



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF DETROIT POLICE AND FIRE)
RETIREMENT SYSTEM, Derivatively On)
Behalf Of NiSource, Inc.,)
Plaintiff,)

v.)

JOSEPH HAMROCK, ARISTEDES S.)
CANDRIS, CAROLYN Y. WOO,)
DEBORAH A. HENRETTA, ERIC L.)
BUTLER, KEVIN T. KABAT, MICHAEL E.)
JESANIS, PETER A. ALTABEF,)
THEODORE H. BUNTING, JR., WAYNE S.)
DEVEYDT, and RICHARD L.)
THOMPSON,)
Defendants,)

and)

NISOURCE, INC.)
Nominal Defendant.)

Civil Action No.

PUBLIC VERSION
FILED May 4, 2021

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

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(“CEO”), seeking to remedy defendants’ breaches of fiduciary duties beginning no later than 2017 and continuing to the present (the “Relevant Period”).

Plaintiff alleges the following based upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through its attorneys, which included, among other things, a request for and inspection of certain non-public books and records pursuant to 8 *Del. C.* § 220 (the “220 Documents”), statements made by the Company and Individual Defendants (defined below), United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding NiSource, news reports, securities analysts’ reports, information made available by the U.S. Government, including a criminal Deferred Prosecution Agreement (“DPA”) entered into by the Company with the U.S. Department of Justice (“DOJ”) and the criminal information (“Criminal Information”) charged against Columbia Gas of Massachusetts (“CMA”), advisories about the Company, and information readily obtainable on the Internet.¹

¹ On February 26, 2020, the DOJ filed the Criminal Information and the DPA in the criminal case against CMA as Exhibits A and C, respectively, to the Plea Agreement entered into by the DOJ and CMA. *United States v. Bay State Gas Co.*, Case No. 1:20-cr-10066-FDS (D. Mass. Feb. 26, 2020), ECF No. 2 (“Plea Agreement”). The Criminal Information was also included as an exhibit to the DPA in the same filing, and filed separately as ECF No. 1. For ease of reference, the DPA is attached to this

I. INTRODUCTION

1. For years, NiSource's Board consciously ignored "mission critical" compliance risks at NiSource's highly regulated wholly-owned gas operations, by failing to implement appropriate pipeline safety measures and failing to ensure that all of NiSource's Gas Subsidiaries (defined below) complied with minimum pipeline safety standards under federal and state law. Despite numerous red flags evidencing violations of gas pipeline safety laws that occurred over a number of years, NiSource's Board breached its non-exculpable fiduciary duties when it failed to heed those warnings and knowingly permitted NiSource's Gas Subsidiaries to operate illegally to minimize costs.

2. Repeatedly, the Board was warned of violations of federal and state pipeline safety laws at NiSource's subsidiaries involving, among other things, (i) substantial risks of dangerous over-pressurization events; (ii) deficient and non-compliant record-keeping and documentation; (iii) weak engineering management; (iv) inadequate mapping and location of pipelines; and (v) insufficient management of change procedures that failed to identify or mitigate risks. In addition, the Board made no effort to implement prudent and reasonable prophylactic safety measures

complaint as Exhibit A and the Criminal Information is attached as Exhibit B, and each document will be hereinafter referred to as such.

designed to prevent a potential catastrophic event – alternative measures that would have been consistent with the “mission critical” goal of protecting public safety. In fact, the Company has admitted that the Board failed to review even a single NiSource gas safety policy during 2016-2017 and continuing through September 2018.

3. The Board’s bad faith actions culminated in a foreseeable and preventable tragic event on September 13, 2018, when NiSource’s wholly-owned gas subsidiary, CMA, triggered a series of five explosions in Lawrence, Andover, and North Andover, Massachusetts (the “Greater Lawrence Explosions”) resulting in 141 fires, one fatality and a number of serious injuries, while forcing approximately 30,000 people to evacuate their homes. The Greater Lawrence Explosions, resulting from the Company’s failure to comply with minimum pipeline safety standards and, more particularly, from the Board’s purposeful failure to oversee the Company’s compliance with pipeline safety standards, led to over \$1 billion in damages to NiSource and subjected the Company and its subsidiaries to a multitude of criminal and regulatory sanctions.

4. Less than a year and a half later, on February 26, 2020, NiSource announced an agreement with the DOJ, in which CMA pled guilty to knowing and willful violations of federal pipeline safety laws for failing to meet minimum safety

standards for at least three years leading up to the Greater Lawrence Explosions, and was required to pay a \$53 million fine, the largest criminal fine ever imposed under the federal Pipeline Safety Act. As described by the DOJ in the sentencing memorandum, “The Plea Agreement include[d] unique and significant terms that not only involve the Government and CMA, but also involve CMA’s parent, NiSource.” Sentencing Memorandum at 10, *United States v. Bay State Gas Co.*, Case No. 1:20-cr-10066-FDS (D. Mass. June 2, 2020), ECF No. 35.

5. Concurrently, NiSource entered into a DPA with the U.S. Government, in which it acknowledged that *the DOJ had a sufficient basis to allege that NiSource itself was criminally responsible for the misconduct alleged in the Criminal Information against CMA* – conduct which included “a pattern of flagrant organizational indifference, [and that CMA] knowingly and willfully violated a minimum safety standard for the starting up and shuttering of any part of a distribution pipeline.” Ex. B. The Plea Agreement and the DPA were signed by Defendant Hamrock with the Board’s approval. At a press conference held on February 27, 2020, Andrew E. Lelling, the U.S. Attorney for the District of Massachusetts, stated: “When we were done with the investigation, what was very clear was that *the company as a whole* had simply failed to do what it was supposed to do to maintain the public safety, and had in fact acted with what we call flagrant

disregard for the public safety...[and] knowingly violated minimum safety standards.” (Emphasis added).

6. These “flagrant” organizational failures to protect public safety fell directly at the feet of NiSource and its management, including the Board members, who had deliberately failed to take the necessary actions. The DPA imposed significant penalties on NiSource and its subsidiaries, including CMA. NiSource was required to exit the gas pipeline and distribution business in Massachusetts entirely, and was forced to sell CMA at no profit – with NiSource forfeiting any profits on the sale to the government. NiSource was further required to resolve all civil claims relating to the incident, including claims asserted by the Massachusetts Department of Public Utilities (“DPU”). NiSource was placed on probation for three years subject to certain conditions, including mandatory obligations to implement appropriate minimum safety standards at all of its operating gas subsidiaries. In addition, NiSource paid the record \$53 million criminal fine imposed on CMA.

7. Unsurprisingly, the Greater Lawrence Explosions prompted investigations by other federal and state government authorities and regulatory agencies. On November 14, 2018, the National Transportation Safety Board (the “NTSB”) issued five urgent safety recommendations based on its ongoing investigation concerning the Greater Lawrence Explosions. *See* Exhibit C, NTSB

Safety Recommendation Report (the “Preliminary NTSB Report”). In its news release accompanying the Preliminary NTSB Report, the NTSB stated: “In this investigation, the NTSB issued five urgent safety recommendations to address the imminent threat to life safety created by the conditions discovered thus far in the agency’s ongoing investigation of the accident.” Notably, four of the five safety recommendations were issued directly to NiSource as the responsible party -- not to its operating subsidiary CMA -- and related directly to the failure to maintain minimum safety standards for “mission critical” issues such as compliance with federal and state pipeline safety laws.

8. The NTSB required NiSource to address specific identifiable failures, including:

- The inadequate review of pipeline construction and engineering plans;
- Inadequate records and documentation of natural gas systems and information;
- Failure to use or adopt an adequate “management of change” process to identify system threats; and
- The need to develop and implement control procedures to mitigate risks during management of change operations.

All of these identified failures paralleled violations that had previously occurred at CMA and a number of NiSource’s gas subsidiaries – failures that had not been adequately addressed by the Board or its committees.

9. Similarly, in its final report, adopted on September 24, 2019, the NTSB concluded that “the probable cause of the over-pressurization of the natural gas distribution system and the resulting fires and explosions was the Company’s weak engineering management.” Exhibit D, NTSB Pipeline Accident Report at vii. In other words, the NiSource Board’s lack of oversight over required safety protocols and the failure to establish minimum safety standards led directly to the tragic Greater Lawrence Explosions.

10. Moreover, events subsequent to the Greater Lawrence Explosions provide further confirmation that the Board consciously disregarded its oversight duties when it came to monitoring compliance with pipeline safety laws by all of NiSource’s gas subsidiaries. For example, as part of the CMA’s guilty plea, the court appointed an independent monitor to oversee proper implementation of the necessary remedies related to the NTSB’s recommendations at CMA. That independent monitor further confirmed that the Board failed to do its job, and that the DOJ no longer trusted the Board to do so. Critically, the independent monitor’s final report, which was filed with the federal court on October 7, 2020, outlined how CMA continued to fail to address the NTSB’s recommendations, and how NiSource attempted to take short-cuts by narrowing the focus of the NTSB’s recommendations

in order to show CMA’s purported compliance with them.² Those facts also demonstrate how the Board and Environmental, Safety And Sustainability Committee (the “ES&S Committee”) had for years disregarded their duties to oversee the implementation of these necessary remedies at CMA, and continued to do so.

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The distribution of natural gas through dangerous pipelines is the very definition of operating in a highly regulated and dangerous environment, and the Individual Defendants’ fiduciary duties required them to rigorously exercise their oversight function and ensure that a robust and effective system was in place. A “reasonable board-level system of monitoring and reporting” is particularly important for a company’s “mission critical” compliance risks, such as public safety related to the transmission of natural gas. *Marchand v. Barnhill*, 212 A.3d 805, 821, 824 (Del. 2019). Further, “when a company operates in an environment where externally imposed regulations govern its ‘mission critical’

² Monthly and Final Report, *United States v. Bay State Gas Co.*, Case No. 1:20-cr-10066-FDS (D. Mass. Oct. 7, 2020), ECF No. 52.

operations, the board’s oversight function must be more rigorously exercised” and “[d]irectors must be particularly scrupulous when overseeing the corporation’s compliance with its legal obligations.” *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at *13 (Del. Ch. Oct. 1, 2019); *Lebanon Cty. Employees’ Ret. Fund v. Amerisourcebergen Corp.*, No. CV 2019-0527-JTL, 2020 WL 132752, at *21 (Del. Ch. Jan. 13, 2020), *aff’d*, 243 A.3d 417 (Del. 2020).

[REDACTED]

12. [REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED] In 2012, an old cast-iron pipe system in Springfield, Massachusetts exploded and injured twenty-one people. The DPU had fined CMA for five separate safety violations, including an over-pressurization incident that resulted from inadequate record-keeping. [REDACTED]

[REDACTED]

In 2015, one NiSource subsidiary experienced a “near miss” of a “catastrophic event” involving a repair to a regulator control line – similar to the work performed during the Greater Lawrence Explosions. Prior to the Greater Lawrence Explosions, several of NiSource’s gas subsidiaries were cited by regulators in Massachusetts, Ohio, West Virginia, and Indiana, for serious pipeline safety violations, all of which involved failures similar to the violations underlying the Greater Lawrence Explosions.

14. As the Indiana Utility Regulatory Commission (“IURC”) said in its

November 29, 2017 Order (“2017 IURC Order”), regarding NiSource’s Indiana gas subsidiary, NIPSCO, just months before the Greater Lawrence Explosions:

the Commission is particularly troubled by [the Company’s] acknowledgement that NIPSCO has always had a concern with its maps and records, and that NIPSCO is only in the 65% range for completion of these reform projects ...and that NIPSCO’s failure to complete these reforms is not a resource issue...Given the documentation of these 261 pipeline safety violations, the likelihood of ongoing significant property damage, and the potential loss of life as demonstrated by the gas explosion in San Bruno, California more than seven years ago, the Commission *is extremely concerned that there does not appear to be a sense of urgency on behalf of NIPSCO to update and modernize its pipeline maps and records.* (Emphasis added).

This Order was issued based on NIPSCO’s repeated violations under two prior consent agreements issued in 2013 for pipeline safety violations. Despite the Commission’s extreme concern, under the 2017 IURC Order, NiSource’s Indiana gas subsidiary continued to violate federal and state gas pipeline laws through 2019, having now paid over \$3.9 million in fines for 878 statutory violations reflecting the Company’s knowing disregard for pipeline safety standards even in the wake of the Greater Lawrence Explosions.

15. In the face of these red flags, the Individual Defendants knew that appropriate minimum pipeline safety standards could be achieved through the adoption of the industry-recommended Safety Management System, or “SMS”. In

fact, NiSource introduced the concept of implementing SMS at NiSource’s Virginia gas subsidiary in 2015 – three years before the Greater Lawrence Explosions. Notably, Virginia’s federal and state regulators were and are well-known as some of the “toughest” in the nation, and Virginia has approved rate increases for NiSource’s Virginia customers to pay for its compliance with minimum standards under federal and state laws. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, this derivative action seeks to hold the Individual Defendants responsible for their illegal business decisions, inactions and failures of oversight, which constitute a breach of their fiduciary duties of loyalty, causing the catastrophic Greater Lawrence Explosions and over \$1 billion in damages to NiSource.

II. PARTIES

Plaintiff

17. Plaintiff City of Detroit Police and Fire Retirement System is a shareholder of NiSource and has continuously held NiSource shares since December 2013.

Nominal Defendant

18. Nominal Defendant NiSource is a Delaware corporation with its principal executive offices located at 801 East 86th Avenue, Merrillville, Indiana, 46410. NiSource is a public utility holding company that operates across six states through several wholly-owned subsidiaries, and serves approximately 3.2 million natural gas customers and 500,000 electric customers. NiSource is subject to multiple federal and state regulatory requirements in connection with the transmission and distribution of gas and electricity. NiSource's common stock is

traded on the NYSE Stock Market under the symbol “NI.”

19. NiSource generates substantially all of its operating income through its rate regulated subsidiaries. NiSource’s consolidated financial statements include the accounts and assets of all its majority-owned subsidiaries. In addition, NiSource further discloses in its Annual Reports on SEC Form 10-K that it is dependent on its subsidiaries to operate. For example, NiSource’s 10-Ks from 2017 through 2020 each state:

We are a holding company and conduct our operations primarily through our subsidiaries, which are separate and distinct legal entities. Substantially all of our consolidated assets are held by our subsidiaries. Accordingly, our ability to meet our debt obligations or pay dividends on our common stock and preferred stock is largely dependent upon cash generated by these subsidiaries. In the event a major subsidiary is not able to pay dividends or transfer cash flows to us, our ability to service our debt obligations or pay dividends could be negatively affected.

a. NiSource’s Gas Operations

20. Prior to October 9, 2020, NiSource operated a gas business in Massachusetts through its wholly-owned subsidiary CMA. It operated in Springfield, Brockton, Lawrence, Andover, and North Andover and supplied gas to approximately 325,000 customers. After the Greater Lawrence Explosions, NiSource was forced to sell CMA while forfeiting all profits from the sale per the terms of the DPA. *See* Ex. A. On February 26, 2020, NiSource announced that it

had entered into a definitive agreement to sell CMA to Evercore Energy. That deal closed on October 9, 2020. In addition, NiSource is expected to take an approximate \$360 million pre-tax loss for CMA's sale.

21. According to NiSource's 2020 Form 10-K, NiSource owns and controls "five distribution subsidiaries that provide natural gas to approximately 2.4 million residential, commercial and industrial customers in Ohio, Pennsylvania, Virginia, Kentucky, and Maryland. Additionally, [NiSource] distribute[s] natural gas to approximately 848,000 customers in northern Indiana through [its] wholly-owned subsidiary NIPSCO" (collectively referenced with CMA, as NiSource's "Gas Subsidiaries").

22. NiSource's 10-Ks describe how NiSource calculated its "Safety activity costs" at its Gas Subsidiaries, explaining that those costs "[r]epresent[] the difference between costs incurred in eligible safety programs in excess of those being recovered in rates," and how "[t]he eligible cost deferrals represent necessary business expenses incurred in compliance with PHMSA regulations and are targeted to enhance the safety of the pipeline systems." NiSource further explained that "[c]ertain subsidiaries defer the excess costs as a regulatory asset in accordance with regulatory orders and recovery of these costs will be addressed in future base rate proceedings."

The Individual Defendants

23. Defendant Joseph Hamrock (“Hamrock”) has served as the Company’s President and CEO and a member of the Board since July 2015. In 2017, 2018, 2019, and 2020, defendant Hamrock was paid \$5.4 million, \$5.8 million, \$6.6 million, and \$6.5 million respectively. Hamrock was Executive Vice President and Group CEO for NiSource’s Gas Distribution Operations, comprised of local gas distribution companies in Kentucky, Maryland, Massachusetts, Ohio, Pennsylvania and Virginia, from May 2012 to June 2015. Despite the failures in pipeline compliance and the catastrophic explosion, the enormous costs incurred by NiSource (over \$1 billion), and the forced sale of CMA, the NiSource Board increased Hamrock’s compensation by over 20% since 2017.

24. Defendant Peter Altabef (“Altabef”) has served on the Company’s Board since 2017. Altabef serves on the Board’s Finance Committee (Chair) and Nominating and Governance Committee.

25. Defendant Theodore H. Bunting, Jr. (“Bunting”) has served on the Company’s Board since 2018. Bunting serves on the Board’s Audit Committee (Chair) and Nominating and Governance Committee.

26. Defendant Eric L. Butler (“Butler”) has served on the Company’s Board since 2017. Butler serves on the Board’s Compensation Committee (Chair)

and Nominating and Governance Committee.

27. Defendant Aristedes S. Candris (“Candris”) has served on the Company’s Board since 2012. Candris serves on the Board’s Environmental, Safety and Sustainability Committee (Chair) and Nominating and Governance Committee.

28. Defendant Wayne S. DeVeydt (“DeVeydt”) has served on the Company’s Board since 2016. DeVeydt serves on the Board’s Audit Committee and Finance Committee.

29. Defendant Deborah A. Henretta (“Henretta”) has served on the Company’s Board since 2015. Henretta serves on the Board’s Compensation Committee and Audit Committee.

30. Defendant Michael E. Jesanis (“Jesanis”) has served on the Company’s Board since 2008. Jesanis serves on the Board’s Compensation Committee and Environmental, Safety and Sustainability Committee.

31. Defendant Kevin T. Kabat (“Kabat”) has served on the Company’s Board since 2015. Kabat serves on the Board’s Nominating and Governance Committee (Chair).

32. Defendant Carolyn Y. Woo (“Woo”) has served on the Company’s Board since 1998. Woo serves on the Board’s Audit Committee and Finance Committee.

Former Director

33. Defendant Richard L. Thompson (“Thompson”) was a NiSource Board member from May 2004 through May 2019. Defendant Thompson, at the time of his retirement, served as NiSource’s Chairman. Upon his retirement, Thompson was replaced as Chairman of the Board by defendant Kabat. Defendant Thompson attended all ES&S Committee meetings during the Relevant Period, despite him not being a formal member of the ES&S Committee.

34. The defendants identified in ¶¶ 23-33 are sometimes referred to herein as the “Individual Defendants.” The Individual Defendants also made up the entirety of NiSource’s Board of Directors, during the Relevant Period.³

III. SUBSTANTIVE ALLEGATIONS

A. The Greater Lawrence Explosions Occurred on September 13, 2018

35. On September 13, 2018, a series of 141 fires in as many as forty homes and five explosions occurred in Lawrence, Andover, and North Andover, Massachusetts related to CMA’s distribution of natural gas.

36. The facts are relatively straightforward and are a direct and foreseeable result of the Individual Defendants’ bad faith failure to oversee CMA’s compliance

³ Two current directors of NiSource, Deborah Hersman and Lloyd Yates, joined the Board in 2019 and 2020, respectively, after the Greater Lawrence Explosions.

with pipeline safety laws despite numerous red flags warning them to do so. During the course of replacing an aging, cast iron main supply pipe with a modern PVC pipe, CMA employees and contractors began excavating near South Union Street in Lawrence, Massachusetts. Cast iron pipes are much more leak prone than modern PVC pipes. In fact, even though only 2% of distribution mains nationwide are made of cast iron, they accounted for 41% of all fatalities involving gas lines between 2005 and 2017. Like all of its Gas Subsidiaries, CMA generally made safety improvements related to its gas pipelines only if its customers were paying for the Company's safety costs. CMA had received approval (and funding) from the DPU to replace some old cast iron pipes with modern PVC.

37. During the South Union work project, the “control lines” or “regulator sensing lines” were removed along with a piece of discarded pipe. These control lines act as safety sensors and regulate the flow of natural gas through the pipe. When the control lines were removed along with the section of removed cast iron pipe, the control line sent a signal to the distribution center that the main pipe had experienced a drop in pressure. There was no actual drop in pressure as the control lines were measuring nothing, because the pipe had been removed from the network. But the regulator valves did not know that and automatically responded to the perceived pressure drop by increasing the amount of natural gas sent to that pipe.

This caused what is called an “over-pressurization event,” which is when too much gas is pumped into a gas pipe. CMA’s monitoring system in Columbus, Ohio received two high-pressure alarms just before the Greater Lawrence Explosions, but the monitoring center had no safety mechanism in place to open or close the valves.

38. The highly pressurized gas had nowhere else to go but into the homes and businesses of residents supplied by that pipe, which led to a series of explosions.

39. As discussed further below, the CMA contractor and his crew performed their duties as directed, under CMA supervision, and they followed the defective work package CMA developed and approved. Notably, CMA’s work order did not mention a sensor. In other words, this was no accident – the workers performed the work precisely as it was described in their directions from CMA’s poor documentation, which violated both federal and state pipeline safety laws.

40. The Greater Lawrence Explosions led to one fatality, a number of serious injuries, and massive property damage, while forcing approximately 30,000 people to evacuate their homes. The final costs (or damages) to NiSource exceed \$1 billion and also resulted in the Massachusetts Governor’s Office declaring a state of emergency and authorizing Eversource Energy (“Eversource”), another utility company, to coordinate the restoration of gas services. The Greater Lawrence Explosions affected more than 7,500 gas meters. Some customers’ services were

not restored until December 2018.

41. The Greater Lawrence Explosions prompted investigations by federal and state governmental authorities and regulatory agencies. As discussed below, the Massachusetts U.S. Attorney's office investigation would lead to criminal charges against CMA and a guilty plea, and a DPA with NiSource.

42. Less than one month after the Greater Lawrence Explosions, on October 11, 2018, the NTSB issued a preliminary public report, which found that the root cause of the catastrophe was a defective and inadequate construction work package prepared by CMA. Notably, the work package for the South Union Project, which was not prepared by a professional engineer, failed to instruct the crew to deactivate underground pressure sensors from the old pipeline when doing their work.

43. The South Union work package failed to include consideration of the existence of regulator-sensing lines within the scope of the work. The omission of the regulator lines was also not identified by the "constructability review." Constructability reviews are a recognized and generally accepted good engineering practice for the execution of professional design services and are intended to provide an independent and structured review of construction plans and specifications to ensure there are no conflicts, errors, or omissions. The review should be performed

by qualified engineering professionals to identify deficiencies and incorporate improvements into the construction documents. Many jurisdictions also require that plans be approved (i.e., “sealed”) by a professional engineer licensed to perform engineering in the jurisdiction. The NTSB concluded that “had accurate alignment sheets with comprehensive system information been available and used during the construction project, engineers and work crews would have been able to identify the regulator-sensing lines and ensure their relocation prior to abandoning the pipeline main.” Ex. C at 5. This would have prevented the over-pressurization of the gas lines and the resulting fires, explosions, property damages, injuries and fatality.

44. Significantly, the “NTSB investigators also determined that had [CMA] adequately performed [management of change] and placed personnel at critical points along the system, [CMA] could have immediately addressed the issue and mitigated the consequences of the event.”⁴ *Id.* at 6.

B. NiSource is a Highly Regulated Entity

45. NiSource is an energy holding company, which operates through two

⁴ According to reporting in *Popular Mechanics*, until approximately 2015, “a technician from the Meter and Regulation Department would have been assigned to the site to monitor pressure readings on the affected section of gas main, but [CMA], for undisclosed reasons, ended this practice.” Nathaniel Penn, *The Day the Town Blew Up*, *Popular Mechanics* (June 3, 2019).

regulated business segments: Gas Distribution Operations and Electric Operations. As stated in its Annual Reports on Form 10-K, NiSource's operating subsidiaries are fully regulated natural gas and electric utility companies.

46. Given the inherent danger of natural gas service and delivery to the public, NiSource operates in a highly regulated environment and must adhere to both federal and state laws and regulations governing the Company's operations. These laws require strict compliance due to the high risk of loss of life and property which could result from an accident involving natural gas.

47. Had the Individual Defendants fulfilled their oversight duties to ensure that NiSource and its subsidiaries were in compliance with federal and state pipeline safety laws, the catastrophic Greater Lawrence Explosions likely would not have occurred. The Individual Defendants should have been laser-focused at all times on ensuring this compliance, because the Company is a highly regulated entity where rigorous compliance with external regulations is critical to NiSource's success. Instead, the Individual Defendants, in violation of their non-exculpable duty of loyalty, were concerned primarily with the cost of pipeline safety, and not whether NiSource's gas operations operated in compliance with pipeline safety laws.

i. NiSource Is Regulated Under the PSA

48. The Natural Gas Pipeline Safety Act of 1968 ("NGPSA") established

minimum safety standards for the transportation of natural gas and other gases by pipeline. In 1994, Congress enacted the Pipeline Safety Act (“PSA”), 49 U.S.C. § 60101 et seq. The PSA combined and re-codified, without substantive changes, the two then existing pipeline safety statutes, NGPSA and HLPSA. The Department of Transportation (“DOT”) thereafter issued regulations designed to protect against the risks of loss of life and property posed by pipeline transmission and pipeline facilities. These regulations impose criminal penalties for knowing and willful violations of any part of the regulations promulgated by the DOT for the PSA. Subsequent acts of Congress and federal regulations have amended and expanded the obligations of natural gas operators, like NiSource and its subsidiaries. These regulations are contained in Part 192 of Title 49 of the Code of Federal Regulations, Subparts A through M (“Part 192”).

49. In 2006, Congress passed the Pipeline Inspection, Protection, Enforcement and Safety Act, which directed the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) (PHMSA is an agency within the DOT) to “prescribe minimum standards for integrity management programs for distribution pipelines.” Pipeline Inspection, Protection, Enforcement and Safety Act, Pub. L. No. 109-468, § 9, 120 STAT. 3486, 3493 (2006). In 2009, PHMSA promulgated regulations which require natural gas operators to “develop and implement” a

Pipeline Integrity Management System by no later than August 2, 2011.

50. In addition, Part 192 of the regulations, Subsection 605(a) requires operators to “prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities.” This is commonly known as an operation and maintenance manual or O&M Manual. Subsection 605(b)(5) of Part 192 requires the O&M Manual to include a procedure for “starting up and shutting down any part of a pipeline in a manner designed to assure operation within the [...] limits prescribed” in order to “provide safety during maintenance operations.” Subsection 603(b) of Part 192 also requires a natural gas operator to “keep records necessary to administer the procedures established under §192.605.” The records required to be kept and made available to operating personnel include, “construction records, maps and operating history.” 49 C.F.R. § 192.605(b)(3). In sum, Part 192 establishes the *minimum* safety standards required by federal law.

51. Massachusetts state law also requires that “[e]very gas piping system and liquefied petroleum gas plant in Massachusetts shall be constructed, operated, and maintained, except as otherwise provided in 220 CMR 101.00, in compliance with federal pipeline safety standards as set forth in 49 CFR Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (MFS Standards).” 220 C.M.R. 101.00. As such, a failure to comply with

Part 192 violated both federal and Massachusetts law.

52. Moreover, a violation of any part of the safety regulations, like those alleged by the government against CMA (and potentially against NiSource under the DPA), may bring serious criminal penalties, warranting close Board attention. Specifically, the compliance mandate governing NiSource and CMA as pipeline facility operators is found in 49 U.S.C. § 60118. The requirements are as follows:

(a) GENERAL REQUIREMENTS.—A person owning or operating a pipeline facility shall—(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126; (2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title; (3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under subsections (a) through (e) of section 60117 of this title; and (4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c).

53. Under 49 U.S.C. §60123, a person who knowingly and willfully violates §60118(a) “or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.” Pursuant to the DPA, NiSource has expressly and publicly acknowledged that the DOJ had a sufficient basis to allege the Company’s responsibility for the criminal violations brought against CMA.

C. The Board Identified the Mission Critical Risks Associated with NiSource's Gas Operations and Public Safety

54. The NiSource Board is responsible for ensuring that the Company's Gas Subsidiaries are in compliance with all state and federal laws. Indeed, the Board was well aware of its duties to ensure compliance with such laws as critical for the safety of NiSource's customers and employees and the public, such that the failure to comply with such laws as occurred here constituted a serious oversight failure by the Board.

55. For example, the Company's SEC filings demonstrate that the Board was aware of the serious risks associated with electricity and natural gas services. Specifically, the Company's Annual Reports on Form 10-K for the years 2016-2018, signed by each of the Individual Defendants, admitted that:

Distribution of natural gas, and the generation, transmission and distribution of electricity involve numerous risks that may result in incidents and other operating risks and costs.

NiSource's gas distribution activities, as well as generation, transmission, and distribution of electricity, involve a variety of inherent hazards and operating risks, such as gas leaks, downed power lines, incidents, including third-party damages, large scale outages, and mechanical problems, which could cause substantial financial losses. In addition, these risks could result in serious injury or loss of life to employees and the general public, significant damage to property, environmental pollution, impairment of our operations, adverse regulatory rulings and reputational harm, which in turn could lead to substantial losses to NiSource. The location of pipeline facilities, or generation, transmission, substation and distribution facilities near

populated areas, including residential areas, commercial business centers and industrial sites, could increase the level of damages resulting from such events. These activities may subject us to litigation or administrative proceedings from time to time, which could result in substantial monetary judgments, fines, or penalties against us, or be resolved on unfavorable terms. The occurrence of such events could adversely affect NiSource's financial position and results of operations. In accordance with customary industry practice, NiSource maintains insurance against some, but not all, of these risks and losses.

56. In addition, the Company's Annual Proxy Statements for the years 2017-2020 represented the following to NiSource shareholders about the Board and its related standing committees' obligations to oversee the Company's serious risks related to its highly regulated gas and electric businesses:

Board Oversight of Risk

The Board takes an active role in monitoring and assessing the Company's strategic, compliance, operational and financial risks. The Board administers its oversight function through utilization of its various committees. The Company's Risk Management Committee, which consists of members of our senior management, is responsible for oversight of the Company's risk management process. Senior management regularly provides reports on our risks to the Board, the Audit Committee and the Board committees that oversee the applicable risks. Additionally, the Audit Committee discusses with management and the independent [registered public accounting firm] the effect of regulatory and accounting initiatives on the Company's financial statements and is responsible for review and evaluation of the Company's major risk exposures, including cybersecurity and supplier risks, and the steps management has taken to monitor and control such exposures. In addition, the Compensation Committee, the Environmental, Safety and Sustainability ("ESS") Committee, the Finance Committee and the Nominating and Governance Committee

are each charged with overseeing the risks associated with their respective areas of responsibility.

57. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For example, in 2016, “safety” was weighted as only 10% of the total matrix for awarding executive compensation, the remainder being financial performance. Safety was increased as a percentage in 2017 to 25%. In addition, until 2017, the “safety” component was measured by the “DART Rate,” which “measures the rate of employee injuries that resulted in work days missed or restricted or an employee transfer, with the target set using industry benchmark of top decile.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. In 2017, the Compensation Committee amended the “safety” category and added a “National Safety Council Barometer Survey” to the category mix ostensibly to emphasize safety. This NCSB survey “gauges employee perception of

Company safety programs and benchmarks results against a proprietary database of over 800 companies.” By focusing on employee perception, this change failed to capture actual and objective industry measures of compliance with federal and state pipeline safety laws and federal and state record-keeping requirements.

D. Ensuring NiSource’s Gas Subsidiaries’ Compliance with Pipeline Safety Laws Was a Mission Critical Operation for the Board

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. First, Virginia Gas operates in Virginia, where state and federal programs have a well-earned reputation for being among the nation’s strongest programs to ensure that the state’s gas pipelines operate safely. For example, in 2010, Massoud Tahamtani, a director of Virginia’s Division of Utility and Railroad Safety, said, “I truly believe that Virginia has one of the most active, robust pipeline

safety and damage protection inspection and enforcement programs,” adding, “This doesn’t mean, however, that an accident couldn’t happen.” Tahamtani further explained how Virginia’s inspectors are “there to make sure [the gas companies] do the right thing.”

61. In fact, the Virginia State Corporation Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards in Virginia. This Commission is also authorized to enforce the standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows that Commission to impose the fines and penalties authorized therein.

62. Second, in Virginia, NiSource also received additional funding to adopt pipeline safety improvements. For example, in 2014, Virginia Gas filed a rate case to increase its customers’ rates by roughly \$8 for each customer’s average bill. In its application, Virginia Gas stated its ability to replace its aging pipeline as the need for the rate increase. Notably, when asked by 13NewsNow, “Why can’t you do that, you know at no extra cost to your customer? Just as in any business there is a cost to improve your system.” Virginia Gas spokesman Robert Innes responded that Virginia Gas was subject to many regulations that make it different than other businesses and that it is fair to make customers pay a higher price to stay safe.

63. That is exactly what NiSource achieved, as disclosed in its 2015 Form

10-K:

On April 30, 2014, Columbia of Virginia filed a base rate case with the VSCC seeking an annual revenue increase of \$31.8 million, which includes \$6.9 million in annual revenues currently collected as a separate infrastructure replacement rider on customers' bills under the Virginia SAVE Act. On December 10, 2014, Columbia of Virginia presented at hearing a Stipulation and Proposed Recommendation ("Stipulation") executed by certain parties to the rate proceeding, including the Staff of the VSCC and the Division of Consumer Counsel of the Office of the Attorney General of the Commonwealth of Virginia. The Stipulation includes a base revenue increase of \$25.2 million, *recovery of costs related to the implementation of pipeline safety programs*, and the proposed change to thermal billing. On January 13, 2015 the Hearing Examiner issued a report that recommended that the VSCC approve the Stipulation.

(Emphasis added).

64. [REDACTED]

65. [REDACTED]

66.

[REDACTED]

67.

[REDACTED]

5

[REDACTED]

[REDACTED]

68. [REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. GIS is an acronym for “Graphical Information System,” which is a framework for gathering, managing and analyzing data. GIS integrates many types of data, analyzes spatial locations and organizes layers of information into visualizations using maps and 3D scenes. This type of system is a necessary tool which integrates a pipeline operator’s operations, including location data for shutoffs into one place where any employee may access it. Such a system was among the recommendations from the NTSB report and should have been in place before the Greater Lawrence Explosions. An adequate GIS system likely would have prevented the event.

71. The SMS and GIS programs were both widely available before the Greater Lawrence Explosions occurred and, had they been in place, likely would have prevented that tragedy. The Board, the ES&S Committee and the Audit Committee, however, failed to oversee that CMA had implemented systems to ensure compliance with minimal standards of pipeline safety regulations. Here,

where the Company operates in the midst of “mission critical” regulatory compliance risk, these failures reflect bad faith misconduct by the entire Board.

E.

[REDACTED]

72.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i.

[REDACTED]

73.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

74. [REDACTED]

[REDACTED]

In fact, a related NTSB report concluded that the rupture resulted from external corrosion that caused the pipeline's walls, which were installed in 1967 and had not been inspected or tested since 1988, to deteriorate.⁶ [REDACTED]

[REDACTED]

⁶ See *Columbia Gas Transmission Corporation Pipeline Rupture, Sissonville, West Virginia, Accident Report*, NTSB (Feb. 19, 2014), available at <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1401.pdf>.

[REDACTED]

75. In August 2015, the *Boston Globe* published an article entitled “Project Reveals 20,000 Leaks in Mass. Gas Lines: Trouble Widespread, Some Decades Old” discussing the risks posed by aging cast iron pipes in Massachusetts and the profit motive of the public utility companies to let those leaks continue so long as there are no risks of explosion (the “*Boston Globe* Article”). The *Boston Globe* Article also discusses the replacement of cast iron pipes and an explosion which had occurred in Dorchester, Massachusetts the previous year. Although the article did not specifically name CMA, it operated a significant portion of the gas pipeline system in Massachusetts described therein. [REDACTED]

[REDACTED]

76. [REDACTED]

ii.

[REDACTED]

77. NiSource has a long history of violations of pipeline safety laws in its Gas Subsidiaries, often requiring the payment of record fines. For example, in 2013, NIPSCO entered into two Consent Agreements with the IURC to resolve numerous violations of pipeline safety laws under Part 192. These violations of Part 192 were based on NIPSCO’s failure to follow written procedures and keep accurate records. Subsequently, on August 4, 2017, the IURC’s Pipeline Safety Division (the “Division”) filed a Petition against NIPSCO for repeat violations of pipeline safety standards related to the prior 2013 Consent Agreements.

78. The Division sought civil penalties against NIPSCO for at least 261 violations that occurred between January 1, 2015 and March 8, 2016. Specifically, the Division requested that the IURC impose a penalty on NIPSCO for: (1) 208 violations relating to the obligation to timely and accurately locate its underground facilities in compliance with the written procedures for conducting operations and maintenance activities pursuant to 49 C.F.R. § 192.605, Ind. Code§ 8-1-26-18, and 170 IAC 5-3-0.6; and (2) 53 violations relating to inaccurate location of facilities

that resulted in damage to NIPSCO's natural gas facilities because of NIPSCO's failure to maintain accurate facility maps and records pursuant to 170 IAC 5-3-2(10).

79. The 2017 Petition also demanded that NIPSCO undertake corrective action with regard to its violations.

80. The IURC found that NIPSCO committed 261 violations of pipeline safety standards in two categories in the 2017 IURC Order. First, NIPSCO failed to locate its facilities in two working days in violation of its own Operating and Maintenance Procedures Manual, Part 10.1, and Indiana state law (Ind. Code § 8-1-26-18) and 49 CFR 192.605, adopted into state law through 170 IAC 5-3-0.6 and 170 IAC 5-3-2(1). Second, the IURC held that NIPSCO failed to follow, for each pipeline, a manual of written procedures for conducting operations and maintenance activities.

81. The second category of violations includes NIPSCO's failure to maintain adequate facility records. Indiana law, specifically 170 IAC 5-3-2(10), requires NIPSCO to maintain adequate facility records and maps to facilitate safe operation and maintenance. NIPSCO's inaccurate location of its facilities stemmed from inadequate or incorrect facility records or maps, therefore violating 170 IAC 5-3-2(10).

82. NIPSCO admitted to the violations and did not dispute any of the facts

underlying the specific damages at issue.

83. Concurrent with filing the 2017 Petition, the Division and NIPSCO filed a Settlement Agreement detailing NIPSCO's purported plans to eliminate, reduce, and mitigate the risks associated with the violations described and detailing corrective actions and the payment of civil fines. As part of the Settlement, NIPSCO agreed:

(1) to provide certain up-to-date pipeline safety compliance-related organizational data and corresponding contact information and, among other things to engage in meetings and discussions surrounding various projects as well as locating performance, emerging issues, and problems;

(2) to provide the Division with ongoing reports on a series of performance metrics. related to the obligations of NIPSCO to locate its underground facilities and maintain accurate maps and records;

(3) to implement American Petroleum Institute's ("API") Recommended Practice 1173 ("API RP 1173") - Pipeline Safety Management Systems ("PSMS")...and to provide the Division with a gap analysis of API RP 1173 against its existing policies, procedures, and practices; an assessment of its pipeline safety culture; and ongoing updates regarding NIPSCO's implementation of API RP 1173; and

(4) pay penalties for both past violations and future violations that may occur through calendar year 2019.

84. In relation to NIPSCO's agreement to implement a comprehensive

pipeline SMS pursuant to API RP 1173, the 2017 IURC Order contained a series of organizational practices and protocols designed to improve both safety performance and culture within NIPSCO. NIPSCO also agreed to: (1) pay the \$900,000 civil penalty, (2) a structure to calculate civil penalties for 2017, 2018, and 2019 in the event such penalties are assessed by the Division, and (3) that it would not seek to recover penalties from NIPSCO's customers.

85. [REDACTED]

[REDACTED]. The 2017 IURC Order imposed upon NIPSCO a reporting obligation through 2019 to advise Indiana regulators of any further violations of pipeline safety laws, particularly in the areas of pipeline location and mapping.

86. In the next three updates provided by NIPSCO through 2019, it reported *another 617 statutory violations covering part of 2017 and the years 2018 and 2019, for which it was fined another \$3.013 million, including the largest fine in Indiana gas pipeline regulatory history.*

87. In its most recent findings, dated March 17, 2021, the IURC noted that NIPSCO committed 234 violations in 2019 for “fail[ing] to locate its underground

facilities in two full working days or . . . fail[ing] to mark those facilities.” It, therefore, imposed a fine of \$1.138 million and noted that NIPSCO could not receive a reduction in the fine because it “did not achieve top quartile performance in the applicable American Gas Association’s marking and locating annual report.” It further noted that none of the penalty could be recovered from NIPSCO’s customers.

88. [REDACTED]

iii. [REDACTED]

89. [REDACTED]

[REDACTED] For example, approximately two years before the Greater Lawrence Explosions, in February 2016, CMA was fined \$75,000 by the DPU for five violations linked to a single incident in Taunton, Massachusetts stemming from an event where the pressure in CMA’s

natural gas pipes rose dangerously high in violation of federal and state safety regulations (the “Taunton Event”).

90. The pressure in CMA’s pipes hit alarming levels for almost a half hour during the Taunton Event. CMA was cited and fined by the DPU for failing to protect against over-pressurization and for failure to properly maintain its equipment.

91. The DPU found it had reason to believe that CMA violated multiple regulations under Part 192 of the PSA because it did not provide the proper protection against over-pressurization “as part of the design and operations and maintenance of its district regulator stations” ***and did not have any records*** showing proper maintenance of its district regulator stations, which control pressure in the pipes. CMA received a Notice of Probable Violation in connection with the inspection conducted by the DPU.

92. The Taunton Event stemmed from an over-pressurization event wherein CMA lacked any records showing maintenance as required under Part 192 in violation of both federal and state law. Accordingly, in February 2016, the Individual Defendants had failed to ensure that CMA had internal controls in place which required the Company to maintain these vital records -- in violation of federal and state pipeline safety laws. The DPU further charged that CMA had violated

numerous provisions of Part 192 including: § 192.201(a)(2)(1) (Required capacity of pressure relieving and limiting stations); § 192.195(b)(2) (Protection against accidental over-pressuring); § 192.603 (General provisions – mandatory maintenance of records); § 192.605(b)(1) (Procedural manual for operations, maintenance, and emergencies); § 192.739(a) (pressure limiting and regulating stations: Inspection and testing); and § 192.13(c) (general requirements).

93. CMA entered into a Consent Order to resolve the investigation and paid a fine of \$75,000. CMA also agreed to undertake a series of remedial measures designed to remedy the failures stemming from the over-pressurization event.

94.

[REDACTED]

iv.

[REDACTED]

95.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In this regard, on September 2, 2015, NiSource internally disseminated Operational Notice (“ON”) 15-05, entitled “Below Grade Regulator Control Lines: Caution When Excavating Near Regulator Stations or Regulator Buildings” to all its Gas Subsidiaries, including CMA.⁷ The impetus for ON 15-05 was described as a “near miss” of a catastrophic event involving another NiSource company outside of Massachusetts where a construction crew, “excavating to repair” a gas leak near a Regulating Station, came close to hitting a control line and was unaware of its purpose and importance. *Id.*

96. The stated objective of ON 15-05 was two-fold: “1. Bring awareness to Company and Contractor employees regarding the existence and importance of regulator control lines ...that help to provide critical sensing information for the accurate monitoring and control of outlet pressure into the Company’s piping systems...” and “2. Set forth required actions for future Company excavations.” *Id.*

¶ 24.

97. ON 15-05 described the importance of Reg. Station control lines as it

⁷ See Ex. B, ¶ 23.

relates to pipeline safety:

. . . [control lines] sense the outlet pressure of the regulator. Based on the pressure sensed through the control line, the regulator valve will open or close to control the downstream pressure at the set point of the regulator.

Id. ¶ 25.

98. Safety precautions related to control lines were critical to overall pipeline safety issues. ON 15-05 warned that a broken or disrupted control line could lead to a “catastrophic event”:

If a control line breaks, the regulator will sense a pressure loss, causing the valve to open further, resulting in an over pressurization of the downstream piping system, which may lead to a catastrophic event. The same result occurs if the flow through the control line is otherwise disrupted (*e.g.*, control line valve shut off, control line isolated from the regulator it is controlling).

Id. ¶ 26.

99. Finally, the “Required Action” from ON 15-05 to the Company's employees was that:

any Company excavations within the footprint of a [Reg. Station] and/or within 25 feet of a station building or fence shall only proceed with M&R [Metering & Regulation] standing by throughout the excavation

Id. ¶ 27.

100. In short, over-pressurization was a known risk which could result in a

“catastrophic event” (*Id.* ¶ 26), but on the Individual Defendants’ watch, the Company never prepared or implemented any written procedure to ensure that below-ground control lines were accounted for, or properly mapped and, if necessary, removed or relocated. NiSource, through ON 15-05, never addressed the various inadequate pipeline safety measures that led to the cause of the Greater Lawrence Explosions. Instead, CMA failed to meet minimum pipeline safety standards by continuing to “rel[y] upon [among other practices] an informal practice of encouraging verbal communication among members of Field Engineering, Construction and M&R when excavation took place within the footprint of a Reg. Station.” Ex. B, ¶ 28. In ON 15-05 NiSource had the opportunity, but failed to introduce any measures to address the fundamental systemic pipeline safety issues of inadequate record keeping and documentation, poor mapping, weak engineering and insufficient management of change processes.

101. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

v.

[REDACTED]

102.

[REDACTED]

[REDACTED]

[REDACTED]

Specifically, a natural gas release from an “improperly abandoned” service line was responsible for the explosion and fire in Upper Arlington, Ohio, according to the Public Utilities Commission of Ohio. This explosion caused \$9 million in structural damage.

103. The Ohio state regulator’s report concluded that the gas line was taken out of service between 1985 and 1997. The line, however, was never disconnected from the gas main and was not plugged or sealed. This report further concluded that Ohio Gas “did not follow their Operation and Maintenance procedure” with regard to the gas line, which ultimately led to the explosion during the repair of a water leak.

104. In 2017, the Public Utilities Commission of Ohio approved an agreement that required Ohio Gas to pay a \$200,000 fine, improve its record-keeping by including GPS locations of curb boxes and other infrastructure in its internal records, and enhance safety outreach in the utility’s service territory. [REDACTED]

[REDACTED]

vi.

[REDACTED]

105.

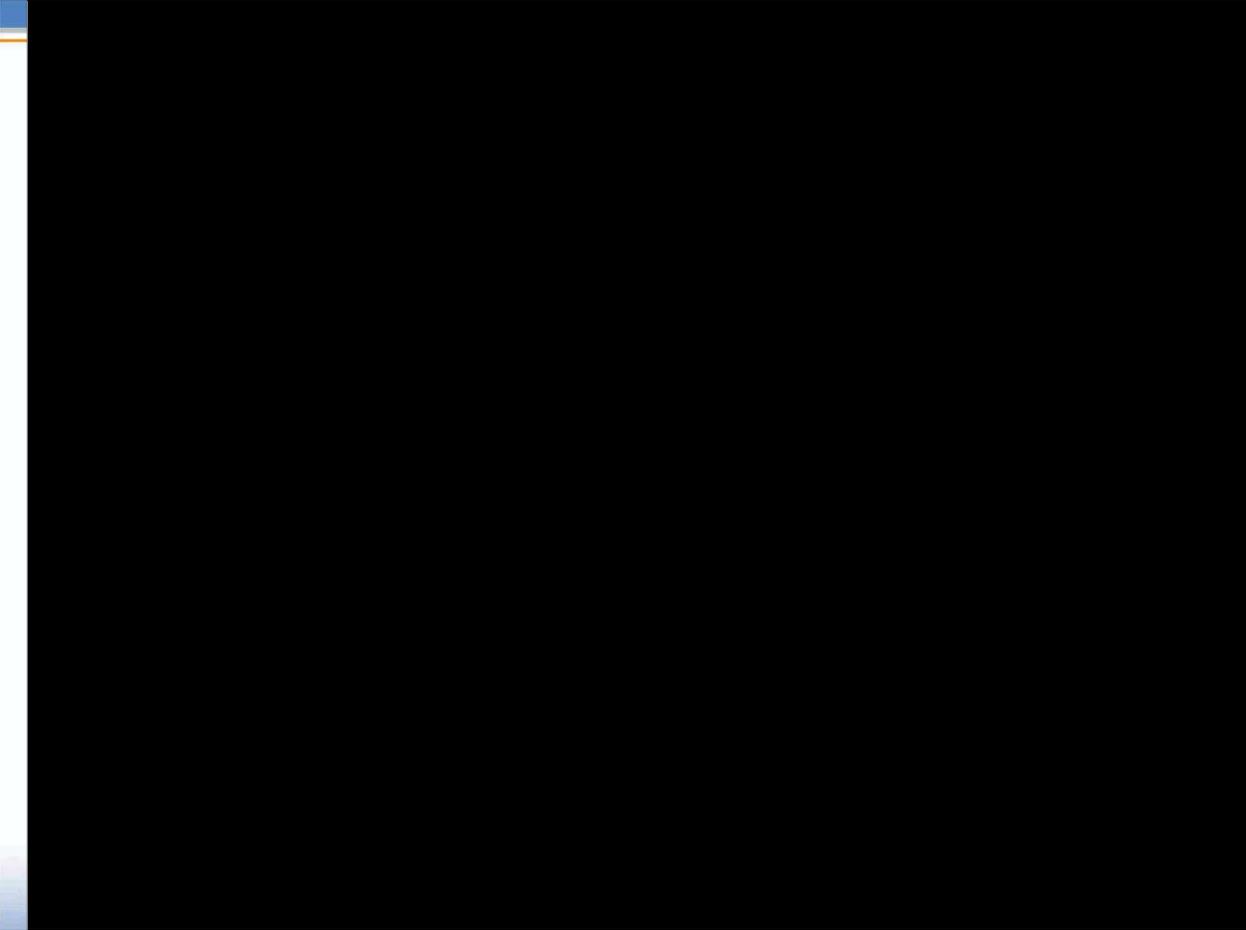
[REDACTED]

[REDACTED]

106.

[REDACTED]

[REDACTED]



107. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

109. [REDACTED]

110. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

111.

[REDACTED]

112.

[REDACTED]

113.

[REDACTED]

114.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED]

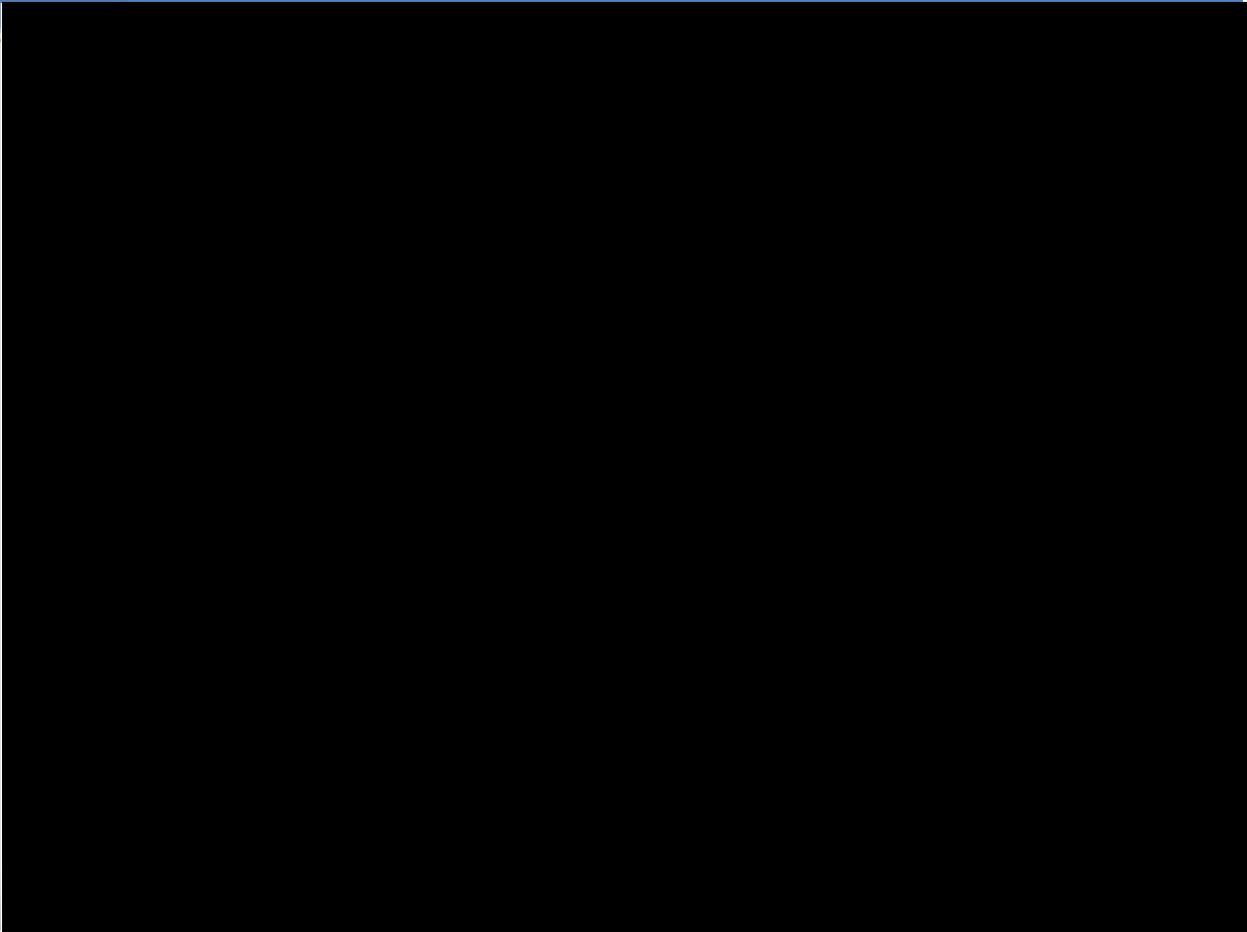
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



116.



[Redacted text block]

117. [Redacted text]

[Redacted text block]

118. [Redacted text]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

119. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. In a Rare Move, the NTSB Issued Five Urgent Safety Recommendations for NiSource’s Immediate Compliance at All Its Gas Subsidiaries During Its Ongoing Investigation

120. On November 14, 2018, the NTSB issued five urgent safety recommendations based on its ongoing investigation concerning the Greater Lawrence Explosions. *See* Ex. C. Typically, the NTSB will wait until its investigation is complete before issuing its findings; however, in its news release accompanying the Preliminary NTSB Report, the NTSB said, “In this investigation, the NTSB issued five urgent safety recommendations to address this imminent threat to life safety created by the conditions discovered thus far in the agency’s ongoing investigation of the accident.” Notably, *four of the five safety recommendations were issued directly to NiSource* – not to CMA -- and related directly to the Board

ignoring red flags concerning its “mission critical” issues involving pipeline safety oversight.

121. First, the Board ignored red flags about its oversight failures related to implementing safety policies and procedures to ensure that “all applicable departments review construction documents for accuracy, completeness, and correctness, and that the documents or plans be sealed by a professional engineer prior to commencing work.” Ex. C at 7. The NTSB concluded that a comprehensive constructability review, which would require all departments to review each project, along with the seal of approval from a professional engineer, (which had not occurred) and would likely have identified the omission of the location of the regulator-sensing lines, thereby preventing the error that led to the accident. This was simply not required by NiSource’s policies, which were under the purview of the ES&S Committee.

122. Second, NiSource was required to “review and ensure that all records and documentation of [its] natural gas systems are traceable, reliable, and complete” as applied to all its Gas Subsidiaries. *Id.* This was impossible under the safety and compliance system implemented by the Individual Defendants at CMA, which had non-compliant documentation requirements, which relied on verbally relaying information from one employee to another and placing critical information on

location of safety control lines in a binder that was not readily available to work crews. As the NTSB’s News Release accompanying the Preliminary Report states, “the NTSB believes had accurate alignment sheets with comprehensive system information been available and used, engineers and work crews would have been able to identify the regulator-sensing lines and ensured their relocation prior to abandoning the pipeline main.” [REDACTED]

[REDACTED]

[REDACTED]

123. The third and fourth urgent safety recommendations are interconnected. Third, NiSource was urged to “apply management of change process to all changes to adequately identify system threats that could result in a common mode failure.” Ex. C at 7. The fourth required NiSource to “develop and implement control procedures during modifications to gas mains to mitigate the risks identified during management of change operations. Gas main pressures should be continually monitored during these modifications and assets should be placed at critical locations to immediately shut down the system if abnormal operations are detected.”

Id.

124. These final two “urgent” items relate to control procedures for the technical term -- management of change. “Management of Change” (“MOC”) is a

best practice used to ensure that safety, health, and environmental risks and hazards are properly controlled when an organization makes changes to facilities, operations or personnel. Having a properly implemented MOC policy in place when implementing changes can help ensure that new hazards are not introduced, and the risk levels of existing hazards are not being increased. Inadequate MOC, on the other hand, has the potential to increase risks to the health and safety of employees and the environment. Performing an MOC is *required* under the Occupational Safety and Health Administration’s (“OSHA”) Process Safety Management standard, and NiSource’s failure here was a violation of 29 C.F.R. 1910.119. It is likewise a required element of a pipeline safety system.

125. NiSource did not have a compliant MOC policy in place at CMA. Instead, it was shuffling different employees (and engineers) on and off of the South Union Street pipeline replacement project, and those employees did not all have the same level of knowledge regarding the location of the safety control lines (and that critical information was not found in a pipeline database or GIS system). The safety risks due to reliance on verbal communications, poor documentation, and knowledge only in the possession of certain employees was a significant failure of NiSource’s policies and practices.

126. In sum, the NTSB’s four urgent safety recommendations to “address

the imminent threat to life safety created by the conditions” at NiSource all related to specific, identifiable failures by the Individual Defendants with respect to their lack of oversight of safety and compliance policies for NiSource, which in turn affected all of the Company’s Gas Subsidiaries.

127. The NTSB’s initial conclusions would subsequently be upheld when the NTSB issued its final report, adopted September 24, 2019, which concluded that “the probable cause of the over pressurization of the natural gas distribution system and the resulting fires and explosions was Columbia Gas of Massachusetts’ weak engineering management.” Ex. D at vii. Furthermore, “contributing to the accident was a low pressure natural gas distribution system designed and operated without adequate overpressure protection.” *Id.* The Company’s culpability was never seriously in doubt, and CMA provided a statement to the media on February 26, 2020 which said that it took “full responsibility for the tragic events of September 13, 2018.”

G. Events Following the Greater Lawrence Explosions Provide Additional Confirmation that the Board Consciously Ignored Numerous Red Flags Concerning CMA’s Noncompliance with Pipeline Safety Laws

128. Immediately after the Greater Lawrence Explosions, Massachusetts Governor Charles D. Baker, Jr. (“Governor Baker”) declared a state of emergency for the area while expressing frustration with the Company. At a press conference,

Governor Baker stated, “on a number of very significant issues, we heard one thing, then something else happened.” Likewise, during a full Congressional committee hearing on November 26, 2018, entitled “Pipeline Safety in the Merrimack Valley: Incident Prevention and Response, U.S. Senator Edward J. Markey (“Senator Markey”), a member of the Senate Committee on Commerce, Science, and Transportation, stated “At every step of the process, there was a chance to avoid this disaster. Instead of choosing safety, you chose savings. Instead of choosing to do things the right way, you chose to do things the easy way and the result was disaster.”

129. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. NiSource Enters into a DPA as its Subsidiary CMA Pleads Guilty to Criminal Violations of Pipeline Safety Laws With a Record Fine

130. Less than eighteen months after the Greater Lawrence Explosions, on February 26, 2020, CMA agreed to plead guilty to criminal violations of 49 U.S.C. §§ 60123(a) and 60118(a) and 49 C.F.R. §§ 192.605(a) and 192.605(b)(5) for a “Knowing and Willful Failure to Prepare and Follow a Procedure for the Starting Up and Shutting Down of a Pipeline,” arising from the safety and compliance

failures that led to the explosions. At the same time, NiSource entered into a DPA arising from the conduct of its wholly-owned subsidiary, CMA. The Criminal Information filed against CMA is included as part of the NiSource DPA.

131. The terms of NiSource's DPA, which were onerous, devastated the value of NiSource's CMA subsidiary and caused substantial financial losses to NiSource. In fact, one of its terms forced the Company to completely exit the gas business in Massachusetts while forfeiting all profits related to the sale of CMA. Indeed, NiSource is expected to take an approximate \$360 million pre-tax loss for CMA's sale.

132. For example, the terms of the DPA included:

- a. NiSource's agreement to use reasonable best efforts to sell CMA or CMA's gas distribution business, to a qualified third-party buyer ... and upon the completion of any such sale, to cease and desist any and all gas pipeline and distribution activities in the District of Massachusetts;
- b. In the event that CMA or its gas distribution business is sold within CMA's three (3) year term of probation, NiSource's agreement to forfeit and pay a monetary penalty equal to the total amount of any profit or gain from the sale of CMA or CMA's gas distribution business;
- c. NiSource's prior voluntary payments of restitution to the victims of the Event including, but not limited to, payments to the individuals, businesses and municipalities affected;
- d. NiSource's agreement to seek to resolve all pending civil claims, including NiSource's agreement to seek to settle the claims filed by the Massachusetts DPU;
- e. *NiSource's acknowledgement that, based on the allegations in the*

CMA Criminal Information, the Government has sufficient basis to allege that NiSource is responsible for CMA’s conduct as alleged in the CMA Criminal Information; and

f. NiSource’s commitment to fulfill all of the terms of this Agreement.

See Ex. A, ¶ 4.⁸ (Emphasis added).

133. Accordingly, given NiSource’s Board and management’s responsibilities for managing the conduct and affairs of NiSource and its subsidiaries, NiSource and its Board’s approval of CMA’s criminal plea agreement, and their acknowledgement of the sufficiency of the criminal allegations attached to the DPA, those facts support a direct inference and an admission of the Individual Defendants’ breach of their fiduciary duty of oversight.

134. Notably, the DPA required NiSource to “implement and adhere to each of the recommendations from the [NTSB]” related to the Greater Lawrence Explosions in each of its “subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, Pennsylvania, Maryland, Kentucky, and Virginia.” Ex. A, ¶ 11. Moreover, the DPA further required

⁸ Paragraph 7 of the DPA states in full: “NiSource acknowledges that, based on the allegations in the CMA Criminal Information, the Government has sufficient basis to allege that NiSource is responsible for CMA’s conduct alleged in the CMA Criminal Information. ***NiSource will not, through any person authorized to speak on its behalf, make any public statement, in litigation or otherwise, contradicting in whole or in part NiSource’s acknowledgement set forth above.***” *Id.* ¶ 7 (emphasis added).

NiSource to employ at its own expense, an in-house monitor to oversee its “compliance with the recommendations of the NTSB and applicable laws and regulations” who will report monthly to government officials. Significantly, NiSource remained subject to possible prosecution for any violation of the terms of the DPA (Ex. A, ¶ 13) because it continued to apply to NiSource’s remaining Gas Subsidiaries. NiSource also had to pay CMA’s record fine of \$53 million – the largest criminal fine ever imposed under the PSA.

135. The Criminal Information is a striking indictment and culmination of the Individual Defendants’ failure to respond to numerous red flags concerning CMA’s non-compliant pipeline safety practices and critical issues of public safety: CMA “[f]rom in or about 2015 through on or about September 13, 2018...by and through the actions of its employees,” and “through a pattern of flagrant organizational indifference, knowingly and willfully violated a minimum safety standard for the starting up and shuttering of any part of a distribution pipeline.” Furthermore, CMA “knowingly and willfully failed to prepare and follow procedures to remove and relocate regulator control lines on the South Union Project to assure operation of the South Lawrence LP System within the Maximum Allowable Operating Pressure and safety during maintenance and operations.” Ex. B, ¶ 95.

136. The details provided in the Criminal Information, together with NiSource’s acknowledgement of the adequacy of the allegations underlying CMA’s criminal liability, paint a stark picture connecting NiSource’s repeated and ongoing failures in adopting safety standards and safeguards in its gas operations to its wholly owned subsidiaries, including CMA, further reflecting the Board’s related oversight failures. Among those failures, all of which were earlier revealed to NiSource’s Board as red flags included: (i) CMA “did not maintain consistent and reliable records of control lines” (Ex. B, ¶ 42); (ii) CMA “deliberately chose not to include consistent and reliable information about the location of control lines in GIS and instead relied upon the patchwork of records . . . that were often outdated and unreliable” (*Id.* ¶ 46); (iii) despite concerns regarding the GIS and “accuracy of gas pressure models for Field Engineers . . . CMA deliberately chose not to change its practice and failed to include” necessary information “because of the substantial cost involved” (*Id.* ¶¶ 47-48); (iv) CMA and its “Field Engineering’s evaluation of risk focused on the actual occurrence of prior events affecting pipeline integrity” rather than the known “near-miss” involving control lines within NiSource (*Id.* ¶ 71); and (v) CMA “did not prepare and follow, nor even contemplate, a formal written procedure for the removal of the control lines [that it] knew was needed to prevent an over-pressurization and assure operation within [guidelines]” (*Id.* ¶ 88). These

non-compliant policies were endorsed by NiSource’s Board, which failed to address the red flags identified in the preceding years, much less take the necessary steps to mitigate a potential catastrophic event.

137. Coincident with the DPA, NiSource announced that it would sell CMA’s assets to Eversource, a competing natural gas provider. The Company also agreed to give the government any profits from the sale of CMA and subject its operations to monitoring during a three-year period to ensure compliance with federal and state safety regulations. NiSource also retained future and ongoing liabilities associated with CMA “arising out of or related to the Greater Lawrence Incident” including, among other things, any losses arising from or related to “any litigation, demand, cause of action, claim, [or] suit investigation. . . .”⁹

138. When announcing the deal to sell CMA to Evercore, in a February 26, 2020 press release, defendant Hamrock, NiSource’s President and CEO, and a NiSource director, stated: “We believe this transaction will create the right next chapter for the customers and communities that [CMA] serves throughout the state. Eversource is one of the most respected energy companies in the country with a strong operational track record in the New England area, and we believe they are

⁹ See NiSource Inc., Asset Purchase Agreement (Ex. 2.1 to Form 8-K) (Feb. 26, 2020) (Section 2.1 (d) “Excluded Liabilities”).

focused on investing in [CMA] to further improve system operations, including to enhance safety, pipeline integrity and reliability programs.”

139. Likewise, Mark Kempic, CMA’s President and CEO, commented, “Eversource is the right partner for [CMA]. While we have taken significant restoration and safety steps over the past 17 months, we acknowledge that events have led many to lose trust in [CMA]. We believe that Eversource’s proven track record of investing in its infrastructure, employees and operations to enhance system reliability, combined with its deep familiarity with the region and our operations, will enable [CMA] to be a part of a strong local gas distribution company.”

140. NiSource completed its sale of CMA to Evercore on October 9, 2020.

ii. NiSource and CMA Pay an Additional \$56 Million to Settle Claims with the Massachusetts AG and the Massachusetts DPU

141. On July 2, 2020, Massachusetts Attorney General (“AG”) Maura Healey announced a \$56 million settlement with the Company related to the Greater Lawrence Explosions (the “MA AG Settlement”), stating, “Today’s first-of-its-kind agreement ensures that [CMA] never does business in Massachusetts again....” In connection with this announcement, the mayor of Lawrence, Massachusetts stated: “I look forward to a heating season without [CMA] at the helm, and with priorities that put safety of people over profit. ...”

142. The MA AG Settlement: (1) resolved two Massachusetts DPU investigations stemming from the Greater Lawrence Explosions and CMA's violation of Part 192 via 220 CMR 101.00; (2) required NiSource to pay \$56 million; and (3) approved the terms of the sale of CMA to Evercore.

iii. The Board's Actions After the Greater Lawrence Explosions Further Expose Its Prior Failures of Oversight

143. [REDACTED]

144. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

146. [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

147. [Redacted text]

[Redacted text block]

[REDACTED]

[REDACTED]

148. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

149. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150. With regard to the priority of public safety, the Individual Defendants were duty-bound, and as required by the ES&S Committee Charter, to “review and evaluate the Company’s programs, policies, practices and performance with respect

10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[Redacted]

153. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

154. [REDACTED]

[REDACTED]

155. [REDACTED]

¹¹ Commonwealth of Massachusetts Department of Public Utilities Consent Order, D.P.U. 18-PL-03, November 30, 2018.

[REDACTED]

156. Moreover, the Board’s actions after the Greater Lawrence Explosions further confirm the Individual Directors’ misconduct before they occurred. For example, since the Greater Lawrence Explosions, NiSource highlighted on its “Safety in Communities” webpage how in 2019, it “made substantial progress in shifting SMS from a project to a full organizational ownership.” NiSource claimed that its long overdue “[m]ajor safety accomplishments” included:

- “Adding safety expert and former chair of the National Transportation Safety Board (NTSB) Deborah Hersman to our Board of Directors;
- Creating a new Chief Safety Officer position, filled by NiSource executive Chuck Shaferm reporting directly to CEO John Hamrock;

- Integrating safety, compliance and risk management functions at each NiSource operating company and at the corporate level and increasing related staffing and capabilities;
- Implementing the National Transportation Safety Board’s urgent safety recommendations following the September 2018 event in Massachusetts;
- Training nearly 90% of our Gas segment employees on SMS in 2019, the remainder will be trained this year [2020];
- Defining asset classes and an integrated planning process structure, including documenting SMS standards, policies and processes.”

157. All of the purported safety improvements in 2019 show how the members of the Board and the Company’s senior management team failed to perform their duties in the years leading up to the Greater Lawrence Explosions. For example, not one member of the NiSource Board possessed a background in the “mission critical” issues of pipeline safety compliance facing the Company. NiSource also lacked a Chief Safety Officer, even though its wholly owned subsidiaries all operated in highly regulated industries, where public safety could be put in jeopardy due to non-compliance with safety regulations.

H. The Court-Appointed Independent Monitor Confirmed that the NiSource Board Continues to Fail to Ensure All of the Company’s Gas Subsidiaries Comply with Pipeline Safety Laws

158. The DPA required the court appointment of an “Independent Monitor” to monitor NiSource’s and CMA’s compliance with the DPA’s terms. James Hall (“Mr. Hall” or the “Independent Monitor”) of Hall & Associates LLC was appointed

as the Independent Monitor. As a former member and Chairman of the NTSB, Mr. Hall is a leading expert in crisis management and government relations, and transportation safety and security, having served government and private clients for more than five decades.

159. In his capacity as the Independent Monitor, Mr. Hall submitted three reports to the federal court on July 30, 2020, September 3, 2020, and October 6, 2020.

160. The Independent Monitor's Final Report, dated October 6, 2020, condemns the governance and oversight of NiSource over CMA. Specifically, it states:

(i) "The Monitor's obligations were limited to oversight of CMA per the Plea Agreement and Work Plan. In the performance of this oversight, *the Monitor's report shows that certain safety deficiencies exist at CMA as a result of the governance by the parent company [NiSource].*"

(ii) "The Monitor notes that now, after two years and many reports with recommendations, some safety gaps identified from the Merrimack Valley accident have not yet been closed. Performance goals for safety have not been appropriately established or cascaded down through the workforce. *The discretionary performance bonus component provided to leadership has been driven in large part by financial performance of the company rather than safety.*"

(iii) "*The Monitor recognizes that NiSource – as CMA's current parent – remains responsible for ensuring CMA's safety until the [s]ale to Eversource is complete.*"

(iv) “The Monitor believes that the formal MOC process – as stipulated by API Recommended Practice 1173 – had not been accomplished by NiSource at the time the NTSB closed this recommendation on September 24, 2019, nor has it been fully implemented at CMA as of the date of this report.... The Monitor believes that CMA/NiSource’s efforts with MOC are overdue”; and

(v) “The expectations that lead to a positive safety culture are created at the top of the organization, not merely supported by the top. . . ***leadership failed to prevent the safety lapses that led to the accident, and then failed to expedite corrective safety actions after the event.***” (Emphasis added).

161. These items from the Independent Monitor’s Report directly tie the knowing and willfully criminal pipeline safety practices and policies at CMA to a failure of leadership and governance at NiSource – in other words, the Board’s and the Individual Defendants’ bad faith and lack of oversight. Moreover, they show the Board’s improper motivation to put profits ahead of compliance with federal pipeline safety laws.

162. The Independent Monitor’s Final Report further noted that the “Monitor has not found sufficient evidence to verify the presence of a positive safety culture at CMA.” In fact, Mr. Hall noted that in his “opinion[,] [] a positive safety culture at CMA has existed mostly in the form of words and slogans rather than in its functional application and organizational understanding.” The Independent Monitor also stated as recently as 2020 that he “cannot affirmatively state that all aspects of CMA’s operations are compliant with all such laws and regulations.”

163. The Independent Monitor’s Final Report also detailed the “short-cuts” that NiSource took with respect to its purported compliance with the NTSB’s five recommendations. For example, the NTSB’s first recommendation required that “Documentation is Traceable, Reliable and Complete,” but the Independent Monitor noted that “[d]espite stipulating that all records and documentation should be determined to be traceable, reliable and complete, NiSource interpreted the intent of this recommendation to apply only to its low pressure regulator stations, and specifically to the sensor lines associated with these facilities.” The Independent Monitor further noted how “on June 26, 2020, the Monitor was notified by CMA of the discovery of inaccurate, unsigned and undated drawings of regulator stations within CMA that had been discovered by a contractor.” The Independent Monitor also noted he was “concerned with this finding since it related directly to the regulator sensing lines addressed by the NTSB recommendation.” As such, even years after the Greater Lawrence Explosions, the Board was still failing in its oversight duties when it came to CMA’s compliance with safety pipeline laws.

I. Damages to NiSource Resulting from the Individual Defendants’ Breaches of Fiduciary Duty

164. Damages are estimated at more than \$1 billion to NiSource. The exact dollar amount of damages to NiSource is presently unknown, but the categories of damages are well developed. NiSource’s public filings provide some information

regarding the massive costs the Company has and will incur as a result of this tragedy.

165. NiSource's post-explosion quarterly reports, and the Company's 2019 Annual Report on Form 10-K disclose that the Greater Lawrence Explosions will result in over \$1 billion in total costs from third-party claims. Included in this sum is \$143 million to settle certain class actions related to the Greater Lawrence Explosions and an \$80 million settlement with a family whose child was killed during the explosions. [REDACTED]

[REDACTED]. The \$1 billion figure provided in NiSource's public filings excludes: (i) the record \$53 million criminal fine NiSource agreed to pay in the DPA; (ii) the sale of CMA below its book value; (iii) lost profits on the CMA sale; (iv) the \$56 million payment related to the MA AG Settlement; (v) the costs of the Independent Monitor; (vi) assumed future liabilities; and (vii) the increased cost of liability insurance premiums for the foreseeable future.

166. In addition, after the Greater Lawrence Explosions, S&P announced that it was "revising our outlooks on the companies to negative from stable. The negative outlooks reflect our view that NiSource may experience greater operating and regulatory risks and potential financial contingencies in excess of insurance

proceeds due to the fires and explosions in Northern Massachusetts, which could lead us to lower our rating.” S&P further noted that “Governor Baker’s extraordinary decision to replace [CMA] with Eversource Energy to manage the restoration effort in the affected communities signals a potential weakening in NiSource’s ability to effectively manage its operating and regulatory risk. Furthermore, the outlook incorporates the company’s minimal financial cushion at the current rating level.” [REDACTED]

167. Indeed, further (and likely non-compensable) damages to NiSource are likely. NiSource’s most recent Annual Report on Form 10-K, filed on February 17, 2021, provides the following narrative:

The Greater Lawrence Incident has materially adversely affected and may continue to materially adversely affect our financial condition, results of operations and cash flows.

In connection with the Greater Lawrence Incident, we have incurred and will incur various costs and expenses. We have been subject to inquiries and investigations by government authorities and regulatory agencies regarding the Greater Lawrence Incident, including the

Massachusetts DPU and the Massachusetts Attorney General’s Office, as further described in Note 7, “Goodwill and Other Intangible Assets,” Note 20-C. “Legal Proceedings,” and Note 20-E. “Other Matters” in the Notes to Consolidated Financial Statements.

While we have recovered the full amount of our liability insurance coverage available under our policies, total expenses related to the incident have exceeded such amount. Expenses in excess of our liability insurance coverage have materially adversely affected and may continue to materially adversely affect our results of operations, cash flows and financial position.

We may also incur additional costs associated with the Greater Lawrence Incident, beyond the amount currently anticipated, including in connection with the U.S. Attorney’s Office investigation as well as civil litigation. Further, state or federal legislation may be enacted that would require us to incur additional costs by mandating various changes, including changes to our operating practice standards for natural gas distribution operations and safety. If we are unable to recover the capital cost of the gas pipeline replacement through the pending property insurance litigation related to this matter, or we incur a material amount of other costs, our financial condition, results of operations, and cash flows could be materially and adversely affected.

Further, if it is determined in other matters that we did not comply with applicable statutes, regulations or rules in connection with the operations or maintenance of our natural gas system, and we are ordered to pay additional amounts in penalties, or other amounts, our financial condition, results of operations, and cash flows could be materially and adversely affected. (Emphasis added).

168. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. THE INDIVIDUAL DEFENDANTS' DUTIES

169. By reason of their positions as officers and/or directors of the Company, and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due care, and were, and are, required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner and in compliance with federal and state laws. The Individual Defendants were, and are, required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interests or benefit.

170. Each director and officer owed to the Company and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

171. The Individual Defendants, because of their positions of control and

authority as directors and/or officers, were able to, and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

172. At all times relevant hereto, each of the Individual Defendants was the agent of the other Individual Defendants and of the Company and was at all times acting within the course and scope of such agency.

173. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Company and its subsidiaries. By virtue of such duties, the Individual Defendants were required to, among other things:

- a) manage, conduct, supervise and direct the business affairs of the Company in accordance with all applicable laws;
- b) neither violate, nor knowingly permit any officer, director or employee of the Company to violate applicable laws, rules and regulations;
- c) establish and maintain systematic and accurate records and reports of the business and affairs of the Company and procedures for the reporting of the business and affairs to the Board, and to periodically investigate, or cause independent investigation to be

- made of, said reports and records;
- d) neither engage in self-dealing, nor knowingly permit any officer, director or employee of the Company to engage in self-dealing;
 - e) ensure that the Company complied with its legal obligations and requirements;
 - f) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;
 - g) ensure that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times; and
 - h) remain informed regarding how the Company conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws.

174. Each Individual Defendant, by virtue of his or her position as a director

and/or officer, owed to the Company and its shareholders the fiduciary duties of loyalty, good faith, the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants alleged herein involves violations of their obligations as directors and/or officers of the Company, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its stockholders that the Individual Defendants were aware, or should have been aware, posed a risk of serious injury to the Company. The conduct of the Individual Defendants, who were officers and/or directors of the Company, has been ratified by the remaining defendants.

175. As directors and officers of NiSource, the Individual Defendants were and are bound by the Company's Code of Business Conduct (the "Code"). The Code provides, in relevant part, the following:

Our core values –fairness, honesty, integrity and trust are the focus of the NiSource Code of Business Conduct (the "Code"). We put our values into action by demonstrating them through our behaviors, decisions and interactions. To achieve our long-term business performance goals that reflect premier performance for our customers and stakeholders, we must be relentless champions and conduct ourselves in a way that earns respect, supports our goals and inspires us all to do our best work. We must:

- **SERVE OUR CUSTOMERS AND OUR COMMUNITIES.** Understand the needs and expectations of our customers and

stakeholders so we can do our best to meet or exceed them. Care about our customers. Give back to our communities.

• **DO THE RIGHT THING.** Work and operate safely, always. Be ethical and honest in everything we do. Protect our environment. Care about our customers. Give back to our communities. Invest in our nation’s energy infrastructure and fuel long-term economic growth.

We believe that good, ethical business conduct is the foundation of a workplace where we can enjoy an atmosphere of fairness, honesty, integrity and trust, and where talented people have an equal opportunity to contribute to our strength and growth.

Our reputation ultimately rests on the good judgment and personal integrity of each of our employees, officers, Board of Directors and those with whom we do business. We believe that our core values must –at all times –guide our decisions, actions and conduct.

* * *

OUR PROMISE

To be responsible for our personal actions and for complying with the Code. We are responsible to read and know when, where and how to report any violation. (p. 5-7)

USING SOLID JUDGMENT

We will use solid business judgment in making decisions and adhere to the Company’s policies and standards. If a situation arises that does not seem appropriate, we will seek the necessary resources to do what is right and will not retaliate against those who make a good faith effort to report any violation of the Code. (p. 8-9)

MAINTAINING A POSITIVE WORK ENVIRONMENT

We will maintain a work environment that is inclusive, safe and healthy, and free from sexual and other forms of harassment, bias and violence. (p. 10-12)

* * *

Everyone has the power to own safety. You have the responsibility and are expected to **Stop Work** whenever you see an employee, business partner or member of the public who is at risk of harm

176. As directors of NiSource, the Board members were and are bound by the Company's Corporate Governance Guidelines. The Corporate Governance Guidelines provide, in relevant part, as follows:

General Responsibilities of Directors.

Directors are expected to exercise their business judgment in good faith and in what they reasonably believe to be the best interests of the Company and its stockholders. In discharging those obligations, directors should be entitled to rely on the honesty and integrity of the Company's senior management and outside advisors and auditors.

The Audit Committee:

177. During the Relevant Period, five (5) of the Individual Defendants – Bunting, Butler, DeVeydt, Jesanis and Woo – were members of the Board's Audit Committee and thus had additional responsibilities to NiSource. The Audit Committee Charter describes the duties and responsibilities of its members to:

assist the Board in . . . (4) monitoring the compliance by the Company with legal and regulatory requirements, and (5) monitoring the Company's risk assessment process.

178. Likewise, the Company's Proxies for 2016-2018 also described the Audit Committee's responsibilities related to the risk associated with NiSource's Gas Subsidiaries: "Audit Committee is responsible for the oversight of our internal

audit function and financial reporting process. The Audit Committee. . . is responsible for, among other things:

- reviewing and evaluating our major risk exposures, including cybersecurity and supplier risks, and the steps management has taken to monitor and control such exposures, including discussion of our risk assessment and risk management policies; and
- overseeing our compliance with legal and regulatory requirements.”

179. [REDACTED]

[REDACTED]

The ES&S Committee:

180. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The ES&S

Committee is particularly relevant to this action given the Greater Lawrence Explosions, and its Charter is explicit regarding the responsibilities of its members:

Purpose

The Environmental, Safety and Sustainability Committee (the “Committee”) is appointed by the Board of Directors (the “Board”) of NiSource Inc. (the “Company”) to assist the Board in overseeing the programs, performance and risks relative to environmental, safety and sustainability matters.

Committee Authority and Responsibilities

The Committee will make regular reports to the Board and will propose any necessary action to the Board. The Committee will review and reassess the adequacy of this charter annually and recommend any proposed changes to the Board for approval. The Committee will annually evaluate the Committee’s own performance.

The Committee, to the extent it deems necessary or appropriate and in furtherance of its purpose, shall:

1. Review and evaluate the Company’s programs, policies, practices and performance with respect to the environment.
2. Review and evaluate the Company’s programs, policies, practices and performance with respect to employee, contractor and public safety.
3. Review and evaluate the Company’s programs, policies, practices and performance with respect to sustainability.
4. Review stockholder proposals related to the environment, safety and sustainability, and assess the impact on the Company.
5. Review major legislation, regulation and other external influences pertaining to responsibilities of the Committee, and assess the impact on the Company.
6. Review and evaluate the Company’s programs, policies, practices and performance with respect to environmental, health and safety compliance auditing.
7. Perform other duties and responsibilities, consistent with this Charter, the Company’s bylaws, governing law, the rules and regulations of the New York Stock Exchange, the federal securities

laws and such other requirements applicable to the Company, delegated to the Committee by the Board. NISOURCE002564.

181. The Company's 2016-2018 Proxies also highlight the ES&S responsibilities as follows: "The ESS Committee assists the Board in overseeing the programs, performance and risks relative to environmental, safety and sustainability matters. Its responsibilities include, among others:

- evaluating our environmental and sustainability policies, practices and performance;
- evaluating our safety policies, practices and performance relating to our employees, contractors and the general public;
- reviewing and assessing stockholder proposals related to the environment, safety and sustainability;
- reviewing and evaluating our programs, policies, practices and performance with respect to health and safety compliance auditing; and
- assessing major legislation, regulation and other external influences that pertain to the ESS Committee's responsibilities and assessing the impact on us."

182. [REDACTED]

V. DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

183. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress the Individual Defendants' breaches of fiduciary duties.

184. Plaintiff is a shareholder of the Company, was a shareholder of the Company at the time of the wrongdoings alleged herein, and has been a shareholder

of the Company continuously since December 2013.

185. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

186. As a result of the facts set forth herein, Plaintiff has not made any demand on the Board to institute this action against the Individual Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously pursue this action.

187. The Board currently consists of twelve directors: defendants Candris, Woo, Henretta, Butler, Hamrock, Kabat, Jesanis, Altabef, Bunting and DeVeydt and non-parties Lloyd Yates (“Yates”) and Deborah A.P. Hersman (“Hersman”).¹² In order to adequately plead demand futility, a derivative plaintiff need only raise doubt that half of the directors are disinterested or independent. Plaintiff has adequately alleged reason to doubt that at least six current directors are capable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action, for the following reasons:

¹² Non-Party Yates was appointed to the Board on March 10, 2020, after the wrongdoing complained of herein and is not alleged at this time to have breached his fiduciary duties. Non-Party Hersman was appointed to the Board on June 6, 2019, after the wrongdoing complained of herein and is not alleged at this time to have breached her fiduciary duties.

A. Defendant Hamrock Is Not Independent

188. There is reason to doubt that defendant Hamrock is capable of disinterestedly and independently considering a demand to commence and vigorously prosecute this action because defendant Hamrock's principal professional occupation is his employment as President and CEO of the Company, pursuant to which he has earned and stands to earn tens of millions of dollars in annual salary, bonuses and other compensation. In 2017, 2018, and 2019, defendant Hamrock was paid \$5.4 million, \$5.8 million, and \$6.6 million respectively. Incredibly, defendant Hamrock was awarded a **6% raise** in 2018, the year of the Greater Lawrence Explosions, and another **14% raise** the year following the catastrophe. Under Hamrock's "leadership," NiSource suffered more than \$1 billion in damages, serious reputational damage, and increased regulatory oversight and related costs, yet the Board rewarded him with significantly increased compensation.

189. Accordingly, defendant Hamrock is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against those defendants who control his annual compensation. The Company's Proxy Statements on Form DEF 14A admit that defendant Hamrock is not independent.

B. Demand Is Futile Because the Individual Defendants Consciously Failed to Oversee that NiSource’s Gas Subsidiaries, Including CMA, Operated in Compliance with Federal and State Pipeline Safety Laws Despite Numerous Red Flags

190. At all times, compliance with federal and state pipeline safety laws was a “mission critical” function for NiSource, and the Board’s oversight function had to be rigorously exercised. In this regard, operation of a public utility, which provides natural gas service to residential and commercial customers is the very definition of an enterprise where externally imposed regulations strictly govern operations. Therefore, the Board was required to: (a) ensure that the Company complied with regulations governing the operation of natural gas pipelines at the state and federal level and in compliance with the federal PSA, and (b) oversee and monitor the Company’s compliance with those critical state and federal pipeline safety laws. The Individual Defendants failed to do so. The Board readily knew how to “Do the Right Thing,” but consciously chose not to do so with deadly and devastating consequences.

191. As such, the Board’s fiduciary duties of loyalty required the Individual Defendants to make a good faith effort to implement an oversight system and then monitor it. The Board’s monitoring entails a sensitivity to compliance issues intrinsically critical to NiSource, like pipeline safety laws. Here, the Board failed to

act in the face of many red flags that CMA and its other Gas Subsidiaries were not complying with minimum standards under federal and state pipeline safety laws. The Board's bad faith oversight failures are not protected under Delaware law, therefore excusing pre-suit demand.

192. The Board's violations of their general obligations also excuse demand:
 - a. NiSource's Code required every director to "**DO THE RIGHT THING.** Work and operate safely, always. Be ethical and honest in everything we do."
 - b. NiSource's ES&S Committee Charter required each member to "[r]eview and evaluate the Company's programs, policies, practices and performance with respect to employee, contractor and public safety."
 - c. The Audit Committee Charter required each member to "oversee[] our compliance with legal and regulatory requirements."

Thus, not only did the Board allow CMA to violate federal and state pipeline safety laws, but the Company's own governance policies too.

193. As the Massachusetts U.S. Attorney stated, "Columbia Gas, by and through the actions of its employees, and through a pattern of flagrant organizational indifference, *knowingly and willfully violated [a] minimum safety standard.*" The

DPA, which defendant Hamrock signed on behalf of the NiSource Board, admitted that CMA “*knowingly and willfully* violated a minimum safety standard for the starting up and shutting of any part of a distribution pipeline.” Ex. B, ¶ 95. The DPA further admits that CMA “*knowingly and willfully* failed to prepare and follow procedures to remove and relocate regulator control lines on the South Union Project to assure operation of the South Lawrence LP System within the Maximum Allowable Operating Pressure and safety during maintenance and operations.” *Id.* Particularly in the context of the DPA, the words “knowingly” and “willfully” are legal terms of art with precise meaning which describe an intentional act. Delaware law has long permitted stockholder derivative claims on behalf of a corporation against corporate fiduciaries who “knowingly” caused the corporation to commit illegal acts and, as a result, caused the corporation to suffer harm. That is precisely what happened here.

C. [REDACTED]

194. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Audit Committee:

196. Defendants and current Board members, Bunting, Butler, DeVeydt, Jesanis, Kabat and Woo served on the Audit Committee during the Relevant Period. The Audit Committee charter charged its members with “monitoring the compliance by the Company with legal and regulatory requirements.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The ES&S Committee:

197. Defendants and current Board members, Altabef, Butler, Candris, Henretta and Woo served on the ES&S Committee during the Relevant Period. The ES&S Committee charter required its members to “review and evaluate the Company’s programs, policies, practices and performance with respect to employee, contractor and public safety.”

198. The Criminal Information confirms, among other things, that CMA “did not maintain consistent and reliable records of control lines.” Ex. B, ¶ 42. The ES&S Committee was required to “[r]eview and evaluate the Company’s programs, policies, practices and performance with respect to employee, contractor and public safety.” Federal pipeline safety laws are by their very terms public safety laws. The very first subsection of Part 192 states: “This part prescribes minimum safety requirements for pipeline facilities and the transportation of gas.” *See* 49 C.F.R. 192.1.

199. Federal pipeline safety laws, like Part 192, are indisputably public safety laws. As such, CMA’s “deliberate” policy of not maintaining consistent and reliable records was under the direct purview of NiSource and the ES&S Committee. CMA also “did not prepare and follow, nor even contemplate, a formal written procedure for the removal of the control lines [that it] knew was needed to prevent an over-pressurization and assure operation within [guidelines].” Ex. B, ¶ 88. This too was a policy that should have been overseen and approved by the ES&S Committee. Or, in other words, the contractors performed the work precisely as CMA’s policies required them to, but not in compliance with minimum standards as required by federal and state pipeline safety laws. The Greater Lawrence Explosions were not the result of a random accident, but rather were the natural and foreseeable

consequence of workers following policies that violated federal and state pipeline safety laws.

200. [REDACTED]

201. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. [REDACTED]

202. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

203. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

204. [REDACTED]

[REDACTED]

The failure to meet minimum safety standards in these areas was cited by regulators in Massachusetts for the Greater Lawrence Explosions (¶¶ 35-44; 128-142) and the Taunton Event (¶¶ 89-94), twice in Indiana (¶¶ 77-88), and also in Ohio (¶¶ 102-104), and West Virginia (¶ 74).

205. [REDACTED]

[REDACTED]

[REDACTED]

206. [REDACTED]

[REDACTED]

ii. [REDACTED]

207. [REDACTED]

[REDACTED]

[REDACTED] In addition, in February 2016, CMA was fined \$75,000 by the DPU for five violations linked to an incident in Taunton, Massachusetts, where the

pressure in CMA’s natural gas pipes rose dangerously high in violation of federal and state safety regulations, including Part 192. The DPU concluded that CMA did not provide the proper protection against over-pressurization, *and did not have any records* showing proper maintenance of its district regulator stations, which control pressure in the pipes.

208. Explosions and over-pressurization events caused by regulatory violations also occurred in Massachusetts at the Springfield Event (¶¶ 13, 20, 74), in Ohio (¶¶ 102-104), and in West Virginia (¶ 74).

209. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 [REDACTED]

210. [REDACTED]

iii. [REDACTED]

211. NiSource’s wholly-owned NIPSCO subsidiary providing natural gas in the State of Indiana had a long history of violating pipeline safety laws. For example, in 2013, NIPSCO entered into the 2103 Consent Agreements related to violations of Part 192. NIPSCO, however, continued to violated pipeline safety laws, and by 2017, the IURC’s Pipeline Division had filed a Petition against NIPSCO seeking civil penalties concerning at least 261 additional violations occurring between January 1, 2015 and March 8, 2016. The subsequent 2017 IURC Order imposed a \$900,000 fine for such violations. NIPSCO then reported another 617 statutory violations for part of 2017, and the years 2018 and 2019, for which is

was fined another \$3.013 million, including the largest fine in Indiana gas pipeline regulatory history. Most recently, on March 17, 2021, the IURC fined NIPSCO another \$1.138 million due to 234 violations committed in 2019. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv. [REDACTED]

212. [REDACTED]

213. Specifically, the Board knew or should have known that on September

2, 2015, NiSource and CMA internally disseminated ON 15-05 due to a “near miss” experience involving another NiSource company outside of Massachusetts where a construction crew, “excavating to repair” a gas leak near a Regulating Station, came close to hitting a control line and was *unaware of its purpose and importance*.

214.

[REDACTED]

215.

[REDACTED]

v.

[REDACTED]

216.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 2017, the Public Utilities Commission of Ohio approved an agreement that required Ohio Gas to pay a \$200,000 fine, improve its record-keeping by including GPS locations of curb boxes and other infrastructure in its internal records, and enhance safety outreach in the utility's service territory.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi.

[REDACTED]

217.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

218. [REDACTED]

[REDACTED]

219.

[REDACTED]

vii.

[REDACTED]

220.

[REDACTED]

221. [REDACTED]

D. The Board and ES&S Committee's Actions After the Greater Lawrence Explosions Provide Further Reasons to Excuse Demand

222. In addition to CMA having committed a felony by willfully and knowingly violating the minimum safety standards required under the PSA for at least the period from 2015 until September 13, 2018, the Board and ES&S Committee also failed to implement numerous other reasonable and necessary pipeline safety measures at CMA and its other subsidiaries until after the Greater Lawrence Explosions.

223. Among the other prudent safety measures never considered or adopted throughout NiSource's seven gas operating subsidiaries, even after being put on notice by the numerous red flags identified above, were:

- The installation of automatic shut-off devices to protect against under and over-pressurization;

- The implementation of remote monitoring capability to warn the Company of abnormal system performance to improve response efforts;
- Improving deficient practices involving field inspections and surveys, and monitoring of third-party excavators;
- Improving electronic mapping systems with better worker accessibility; and
- The appointment of a chief safety officer to oversee pipeline safety despite the Company’s purported commitment to safety first.

224. Only after the Greater Lawrence Explosions did the Company see any urgency to adopt these and other pipeline safety measures. As reflected in the Company’s Fourth Quarter 2018 Earnings Call, NiSource needed to play “catch up” and the implementation of these long-needed public safety measures would cost the Company hundreds of millions of dollars.

225. [REDACTED]

E. The Company’s Admission that the Board “Lacked the Expertise” to Provide Meaningful Oversight of the Company’s Compliance with Federal and State Pipeline Safety Laws Excuses Demand

226. Plaintiff alleges that the entire Board acted disloyally, so as to excuse demand because almost none of the directors at the time of the Greater Lawrence Explosions had any expertise in natural gas service, and the Board did nothing to rectify their lack of knowledge. In addition, none had any expertise in gas pipeline safety matters. This lack of experience was so profound that the Board was incapable of protecting or acting in the best interests of NiSource.

227. A review of the professional backgrounds of the ES&S Committee members demonstrates their ineptitude to oversee such a highly regulated entity.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Not a single member of the*

ES&S Committee disclosed any experience with natural gas service or at a natural gas utility in their biographies – clearly falling short of the level of rigorous oversight Delaware law requires. Only one Board member at the time of the Greater Lawrence Explosions had prior experience with natural gas production or at a natural gas utility of any sort, and that was defendant Jesanis, who was not a member of the ES&S Committee at that time (although he had been a member in earlier periods). After the Greater Lawrence Explosions, two non-party directors Yates and Hersman, joined the Board to remedy a clear and acknowledged deficiency.

228. The Company explicitly acknowledged that senior leadership at the Board level lacked the required “expertise” to oversee an SMS system and the Company’s compliance with federal and state pipeline safety laws.

229. A March 14, 2019 article in *The Columbus Dispatch* confirms the hiring of Ray LaHood to create and run a new independent committee to oversee “a safety effort that [NiSource] launched in the wake of the Massachusetts gas explosion.”¹⁴ According to the *Columbus Dispatch* article and the interview therein with defendant Hamrock, the “group will monitor the Company’s implementation of its Safety

¹⁴ Mark Williams, *NiSource creates independent committee to oversee company’s safety effort*, *The Columbus Dispatch* (Mar. 14, 2019) <https://www.dispatch.com/business/20190314/nisource-creates-independent-committee-to-oversee-companys-safety-effort>.

Management Systems program across the Company’s seven-state footprint.” This is the very same SMS system which the government and the Board acknowledged was “*required*” for compliance with federal and state pipeline safety laws. Such a system was completely absent from CMA (and several other NiSource Gas Subsidiaries). In response to the appointment of Mr. LaHood and the enterprise-wide pipeline SMS system NiSource announced was in process, defendant Hamrock is quoted as saying: “*[t]his is a journey that requires expertise we don’t have.*”

230. If the Board did not have sufficiently qualified individuals serving on it prior to the Greater Lawrence Explosions, the entire Board had the obligation to either resign in favor of new directors who possessed the required experience or to appoint additional directors to make up for their own shortcomings. The Board did neither until after the Greater Lawrence Explosions occurred, as only then did the Board appoint two new directors possessing experience with natural gas production and delivery. The admission by defendant Hamrock that the Board did not possess the expertise to oversee the Company’s compliance with federal and state pipeline safety laws is sufficient to excuse demand.

VI. CLAIMS

CLAIM I AGAINST ALL INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES

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

232. By reason of their fiduciary roles as officers and/or directors of the Company, the Individual Defendants specifically owed and owe NiSource the highest obligation of good faith, fair dealing, loyalty and due care.

233. The Individual Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

234. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, NiSource has sustained significant damages, not only monetarily, but also to its corporate image and goodwill.

235. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

236. Plaintiff, on behalf of NiSource, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties;

B. Directing NiSource to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein;

C. Awarding to NiSource restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Individual Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

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