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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
For The
WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
v.	:
	:
NATIONAL GAS & POWER COMPANY, INC.,	:
et. al	:
	:
Defendants.	:

CIVIL ACTION NO.
89-207-M

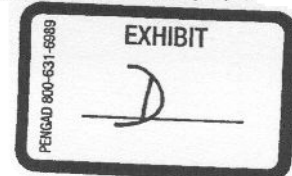
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Matters

1. This matter was heard pursuant to a Motion for Summary Judgment filed by Plaintiff, Securities and Exchange Commission ("Commission"), pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. This action was commenced on May 12, 1989, with the filing of a Complaint by the Commission seeking to enjoin Defendants National Gas & Power Company, Inc. ("NGP"), Joseph A. DiBruno ("DiBruno") and Virginia L. Ingle ("Ingle") from violating and aiding and abetting violations of the federal securities laws.

3. NGP is alleged to have violated and aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended ("Securities Act") [15 U.S.C. 77e(a), 77e(c),



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and 77q(a)], Sections 10(b) and 13(a) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. 78j(b) and 78m(a)], and Rules 10b-5, 12b-20, 12b-25, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.10b-5, 240.12b-20, 240.12b-25, 240.13a-1, 240.13a-11, and 240.13a-13].

4. DiBruno is alleged to have violated and aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. 77e(a), 77e(c) and 77q(a)]; and Section 10(b) of the Exchange Act [U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5] and violated Sections 13(d) and 16(a) of the Exchange Act [15 U.S.C. 78m(d) and 78p(a)] and Rules 13d-1 and 16a-1 thereunder [17 C.F.R. 240.13d-1 and 240.16a-1] and aided and abetted violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules 12b-20, 12b-25, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.12b-25, 240.13a-1, 240.13a-11, and 240.13a-13].

5. Ingle is alleged to have violated and aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. 77a, 77e(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]; and violated Section 15(a) of the Exchange Act [15 U.S.C. 78o(a)].

6. The Commission's motion was supported by judicial admissions of the defendants, depositions, affidavits and exhibits thereto.

7. Defendant Ingle filed a response basically agreeing that the Commission was entitled to the relief. Subsequently, she consented to the relief without admitting or denying the allegations of the complaint.

8. DiBruno, on behalf of NGP and himself, filed an affidavit in opposition to the motion for summary judgment which denied the Commission was entitled to the relief. However, it consisted of few statements of fact which would be admissible into evidence. Moreover, it has not been considered by the Court for reasons set forth hereinafter.

The Defendants

9. DiBruno and NGP admit that NGP was a Delaware corporation with its principal place of business in Charlotte, North Carolina.¹ NGP's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act of 1934 ("Exchange Act") and its common stock was publicly traded in the over-the-counter market throughout the relevant time period, namely December 1983 through December 1987.² NGP is presently a shell corporation with no active business but is still controlled by DiBruno.³

10. DiBruno was, from at least November 1983 until in or about January 1988, President, Chief Executive Officer, Chairman of the Board of Directors, and a controlling person of NGP, as admitted by him in his affidavit.⁴ DiBruno acted on behalf of NGP in filing an answer and other pleadings herein; thus, he continues to control NGP's actions. DiBruno until recently was a shareholder

and a member of the Board of Directors of Jersey Farms Corporation, a non-public corporation.⁵

11. Defendant Ingle, a resident of Statesville, North Carolina, first became a shareholder of NGP in or about April 1985.⁶ Thereafter, she offered and sold over 465,000 shares of common stock of NGP to over 60 persons.⁷ DiBruno admits Ingle is not and never was registered as a broker or dealer with the Commission nor has she ever been associated with any registered broker-dealer.⁸

Background

12. In a merger transaction dated November 21, 1983, NGP, then known as Brewer Alcohol Fuel Corporation ("Brewer"), merged with a North Carolina corporation, National Gas and Power Company, Inc., hereinafter referred to as Old National.⁹ Upon consummation of the merger, Brewer's name was changed to NGP.⁹

13. Prior to the merger DiBruno was the principal shareholder of Old National and was the sole shareholder of Farm Maid Corporation ("Farm Maid") and Genesis Ozonics, Inc. ("Genesis"). Brewer at the time of the merger also acquired Farm Maid and Genesis from DiBruno.⁹

14. None of the corporations at the time of the merger had any substantial assets, nor were they doing any business which generated income on a regular basis.¹⁰

15. Immediately prior to the merger NGP had 10 million shares of common stock authorized, of which approximately 2.7 million shares had been issued; however, only 1.2 million shares were

outstanding.¹¹ The other 1.5 million shares were held by NGP as treasury stock.¹¹

16. As admitted in the answer of NGP and DiBruno, the merger agreement required NGP to issue an additional 5.75 million shares to shareholders of Old National and to DiBruno for his stock in Farm Maid and Genesis.¹² As a consequence, NGP was to have approximately 6.95 million shares issued and outstanding.¹²

17. Of the 6.95 million shares of NGP common stock to be issued and outstanding, DiBruno admits he was to receive 3,080,000 shares.¹³ DiBruno was to be issued 1.33 million shares of NGP common stock for his 665,000 shares of Old National common stock; 1 million shares of NGP common stock were to be issued to him for Farm Maid stock and 750,000 shares of NGP common stock were to be issued to him for his Genesis stock.¹⁴

18. The 3,080,000 shares represented 36 percent of the stock issued by NGP and 44 percent of the outstanding stock of NGP.¹⁵

19. All of the shares to be issued to DiBruno were to be restricted; that is, they could not be sold unless registered or pursuant to an appropriate exemption from registration.¹⁶

20. From and after the merger in November 1983 through at least December 1987, NGP offered and sold approximately 5.5 million shares of National's common stock, which were not registered with the Commission, to about 190 investors residing in 16 states.¹⁷

21. DiBruno personally participated in many of the sales, as shown by the testimony of Ingle, James M. Devers, Jr., Braxton Stroud, Frank Cody, Maurie Shields, Herbert Martin, and Steve

Dolley, Jr.¹⁸ In addition, the testimony shows DiBruno authorized Ingle and others to sell NGP common stock, providing them with receipts, signed by him, to be given to persons who purchased NGP common stock.¹⁹

22. Ingle testified she became a shareholder of NGP in April 1985.²⁰ Thereafter over 468,000 shares of NGP stock were sold by her and her husband from in or about April 1985 through 1986 to at least 64 investors residing in four states.²¹

23. Steve Dolley, Jr., a director of NGP and its attorney testified that the Board of Directors of NGP never authorized NGP or DiBruno to offer or sell any shares of NGP subsequent to the merger in November 1983.²²

24. The Board of Directors of NGP did not authorize the issuance of any shares of NGP for any purpose subsequent to the merger in 1983.²³

25. Notwithstanding the lack of authority, NGP, through DiBruno, requested its transfer agent to issue over 10 million shares of NGP common stock purportedly to persons who were shareholders of Old National.²⁴

26. The request for the issuance of these shares subsequent to the merger in November 1983, orchestrated by DiBruno, exceeded the total number of shares that NGP was even authorized to issue.²⁵

27. Included among the over 10 million shares DiBruno caused NGP to issue were 500,000 shares in the name of his secretary, Betty Ramsey.²⁶

28. Ramsey testified she did not order the stock nor could she pay for the securities.²⁷ After she received the certificates, she advised DiBruno that there was a mistake, that she had not requested any stock nor could she pay for the stock.²⁸ DiBruno had her take the certificates for the 500,000 shares to a bank and have her signature guaranteed by the bank to facilitate the transferability of the shares.²⁹ DiBruno then sold over 400,000 of the shares to over 25 people including Frank Cody who testified he received the certificates in Ramsey's name directly from DiBruno.³⁰ NGP received nothing for the 500,000 shares.³¹

29. James M. Devers, Jr. and Braxton Stroud testified that DiBruno represented to investors that he was attempting to help a shareholder of NGP who needed to sell the shares to raise money for a financial problem; however, the stock eventually issued to the investors was original issue stock directly from NGP.³² DiBruno refused to answer questions pertaining to these matters based on his rights under the Fifth Amendment to the United States Constitution.³³

30. Although Ingle testified that she was purchasing the stock from NGP, none of the monies paid by Ingle for the stock was ever turned over to NGP in payment for the stock.³⁴

31. Ingle testified she told persons to whom she sold NGP stock that NGP was the seller of the stock, and turned monies received from investors for the purchase of NGP common stock over to DiBruno.³⁵ Some investors paid in cash, which DiBruno liked, according to Ingle; also Ingle testified that she received checks

payable to her, which she converted to cash before turning the monies over to DiBruno for NGP. Yet, none of the monies were ever recorded on NGP's books as capital according to Diane Eckert, the Commission's accountant.³⁶

32. In addition to cash, some investors, including Ingle and Frank Cody, transferred road equipment, antique dolls, antique cars, televisions and other personal property to DiBruno in payment for shares of NGP.³⁷ None of the assets were reflected on the books and records of NGP.³⁸ DiBruno declined to answer any questions concerning what he did with these assets based on the Fifth Amendment.³⁹

33. In order to cause the transfer agent to issue the common stock, DiBruno caused four (4) lists of shareholders purportedly entitled to receive NGP common stock as a result of the merger in November 1983 to be sent to the transfer agent, according to the testimony of Steven Dolley, Jr., NGP's attorney.⁴⁰ DiBruno declined to answer any questions concerning the subject based upon his Fifth Amendment rights.⁴¹

34. Each list was accompanied by an opinion letter on the stationery of Steve Dolley, Jr. ("Dolley"), NGP's corporate counsel and a director of NGP. The letters in substance stated that the persons shown on the lists had been shareholders of Old National and were entitled to the shares based on the merger agreement.⁴²

35. The letters Dolley did prepare were attached to lists other than the ones shown to him by DiBruno.⁴³ The letters Dolley prepared subsequent to the initial opinion letter issued in

February 1984, were prepared at the request of DiBruno who told Dolley that two or three names had been omitted from the original list; one letter purportedly from Dolley was forged.⁴³

36. The four (4) lists sent to National's transfer agent reflected a total of 10,027,813 shares of NGP common stock; DiBruno requested that his 3,080,000 shares be held.⁴⁴

37. Despite the request to hold 3,080,000 shares owed to DiBruno, 8,151,413 shares were issued and are outstanding as a result of the lists submitted by DiBruno.⁴⁴

38. The number of shares issued and outstanding even excluding DiBruno's 3,080,000 shares exceeds by 2,401,413 shares the number of shares which were to be issued and outstanding according to the merger agreement.⁴⁵

39. The last list sent to the transfer agent was in October 1986, almost three years after the merger. The dates on which the lists were sent to National's transfer agent and the number of shares requested to be issued are as follows:⁴⁶

<u>DATE OF LETTER</u>	<u>NO. OF SHARES</u>
Feb. 1984	5,725,000
May 1984	745,100
Sept. 1985	1,738,050
Oct. 1986	1,819,663

40. Included on the lists were the names of many investors who purchased their stock in 1985 and 1986 including Ingle.⁴⁷

41. Most of the persons who purchased stock in 1985 and 1986 had never been shareholders of Old National, nor were they entitled

to the shares issued to them as a result of the merger that occurred in November 1983.⁴⁸ These persons first heard about NGP when they were offered and sold their stock in 1985 and 1986.⁴⁹

42. The investors who purchased stock subsequent to the merger paid prices ranging from \$.25 to \$1.00 per share.⁵⁰

43. Investors were sold NGP stock at arbitrary and capricious prices ranging from \$.25 to \$1.00 per share.⁵¹ Investors were not told that they were being charged prices that were higher than the amount charged to other investors.⁵²

44. DiBruno converted monies and property paid by investors for stock of NGP.⁵³ DiBruno falsely claimed to be keeping NGP afloat by personally loaning it money to meet the expenses of its operations.⁵⁴

45. Even though the stock of NGP was sold over several years, investors were consistently being told that the stock would more than double in price in a short period of time and many were told that the stock would be selling at \$10.00 per share in 6 to 8 months.⁵⁵

46. Investors were not furnished with financial information concerning NGP at the time they bought their stock.⁵⁶

47. Investors who were furnished financial information and reports and newsletters thereafter were furnished false and misleading financial information.⁵⁷

48. DiBruno furnished a written guarantee to repurchase NGP stock sold to Ingle's mother.⁵⁸

49. Investors were told that the stock of NGP would soon be listed on NASDAQ (NASDAQ is an acronym for National Association of Securities Dealers Automated Quotation) without being told what the qualifications were to be listed on NASDAQ, nor the fact that NGP did not meet the qualifications for NASDAQ.⁵⁹

50. DiBruno falsely told investors that NGP owned plants for the recycling of garbage when, in fact, NGP never owned a recycling plant.⁶⁰

51. Investors were told that NGP had entered into contracts with municipalities for the construction and operation of recycling plants that would produce millions of dollars in revenue for NGP when in fact, no contracts were ever agreed upon between NGP and any municipality for the construction and operation of recycling plants.⁶¹

52. From December 1983 through December 1986, NGP and DiBruno prepared seven (7) newsletters which were sent to investors and filed them with the Commission on Form 8K Reports (current reports). The newsletters and the reports were false and misleading.⁶²

53. The first newsletter, which was dated December 30, 1983, stated that NGP's system for processing garbage was tested by an independent laboratory and found to be 95% efficient when, in fact, NGP never had a complete full-sized system to be tested.⁶³

54. There was also a statement in the newsletter dated December 30, 1983 that Farm Maid, a subsidiary of NGP, had a chocolate drink, KoKo Sip, that was to be distributed by a company

whose market covered seven states. In fact, there was no contract for such distribution and Dolley, a director of NGP and its corporate counsel, had advised DiBruno not to include any information in the newsletter regarding KoKo Sip since there was no distribution contract and the negotiations for a distributor were not near being finalized.⁶⁴

55. In a newsletter dated August 2, 1985, NGP and DiBruno stated that NGP had purchased Seafood Express, Inc. ("Seafood Express"), a fast food restaurant located in Charlotte, North Carolina, under "the most favorable conditions" and that the acquisition added significantly to NGP's financial condition, when in fact, NGP had not finalized the purchase and the purchase was never consummated.⁶⁵

56. A consolidated NGP balance sheet as of July 31, 1985 was attached to the August 2, 1985 newsletter.⁶⁶ The balance sheet included Seafood Express as an asset and understated the liabilities for the purported acquisition of Seafood Express by \$100,000. It also listed as an asset on the balance sheet treasury stock valued at \$1,570,180 and stated stockholders equity at \$1,859,405. Neither Seafood Express nor the treasury stock should have been included as an asset on the July 31, 1985 balance sheet.⁶⁷ In fact, National was insolvent as of July 31, 1985. (See footnote 72.)

57. In a newsletter dated August 26, 1985 NGP and DiBruno stated that NGP had issued licensing agreements to the principals of DEMCO, Inc. (DEMCO"), an Atlanta, Georgia company, for

\$2,270,000 in DEMCO corporate notes to be paid over a 5 year period. DEMCO was not a corporation, but only a trade name under which Automotive Electric Corp., a Georgia corporation, operated.⁶⁸

58. DEMCO had been unable to pay its bills as they matured at that time and had lost the customer which made almost all the purchases of its products. Further, the principals of DEMCO were attempting to sell all of the company's assets which had been pledged to secure a \$100,000 bank loan which facts were not disclosed to NGP shareholders.⁶⁹

59. NGP and DiBruno issued another newsletter on November 4, 1985 which stated that a partial payment on the five year notes for \$2,270,000 had been made by the transfer of over \$1,600,000 of DEMCO assets; no mention was made that NGP had assumed DEMCO's \$100,000 bank loan nor did it disclose that there was no market for the large diesel engines acquired.⁷⁰

60. The August 26, 1985 newsletter had attached to it a balance sheet which falsely represented NGP's financial condition. The balance sheet, included as part of the August 26, 1985 newsletter stated NGP had a stockholder's equity of \$178,842 as of August 21, 1985, which was over \$1.5 million less than it reported as of 3 weeks earlier.⁷¹

61. Later, in connection with a November 1985 newsletter, NGP, as of November 1, 1985, claimed a stockholders' equity of \$1,778,035 when, in fact, NGP was insolvent.⁷²

62. In a newsletter dated February 20, 1986, NGP and DiBruno stated that authorization had been obtained from Mecklenburg

County, North Carolina, for NGP to conduct a feasibility study for a garbage recycling plant. The newsletter implies that NGP also had been given a contract for the construction of a recycling plant for Mecklenburg County which, in fact, it did not obtain. The newsletter also contained copies of newspaper clippings which purport to quote DiBruno as a spokesman for NGP. Some of the articles cite DiBruno as claiming NGP operated a prototype in Richmond, Virginia. One article stated that DiBruno had represented that NGP was earning about \$2,000,000 a year with plants in Georgia and could become a \$20,000,000 company within a year. In fact, NGP never had such income, and did not operate a plant in Richmond, Virginia.⁷³

63. NGP and DiBruno issued a newsletter dated November 24, 1986 which falsely stated that Douglas County, Georgia had issued \$10,000,000 in bonds for the construction by NGP of a 400 ton per day resource recovery system, when, in fact, Douglas County had never issued \$10,000,000 in bonds and had never entered into a contract with NGP for the issuance of such bonds. The November 24, 1986 newsletter also falsely stated that Bartow County, Georgia had authorized a \$9.5 million bond offering for the building of a plant by NGP.⁷⁴

Reporting Violations

64. All reports filed by NGP subsequent to its merger with Old National in November 1983 have been incomplete, false and misleading, and were not filed in a timely manner.⁷⁵

65. NGP has not filed any reports since it filed its quarterly report on Form 10-Q for May 31, 1985 on March 24, 1986, which was over seven months late.⁷⁶

66. NGP filed its last annual report on Form 10-K for its fiscal year ending August 31, 1984 on July 2, 1985, which was over seven months late. It did not contain audited financial statements which are required, and was false and misleading as described above. NGP should have filed annual reports on Form 10-K for its fiscal year ending August 31, 1985 and for each fiscal year thereafter, which it has failed to do.⁷⁷

67. NGP is required to file quarterly reports for the first three quarters of its fiscal year. It has not filed a quarterly report since March 24, 1986, when it filed quarterly reports for its quarters ending November 30, 1984, February 28, 1985, and May 31, 1985. NGP is delinquent in filing quarterly reports for its fiscal years 1986 through 1990. Moreover, the last three quarterly reports filed merely contained a copy of the last annual report, which was false and misleading.⁷⁸

68. DiBruno is the owner of 3,080,000 shares of NGP common stock as a result of the merger and acquisition made by NGP in November 1983, which was over thirty-five (35) percent of the then outstanding stock. DiBruno should have but did not file a Schedule 13D Report with the Commission.⁷⁹

69. Although DiBruno was an officer and director of NGP from November 1983 through at least 1986, he never filed any stock ownership reports on Form 3 or Form 4.⁸⁰

70. There are no material issues of fact regarding DiBruno's responsibility for filing reports, which by his own admission were false, or not filing reports of NGP with the Commission.⁸¹ Likewise, there is no material issue of fact that DiBruno did not file a schedule 13D and the requisite stock ownership reports.⁸²

CONCLUSIONS OF LAW

1. Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, the Court in ruling on a motion for summary judgment is to determine whether a genuine issue of material fact exists, not to resolve any existing factual issues. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 467, 82 S.Ct. 486, 488, 7 L.Ed.2d 458 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627, 64 S.Ct. 724, 728, 88 L.Ed. 967, reh'g denied, 322 U.S. 767, 64 S.Ct. 941 (1944). In considering the motion, the Court, solely for the purpose of ascertaining whether issues of fact exist, is to consider the pleadings, depositions, and admissions of the parties, together with affidavits, if any, and all other evidence before it. Utility Control Corp. v. Prince William Construction Co., Inc., 558 F.2d 716, 719 (1977); Bland v. Norfolk and Southern Railroad Company, 406 F.2d 863, 866 (1969). Even factually complex cases may be disposed of by summary judgment. Carpenter v. Harris Upham & Company, Inc., 594 F.2d 388, 395 (4th Cir. 1979). Securities and Exchange Commission v. Research Automation Corp., 585 F.2d 31, 33-34 (2d Cir. 1978). See also Parsons v. Hornblower & Weeks-Hemphill, Noyes, 447 F.Supp. 482 (M.D. N.C.), aff'd. per curiam 571 F.2d 203 (4th Cir. 1978).

2. DiBruno's personal affidavit in opposition to the Commission's motion for summary judgment will not be considered by the Court because of his refusal to testify during a deposition taken by the Commission. SEC v. American Beryllium & Oil Corp., 303 F.Supp. 912 (S.D. N.Y 1969); Worthington Pump Corp. (U.S.A.) v. Hoffert Marine, Inc., 34 Fed. Rules Serv. 2nd 855 (D.C. N.J. 1982). DiBruno refused to testify based upon his right under the Fifth Amendment to the United States Constitution. While DiBruno has the right to refuse to testify, assuming the right has not been otherwise waived, to allow the invokee to proceed with his testimony by affidavit or at trial mocks the discovery process. Rule 37 of the Fed. R. Civ. P. provides for a variety of remedies should a party fail or otherwise refuse to provide discovery, including precluding a party " . . . from introducing designated matters in evidence." Rule 37(b)(2)(B). The Court has determined that such preclusion is in the interest of justice.

Even if the Court were to consider the affidavit submitted by DiBruno it does not contain probative evidence admissible at trial. "Mere denials unaccompanied by a statement of any facts which could be admissible into evidence at a hearing, are not sufficient to raise a genuine issue of fact." First National Bank Co. of Clinton, Ill. v. Insurance Co. N. America, 606 F.2d 760, 768 (7th Cir. 1979). See also Ross v. Communications Satellite Corporation, 759 F.2d 355, 364 (4th Cir. 1985).

3. The record before this Court shows that no material issues of fact exist regarding:

(1) that the defendants, directly and indirectly, offered and sold millions of shares of unregistered common stock of NGP by use of the mails and instruments of interstate commerce;

(2) that in connection with the offer and sale of NGP common stock, the defendants misrepresented and failed to state material facts concerning: (a) the sale of NGP stock at arbitrary and capricious prices; (b) the conversion (theft) of investors' funds by DiBruno; (c) the financial condition of NGP, in particular that NGP was insolvent; (d) the acquisition of contracts for the recycling of garbage for local government bodies which they falsely represented would produce millions of dollars in revenue for NGP; and (e) the prospective rise in the price of NGP stock of a hundred to a thousand percent within a matter of weeks and months respectively. Such sales violated the registration and anti-fraud provisions of the federal securities laws as alleged by the Commission, namely Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

4. Unless exempt, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a) and 77e(c)] make it unlawful for anyone to offer or sell securities by use of the mails or any means of interstate commerce unless a registration statement is filed or in effect with the Commission for those securities. From late 1983 through at least July 1987, NGP and DiBruno sold 5.5 million shares of NGP's common stock to more than 100 individuals residing in 16

states. No registration statement for this common stock of NGP was filed or in effect throughout that period.

DiBruno violated Sections 5(a) and 5(c) of the Securities Act both as an issuer and as an underwriter of unregistered stock of NGP. "The term 'issuer' includes both the company issuing stock and control persons of the company." SEC v. National Bankers Life Ins. Co., 324 F.Supp. 189, 194 (N.D. Tex. 1971). DiBruno was a control person of NGP. He was its chief executive officer, managing its day to day affairs, and as a consequence is liable as an issuer. Also, he was an underwriter. Section 2(11) of the Securities Act includes persons who offer or sell "for an issuer in connection with the distribution of any security. ."

The Ninth Circuit, in determining participant liability under Section 5, in SEC v. Rogers, 790 F.2d 1450, 1456 (1986) held that a person's conduct must "be both necessary to, and a substantial factor in the unlawful transaction . . . the first prong of this standard requires a defendant's participation to be a 'but for' cause of the unlawful sale, and the second requires the participation to be more than 'de minimus'" (citations omitted). See also, SEC v. Murphy, 626 F.2d 633, 650 (9th Cir. 1980).

Similarly, the Fourth Circuit, in construing Section 12 of the Securities Act (granting a private right of action for violations of Section 5), held, in Lawler v. Gilliam, 569 F.2d 1283 (4th Cir. 1978), that seller liability includes significant participation in the sale, such as participating in negotiations or arranging the sale, but excludes minor participation with no

causal connection. Id. at 1288. This mirrors the two-pronged analysis of SEC v. Rogers and should be applied to violations of Section 5 in the instant case. Here, the sales of unregistered NGP common stock would not have taken place but for DiBruno's participation. He was responsible personally for sales to investors. Investors were provided with receipts signed by him. He sent or caused to be sent the false letters to the transfer agent for NGP directing the shares to be issued to the investors purchasing NGP's stock from him and Ingle. Also, monies obtained from the investors were taken by him and "loaned" by him to NGP.

The Defendants Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

5. The fundamental purpose of the securities laws is "to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry." Affiliated Ute Citizens v. United States, 406 U.S. 128, 151, 92 S.Ct. 1456, 1471 (1972) (quoting Securities and Exchange Commission v. Capital Gains Research Bureau, 375 U.S. 180, 186, 84 S.Ct. 275, 280 (1963)). The Supreme Court reaffirmed the broad remedial purposes of the anti-fraud provisions of the securities laws in Herman & MacLean v. Huddleston, 459 U.S. 375, 103 S.Ct. 683 (1983). There the Court (quoting Capital Gains Research Bureau, Inc., supra, 375 U.S. at 195) stated that "securities laws combating fraud should be construed 'not technically and restrictively, but flexibly to effectuate [their] remedial purposes.'" Huddleston, supra, 459 U.S. at 386-87.

Lying at the heart of the federal securities laws' concern with fair dealing in securities transactions are the anti-fraud provisions -- Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. These provisions "prohibit all fraudulent schemes in connection with the purchase or sale of securities, whether the artifices employed involve a garden type variety of fraud, or present a unique form of deception." Superintendent of Insurance v. Bankers Life and Casualty Co., 404 U.S. 6, 10 n.7, 92 S.Ct. 165, 168 n.7 (1971) (quoting A.T. Brod & Co. v. Perlow, 375 F.2d 393, 397 (2d Cir. 1967)). These provisions make unlawful not only misstatements but also omissions to state material facts. Therefore, representations that are false or misleading by virtue of the fact that necessary qualifications or explanations were omitted, consistently have been held by the courts and the Commission to constitute fraudulent activity violative of the anti-fraud provisions of the federal securities laws. E.g., Walker v. Action Industries, Inc., 802 F.2d 703, 708 (4th Cir. 1986); Charles Hughes & Co. v. Securities and Exchange Commission, 139 F.2d 434 (2d Cir. 1943); Norris & Hirshberg v. Securities and Exchange Commission, 177 F.2d 228 (D.C. Cir. 1949).

The defendants' misrepresentations and omissions to state material facts in connection with the offer and sale of the common stock of NGP to investors and in NGP's newsletters and reports to investors and publicly filed with the Commission are clearly material and violative of the anti-fraud provisions. For purposes

of the federal securities laws, "materiality depends on the significance the reasonable investor would place on the withheld or misrepresented information." Basic, Inc. v. Levinson 108 S.Ct. 978, 988 (1988). See also: TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976); Walker v. Action Industries, 802 F.2d 703, 706 (4th Cir. 1986). The test of materiality is objective. Basic, supra, 108 S.Ct. at 987; Sandberg v. Virginia Bankshares, Inc., 891 F.2d 1112, 1121 (4th Cir. 1989); Securities and Exchange Commission v. First American Bank & Trust Co., 481 F.2d 673, 679-80 (8th Cir. 1973). There is no need for showing in the case of an omission that any particular investor relied to his detriment or would have acted differently had there been no omission. Basic, supra, Edens v. Goodyear Tire & Rubber Co., 858 F.2d 198, 207 (4th Cir. 1988) (positive proof of reliance is not a prerequisite to recovery in case involving a failure to disclose). Burlington Industries, Inc. v. Edelman, 666 F.Supp. 799, 807; (M.D. N.C. 1987); First American Bank & Trust Co., supra, 481 F.2d at 679-80 (8th Cir. 1973). Cf. Affiliated Ute Citizens, 406 U.S. at 153-54. Moreover, reliance is not an element of proof in actions brought by the Commission. SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2nd Cir. 1968) (en banc), cert. denied sub nom., Coates v. SEC, 394 U.S. 976 (1969); SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1171 (D.C. Cir. 1978), cert. denied sub nom., Zimmerman v. SEC, 440 U.S. 913 (1979).

Misrepresentations relating to the character of an issuer's business are material and such misrepresentations violate the federal securities laws. See Holdsworth v. Strong, 545 F.2d 687, 697-98 (10th Cir. 1976), cert. denied, 430 U.S. 955, 97 S.Ct. 1600 (1977). See also Escott v. Bachris Construction Corp., 283 F.Supp. 643, 681 (S.D.N.Y. 1968).

A seller of securities has a duty to disclose the financial condition of the issuer and the failure to do so constitutes fraud violative of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. Securities and Exchange Commission v. World Radio Mission, Inc., 544 F.2d 535, 539-40 (1st Cir. 1976); Securities and Exchange Commission v. American Institute Counselors, Inc., [1975-76 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,388, at 98,953-54 (D.D.C. 1975).

Here, NGP and DiBruno knew that NGP was insolvent; yet, investors were not provided truthful information concerning NGP either at the time they bought the stock, nor at any time thereafter. Investors were told NGP operated a recycling plant in Virginia and that it had been awarded contracts by municipalities, some of which had purportedly issued millions of dollars in bonds to facilitate NGP, all of which was false. Moreover, they were not informed of NGP's need to obtain millions of dollars in financing in order to obtain contracts from government bodies for the recycling of garbage for such entities. Under Basic, Inc., supra, 108 S.Ct at 988 and TSC, supra, 426 U.S. at 449, such facts are material within the language of the federal securities laws.

Also, related party transactions often are material, and thus, must be disclosed in the offer or sale of a security. See, e.g., Gladwin v. Medfield Corp., 540 F.2d 1266, 1270-71 (5th Cir. 1976) (stockholder action alleging misstatements or material omissions in proxy materials). See also Securities and Exchange Commission v. World-Wide Coin Investments, Ltd., 567 F.Supp. 724, 757 (D. Ga. 1983) (involving proxy solicitations). Here DiBruno "loaned" monies to NGP which actually were funds from investors which should have gone to the corporation as a capital contribution. The investors' funds should not have been shown as a liability to DiBruno, who had misappropriated the funds. Moreover, DiBruno sold stock of NGP which he improperly had issued to his secretary, who did not pay for the stock. DiBruno had her endorse certificates for 500,000 shares, and then sold over 400,000 shares to over 25 persons, retaining the proceeds for himself. See e.g., SEC v. Washington County Utility District, 676 F.2d 218 (6th Cir. 1982) (kickback to manager of utility district from bond dealer was material). Even in the absence of an actual conflict of interest, related party transactions have been held material where there was only a potential for a conflict of interest. Steadman v. Securities and Exchange Commission, 603 F.2d 1125, 1130 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91, 101 S.Ct. 999 (1981). See also Sandberg v. Virginia Bankshares, Inc., 891 F.2d 1112, 1121-28 (4th Cir. 1989) (failure to disclose self-interests of appraiser and directors could be material omission). The Supreme

Court in discussing the broad remedial purposes of a disclosure rule (proxy solicitation Rule 14a-9) stated that the purpose,

"is not merely to ensure by judicial means that the transaction . . . is fair and . . . adequate, but to ensure disclosures by corporate management in order to enable shareholders to make an informed choice . . . [therefore] [d]oubts as to the critical nature of the information . . . [should] be resolved in favor of those the statute is designed to protect." (citation omitted.)

TSC, supra, 426 U.S. at 448, 96 S.Ct. at 2132.

Moreover, DiBruno's conduct was more than merely a related party transaction. The theft of investors' funds is obviously material, and that is exactly what DiBruno was doing when he credited the money received from investors as a loan to the corporation from him.

The false statements and omissions in this case relating to the price charged for NGP stock, the prospective increase in the price of NGP's stock, the financial condition of NGP and purported contracts involving millions of dollars with various government units "are so obviously important to the investor, that reasonable minds cannot differ on the question of materiality." TSC, supra, 426 U.S. at 450 (quoting Johns Hopkins University v. Hutton, 422 F.2d 1124, 1129 (4th Cir. 1970), cert. denied, 416 U.S. 916, 94 S.Ct. 1622, 1623 (1974)), and, thus make summary judgment appropriate under the circumstances of this case.

Scienter must be shown to sustain a violation of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Aaron v. Securities and Exchange

Commission, 446 U.S. 680, 697, 100 S.Ct. 1945, 1956 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12, 96 S.Ct. 1375, 1381 n.12, 47 L.Ed.2d 668 (1976). Count three of the Commission's Complaint seeks relief under Sections 17(a)(2) and 17(a)(3) of the Securities Act. Scienter is not required under 17(a)(2) or 17(a)(3). Aaron v. Securities and Exchange Commission, 446 U.S. 680, 697, 100 S.Ct. 1945, 1956 (1980); Newcome v. Esrey, 862 F.2d 1099, 1106 (4th Cir. 1988). However, neither Section 10(b) nor Rule 10b-5, thereunder, require a specific intention to violate the law, but rather "knowing or intentional actions which, objectively examined, amount to a violation." Pittsburgh Terminal Corp. v. Baltimore & Ohio Railroad Co., 680 F.2d 933, 942 (3d Cir.), cert. denied, 459 U.S. 1056, 103 S.Ct. 474 (1982). See also Securities and Exchange Commission v. Falstaff Brewing Corp., 629 F.2d 62, 77 (D.C. Cir. 1980), cert. denied, sub nom., Kalmanovitz v. Securities and Exchange Commission, 449 U.S. 1012, 101 S.Ct. 569 (1980). Scienter may be established by a showing of recklessness. Securities and Exchange Commission v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11th Cir. 1982). As the facts demonstrate, the conduct of DiBruno was knowing and intentional. He misrepresented facts and omitted facts in connection with direct sales of the NGP common stock to investors, and he was responsible for public reports relied upon by investors in the marketplace. DiBruno prepared the newsletters and caused them to be sent to investors and filed with the Commission. He did so even after being warned that the statements made therein were misleading. Thus, an "informed

investment decision" was rendered impossible when so many material facts were either misrepresented, concealed or withheld. Nothing could be more material than the financial condition of NGP and the use of investors' funds. Yet, in sale after sale, investors were not furnished with financial information concerning NGP. The investors were told that the monies being paid by them were going to NGP for the purchase of stock. DiBruno knew this was false because he was converting such funds for his own personal benefit, and when he did turn stock sale proceeds over to NGP, he caused NGP to record the receipt of the funds as a loan from DiBruno to the corporation.

At the same time investors were being deprived of financial information concerning NGP, they were being charged arbitrary and capricious prices for the stock. The prices ranged from \$.20 to \$1.00 per share. The various prices being charged were clearly material and DiBruno knowingly fixed the prices in an arbitrary manner.

NGP violated the anti-fraud provisions as a result of the actions of its agent, DiBruno. "Under well settled principles of agency, it would be vicariously liable if [DiBruno] acted unlawfully." Carras v. Burns, 516 F.2d 251, 259-260 (4th Cir. 1975) (stockbroker liable for misrepresentations of its agents), citing Affiliated Ute Citizens v. United States, 406 U.S. 128, 154, 92 S.Ct. 1456 (1972); John Hopkins University v. Hutton, 422 F.2d

1124, 1130 (4th Cir. 1970). Also, NGP and DiBruno each aided and abetted the violations of the other. Secondary liability, or aiding and abetting, consists of three elements: (1) there exists an independent securities law violation committed by another party; (2) the aider and abettor has a general awareness that his role is part of an overall activity that is improper; and (3) the aider and abettor knowingly and substantially assisted the violation. Washington County, supra, 676 F.2d at 225-26. Woodward v. Metro Bank of Dallas, 522 F.2d 84, 97 (5th Cir. 1975), cited with approval in Sinkins v. National Executive Planners, Ltd., [1981-82 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,304 (M.D. N.C. 1981)].

NGP Violated and DiBruno Aided and Abetted Violations of
the Periodic Reporting Provisions of Section 13(a) of the
Exchange Act and Rules 12b-20, 12b-25, 13a-1, 13a-11 and
13a-13, Thereunder

Section 13(a) of the Exchange Act requires issuers subject to the reporting requirements to file periodic and other reports with the Commission, including an annual report on Form 10-K, pursuant to Rule 13a-1, quarterly reports on Form 10-Q, pursuant to Rule 13a-13, and current reports on Form 8-K, pursuant to Rule 13a-11.

Rule 12b-20 requires disclosure of all material information necessary to make the statements made not misleading and Rule 12b-25 requires an issuer to file a notification of its inability to timely file reports.

Section 13(a) was "designed to insure that investors receive adequate information upon which to base their investment decisions." SEC v. World-wide Coin Investments, Ltd., 567 F.Supp.

724, 758 (N.D. Ga. 1983). Its requirements are "clear and unequivocal and are satisfied only by the filing of complete, accurate and timely reports." SEC v. IMC International, Inc., 384 F.Supp. 889, 893 (N.D. Tex. 1974), aff'd, 505 F.2d 733 (5th Cir. 1974), cert. denied sub nom., Evans v. SEC, 420 U.S. 930, 95 S.Ct. 1131, 43 L.Ed.2d 402 (1975).

NGP violated Section 13(a) and Rule 13a-1 by filing a false Form 10-K for its fiscal year ending August 31, 1984, which also was not timely filed, and by failing to file any reports on Form 10-K for its fiscal years ended 1985, 1986, 1987 and 1988. Similarly, NGP violated Rule 13a-13 and 13a-11 by failing to file any of the required quarterly and current reports over the same period. NGP violated Rule 12b-25 by failing to file notifications of late filing for every annual and quarterly reporting since the merger between NGP and Old National in November 1983.

NGP violated Rule 12b-20 by failing to disclose material information necessary to make statements made in the reports it did file accurate, all as more fully discussed above.

DiBruno aided and abetted these violations. Here, NGP's violation of Section 13(a) satisfies the wrongful act requirements. DiBruno was aware that NGP was required to file these reports because some reports were filed and signed by him. He was the creator and draftsman of the false reports filed; therefore, DiBruno's knowledge of and participation in National Gas' violation of Section 13(a) was knowing and substantial, making him an aider and abettor of these violations.

**DiBruno Violated Sections 13(d) and 16(a) of the Exchange Act
and Rules 13d-1 and 16a-1, Thereunder**

Section 13(d) of the Exchange Act requires anyone who acquires beneficial ownership of more than 5% of any class of equity securities of a company registered with the Commission to file a statement with the Commission on Schedule 13D, pursuant to Rule 13d-1, within 10 days of acquisition. Section 13(d) creates a "duty to file truthfully and completely . . . in part, to allow investors to know of potential changes in corporate control and to evaluate the situation. . . ." Dan River, Inc. v. Unitex, Ltd., 624 F.2d 1216, 1223 (4th Cir. 1980), quoting from SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied sub nom., Zimmerman v. SEC, 440 U.S. 913 99 S.Ct. 1227 (1979).

Section 16(a) of the Exchange Act places on persons who acquire more than 10% of any class of equity securities registered under Section 12 of the Exchange Act, and on corporate officers and directors of such companies, the duty to file with the Commission reports disclosing the extent of and changes in their beneficial interest.

Failure to file any reports required under Sections 13(d) and 16(a) is a violation of those sections. See SEC v. World-wide Coin Investments, Ltd., 567 F.Supp. 724 (N.D. Ga. 1983) (failure to file under Sections 13(a) and 16(a)); SEC v. Shattuck Denn Mining Corp., 297 F.Supp. 470 (S.D. N.Y. 1968) (failure to file under Section 16(a)). The innocence of the failure to file is irrelevant. Twin Fair, Inc. v. Reger, 394 F.Supp. 156 (W.D. N.Y. 1975).

As a result of the merger of November 1983, DiBruno acquired 3,080,000 shares of NGP's stock or 44% of all shares outstanding. All conditions precedent to DiBruno's ownership of the stock had been fulfilled; therefore, the fact that DiBruno requested the transfer agent not to send him the evidence of that ownership, namely the certificates, is irrelevant to his obligation to file the reports. He was entitled to the shares and obligated to file the reports. However, he failed to file any reports with the Commission on Schedule 13D disclosing his interest of more than 5% of NGP's stock as required by Rule 13d-1. Despite owning more than 10% of NGP's stock and acting as its chief executive officer, DiBruno failed to file any reports with the Commission on Form 3 or Form 4 as required by Rule 16a-1.

Even the commencement of the investigation by the Commission, which focused in part on these violations, did not cause DiBruno to cease violating the provisions by promptly filing the required reports. Consequently, DiBruno violated Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-1 promulgated under the respective sections.

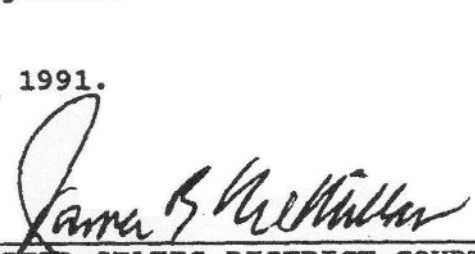
Equitable Relief

Unlike other suits in equity, "[a] successful suit by the Commission to enjoin violation[s] of the [securities laws] does not require a showing of irreparable damage." SEC v. Tax Services, INC., 357 F.2d 143, 145 (4th Cir. 1966). The primary purpose of injunctive relief is to deter future violations of the securities laws. Because of past violations, future violations may be

strongly inferred. Securities and Exchange Commission v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1100 (2d Cir. 1972); Securities and Exchange Commission v. First American Bank & Trust Co., 481 F.2d 673, 682 (8th Cir. 1973). In an injunction for past violations, the "critical question . . . is whether there is a reasonable likelihood that the wrong will be repeated." SEC v. Manor Nursing Centers, Inc., 458 F.2d at 1100. See also SEC v. Washington County Utility District, 676 F.2d 218 (6th Cir. 1982). "As the frequency and magnitude of the past violations increase, the strength of the inference [of the likelihood of future violations] also increases." SEC v. Professional Associates, 731 F.2d 349, 358 (6th Cir. 1984).

The record shows that the misconduct described was egregious and extended over a long period of time. These undisputed facts show a reasonable likelihood of future violations, and, thus, as a matter of law entitle the Commission to a judgment enjoining the defendants from violating the federal securities laws as discussed herein, an accounting, and disgorgement.

Dated this 8 day of July 1991.


UNITED STATES DISTRICT COURT JUDGE

FOOTNOTES

1. Answer of NGP and DiBruno dated July 31, 1989, docket item number 11, p. 2, ¶ 8.
2. Affidavit of DiBruno dated September 28, 1989, and filed on September 29, 1989, docket item number 28, p. 1, ¶ 3; Affirmative Defenses of DiBruno and NGP dated July 31, 1989, docket item number 10, p. 2, ¶ 7; deposition of DiBruno dated February 21, 1990, p. 17, l. 5-13; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 3, ¶ 4.
3. Answer and Affirmative Defenses of DiBruno and NGP dated July 31, 1989, docket items 10 and 11 respectively; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 3, ¶ 4; Affidavit of DiBruno dated September 28, 1989, and filed on September 29, 1989, docket item number 28, p. 2, ¶ 7-9.
4. Affidavit of DiBruno dated September 28, 1989 and filed on September 29, 1989, docket item number 28, p. 2, ¶ 5-6.
5. Affidavit of DiBruno dated September 28, 1989 and filed September 29, 1989, docket item number 28, p. 4, ¶ 13.
6. Answer of NGP and DiBruno dated July 31, 1989, docket item number 11, p. 3, ¶ 10; Ingle deposition dated February 1, 1990, p. 39, l. 25 to p. 40, l. 20.
7. Deposition of DiBruno dated February 2, 1990, p. 20, l. 4-8; Ingle deposition dated February 1, 1990 p. 143, l. 21 to p. 159, l. 4.
8. Answer of NGP and DiBruno dated July 31, 1989, docket item number 11, p. 3, ¶ 10.
9. Affidavit of DiBruno filed September 29, 1989, docket item number 28, p. 1-2, ¶ 3-5.
10. Deposition of DiBruno dated November 2, 1989, p. 47, l. 2 to p. 48, l. 8; p. 74, l. 14 to p. 75, l. 24; Deposition of DiBruno dated February 2, 1990, p. 19, l. 9-14.

11. Answer of NGP and DiBruno dated July 31, 1989, docket item number 11, p. 3, ¶ 14.
12. Answer of NGP and DiBruno dated July 31, 1989, docket item number 27, p. 4, ¶ 15; Memorandum of Law of Defendants NGP and DiBruno dated September 28, 1989, p. 3, l. 6-8.
13. Answer of NGP and DiBruno dated July 31, 1989, docket item number 11, p. 3, ¶ 16; Deposition of DiBruno dated February 2, 1990, p. 18, l. 1-15.
14. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 3, ¶ 5.
15. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 14, ¶ 32.
16. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 3, ¶ 5; Deposition of DiBruno dated November 2, 1987, p. 73, l. 7-14; Deposition of Stephen Dolley dated August 25, 1989, p. 23, l. 3 to p. 24, l. 9.
17. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 4, ¶ 7 to p. 7, ¶ 13 and affidavit of Diane Eckert dated August 13, 1990, exhibit number 22 of docket number 62 filed in support of Motion for Summary Judgment.
18. Ingle Deposition dated February 2, 1990, p. 177, l. 19 to p. 179, l. 8; Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 47, l. 12 to p. 48, l. 11; DiBruno deposition dated February 2, 1990, p. 20, l. 9-12.
19. Deposition of Ingle dated February 2, 1990, p. 79, l. 16 to p. 80, l. 2 and p. 85, l. 21 to p. 87, l. 14; Deposition of Frank Cody dated January 11, 1990, p. 50, l. 3 to p. 53, l. 23; Deposition of DiBruno dated February 2, 1990, p. 20, l. 4-8.
20. Deposition of Ingle dated February 2, 1990, p. 39, l. 22 to p. 40, l. 20; p. 79, l. 9-24.

21. Deposition of Ingle dated February 2, 1990, p. 145, l. 4 to p. 159, l. 4.
22. Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 145, l. 4 to p. 159, l. 4.
23. Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 46, l. 1 to p. 47, l. 22.
24. Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 49, l. 24 to p. 52, l. 24; DiBruno deposition dated February 2, 1990, p. 19, l. 15 to p. 26, l. 3.
25. DiBruno deposition dated February 2, 1990, p. 52, l. 11-24, p. 73, l. 23 to p. 74, l. 3; Affidavit of Diane Eckert filed May 12, 1989, p. 4, ¶ 7.
26. Deposition of Betty Ramsey dated February 6, 1990, p. 58, l. 12 to p. 60, l. 23, p. 45, l. 12 to p. 46, l. 9.
27. Deposition of Betty Ramsey dated February 6, 1990, p. 45, l. 12 to p. 46, l. 9.
28. Deposition of Betty Ramsey dated February 6, 1990, p. 58, l. 12 to p. 59, l. 19.
29. Deposition of Betty Ramsey dated February 6, 1990, p. 58, l. 12 to p. 59, l. 19.
30. Affidavit of Diane Eckert dated August 13, 1990 filed as item 22 of the Exhibits filed in support of the Commission's Motion for Summary Judgment, docket item number 62, p. 2, ¶ 6; Deposition of Frank Cody dated January 11, 1990, p. 113, l. 14 to p. 114, l. 9.
31. Deposition of Betty Ramsey dated February 6, 1990, p. 78, l. 2-4; Affidavit of Diane Eckert dated August 13, 1990, p. 2, ¶ 4.
32. Deposition of James M. Devers, Jr. dated September 29, 1989, p. 12, l. 10 to p. 13, l. 17; Deposition of Braxton M. Stroud dated September 29, 1989, p. 13, l. 20-25, and p. 19, l. 10-

- 25; Affidavit of Diane Eckert dated August 13, 1990, p. 2 ¶ 5.
33. Deposition of DiBruno dated February 2, 1990, p. 30, l. 22 to p. 32, l. 8, p. 34, l. 6-24.
34. Deposition of Ingle dated February 1, 1990, p. 97, l. 19 to p. 98, l. 9; Affidavit of Diane Eckert dated August 13, 1990, p. 2, ¶ 4.
35. Deposition of Ingle dated February 1, 1990, p. 133, l. 19 to p. 134, l. 22.
36. Affidavit of Diane Eckert dated August 13, 1990, p. 2, ¶ 4; Deposition of Ingle dated February 1, 1990, p. 133, l. 19 to p. 134, l. 22 and p. 163, l. 21 to p. 164, l. 1, p. 193, l. 2-14.
37. Deposition of Ingle dated February 1, 1990, p. 52, l. 15-18, p. 56, l. 6 to p. 57, l. 10, p. 44, l. 3 to p. 45, l. 22; Deposition of Frank Cody dated January 11, 1990, p. 26, l. 24 to p. 30, l. 7.
38. Affidavit of Diane Eckert dated August 13, 1990, p. 2, ¶ 4.
39. Deposition of DiBruno dated February 2, 1990, p. 26, l. 2 to p. 27, l. 14, p. 37, l. 3-16, p. 42, l. 12 to p. 43, l. 9, p. 142, l. 16 to p. 143, l. 1.
40. Deposition of Stephen Dolley, Jr., dated August 25, 1989, p. 21, l. 9 to p. 44, l. 1.
41. Deposition of Stephen Dolley, Jr., dated August 25, 1989, p. 19, l. 15-21.
42. Deposition of Stephen Dolley, Jr., dated August 25, 1989, p. 21, l. 9 to p. 44, l. 1.
43. Deposition of Stephen Dolley, Jr., dated August 25, 1989, p. 21, l. 9 to p. 44, l. 1.

44. Deposition of Stephen Dolley, Jr., dated August 25, 1989, p. 34, l. 20 to p. 35, l. 9; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 4, ¶ 7.
45. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 4, ¶ 7.
46. Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 4, ¶ 7; Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 40, l. 10 to p. 42, l. 6; DiBruno deposition dated February 2, 1990, p. 19, l. 15 to p. 20, l. 3.
47. Deposition of DiBruno dated February 2, 1990, p. 21, l. 1-6, p. 141, l. 22 to p. 142, l. 15.
48. Deposition of DiBruno dated February 2, 1990, p. 21, l. 1-6, p. 141, l. 22 to p. 142, l. 15.
49. Ingle deposition dated February 1, 1990, p. 155, l. 19 to p. 159, l. 4; Deposition of James M. Devers, Jr. dated September 29, 1989, p. 12, l. 10 to p. 13, l. 17; Deposition of Frank Cody dated January 11, 1990, p. 32, l. 3-14.
50. Ingle deposition dated February 1, 1990, p. 73, l. 20 to p. 75, l. 25; Herbert H. Martin deposition dated January 10, 1990, p. 18, l. 7 to p. 21, l. 8; DiBruno deposition dated February 2, 1990, p. 66, l. 5 to p. 68, l. 8, p. 72, l. 1-17.
51. Ingle deposition dated February 1, 1990, p. 73, l. 20 to p. 75, l. 25; Herbert H. Martin deposition dated January 10, 1990, p. 18, l. 7 to p. 21, l. 8; DiBruno deposition dated February 2, 1990, p. 66, l. 5 to p. 68, l. 8, p. 72, l. 1-17.
52. Ingle deposition dated February 1, 1990, p. 73, l. 20 to p. 75, l. 25; Herbert H. Martin deposition dated January 20, 1990, p. 18, l. 7 to p. 21, l. 8; DiBruno deposition dated February 2, 1990, p. 66, l. 5 to p. 68, l. 8, p. 72, l. 1-17.

53. DiBruno deposition dated February 1, 1990, p. 142, l. 16 to p. 143, l. 1; Affidavit of Diane Eckert dated August 13, 1990, exhibit number 22 of docket item number 62, p. 1, ¶ 3; Ingle deposition dated February 1, 1990, p. 119, l. 1 to p. 121, l. 20.
54. DiBruno deposition dated February 1, 1990, p. 20, l. 20-25. Ingle deposition dated February 1, 1990, p. 119, l. 1 to p. 120, l. 20; Affidavit of Diane Eckert dated August 13, 1990, exhibit number 22 of docket item number 62, p. 1, ¶ 3.
55. DiBruno deposition dated February 2, 1990, p. 81, l. 22-25, p. 84, l. 23 to p. 85 l. 1, p. 96, l. 22-25; Deposition of Maurie Shields dated January 10, 1990, p. 54, l. 23 to p. 55, l. 6; Deposition of Frank Cody dated January 11, 1990, p. 119, l. 17 to p. 120, l. 6.
56. DiBruno deposition dated February 2, 1990, p. 53, l. 16-25, p. 73, l. 23 to p. 74, l. 2; Frank Cody deposition dated January 11, 1990, p. 54, l. 8-11; Ingle deposition dated February 1, 1990, p. 47, l. 17-22.
57. DiBruno deposition dated February 2, 1990, p. 73, l. 3-17, p. 75, l. 11 to p. 77, l. 8; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 11, ¶ 24 and p. 13, ¶ 29.
58. Ingle deposition dated February 1, 1990 p. 95, l. 3 to p. 96, l. 19; DiBruno deposition dated February 2, 1991, p. 21, l. 13-19.
59. DiBruno deposition dated February 2, 1990, p. 84, l. 19-22, p. 81, l. 18-21; Deposition of Herbert Martin dated January 10, 1990, p. 17, l. 10 to p. 18, l. 3; Ingle deposition dated February 1, 1990, p. 142, l. 3-8; Deposition of Frank Cody dated January 11, 1990, p. 119, l. 17 to p. 120, l. 2., p. 127, l. 19 to p. 128, l. 3,
60. DiBruno deposition dated February 2, 1990, p. 24, l. 5-9, p. 32, l. 9-14, p. 57, l. 10-14; Deposition of Herbert Martin dated January 10, 1990, p. 13, l. 24 to p. 14, l. 11; Deposition of Braxton Stroud dated September 29, 1989, p. 11, l. 13 to p. 12, l. 2.
61. DiBruno deposition dated February 2, 1990, p. 136, l. 10 to p. 139, l. 3; Deposition of Maurie Shields dated January 10, 1990, p. 32, l. 6 to p. 35, l. 12.

62. Answer of NGP and DiBruno, p. 5, ¶ 21 and 22, p. 6, ¶ 25; DiBruno deposition dated February 2, 1990, p. 19, l. 2-8, p. 73, l. 3 to p. 74, l. 3, p. 76, l. 22 to p. 77, l. 18, p. 94, l. 5-16, p. 130, l. 9, to p. 138, l. 4; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 8, ¶ 18 to p. 13, ¶ 27.
63. DiBruno deposition date February 2, 1990, p. 133, l. 7-25.
64. Deposition of Stephen Dolley dated August 25, 1990, p. 70, l. 12 to p. 71, l. 9; DiBruno deposition dated February 2, 1990, p. 134, l. 11-24.
65. Deposition of A. Grant Webb, III dated September 20, 1989, p. 42, l. 2-19; Deposition of DiBruno dated February 2, 1990, p. 76, l. 22 to p. 77, l. 13.
66. Deposition of DiBruno dated February 2, 1990, p. 76, l. 22 to p. 77, l. 13.
67. Deposition of A. Grant Webb, III dated September 20, 1989, p. 59, l. 6-9, p. 68, l. 15 to p. 69, l. 1.
68. Herbert M. Martin deposition dated January 10, 1990, p. 7, l. 19-22; DiBruno deposition dated February 2, 1990, p. 104, l. 5-25, p. 130, l. 14 to p. 131, l. 22.
69. Deposition of Maurie Shields dated January 10, 1990, p. 28, l. 19 to p. 29, l. 7; Deposition of Herbert Martin dated January 10, 1990, p. 8, l. 4 to p. 10, l. 25.
70. Deposition of Maurie Shields dated January 10, 1990, p. 61, l. 22 to p. 62, l. 24; Deposition of Herbert M. Martin dated January 10, 1990, p. 8, l. 4 to p. 10, l. 25; Deposition of DiBruno dated February 2, 1990, p. 104, l. 5-25, p. 132, l. 13 to p. 133, l. 6.
71. DiBruno deposition dated February 2, 1990, p. 130, l. 5-11, p. 127, l. 5-21; Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 10, ¶ 22, p. 11, ¶ 24.

72. DiBruno deposition dated February 2, 1990, p. 132, l. 4-21; Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 10, ¶ 22, p. 11, ¶ 24, p. 13, ¶ 29.
73. DiBruno deposition dated February 2, 1990, p. 134, l. 25 to p. 136, l. 9; Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 97, l. 11-13; Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 12, ¶ 26.
74. Deposition of Stephen Dolley, Jr. dated August 25, 1989, p. 57, l. 18 to p. 59, l. 17; DiBruno deposition dated February 2, 1990, p. 136, l. 10 to p. 139, l. 3; Deposition of Maurie Shields dated January 10, 1990, p. 30, l. 5 to p. 32, l. 5.
75. Deposition of DiBruno dated February 2, 1990, p. 19, l. 2-8, p. 75, l. 11 to p. 76, l. 21, p. 123, l. 9 to p. 127, l. 21; Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 13, ¶ 28-31.
76. Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 14, ¶ 31.
77. Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 14, ¶ 31.
78. Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 14, ¶ 31.
79. DiBruno deposition dated February 2, 1990, p. 18, l. 1-7; Affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 14, ¶ 32.
80. Affidavit of DiBruno, docket item number 28, filed September 29, 1989, p. 2, ¶ 5-6; affidavit of Diane Eckert, docket item number 3, filed May 12, 1989, p. 14, ¶ 32.
81. DiBruno deposition dated February 2, 1990, p. 18, l. 16 to p. 19, l. 8, p. 124, l. 2 to p. 127, l. 21; affidavit of DiBruno dated September 29, 1989, docket item number 28, p. 2, ¶ 5-6.
82. Defendant's Memorandum of Law filed September 29, 1989, docket item number 29, p. 2-3; Affidavit of Diane Eckert filed May 12, 1989, docket item number 3, p. 14, ¶ 32.