividends and the NWAA Payments in 1997 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration. Furthermore, the Director and Officer Defendants knew that Metals was insolvent and would be rendered further insolvent by these transfers.

290. The Director and Officer Defendants knew that the dividends and the NWAA Payments in 1998 were made without Metals receiving any consideration, were for less than reasonably equivalent value, and were for less than fair consideration. Furthermore, the Director and Officer Defendants knew that Metals was insolvent and would be rendered further insolvent by these transfers.

291. The Director and Officer Defendants knew that the sale of Sabel Industries in 2000, which included granting Sabel Industries a release from its Guarantee of the $150 million in New Notes and which provided Metals with no actual benefit whatsoever, was made with Metals receiving less than reasonably equivalent value and less than fair consideration. This transaction was not in the best interests of Metals and resulted in Metals giving up valuable rights in return for nothing of benefit. Furthermore, the Director and Officer Defendants knew that Metals was insolvent and would be rendered further insolvent by these transfers.

H. The MagCorp Executive Officer Defendants

292. Defendants Legge, Thayer, Ogaard, Brown and Kaplan were officers of MagCorp who constituted senior management of the subsidiary (the "MagCorp Officer Defendants"). As officers of the corporation, they owed fiduciary duties to MagCorp.

293. Among the fiduciary duties of the MagCorp Officer Defendants was a duty to make certain that the corporation's financial information was properly reported and the company's financial statements, which were ultimately filed with the SEC, incorporated into public offering documents, and made available to the public, were reasonably accurate and in accordance with GAAP.

294. The MagCorp Officer Defendants caused MagCorp, and therefore Metals, to prepare false and misleading financial statements and disclosures which they knew or should have known did not reflect MagCorp's probable environmental liabilities. The MagCorp Officer Defendants were very familiar with the operations of the Rowley Facility and the generation and disposal of hazardous waste at that facility.

295. The MagCorp Officer Defendants were very familiar with the communications between MagCorp and the EPA and the State of Utah regarding wastes generated and disposed at the Rowley Facility.

296. The MagCorp Officer Defendants knew or should have known that MagCorp faced potentially massive environmental costs as a result of the generation and the disposal of hazardous and/or regulated wastes at the Rowley Facility.

297. Notwithstanding their knowledge, the MagCorp Officer Defendants failed to cease operating the magnesium production facilities at the Rowley facility and/or to

take action to cause MagCorp to comply with all federal, state and local environmental laws and regulations. Furthermore, notwithstanding their knowledge, the MagCorp Officer Defendants failed to cause MagCorp to create a financial reserve for the probable environmental liabilities that the corporation faced.

298. Despite this knowledge, the MagCorp Officer Defendants failed to ensure MagCorp's compliance with GAAP in its 1992, 1993, 1994, 1995, 1996, 1997 and 1999 financial statements. This GAAP failure came as a result of MagCorp's failure to adequately provide for or disclose the material fact that MagCorp faced probable liabilities in connection with compliance and remediation of hazardous wastes under RCRA and the Utah Solid and Hazardous Waste Control Act.

299. Between 1993 and the date of commencement, the MagCorp Officer Defendants worked with KPMG in connection with KPMG's annual audits. As a result, MagCorp's liabilities were substantially understated and did not reflect that MagCorp was insolvent in that its liabilities, including the probable environmental liabilities, exceeded its assets. As a consequence, each of these individuals knew or should have known that the certified audit reports of KPMG misrepresented MagCorp's true condition.

300. Each of the MagCorp Officer Defendants had a conflict of interest in that he was entitled to substantial payments under his NWAA Agreement with MagCorp. These individuals were not acting in the best interests of MagCorp and were in fact acting in their own best interest in that each time a dividend was paid to Group, they became entitled to substantial additional compensation.

301. These Defendants should have, *inter alia*, (a) ensured MagCorp's compliance with applicable environmental law; (b) insisted on Metals' adequate and full disclosure in connection with the 1996 Offering; (c) ensured that MagCorp's 1996 through 1999 financial statements were fairly and accurately represented; (d) taken steps to avert and/or reverse MagCorp's deepening insolvency; and (e) refrained from taking increased compensation during the same period.

I. The Rennert Trusts

302. Upon information and belief, the Rennert Trusts are the ultimate repositories of some or all of the dividends and stock redemption payments from Metals to Group.

J. Sabel Holdings

303. Upon information and belief, Sabel Holdings is the ultimate repository of the assets of Sabel Industries that were transferred in connection with the sale of all outstanding stock of Sabel Industries on or about December 4, 12000.

VI. DUTIES OF THE DEFENDANTS

304. As the persons ultimately responsible for Debtors' management, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants owed fiduciary duties to Metals and MagCorp. These duties include the duties of due care, good faith and loyalty to the corporations they served.

305. Notwithstanding such fiduciary duties, at the instance of the Defendants, Debtors' true financial condition was concealed in order to create the illusion of

corporate solvency to justify the $75.7M Dividend, the Stock Redemption and the NWAA Payments, to the detriment of Debtors and their creditors.

306. The façade of corporate solvency allowed Group and its shareholders, Rennert and the Rennert Trusts, to profit enormously by allowing them to be paid more than $100 million in dividends and stock redemptions, but was completely and directly at odds with the interests of Metals, MagCorp and their creditors.

307. Each of the Defendants herein assisted Group in its concealment and also acted in their own capacity to conceal the environmental liabilities in connection with the Metals' issuance of $150 million in New Notes. In so doing, each of the Defendants herein caused Debtors to be encumbered with millions of dollars in debt that they knew, or with reckless disregard for the truth should have known, could not be repaid.

308. The Professional Defendants additionally breached their fiduciary duties independently owed to Metals and its subsidiary, MagCorp, as Metals' financial advisors, consultants, investment advisors, underwriters, and legal counsel, in dereliction of the trust and confidence Metals placed in them.

309. As financial and/or legal advisors to the Debtors, the Professional Defendants owed fiduciary, contractual and/or common law duties to Metals to act with the utmost care and loyalty and to cause all material facts concerning the Debtors' businesses to be disclosed.

310. Had the Professional Defendants properly discharged their fiduciary duties, their contractual duties and their common law duties to Debtors, they would have

precluded Metals from incurring unnecessary indebtedness and making conveyances that rendered their clients insolvent.

311. As Metals and MagCorp reached the point of insolvency, Group, Rennert (as controlling shareholder), the Director and Officer Defendants and the MagCorp Officer Defendants owed a fiduciary duty not only to the corporations, but also to the creditors of these corporations. Among other things, this fiduciary duty required that Debtors' assets be preserved for the benefit of the entire corporate enterprise, and that all material information regarding Metals and MagCorp and their financial affairs be fully and fairly disclosed to their creditors. As explained elsewhere in this Complaint, in violation of the fiduciary duties owed to Debtors and Group, with the substantial assistance of the other Defendants, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants caused the enormous potential environmental liabilities facing MagCorp to be concealed and/or misrepresented long after both corporations became insolvent.

312. In failing to properly discharge their fiduciary, contractual and/or common law duties to Metals, all of the Defendants artificially prolonged the life of Metals and MagCorp while giving the illusion to the Note Holders, Metals and MagCorp's other creditors, and the SEC that their business was solvent when, in fact, it was not. Defendants allowed Metals and MagCorp to deepen their insolvency and continue to operate under debt that could not be repaid up to the time of bankruptcy in 2001. Had Defendants not engaged in misconduct, the true financial condition of Metals and MagCorp would have been revealed and steps could have been taken to prevent the

Debtors from suffering additional harm and losses including, if necessary, seeking an earlier reorganization or liquidation in bankruptcy.

313. Specifically, in the discharge of their fiduciary, contractual and/or duties to Metals and MagCorp, Defendants were obligated to: (a) ensure MagCorp's compliance with applicable environmental law; (b) insist on Metals' adequate and full disclosure in connection with the 1996 Offering; (c) ensure that MagCorp's 1996-2001 financial statements were fairly and accurately represented; (d) take steps to avert and/or reverse MagCorp's deepening insolvency; and (e) refrain from taking increased compensation during the same period.

VII. COUNTS AND CAUSES OF ACTION

COUNT 1
(Breach Of Fiduciary Duty As Against KPMG)

314. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

315. As described herein, KPMG breached its fiduciary duties by, among other things, participating in, assisting and/or concealing other wrongful conduct. As a direct and foreseeable result of KPMG's breach of fiduciary duties, Debtors' corporate existence were artificially maintained and prolonged.

316. KPMG received substantial economic benefits as a result of its participating in, assisting and/or concealing other wrongful conduct.

317. As a proximate result of KPMG's breach of its fiduciary duties, Debtors have been damaged in an amount to be proven at trial.

COUNT 2
(Negligence/Professional Malpractice As Against KPMG)

318. All foregoing paragraphs of the Complaint are incorporated into this Count.

319. KPMG performed professional services for Debtors as, *inter alia*, Debtors' auditors.

320. In performing these professional services for Debtors, KPMG had a duty to Debtors to comply with GAAS and to plan, structure and perform its work in a professional manner, using the degree of care normally used and expected of a reasonably prudent independent certified public accountant.

321. KPMG breached its duties of professional care in that it failed to perform the audits in accordance with GAAS, failed to plan, structure, and perform its work in a professional manner, and failed to use the degree of care and skill normally used and expected of reasonably prudent certified public accountants and financial advisors.

322. As direct and proximate results of KPMG's breach of its duty of care, Debtors have been damaged in an amount to be proven at trial.

COUNT 3
(Aiding And Abetting Fraudulent Conveyance As Against KPMG)

323. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

324. As described herein, Group, Rennert and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the MagCorp Officer Defendants for which Metals did not receive fair consideration, and

such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

325. KPMG knowingly and recklessly encouraged, induced and assisted Group, Rennert and the Director and Officer Defendants in making such fraudulent conveyances.

326. KPMG was aware of the legal obligation of Group, Rennert and the Director and Officer Defendants not to make conveyances when Metals was insolvent or would be rendered by insolvent by such conveyances.

327. KPMG received substantial economic benefits as a result of its aiding and abetting of Group's, Rennert's and the Director and Officer Defendants' fraudulent conveyances. As a direct and proximate result of the fraudulent conveyances which KPMG aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 4
(Aiding And Abetting Breach Of Fiduciary As Against KPMG)

328. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

329. As alleged herein, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants breached their fiduciary duties to Debtors.

330. KPMG knew that Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants herein breached their fiduciary duties to Debtors by misrepresenting Debtors' financial condition and activities.

331. KPMG provided substantial assistance to Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants in breaching their fiduciary

duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

332. KPMG received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants. As a direct and proximate result of the breaches of fiduciary duties, which KPMG aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 5
(Breach Of Contract As Against KPMG)

333. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

334. KPMG entered into written contracts with Debtors regarding the provision of auditing and financial services.

335. KPMG breached its contractual duty of due professional care in performing the annual audits of the consolidated financial statements of Metals and its subsidiaries for fiscal years 1993 through 1999 including, but not limited to, its duty to conduct audits in accordance with GAAS.

336. As a proximate result of KPMG's breaches, Debtors have been damaged in an amount to be proven at trial.

COUNT 6
(Negligent Misrepresentation As Against KPMG)

337. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

338. KPMG carelessly or negligently made false representations and/or omissions in the financial statements and disclosures relating to Metals and its subsidiaries.

339. KPMG made all representations described herein for financial gain in the course of its profession as Debtors' independent certified public accountants.

340. KPMG made these false representations and/or omissions concerning material facts, expecting and realizing that the representations and omissions would be disseminated to the SEC, the Indenture Trustee, Debtors' creditors and the investing public.

341. KPMG made these false representations and/or omissions concerning material facts, expecting and realizing that Debtors and those to whom such financial statements and disclosures would be disseminated would rely and act upon the representations and omissions.

342. KPMG was in a superior position to know the material facts because it audited Debtors' financial statements.

343. Debtors reasonably relied upon the representations and/or omissions in further disseminating and republishing the representations and omissions; in incurring additional indebtedness; in failing to take corrective action; and in failing to redress corporate mismanagement and waste.

344. As a result of these misrepresentations and/or omissions, each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders

were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred millions of dollars of debt they could not repay.

345. As a direct and proximate result of the misrepresentations and/or omissions, Debtors sustained damages in an amount to be proven at trial.

COUNT 7
(Conspiracy As Against KPMG)

346. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

347. In engaging in the conduct described in this Complaint, KPMG combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances described herein.

348. KPMG engaged in such conduct knowingly, intentionally and purposefully. KPMG knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

349. KPMG was without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties owed to Debtors, and to aid and abet the fraudulent conveyances, and, in addition, constituted a breach of its own fiduciary duties to Debtors.

350. KPMG's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain

corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

351. As a direct and proximate result of KPMG's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 8
(Breach Of Fiduciary Duty As Against DLJ)

352. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

353. DLJ had a fiduciary relationship and owed fiduciary duties to Debtors which arose by virtue of the investment banking and financial advisory services that it provided to Metals, and by virtue of the trust and confidence Metals reposed it DLJ.

354. As described herein, by participating in and/or assisting in transfers that DLJ knew would constituted fraudulent conveyances *per se* under federal and/or state law, DLJ breached its own independent fiduciary duty. As a direct and foreseeable result of DLJ's breach of fiduciary duties, each Debtor's corporate existence was artificially maintained and prolonged.

355. As a proximate result of DLJ's breach of its fiduciary duties, Debtors have been damaged in an amount to be proven at trial.

COUNT 9
(Aiding And Abetting Breach Of Fiduciary Duty As Against DLJ)

356. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

357. As alleged herein, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants breached their fiduciary duties owed to Metals and MagCorp.

358. DLJ knew that such Defendants herein breached their fiduciary duties to Debtors by misrepresenting Debtors' financial condition and activities.

359. DLJ provided substantial assistance to Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

360. DLJ received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants. As a direct and proximate result of the breaches of fiduciary duties, which DLJ aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 10
(Aiding And Abetting Fraudulent Conveyance As Against DLJ)

361. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

362. As described herein, Group, Rennert and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the MagCorp Officer Defendants for which Metals did not receive fair consideration, and such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

363. DLJ knowingly and recklessly encouraged, induced and assisted Group, Rennert and the Director and Officer Defendants in making such fraudulent conveyances.

364. DLJ was aware of the legal obligation of Group, Rennert and the Director and Officer Defendants not to make conveyances when Metals was insolvent or would be rendered insolvent by such conveyances.

365. DLJ received substantial economic benefits as a result of its aiding and abetting of Group's, Rennert's and the Director and Officer Defendants' fraudulent conveyances. As a direct and proximate result of the fraudulent conveyances which DLJ aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 11
(Negligent Misrepresentation As Against DLJ)

366. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

367. In connection with the 1996 Offering, DLJ carelessly and/or negligently made false representations and/or omissions in the 1996 Offering documents and disclosures relating to Metals and its subsidiaries.

368. DLJ made oral representations described herein for financial gain in the course of its profession as Metals' investment banker and financial adviser.

369. DLJ made these false representations and/or omissions concerning material facts expecting and realizing that the representations and omissions would be disseminated to the SEC, the Indenture Trustee, Debtors' creditors and the investing public.

370. DLJ made these false representations and/or omissions concerning material facts expecting and realizing that Debtors and those to whom such public offering documents and disclosures would be disseminated would rely and act upon the representations and omissions.

371. DLJ was in a superior position to know the material facts because it had conducted due diligence in connection with the 1996 Offering.

372. Debtors reasonably relied upon the representations and/or omissions in further disseminating and republishing the representations and omissions and in incurring additional debt.

373. As a result of these misrepresentations and/or omissions, each Debtor's corporate existence was artificially maintained and prolonged; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

374. As a direct and proximate result of the misrepresentations and/or omissions, Debtors sustained damages in an amount to be proven at trial.

COUNT 12
(Conspiracy As Against DLJ)

375. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

376. In engaging in the conduct described in this Complaint, DLJ combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to

breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances.

377. DLJ engaged in such conduct knowingly, intentionally and purposefully. DLJ knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

378. DLJ was without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties to Debtors, and to aid and abet the fraudulent conveyances, and, in addition, constituted a breach of its own fiduciary to Debtors.

379. DLJ's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

380. As a direct and proximate result of DLJ's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 13
(Breach of Contract As Against DLJ)

381. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

382. DLJ entered into a written contract with Metals entered into written regarding the provision of advisory services, including the analysis of the financial conditions of Metals and MagCorp in connection with the 1996 Offering.

383. As described herein DLJ breached its contractual duties, including its duty of good faith and fair dealing.

384. DLJ breached its contractual duty of due professional care in rendering such consulting and financial services to Metals.

385. As a proximate result of DLJ's breaches, Debtors have been damaged in an amount to be proven at trial.

COUNT 14
(Aiding And Abetting Fraudulent Conveyance As Against Houlihan Lokey)

386. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

387. As described herein, Group, Rennert and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the MagCorp Officer Defendants for which Metals did not receive fair consideration, and such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

388. Houlihan Lokey knowingly and recklessly encouraged, induced and assisted Group, Rennert and the Director and Officer Defendants in making such fraudulent conveyances.

389. Houlihan Lokey was aware of the legal obligation of Group, Rennert and the Director and Officer Defendants not to make conveyances when Metals was insolvent or would be rendered by insolvent by such conveyances.

390. Houlihan Lokey received substantial economic benefits as a direct and proximate result of the fraudulent conveyances which Houlihan Lokey aided and abetted. Debtors have been damaged in an amount to be proven at trial.

COUNT 15
(Aiding And Abetting Breach Of Fiduciary Duty As Against Houlihan Lokey)

391. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

392. As alleged herein, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants breached their fiduciary duties to Debtors. Houlihan Lokey knew that such Defendants herein breached their fiduciary duties to Debtors by misrepresenting Debtors' financial condition and activities.

393. Houlihan Lokey provided substantial assistance to Group, Rennert, the Director and Officer Defendants and the MagCorp Defendants in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

394. Houlihan Lokey received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants. As a direct and proximate result of the breaches of fiduciary duties, which Houlihan Lokey aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 16
(Conspiracy As Against Houlihan Lokey)

395. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

396. In engaging in the conduct described in this Complaint, Houlihan Lokey combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances.

397. Houlihan Lokey engaged in such conduct knowingly, intentionally and purposefully. Houlihan Lokey knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

398. Houlihan Lokey was without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties to Debtors, and to aid and abet the fraudulent conveyances, and, in addition, constituted a breach of its own fiduciary to Debtors.

399. Houlihan Lokey's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

400. As a direct and proximate result of Houlihan Lokey's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 17
(Breach Of Contract As Against Houlihan Lokey)

401. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

402. Houlihan Lokey entered into written contracts with Debtors regarding the provision of advisory services, including the analysis of the financial conditions of Metals and MagCorp and the rendering of a solvency opinion.

403. Houlihan Lokey breached its contractual duties, including its duty of good faith and fair dealing.

404. As a proximate result of Houlihan Lokey's breaches, Debtors have been damaged in an amount to be proven at trial.

COUNT 18
(Breach of Fiduciary Duty As Against Cadwalader)

405. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

406. Cadwalader had a fiduciary relationship with and owed fiduciary duties to Metals which arose by virtue of its role as attorneys and legal advisors to Metals in connection with the 1996 Offering, and by virtue of the trust and confidence Metals reposed in Cadwalader.

407. The fiduciary relationship existed when Cadwalader transcended the usual scope of the attorney-client relationship and committed and/or participated in the wrongful acts described herein.

408. As described herein, Cadwalader breached its fiduciary duties by, among other things, participating in, assisting and/or concealing other wrongful conduct. As a direct and foreseeable result of Cadwalader's breach of fiduciary duties, Debtors' corporate existence were artificially maintained and prolonged.

409. As a proximate result of Cadwalader's breach of its fiduciary duties, Debtors have been damaged in an amount to be proven at trial.

COUNT 19
(Aiding And Abetting Breach Of Fiduciary Duty As Against Cadwalader)

410. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

411. As alleged herein, Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants breached their fiduciary duties to Debtors.

412. Cadwalader knew that such Defendants herein breached their fiduciary duties to Debtors by misrepresenting Debtors' financial condition and activities.

413. Cadwalader provided substantial assistance to Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants in breaching his fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in fraudulent activity and other wrongful conduct.

414. Cadwalader received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by Group, Rennert, the Director and Officer Defendants and the MagCorp Officer Defendants. As a direct and proximate result of the breaches of fiduciary duties, which Cadwalader aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 20
(Aiding And Abetting Fraudulent Conveyance As Against Cadwalader)

415. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

416. As described herein, Group, Rennert and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the MagCorp Officer Defendants for which Metals did not receive fair consideration, and such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

417. Cadwalader knowingly and recklessly encouraged, induced and assisted Group, Rennert and the Director and Officer Defendants in making such fraudulent conveyances.

418. Cadwalader was aware of the legal obligation of Group, Rennert and the Director and Officer Defendants not to make conveyances when Metals was insolvent or would be rendered by insolvent by such conveyances.

419. Cadwalader received substantial economic benefits as a result of its aiding and abetting of the fraudulent conveyances. As a direct and proximate result of the fraudulent conveyances which Cadwalader aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 21
(Conspiracy As Against Cadwalader)

420. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

421. In engaging in the conduct described in this Complaint, Cadwalader combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances.

422. Cadwalader engaged in such conduct knowingly, intentionally and purposefully. Cadwalader knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

423. Cadwalader was without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties to Debtors, and to aid and abet the fraudulent conveyances, and, in addition, constituted a breach of its own fiduciary to Debtors.

424. Cadwalader's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

425. As a direct and proximate result of Cadwalader's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 22
(Negligence/Professional Malpractice As Against Cadwalader)

426. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

427. Cadwalader performed professional services for Metals, as Metals' attorneys and legal advisors in connection with the 1996 Offering.

428. In performing these professional services for Metals, Cadwalader had a duty to perform its work in a professional manner, using the degree of care normally used and expected of reasonably prudent attorneys in the locales where Cadwalader performed such work.

429. Cadwalader breached its duties of professional care in that it failed to perform its work in a professional manner, and failed to use the degree of care and skill normally used and expected of reasonably prudent attorneys in like locales.

430. As direct and proximate results of Cadwalader's breach of its duty of care, Metals has been damaged in an amount to be proven at trial.

COUNT 23
(Breach of Fiduciary Duty As Against Rennert)

431. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

432. Rennert had a fiduciary relationship with and owed fiduciary duties to Metals and MagCorp and, once these corporations became insolvent, to their creditors as well. Rennert's fiduciary relationship with Metals and MagCorp arose by virtue of his being a majority and controlling shareholder of Group and because of Group's adverse domination and control; and by virtue of being the sole director and Chief Executive Officer of both Metals and MagCorp.

433. Rennert caused Metals to act for benefit of Group and of the MagCorp Officer Defendants and to the detriment of Metals. Specifically, Rennert, acting in his

capacity as Director of Metals and MagCorp, enabled and caused to occur the 1996 Offering and the simultaneous and subsequent transfers to Group and to the MagCorp Officer Defendants.

434. Rennert's fiduciary duties are based on the fiduciary duties owed a company by majority and controlling shareholders, especially in light of Group's adverse domination and control of Metals. Furthermore, Renner's fiduciary duties are based on the fiduciary duties owed by a director and officer, which duties include the duties of due care, good faith and loyalty.

435. The fiduciary duties arose because of the special confidence reposed in Rennert by Metals and MagCorp. Metals and MagCorp reposed in Rennert that special confidence giving rise to fiduciary duties on Rennert who, in equity and good conscience, was bound to act in good faith and with due regard. Rennert's violation of that trust gives rise to the breach of fiduciary claim here asserted by Plaintiff.

436. Rennert breached his fiduciary duties to Metals and MagCorp, and subsequently to their creditors, by, among other things, engaging in the fraudulent transfers described herein, misrepresenting and concealing the true financial condition of Metals and MagCorp, and particularly with regard to the environmental liabilities of MagCorp, and by his acting with respect to Metals and MagCorp for the benefit and financial gain of Rennert and the Rennert Trusts.

437. As a direct and foreseeable result of Rennert's breach of fiduciary duties, each Debtor's corporate existence was artificially maintained and prolonged.

438. As a direct and proximate result of Rennert's breaches of fiduciary duties, Debtors have been damaged in an amount to be proven at trial.

COUNT 24
(Fraudulent Conveyance As Against Rennert)

439. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

440. As described herein, Metals and MagCorp were caused to make transfers to Group, the MagCorp Officer Defendants and Sabel Holdings in the form of dividends, Stock Redemptions, NWAA Payments and a release from Sabel's Guarantee of the New Notes.

441. Each of the transfers described herein was made at a time when Metals and MagCorp were insolvent, in that their assets exceeded liabilities at fair value, or that one or more of such transfers rendered Metals and MagCorp insolvent.

442. The dividend, Stock Redemption, NWAA Payments and the release of Sabel Industries from its Guarantee of the New Notes were given without fair consideration and for less than reasonable equivalent value. Accordingly, such transfers constituted fraudulent conveyances *per se* under federal and/or state law.

443. As described herein, Rennert was instrumental in causing Metals and MagCorp to make such fraudulent conveyances, and Rennert and the Rennert Trusts (of which he was settlor) benefited as a result.

444. As a direct and proximate result of the fraudulent conveyances, which Rennert caused Metals and MagCorp to make, Debtors have been damaged in an amount to be proven at trial.

COUNT 25
(Aiding And Abetting Breach Of Fiduciary As Against Rennert)

445. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

446. As alleged herein, the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants breached their fiduciary duties to Debtors.

447. Rennert knew that the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants herein breached their fiduciary duties to Debtors by misrepresenting the financial condition and activities of Metals and MagCorp.

448. Rennert provided substantial assistance to the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

449. Rennert received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants. As a direct and proximate result of the breaches of fiduciary duties, which Rennert aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 26
(Aiding And Abetting Fraudulent Conveyance As Against Rennert)

450. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

451. Rennert was aware of the legal obligation of Metals not to make conveyances when Metals was insolvent or would be rendered by insolvent by such conveyances.

452. As described herein, Group and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the MagCorp Officer Defendants for which Metals did not receive fair consideration, and such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

453. Rennert knowingly and recklessly encouraged, induced and assisted Group and the Director and Officer Defendants in making such fraudulent conveyances.

454. Rennert received substantial economic benefits as a result of his aiding and abetting of Group's and the Director and Officer Defendants' fraudulent conveyances. As a direct and proximate result of the fraudulent conveyances which Rennert aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 27
(Negligent Misrepresentation As Against Rennert)

455. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

456. As a Director and the Chief Executive Officer of Metals and MagCorp, Rennert carelessly or negligently made false representations and/or omissions in the financial statement and disclosures relating to Metals and its subsidiaries.

457. Rennert made these false representations and/or omissions concerning material facts, expecting and realizing that the representations and omissions would be disseminated to the SEC, the Indenture Trustee, Debtors' creditors and the investing public.

458. Rennert made these false representations and/or omissions concerning material facts, expecting and realizing that Debtors and those to whom such financial statements and disclosures would be disseminated would rely and act upon the representations and omissions.

459. Rennert was in a superior position to know the material facts because he was Director and the Chief Executive Officer of both Metals and MagCorp.

460. Debtors reasonably relied upon the representations and/or omissions in further disseminating and republishing the representations and omissions; in incurring additional debt; in failing to take corrective action; and in failing to redress corporate mismanagement and waste.

461. As a result of these misrepresentations and/or omissions, each Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

462. As a direct and proximate result of the misrepresentations and/or omissions, Debtors sustained damages in an amount to be proven at trial.

COUNT 28
(Conspiracy As Against Rennert)

463. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

464. In engaging in the conduct described in this Complaint, Rennert combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances.

465. Rennert engaged in such conduct knowingly, intentionally and purposefully. Rennert knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

466. Rennert was without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties to Debtors, and to aid and abet the fraudulent conveyances, and, in addition, constituted a breach of its own fiduciary to Debtors.

467. Rennert's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

468. As a direct and proximate result of Rennert's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 29
(Statutory Misconduct Of Directors And Officers As Against Rennert, New York Business Corporation Law § 720)

469. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

470. As described herein, as a Director and the Chief Executive Officer of Metals and of MagCorp, Rennert neglected, failed to perform, and otherwise violated his duties in the management and disposition of corporate assets committed to his charge.

471. Furthermore, as described herein, Defendant Rennert, in violation of his fiduciary duties to each corporation, acquired for himself, transferred to others, and/or lost or wasted corporate assets in the neglect of, failure to perform and otherwise in violation of his duties.

472. As a result of Rennert's neglect of, failure to perform and other violations of his duties in the management and disposition of corporate assets committed to his charge, debtors have been damaged in an amount to be proven at trial.

COUNT 30
(Breach of Fiduciary Duty As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

473. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

474. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan each had a fiduciary relationship with and owed fiduciary duties to Metals and MagCorp

which arose by virtue of their roles as directors and/or officers of these corporations or of corporations controlling Metals and MagCorp, and by virtue of the trust and confidence Metals and MagCorp reposed in them. Such fiduciary duties included the duties of due care, good faith and loyalty to the corporations.

475. That obligation includes ensuring that the financial information of the corporation is properly reported and that the corporation's financial statements, which are ultimately filed with SEC and made available to creditors and the investing public, are reasonably accurate and in accordance with GAAP.

476. As described herein, these Defendants breached their fiduciary duties by, among other things, making false representations and/or omissions in the financial statements and disclosures relating to Metals and its subsidiaries. Furthermore, these Defendants breached their fiduciary duties by concealing the probable environmental liabilities faced by MagCorp and, hence, by Metals. Additionally, these Defendants caused, assisted or participated in conveyances by Metals and MagCorp which they knew or should have known constituted fraudulent conveyances *per se*, and participated in, assisted and/or concealed other wrongful conduct. As a direct and foreseeable result of these Defendants' breaches of their fiduciary duties, each Debtor's corporate existence was artificially maintained and prolonged.

477. As a proximate result of D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan's breach of their fiduciary duties, Debtors have been damaged in an amount to be proven at trial.

COUNT 31
(Fraudulent Conveyance As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

478. As described herein, D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan caused Metals to make conveyances to Group, Sabel Holdings, and the MagCorp Executive Defendants for which Metals did not receive fair consideration.

479. Certain of the conveyances, including the $75.7M Dividend, the Stock Redemption and the $5.3 million NWAA payments to the MagCorp Officer Defendants in 1996 in conjunction with the 1996 Offering caused Metals to be rendered insolvent by such conveyances in that its liabilities exceeded the fair value of its assets.

480. Subsequent conveyances, including the dividends and the NWAA Payments made during fiscal years 1997 and 1998, as well as the sale of Sabel Industries for less than fair consideration in 2000, were made when Metals was already insolvent in that its liabilities exceeded the fair value of its assets.

481. Such conveyances constitute fraudulent conveyances *per se* under federal and/or state law.

482. As a direct and proximate result of the fraudulent conveyances which D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan caused Metals and MagCorp to make, Debtors have been damaged in and amount to be proven at trial.

COUNT 32
(Aiding and Abetting Fraudulent Conveyance As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

483. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

484. As described herein, Metals and MagCorp were caused to make transfers to Group, the MagCorp Officer Defendants and Sabel Holdings in the form of dividends, Stock Redemptions, NWAA Payments and a release from Sabel's Guarantee of the New Notes.

485. Each of the transfers described herein was made at a time when Metals and MagCorp were insolvent, in that their assets exceeded liabilities at fair value, or that one or more of such transfers rendered Metals and MagCorp insolvent.

486. The dividend, Stock Redemption, NWAA Payments and the release of Sabel Industries from its Guarantee of the New Notes were given without fair consideration and for less than reasonable equivalent value. Accordingly, such transfers constituted fraudulent conveyances *per se* under federal and/or state law.

487. As described herein, D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan were instrumental in causing Metals and MagCorp to make such fraudulent conveyances.

488. As a proximate result of D'Atri's, Fay's, Sadlowski's, Ryan's, Legge's, Thayer's, Ogaard's, Brown's and Kaplan's acts in causing or assisting in such fraudulent conveyances, Debtors have been damaged in an amount to be proven at trial.

COUNT 33
(Aiding And Abetting Breach Of Fiduciary As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

489. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

490. As alleged herein, Group, Rennert, the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants breached their fiduciary duties to Debtors.

491. Group, Rennert, each of the other Director and Officer Defendants, each of the other MagCorp Officer Defendants and the Professional Defendants herein breached their fiduciary duties.

492. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan provided substantial assistance to each of the other Defendants in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

493. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by each of the other Defendants. As a direct and proximate result of the breaches of fiduciary duties, which D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 34
(Aiding And Abetting Fraudulent Conveyance As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

494. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

495. As described herein, Rennert, Group and the Director and Officer Defendants caused Metals to make conveyances to Group, Sabel Holdings and the

MagCorp Officer Defendants for which Metals did not receive fair consideration, and such conveyances were made when Metals was insolvent or Metals was rendered insolvent by such conveyances.

496. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan each were aware of the legal obligation of Rennert, Group and the other Director and Officer Defendants not to make conveyances when Metals was insolvent or would be rendered by insolvent by such conveyances.

497. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan each knowingly and recklessly encouraged, induced and assisted Rennert, Group and the other Director and Officer Defendants in making such fraudulent conveyances.

498. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan received substantial economic benefits as a result of its aiding and abetting of Rennert's, Group's and other Director and Officer Defendants' fraudulent conveyances. As a direct and proximate result of the fraudulent conveyances which D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 35
(Negligent Misrepresentation As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

499. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

500. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan carelessly or negligently made false representations and/or omissions in the financial statements and disclosures relating to Metals and its subsidiaries.

501. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan made these false representations and/or omissions concerning material facts, expecting and realizing that the representations and omissions would be disseminated to the SEC, the Indenture Trustee, Debtors' creditors and the investing public.

502. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan made these false representations and/or omissions concerning material facts, expecting and realizing that Debtors and those to whom such financial statements and disclosures would be disseminated would rely and act upon the representations and omissions.

503. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan were in superior positions to know the material facts because they were directors and/or officers of Group, Metals and MagCorp.

504. Debtors reasonably relied upon the representations and/or omissions in further disseminating and republishing the representations and omissions; in incurring additional debt; in failing to take corrective action; and in failing to redress corporate mismanagement and waste.

505. As a result of these misrepresentations and/or omissions, each of Debtors' corporate existences was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

506. As a direct and proximate result of the misrepresentations and/or omissions, Debtors sustained damages in an amount to be proven at trial.

COUNT 36
(Conspiracy As Against D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan)

507. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

508. In engaging in the conduct described in this Complaint, D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan combined, associated, agreed, mutually undertook or concerted together with other Defendants herein to damage Debtors in at least the following ways: to cause other Defendants to breach their respective fiduciary duties to Debtors; to defraud Debtors; and to aid and abet the fraudulent conveyances.

509. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan engaged in such conduct knowingly, intentionally and purposefully. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan knew that Debtors would be damaged by its conduct and purposefully acted so as to cause Debtors to be so damaged or without regard as to whether Debtors would be so damaged.

510. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan were without legal justification in engaging in such conduct. Such conduct aided and assisted other Defendants to breach their fiduciary duties to Debtors, and aided and abetted the fraudulent conveyances. In addition such conduct constituted a breach of its own fiduciary duty to Debtors.

511. D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan's concerted action caused damage and injury to Debtors in that each of Debtor's corporate existence was artificially maintained and sustained; certain corporate insiders were able to squander, dissipate, loot and mismanage Debtors' assets; and Debtors incurred debt they could not repay.

512. As a direct and proximate result of D'Atri, Fay, Sadlowski, Ryan, Legge, Thayer, Ogaard, Brown and Kaplan's concerted action, Debtors have been damaged in an amount to be proven at trial.

COUNT 37
(Aiding And Abetting Fraudulent Conveyance As Against D'Atri, Keith Sabel and Sabel Holdings)

513. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

514. As described herein, Group, Rennert, and the Director and Officer Defendants caused Metals to make a conveyance on or about December 4, 2000 to Sabel Holdings for which Metals did not receive fair consideration, and such conveyance was made when Metals was insolvent.

515. D'Atri, Keith Sabel and Sabel Holdings knowingly and recklessly encouraged, induced and assisted Rennert, Group and the Director and Officer Defendants in causing Metals to make such fraudulent conveyance.

516. D'Atri, Keith Sabel and Sabel Holdings were aware of the legal obligation of Group, Rennert and the Director and Officer Defendants not to make conveyances when Metals was insolvent.

517. As a direct and proximate result of the fraudulent conveyances which D'Atri, Keith Sabel and Sabel Holdings aided and abetted, Debtors have been damaged in an amount to be proven at trial.

COUNT 38
(Fraudulent Conveyance As Against Group)

518. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

519. As described herein, Metals and MagCorp made transfers to Group, the MagCorp Officer Defendants and Sabel Holdings in the form of dividends, a Stock Redemption, NWAA Payments and a release from the Guarantee of the New Notes.

520. Each of the transfers described herein was made at a time when Metals and MagCorp were insolvent, in that their assets exceeded liabilities at fair value, or that one or more of such transfers rendered Metals and MagCorp insolvent.

521. The dividends, Stock Redemption, NWAA Payments and release were given without fair consideration and for less than reasonable equivalent value. Accordingly, such transfers constituted fraudulent conveyances *per se* under federal and/or state law.

522. As described herein, Group was instrumental in causing Metals and MagCorp to make such fraudulent conveyances.

523. As a direct and proximate result of the fraudulent conveyances, which Group caused Metals and MagCorp to make, Debtors have been damaged in an amount to be proven at trial.

COUNT 39
(Aiding And Abetting Breach Of Fiduciary Duty As Against Group)

524. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

525. As alleged herein, Rennert, the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants breached their fiduciary duties to Metals and MagCorp.

526. Group knew that Rennert, the Director and Officer Defendants, the MagCorp Officer Defendants and the Professional Defendants herein breached their fiduciary duties.

527. Group provided substantial assistance to Group, in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting in their fraudulent activity and other wrongful conduct.

528. Group received substantial economic benefits as a result of its aiding and abetting breaches of fiduciary duties by Group. As a direct and proximate result of the breaches of fiduciary duties, which Group aided and abetted, Debtors have been damaged in an amount to be proven at trial.

529. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

530. As described herein, Group, Rennert and the Director and Officer Defendants caused Metals to make transfers to Group in the form of dividends and stock redemptions, for which Metals did not receive fair consideration, and such transfers were made when Metals was insolvent or Metals was rendered insolvent by such transfers.

531. As described herein, such transfers constituted fraudulent conveyances *per se* under federal and/or state law.

532. Upon information and belief, D'Atri is a trustee or co-trustee of one or more of the Rennert Trusts.

COUNT 40
(Unjust Enrichment As Against D'Atri and Unidentified Trustees of the Rennert Trusts)

533. Upon information and belief, D'Atri, in his capacity as a trustee or co-trustee, and the Unidentified Trustees of the Rennert Trusts were the ultimate transferees of dividends and/or other assets as a result of the fraudulent transfers to Group as described in this Complaint, and the Rennert Trusts were the ultimate depositories of such dividends and/or assets.

534. The Rennert Trusts have reaped substantial financial benefit as a consequence of the fraudulent conveyances to Group as alleged in this Complaint. The Rennert Trusts have and will continue to be unjustly enriched at the expense of Metals, MagCorp and their Creditors if permitted to retain the dividends and/or other assets received as a result of the fraudulent transfers to Group.

535. Accordingly, it is just and proper that D'Atri and the Unidentified Trustees of the Rennert Trusts be ordered to disgorge all dividends and/or other assets received as a result of the fraudulent conveyances to Group.

COUNT 41
(Unjust Enrichment As Against Sabel Holdings)

536. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

537. Upon information and belief, Defendant Sabel Holdings was the ultimate depository of the assets of Sabel Industries transferred in connection with the sale on or about December 4, 2000 of all outstanding stock of Sabel Industries.

538. As described herein, such transfers constituted fraudulent conveyances *per se* under federal and/or state law.

539. Sabel Holdings has reaped substantial financial benefit as a consequence of this fraudulent conveyance alleged in this Complaint. Sabel Holdings has and will continue to be unjustly enriched at the expense of Metals, MagCorp and their Creditors if permitted to retain the proceeds of the fraudulent transfer.

540. Accordingly, it is just and proper that Sabel Holdings be ordered to disgorge all property received in the fraudulent conveyance.

COUNT 42
(Against All Defendants; Violation of Section 170 Of The Delaware General Corporation Law)

541. All of the foregoing paragraphs of the Complaint are incorporated into this Count.

542. As and for an alternative Count against all Defendants, Plaintiff alleges that the dividend paid to Group in July 1996 subsequent to the 1996 Offering was in violation of § 170 of the Delaware General Corporation Law.

543. The July 1996 dividend paid to Group represented an exploitation and wasting of the assets of Metals and MagCorp by the Defendants herein.

544. To the extent that certain of the named Defendants did not directly participate in the payment of the improper dividend in violation of § 170, then said

Defendants assisted, aided and abetted those Defendants who did directly consummate those transactions resulting in the payment of the improper dividend.

545. As a result of the wrongful acts of the Defendants, described herein, Debtors sustained damages in an amount to be proven at trial.

VIII. DEMAND FOR JURY TRIAL

546. Plaintiff demands a jury for all counts so triable.

IX. PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment against Defendants as follows:

A. For judgment against Defendants, and each of them, for actually damages in an amount to be proven at trial, including damages for Debtors' deepening insolvency;

B. For treble damages as allowed pursuant to statutory and common law;

C. For pre-judgment and post-judgment interest as allowed pursuant to statutory and common law;

D. For punitive damages in an amount to be determined at trial;

E. For Plaintiff's taxable costs and expenses of litigation including but not limited to, attorneys' fees pursuant to statutory and common law; and

F. For such other and further relief as the Court deems proper under the circumstances.

RESPECTFULLY SUBMITTED this 31st day of July, 2003

BEUS GILBERT PLLC

By _____

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