

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Westchester

William LaPierre and Clark Funeral Home, Inc.,
each suing derivatively on behalf of the Town of
Yorktown

Plaintiff/Petitioner,

- against -

Eric DiBartolo, individually and in his official capacity as Highway
Superintendent of the Town of Yorktown, Envirostar
Corp., Yorktown Funeral Home, Inc. and John Does 1 through 10

Defendant/Respondent.

Index No. 52433/2012

NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: 02/21/2012

David O. Wright

(Signature)

David O. Wright, Esq.

(Name)

David O. Wright, Esq.

(Firm Name)

2025 Crompond Road (Address)

Yorktown Heights NY 10598

(914) 245-0455

(Phone)

YTdave@aol.com

(E-Mail)

To: Eric DiBartolo
Envirostar Corp.
Yorktown Funeral
Home, Inc.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

=====

WILLIAM LaPIERRE and CLARK FUNERAL HOME,
INC., each suing derivatively on behalf of the
TOWN OF YORKTOWN,

Plaintiffs,

Index No. 52433/2012

Filed Feb. 21, 2012

SUMMONS

- against -

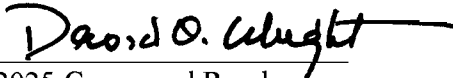
ERIC DiBARTOLO, Individually and in his Official Capacity as
HIGHWAY SUPERINTENDENT OF THE TOWN OF
YORKTOWN, ENVIROSTAR CORP., YORKTOWN FUNERAL
HOME, LLC and JOHN DOES "1" through "10",

Defendants.

YOU ARE HEREBY SUMMONED to answer the complaint in the above-entitled action and to serve a copy of your answer on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after completion of service where service is made in any manner other than by personal delivery within the state. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 21, 2012

DAVID O. WRIGHT, ESQ.


2025 Crompond Road
Yorktown Heights NY 10598
(914) 245-0455
Attorney for Plaintiffs

Venue is based on CPLR 503; The parties' addresses are:

*William LaPierre
1223 McKeel Street
Yorktown Heights NY*

*Clark Funeral Home, Inc.
2104 Saw Mill River Road
Yorktown Heights NY*

*Eric DiBartolo
1572 Westview Drive
Yorktown Heights NY*

Envirostar Corp
13 Westerly Road
Ossining NY

Yorktown Funeral Home, Inc.
584 Gramatan Avenue
Mt. Vernon NY

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

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WILLIAM LaPIERRE and CLARK FUNERAL HOME,
INC., each suing derivatively on behalf of the
TOWN OF YORKTOWN,

Plaintiffs,

- against -

ERIC DiBARTOLO, Individually and in his Official Capacity as
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HOME, LLC and JOHN DOES "1" through "10",

Defendants.

=====

Preliminary Statement

Plaintiffs, WILLIAM LaPIERRE and CLARK FUNERAL HOME, INC., each
suing derivatively, on behalf of the TOWN OF YORKTOWN, as and for their complaint against
the defendants, allege as follows:

1. By this action, plaintiffs seek to recover an estimated several hundred thousand
dollars that the defendant Eric DiBartolo is believed to have misappropriated from the Town of
Yorktown over the course of his holding the position as its Highway Superintendent. Violating
his position of trust, the defendant is believed to have enriched himself and friends by utilizing a
number of "no bid" contracts; undisclosed business interests; using Town equipment, personnel
and resources for personal benefit; secretly working for Town vendors who were doing business
with the Town; violating a host of financial safeguards designed to protect the Town; having
Town personnel perform work on his personal vehicles; undisclosed financial interests;

submitting falsified payroll records; and a host of other financial improprieties amounting to a massive fraud and breach of fiduciary duty.

2. Plaintiffs file this action, not to recover the damages they personally have suffered, but solely to recoup damages for the benefit of the Town of Yorktown, which Yorktown's elected officials have refused to seek from DiBartolo or his businesses. Living in fear of the next election, these officials have chosen to look the other way, instead of vigorously pursuing the blatant wrongdoing by the faithless Highway Superintendent. This, despite a scathing audit report by the New York State Comptroller's Office – which confirmed much of the wrongdoing alleged in this complaint.

3. As set forth below, the activities of the Highway Superintendent and his cohorts constitute racketeering activity entitling the Town to recover the monies wrongfully misappropriated by the Highway Superintendent plus treble damages and attorney fees. Finally, this complaint sets forth several state law taxpayer claims, again to recover misappropriated funds, and to put that money back into the treasury of the Town of Yorktown.

4. Among the remedies sought is a request that the defendant also provide a complete accounting of his financial transactions with Town monies, and equitable relief designed to prevent future wrongdoing.

Parties

5. Plaintiff William LaPierre is an individual and taxpayer of the Town of Yorktown, owning real property assessed at more than \$1,000 and is and has been liable to pay taxes on such assessment to the Town of Yorktown at all times relevant.

6. Plaintiff Clark Funeral Home, Inc. is a corporation duly organized and existing under the laws of the State of New York, and is a taxpayer of the Town of Yorktown, owning real property assessed at more than \$1,000 and is and has been liable to pay taxes on such assessment to the Town of Yorktown at all times relevant.

7. Defendant Eric DiBartolo is, and at all times relevant, has been the Highway Superintendent of the Town of Yorktown since January 1, 1996. Beginning in 2007, DiBartolo also took over the position of Director of Labor Operations for the Town of Yorktown, in addition to his job as Highway Superintendent, until January 2010; for that period of time, DiBartolo had supervisory responsibility for over 200 employees and an annual budget in the millions of dollars.

8. Defendant Envirostar Corp. is a corporation duly organized and existing under the laws of the State of New York; upon information and belief, defendant DiBartolo has and at all relevant times, has had, a financial interest in such corporation required to be disclosed under applicable ethics laws. (hereinafter “Envirostar”)

9. Defendant Yorktown Funeral Home, LLC is a New York Limited Liability Company duly organized and existing under the laws of the State of New York, and upon information and belief, defendant DiBartolo has and at all relevant times, has had, a financial interest in such LLC required to be disclosed under applicable ethics laws. (hereinafter “Yorktown Funeral Home”)

10. Defendants John Does “1” through “10” are (a) persons that are presently not identifiable but associated with DiBartolo and involved in the fraudulent scheme committed against the Town of Yorktown and (b) other past and present officials of the Town who, having

knowledge of DiBartolo's wrongdoing, did nothing to protect the Town and instead enabled that wrongdoing.

Background Facts

11. Upon information and belief, since first becoming elected Highway Superintendent of the Town of Yorktown, in or about November of 1995, DiBartolo has engaged in a pattern of waste, mismanagement and outright theft of the assets and monies of the Town of Yorktown.

12. Among other acts of wrongdoing, this complaint sets forth the particulars of several specific incidents – based on the meager information that has become public through news accounts, FOIL requests, personal observations and other sources; however, the relief requested includes a complete accounting of the financial affairs of the Highway Department, not limited to the specific incidents described below.

The Fuel Spill Incident

13. During the period 2008-2009, DiBartolo devised a scheme whereby he would steal for his family business, Envirostar, from the Town of Yorktown monies in the approximate amount of \$100,000 dollars in connection with an old gasoline spill.

14. The gasoline spill had occurred in or about 1996, some 12 years earlier, and had been fully remediated in 1997 by the firm of Ira D. Conklin; however, Conklin had failed to file a closing statement with the NY Department of Environmental Conservation, and the spill was left as a “open” file.

15. In connection with a routine audit of DEC records in or about February of 2008, the DEC was alerted to the fact that the spill remained an open file; accordingly, the DEC

sent a routine letter to the Town of Yorktown Water Department, which letter was received by DiBartolo in or about February of 2008.

16. The February 2008 letter from the DEC alerted the Town and DiBartolo that the Town needed to file a Corrective Action Plan (CAP) and to respond to the DEC letter promptly.

17. In fact, the Town and DiBartolo ignored the February 2008 letter, resulting in a second, more threatening letter indicating that a response must be received or the DEC would consider imposing substantial fines on a per-day basis against the Town of Yorktown. By the very terms of the letter, it still merely called for a “response.”

18. DiBartolo, who also held the title of Director of Labor Operations, had responsibility for dealing with this matter; however, he did not alert the Town Board nor any other Town officials; it was DiBartolo’s responsibility to promptly alert the Town Board to the matter and to promptly alert the acting Town Engineer, Sharon Robinson to the matter.

19. DiBartolo did not inform the Town Board, nor did DiBartolo inform the acting Town engineer, nor did he inform any other official within the Town of Yorktown to the matter, which therefore remained a secret, in violation of DiBartolo’s statutory and common law obligations to the Town of Yorktown.

20. Upon information and belief, the reason DiBartolo kept the matter a secret was (a) to exaggerate this 12-year old fuel spill from being a minor paperwork issue into a larger project by which he could make some money, and (b) to find a way to enrich himself and his business, Envirostar, at the expense of the Town of Yorktown.

21. DiBartolo initially consulted with Ira D. Conklin, which had performed the

work in 1996 and found that Conklin was willing to do for free or for deeply discounted rates whatever needed to be done to close out the DEC file. Conklin had vast experience with such projects. Rather than accepting an offer of free / discounted work, DiBartolo rejected Ira D. Conklin and retained the services of another firm, Hydro Environmental Solutions, Inc., of Somers, NY. (“HES”)

22. Upon information and belief, HES had little or no experience with a remediation project like this one, and upon information and belief, DiBartolo’s purpose in selecting that firm was to utilize their lack of knowledge so that his firm Envirostar could do substantially all the work.

23. Without obtaining approval from the Town Board, DiBartolo induced Town Supervisor Don Peters to enter into a contract with HES dated February 2009. This “contract” omitted substantially all of the protections that ordinarily would be incorporated into such contracts and was on terms disadvantageous to the Town. DiBartolo’s action in inducing Peters to sign this contract was in violation of his fiduciary duties under the common law owed to the Town of Yorktown.

24. Had DiBartolo alerted the Town Board to the fact that he was entering into a contract with a new firm, presumably someone on the Town Board would have asked the question as to why Conklin was not finishing up this work, and they would have discovered that Conklin had offered to do the work for free or discount; because DiBartolo did not disclose any of this to Town officials, however, Town officials remained ignorant of the true state of affairs, a violation of DiBartolo’s fiduciary and common law statutory duties owed to the Town of Yorktown.

25. At about the same time, acting pursuant to his scheme, DiBartolo selected his own firm, Envirostar, to perform substantially all the alleged remediation work in connection with the gasoline spill, without any of the required competitive bidding, public notice or any of the legal safeguards that exist for the protection of the Town.

26. Again, DiBartolo negotiated, prepared and induced Supervisor Don Peters to sign a contract with Envirostar, based on the false representations that he made to Peters, to the effect that: this was an emergency, that he had been ordered to do the work immediately or face huge fines, that the spill posed an imminent risk to human safety and to the environment, and that Envirostar had been selected by HES – an independent contractor – to do the work.

27. The contract, as signed by Peters, was entered into without the knowledge of any other officials in the Town, including the Town Board – whose approval was required – and the contract omitted substantially all of the protections that ordinarily would be incorporated into such contracts and was on terms disadvantageous to the Town. DiBartolo's action in inducing Peters to sign this contract was in violation of his fiduciary duties under the common law owed to the Town of Yorktown, as well as violating Article 18 of the General Municipal Law, Chapter 45 of the Yorktown Town Code and constituted a crime.

28. Still without alerting the Town Board, the acting Town Engineer or any other responsible official in the Town of Yorktown, DiBartolo purported to oversee his own company Envirostar to perform the "remediation" work and commenced that work in early February 2009, including approving payments and auditing claims under the contract. Within a span of approximately two weeks, DiBartolo's firm ran up a bill of approximately \$73,000. At this point, no one on the Yorktown Town Board had any idea this work had been approved, or that it was

occurring. DiBartolo then presented a bill for \$73,000 to the Town Supervisor, Donald Peters, on or about February 20, 2009, and insisted it be paid immediately.

29. At no time prior to February 20, 2009 did DiBartolo ever disclose to any official within the Town of Yorktown that he had an interest in Envirostar.

30. At no time prior to February 20, 2009 did DiBartolo ever file a financial disclosure form indicating that he had an interest in Envirostar. By law, DiBartolo was required to disclose his interest in businesses that were vendors of the Town, such as Envirostar.

DiBartolo's failure to disclose his interest in Envirostar was misdemeanor under New York law and a violation of the Town of Yorktown Ethics Code.

31. Upon information and belief, DiBartolo's failure to disclose his interest in Envirostar was an omission for the purpose of keeping secret the fact that DiBartolo was steering work to Envirostar in his capacity as Highway Superintendent, and personally benefitting from those contracts.

32. Upon information and belief, DiBartolo has engaged in similar conduct with respect to several other Town contracts with Envirostar over a period of years:

Date	Invoice Amount
6-29-2006	900.00
7-7-2006	2,793.80
7-10-2006	6,419.30
7-11-2006	8,514.80
7-12-2006	8,882.50
7-13-2006	4,375.00
7-14-2006	2,736.25
7-17-2006	41,976.40
7-24-2006	34,621.00
7-25-2006	1,200.00
8-22-2006	200.00
7-18-2007	2,100.00

12-28-2007	1,100.00
1-8-2008	280.00
2-21-2008	1,600.00
2-29-2008	2,500.00
5-12-2008	630.00
11-24-2008	584.75
12-30-2008	1,338.75
1-5-2009	2,825.00
2-3-2009	2,136.25
2-9-2009	6,557.00
2-24-2009	2,225.00

33. DiBartolo's selection of Envirostar to perform work for the Town of Yorktown was work that was required to have been subject to competitive bidding; however, DiBartolo gave the contracts to Envirostar without the benefit of competitive bidding, in violation of New York law, and in violation of the Yorktown Town Code procurement laws.

34. In fact, during 2009 and earlier years, DiBartolo maintained a financial interest in Envirostar, Inc., and obtained a direct or indirect benefit from its contracts with the Town, the precise details of which have never been disclosed by DiBartolo.

35. DiBartolo's selection of Envirostar to perform remediation services for the Town of Yorktown, at the same time as he was both Highway Superintendent and held a financial interest in Envirostar represented an irreconcilable conflict of interest and violated Section 18 of the New York General Municipal Law, Chapter 45 of the Yorktown Town Code and constituted a crime.

36. During the period of early 2009, and thereafter, DiBartolo repeatedly lied to officials within the Town of Yorktown Government including Town Supervisor Donald Peters, members of the Yorktown Town Board, Town Engineer Sharon Robinson, and others to the effect that he did not select Envirostar for this work, nor had he ever participated in their selection

for town projects.

37. DiBartolo also lied to various representatives of the local news media to the same effect.

38. DiBartolo committed the foregoing frauds and made the fraudulent statements with the full knowledge that the statements were in fact false and fraudulent, and with the full knowledge and expectation that his fraudulent communications would be transmitted via the United States Mails, via email and telecopier, all in violation of the federal wire and mail fraud statutes.

39. DiBartolo repeated these lies to representatives of the New York State Comptroller's office when, at the instigation of Yorktown taxpayers, that office conducted an investigation of DiBartolo during 2010 and 2011. The uttering of these communications to an agency of the State of New York constituted the commission of several additional crimes, including obstruction of justice.

40. DiBartolo committed the foregoing frauds and made fraudulent statements with the full knowledge that the statements were in fact fraudulent, and with the full knowledge and expectation that his fraudulent communications would be transmitted via the United States Mails, via email and telecopier, all in violation of the federal wire and mail fraud statutes.

41. In fact, it was DiBartolo who selected his own company, Envirostar, without following any competitive bidding, to perform the \$100,000 of work expected to be involved with the spill project.

42. By failing to submit the Envirostar contract to competitive bidding, DiBartolo knowingly violated New York State Competitive Bidding law including General Municipal Law

Section 103, and Yorktown Town Code procurement policies.

43. The pretense given by DiBartolo was that the work to be performed by Envirostar was an emergency, so it was exempt from competitive bidding; in fact, DiBartolo falsely represented that this work was emergency work, in communications he made to Town Supervisor Donald Peters, to members of the Yorktown Town Board, to Town Comptroller Joan Goldberg, to acting Town Engineer Sharon Robinson, in televised meetings of the Yorktown Town Board in early 2009, during telephone conversations with various reporters during early 2009, and finally in connection with the Comptroller's investigation during 2010.

44. DiBartolo's statements of the factual circumstances being an emergency were false. DiBartolo committed the foregoing frauds and made fraudulent statements with the full knowledge that the statements were in fact fraudulent, and with the full knowledge and expectation that his fraudulent communications would be transmitted via the United States Mails, via email and telecopier, all in violation of the federal wire and mail fraud statutes.

45. On February 5, 2009 Envirostar transmitted to the Town of Yorktown a fax transmission purporting to set forth an outline of cost for remediation work at the spill project. Upon information and belief, this quotation was transmitted by DiBartolo and delivered by him to the Town Supervisor for signing.

46. On March 3, 2009, several of the fraudulent statements of fact initiated by DiBartolo were, in his presence and with his full knowledge and ratification, published over live television by Supervisor Donald Peters, among the false statements:

A. That there was an immediate risk to the environment because of the spill project.

B. That DiBartolo had in February received an order from the DEC to take immediate action to remediate the spill.

C. That failure to do so could cost the town up to \$35,000 per day in fines.

D. That as a result of the Town's immediate response to this emergency, the spill had been contained and the surrounding area and the public had been protected.

47. All of the foregoing statements were false. In fact, there was no risk to human health or to the environment from this 12-year old fuel spill; the entire area was on municipal water, and even if it were not, the contamination, if any, was so slight as to pose no significant risk to anyone or anything. The DEC's form letters did not constitute a realistic threat of fines; instead, the DEC repeatedly indicated they merely desired to see the matter satisfactory progress to being closed out. Nor did the Town "immediately respond" to this incident that occurred 12 years earlier.

48. During the same televised board meeting and also in DiBartolo's presence, a Town Board member made a host of factual misstatements – based on information provided to him by DiBartolo – the net effect of which was to give the public the false impression that there was some sort of emergency which justified an exemption from competitive bidding, and that this was necessary to protect the environment and to avoid exposing the Town to potential liability.

49. In their remarks to the public during the televised meeting, neither the supervisor nor the Board member nor anyone else ever mentioned the fact that the no-bid contract was given to a company in which DiBartolo had a financial interest; despite cost overruns increasing the Envirostar bill to \$73,000, no one mentioned that this money was from a project contracted by DiBartolo for a DiBartolo company; the Town also sent out via telecopier and

mails, a press release containing the same substantially false allegations, again based on information from DiBartolo, and again with his knowledge for the purpose of deceiving the public.

50. DiBartolo's bill from Envirostar to the Town of Yorktown in February 2009 was paid immediately, without the Town Board even seeing it or knowing about it, which was upon information and belief, the first time in the history of the Town of Yorktown that this has ever happened. This was a violation of the New York State Town Law as well as a violation of the Yorktown Town Code. By the time the Town Board found out about the transaction, they were livid, but realized they would look incompetent for allowing it to happen, so they decided to act like nothing inappropriate had happened.

Use of Town Personnel and Resources

51. Over the course of his tenure, DiBartolo has repeatedly used Town equipment, personnel and resources for his private benefit, essentially stealing money from the Town. Among other instances, are the following examples:

A. On May 6, 2002 DiBartolo used a paver that had been rented from Kect Construction Co., paid for with Town funds, to pave his own driveway. He then signed a voucher dated June 20, 2002 certifying that the materials were actually furnished to the municipality.

B. At various dates and times, DiBartolo has ordered Town of Yorktown Highway Department personnel to work on private vehicles, brought to the Town highway garage as if it were a repair shop open to the public. However, these repairs were made by town employees working on town time and using parts and

equipment paid by the Town of Yorktown. Upon information and belief, DiBartolo was paid for at least some of these jobs. Regardless of whether he received remuneration, however, the use of town resources for purely private matters was illegal.

C. DiBartolo has, at various times especially during September 2010 to February 2011, used Town personnel and equipment in the demolition and renovation of his private business, Yorktown Funeral Home, during normal work hours with those employees being paid for that time by the Town of Yorktown.

D. DiBartolo uses unmarked Town vehicles for his personal and business use, and accepts pay from the Town of Yorktown, while spending unknown – but substantial amount of time – during the normal workday, operating a landscaping business for a period of years; then driving a hearse for a funeral establishment; now he has purchased an interest in Yorktown Funeral Home and spends much of his work time there; he also buys and sells equipment – including dealings with the Town of Yorktown.

E. DiBartolo has used his Town-owned office computer and other equipment and supplies for a host of personal and business uses, including (a) to download pornography, (b) to create and distribute election materials, and (c) to operate his various businesses.

F. DiBartolo has declared as “surplus” late-model vehicles, and then steered the Town to sell them to his private company, Envirostar, for much less than the true value of the vehicles; this one transaction cost the Town at least \$30,000.

G. DiBartolo has been seen stealing supplies, such as a truckload of tires, from the Town.

H. DiBartolo has ordered personal auto equipment on Town accounts, and taken the items for his own vehicles, or for the vehicles of others – and not for any legitimate Town purpose.

I. DiBartolo has maintained several credit cards in the name of the Town, but upon information and belief has used those credit cards to order personal goods and services; he has also collected “rewards” points for himself on those cards.

J. DiBartolo has, at various times especially during late 2010 to early 2011, used Town personnel and equipment in the plowing and salting of his private business, Yorktown Funeral Home, during normal work hours with those employees and supplies being paid for by the Town of Yorktown.

K. DiBartolo has been able to secure and to maintain for the benefit of his business, Yorktown Funeral Home, a property tax assessment that is about one-third what it should be, based on similar assessments; DiBartolo apparently induced Town officials (recall his girlfriend Patti Cole had worked in the Assessor’s Office for years) not to inspect his property in early 2011 – which was standard practice whenever a property owner has taken out a Building Permit – so that the property assessment was kept unfairly low, depriving the Town of thousands in property taxes each year.

L. DiBartolo has been able to use his property at Yorktown Funeral Home in violation of local zoning laws, and without a Certificate of Occupancy.

M. DiBartolo is unaccountable to anyone, so he is able to work much of the day on his various private business interests – including Yorktown Funeral Home and Envirostar, as well as his parts business – and if anyone catches him, he says “well I set my own hours, and I’m working for the Town later...” In fact, it seems clear he has been submitting falsified payroll records, falsely showing that he works full time for the Town, when in fact, he works most of his time for himself, essentially a theft of services from the Town.

52. To cover his wrongdoing, since at least 2003, DiBartolo has maintained two sets of payroll records for workers at the Highway Department – one that reflects actual time worked, and a separate set of records that are provided to the Town. The set provided to the Town is materially different, and effectively makes the Town pay for work that Town employees performed for DiBartolo personally or for one of his businesses.

53. Upon information and belief, DiBartolo uses the different sets of books to keep track of favors – “comp time” and extra overtime benefits – given to favored employees. These employees include those who perform work for DiBartolo personally or for one of his businesses during time they are supposed to be working for the Town.

54. Upon information and belief, DiBartolo has also given a host of Town-paid favors to Patti Cole, with whom DiBartolo has occasionally carried on a sexual affair. Cole, formerly employed within the Town of Yorktown Assessor’s office, transferred to work under DiBartolo in the Highway Department, even though it reduced her base pay by \$20,000. It is believed that Cole and the other select employees receive special treatment in the selective grant of overtime. Under the Town of Yorktown’s collective bargaining agreement, for example, an

employee who logs in for one hour on a holiday is paid for a full eight hours of pay. Plaintiffs believe that the quid pro quo for receiving this “perk” is these employees’ willingness to help DiBartolo cheat the Town of Yorktown.

DiBartolo as Town Vendor

55. DiBartolo has, in violation of host of ethics laws, made himself a vendor to the Town of Yorktown, permitting him to sell to the Town a wide variety of equipment and supplies. DiBartolo is able to acquire these pieces of equipment and supplies from unknown sources – it’s entirely possible, indeed probable, that they come from the Town’s own inventory or as gifts from persons selected by DiBartolo to do business with the Town – and then re-sell the material to the Town for a profit.

56. In connection with this business, DiBartolo has requested and induced the Town improperly to not issue him any 1099 form, so that he does not report this income on his personal taxes; this procedure violates the tax laws and has exposed the Town of Yorktown to huge penalties if the IRS and/or New York State tax authorities find out about it.

57. In fact, as a vendor, DiBartolo has received over \$50,000 from the Town of Yorktown over the past several years. Although in some cases this may involve mere reimbursement for lunches purchased for department personnel, much of this sum represents DiBartolo’s trading in equipment and supplies under circumstances in which he has a clear and irreconcilable conflict.

58. In connection with these transactions, DiBartolo had an interest in the contract and also control over the contract; he negotiated and approved them, and approved and audited claims made thereunder, in violation of Article 18 of the General Municipal Law, Chapter

45 of the Town Code, and constituting a crime.

59. Upon information and belief, based upon DiBartolo's activities in other matters, plaintiffs believe that one or more of the subject transactions represents a sale of equipment or supplies to the Town of Yorktown either (a) for an inflated price, (b) for materials already owned by the Town, (c) for materials the Town could have acquired directly at a lower price, or (d) which were non existent or never received by the Town.

Taxpayers Beg the Town to Act

60. On several occasions, taxpayers, including the plaintiff, have attempted to induce the Town's elected officials to take action against DiBartolo to stop the wrongful practices outlined above, and to take some action to recoup monies taken.

61. In 2010, Mr. Fred Gulitz presented to the Town a summary of Commission on Public Integrity Advisory Opinion 91-21, which made clear that DiBartolo's dealings on behalf of the Town, with Envirostar, were unethical. That opinion makes clear that under Section 74 of the Public Officers Law, it was improper for DiBartolo to participate in the granting and the performance of no-bid contracts to Envirostar, since that company was owned by DiBartolo's sibling and DiBartolo had a direct or indirect pecuniary interest. (Of course, it's likely DiBartolo himself had an ownership interest in the company – which would make it even more unethical -- but that will be probed during pretrial discovery herein.)

62. In addition, the taxpayers in 2010 and 2011 alerted the Town Board members to a host of ethical issues. Mr. Gulitz and plaintiff William LaPierre, along with Steven Gardner, repeatedly presented facts, photos, laws and data to the Town Board showing defendant's ethical and financial improprieties.

63. The Town Board did nothing.

64. Thereafter, in 2010, the New York State Comptroller's Office decided to audit the many complaints emanating from the Town of Yorktown Highway Department's financial improprieties.

***The New York State Comptroller's Audit
Confirms Much of DiBartolo's Wrongdoing***

_____ 65. In August of 2011, the Office of the New York State Comptroller issued a report of examination of the Town of Yorktown covering the period January 1, 2007 through May 13, 2010. (Sometimes hereafter referred to as "Comptroller's Audit Report.") This report had the stated purpose of examining the Town's internal controls over purchasing and computer use and to evaluate Highway Superintendent DiBartolo's work activities, computer use and purchasing activities back to January 1, 2006.

66. As a threshold matter, the Comptroller's Audit Report found that the Highway Superintendent acted inappropriately and against the best interests of the Town's citizens, and that there was a conflict between his personal financial interests and his public powers and duties. DiBartolo did not disclose an interest in any actual or proposed contracts with the Town until 2009 when his annual disclosure statement vaguely indicated he would be working for a Envirostar. His March 2010 disclosure statement indicated that he worked for the same corporation on nights, weekends and emergencies; however, he never disclosed his interest in the 2007 and 2008 contracts between his private business and the Town. The Town Board may have been able to detect a potential prohibited interest if DiBartolo had revealed this disclosure in his yearly statements; however, his failure to disclose created an environment susceptible to fraud and

abuse, so the Comptroller found.

67. The Comptroller Report continued, during some or all of his tenure as Highway Superintendent, DiBartolo was engaged in various unincorporated businesses, including buying and selling used car and equipment parts, and landscaping. For example, according to the Comptroller's Audit Report, in 2007 and 2008 DiBartolo personally entered into contracts with the Town for \$28,670 for the sale of used equipment and materials including an industrial sweeper, mixer and tires, without disclosing that as a sole proprietor of the business, he had an interest in the contracts and that he received a personal monetary benefit.

68. The Comptroller's Report continues, two of DiBartolo's brothers were vice presidents of Envirostar -- with which the Town contracted to perform environmental services and DiBartolo was directly involved with the negotiation and preparation of one or more contracts with this corporation and the Town. During the period of 2007-2010 the Town paid the corporation \$100,686, and DiBartolo, acting on behalf of the Town, sold surplus vehicles to the same corporation, in direct violation of the New York State General Municipal Law, so the Comptroller's report found.

69. The Comptroller's Report continues, in March of 2009, DiBartolo notified the Town of an "immediate risk" to the environment at the Town of Yorktown Water Department due to a fuel tank that had previously been removed and which had contaminated the ground. DiBartolo said that he had just received an order from the NYS Department of Environmental Conservation ("DEC") in February, to take immediate action to remediate the spill or else face fines of up to \$35,000 a day, so the Town Board signed an order to commence the work.

70. The Comptroller's Report continues, DiBartolo claimed that an outside

contractor had hired his brothers' corporation to perform environmental services, however this was not the case, as the company had already begun work on the environmental site prior to the arrival of the outside contractor. The Town paid \$181,000 for remediation services allegedly provided by the corporation; of this, \$73,000 was paid (at DiBartolo's request) pursuant to the "emergency" exception to competitive bidding, before the Town Board had the opportunity to review or approve the contract. The Town Comptroller issued the check for \$73,000 on February 20, 2009, just three days after the company submitted its bill, but the Town Board was not presented with the request for payment and the accompanying paperwork until February 24, 2009, four days after the bill had been paid. Meanwhile, another outside contractor who had worked on the same project and who had submitted an invoice for \$3,500 to the Town on February 27, 2009 was not paid until May 8, 2009. So the Comptrollers' Report states.

71. The Comptroller's Audit Report disagreed that the circumstances surrounding the \$73,000 payment constituted an "emergency" exempting the transaction from competitive bidding. The Comptroller's Audit Report specifically pointed out that the Town had received letters from the DEC in February 2008 requesting the Town's corrective action plan for a fuel spill and reminding them that civil penalties of up to \$37,500 per day could be imposed. The Town didn't take action until October 2008 when the Town brought in two vendors to assess the situation. Work didn't start until February 2009, a year after the Town had received the initial DEC letter. There was nothing to indicate any specific deadline to be met, and the Town had sufficient time to seek competition to complete the project. These are the conclusions of the Comptroller's Report.

72. The Comptroller's Report continues, during the period 2007 - 2009, the Town

and DiBartolo purchased 23 trucks for \$1.8 million dollars. Thirteen of the 23 trucks totaling \$948,052 were improperly bid and eleven of the thirteen trucks totaling \$570,453 were purchased from one vendor. There were irregularities with the bidding process and DiBartolo ignored the bid restrictions when he awarded bids for more vehicles than were advertised. Although the Town Board resolutions concerning this bid were confusing and misleading, this did not warrant DiBartolo's misconduct. So the Comptroller's Report continued.

73. The Comptroller's Report continues, in 2007 the Town bid and purchased a new sewer cleaning truck. DiBartolo said the vehicle was inadequate and asked to sell it and buy a new truck. The Town Board solicited bids for sale of a used truck, but no bids were received. DiBartolo then arranged for a trade-in with the original vendor and bought a new truck in June 2009 without bidding. A November 18, 2009 Town Board resolution authorized Town officials to purchase the truck with the trade in, indicating that the bid opening was October 9, 2009, when in fact no bid opening had occurred because the truck had already been purchased. The resolution date of November 18, 2009 was not recorded in the minutes until December 1. These are conclusions of the Comptroller's Report.

74. The Comptroller's Audit Report also found fault with Town officials for not establishing adequate policies and procedures for procurement, aggregate purchases or to take advantage of volume discounts. More specifically, Town officials did not solicit competitive bids for purchases from nine vendors totaling nearly \$2 million dollars and paid eight professional service providers over \$3.9 million dollars without seeking competitive proposals or quotes. There was incomplete and inaccurate recording of the minutes relative to the purchase of Town vehicles and inadequate control over credit card purchases, such that it could not be ascertained if

payments to vendors were necessary or for actual Town expenses. Much of this, of course, related to the Highway Department and areas under DiBartolo's direct responsibility.

The Town Board Acts: To Protect DiBartolo

75. During the Comptroller's Audit, a preliminary draft of the Comptroller's report was sent to the Town of Yorktown. Somehow, a copy of the draft report was leaked to the press and to the public, and this made local headlines.

76. The Town Board reacted, not by reproaching DiBartolo for the litany of criticisms contained in the report, but by lashing out and demanding an investigation to determine who had leaked the draft report.

77. The Town Board never demanded an investigation into any of the long list of DiBartolo's abuses cited by the Comptroller.

DiBartolo Lashes Out at Taxpayers and Critics

78. DiBartolo has repeatedly taken improper legal actions against taxpayers and Town officials whom he perceived were attempting to rein in, to criticize or monitor his financial improprieties and conflicts. Among other actions, he:

- A. Swore out baseless criminal charges against William LaPierre based on LaPierre's attempts to document some of DiBartolo's wrongdoing;
- B. Falsely claimed that taxpayers were "trespassing" when they were on public property attempting to document DiBartolo's wrongdoing;
- C. Filed two frivolous defamation actions against taxpayers Fred Gultitz and William LaPierre in the Supreme Court, Westchester County – based on their comments about his apparently engaging in wrongdoing;

D. Filed a lawsuit against the then Town Supervisor Susan Siegel, alleged she defamed him when she stated she had heard DiBartolo was having an affair with Patti Cole – even though DiBartolo knew that such statement was true or apparently true;

E. During a televised Town Board meeting, defamed plaintiff Willam LaPierre by claiming the police had cited LaPierre for harassing DiBartolo, which statement was false;

F. Demoted or took other adverse employment actions against Highway Department personnel who dared to question DiBartolo's wrongdoing, or to refuse to engage in the wrongdoing.

79. DiBartolo's conduct as set forth herein, constitute violations of a host of criminal statutes, among them:

A. Penal Law Section 195.00 - Official misconduct

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or
2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor

B. Penal Law Section 195.05 - Obstructing governmental administration in the second degree

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act,

Obstructing governmental administration is a class A misdemeanor

C. Penal Law Section 195.20 - Defrauding the government

A person is guilty of defrauding the government when, being a public servant or party officer, he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; and

(b) so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality.

Defrauding the government is a class E felony.

New York General Municipal Law Section 103 (7) – Competitive Bidding

A person or corporation who conspires to prevent competitive bidding on a contract for public work or purchase advertised for bidding shall be guilty of a misdemeanor....

New York General Municipal Law Section 805 – Conflicts of Interest

Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article [conflicts of interest] shall be guilty of a misdemeanor.

80. DiBartolo's conduct constitutes a violation of the New York State

Constitution Article 8 Section 1, which prohibits use of public resources for private benefit:

“No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking”

81. DiBartolo's conduct constitutes wilful dissipation and waste of public assets,

which affects the public interest and which, but for judicial intervention, is expected to continue.

First Cause of Action
(Violation of 18 U.S.C. 1962 (c) - Racketeering)

82. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

83. The “enterprise” as that term is defined in 18 U.S.C. 1961 (4), that engages in, and the activities which affect interstate commerce, is in the alternative (a) the Town of Yorktown Highway Department (b) the Town of Yorktown and/or (c) defendant DiBartolo and a group of individuals named herein as John Doe defendants who are associated in fact and operate as a continuing criminal enterprise.

84. Defendant DiBartolo and John Does 1 through 10 have been associated with the enterprise. They have knowingly conducted and/or participated directly or indirectly, in the conduct of the enterprise affairs through a pattern of racketeering activity consisting of repeated violations of the federal Mail Fraud statute, 18 U.S.C. 1341, based upon the use of the United States mails to submit or cause to be submitted numerous fraudulent invoices seeking reimbursement for monies due. Thus, DiBartolo has, upon information and belief, generated and transmitted using the mails and/or wires, for the purpose of carrying out his fraud:

A. Envirostar invoices approved by himself, on or about the dates indicated above, for work never done, for unnecessary work, or for work at inflated prices, all in violation of a host of ethics and competitive bidding laws, and for the purpose of defrauding the Town and enriching the defendant.

B. Monthly payroll records from 2003 to the present, that did not represent the true dates and hours worked, as described above, for work never done, for

unnecessary work, including hours that Town personnel actually performed work for DiBartolo or one of his businesses, or for work at inflated hours, and for the purpose of defrauding the Town and enriching the defendant.

C. Invoices for equipment and supplies allegedly provided to the Town aggregating over \$50,000 during the period 2002 to 2010 by Eric DiBartolo, as vendor, and which were either (a) already Town property, (b) never received by the Town, (c) sold at inflated prices, or (d) non existent.

D. All of the documentation concerning the 2008 - 2009 fuel spill remediation work, including transmission of proposed contracts between DiBartolo and Peters in February 2009; communications between himself and Envirostar; transmission of invoices by DiBartolo to Town Comptroller Joan Goldberg in 2009; telephonic communications with the Town Supervisor, Town Board members, members of the press, and with the State Comptroller's office during 2010.

85. The predicate acts of mail fraud are and were essential to the operation of the criminal enterprise. Moreover, the enterprise has existed for an indeterminate period of time, the precise starting date being sometime in the late 1990s not being known because its activities are concealed by the defendant; the activities of the enterprise are ongoing at the present and indefinitely into the future implying a threat of continued criminal activity. The racketeering predicate acts are related, and they amount to or pose a threat of continued criminal activity. The last of the predicate acts occurred within 10 years after the latest prior such act.

86. The predicate acts were and are the regular way of operating the enterprise, and the nature of the predicate acts themselves implies a threat of continued criminal activity. As

noted, DiBartolo has been using the same manner of doing business with Envirostar for a period of years, amounting to well over \$150,000 in receipts, continuing to use “no bid” contracts; continuing to falsify “emergencies,” continuing to fail to disclose the nature and true extent of his interest in the business. So too, he has for several years operated the Eric DiBartolo Town Vendor business in the same way and using the same form of predicate acts to carry on the business.

87. Upon information and belief, the defendants continue to engage in the racketeering activity, continue to operate the enterprise and continue to loot the treasury of the Town of Yorktown.

88. The Town of Yorktown has been injured in its business and property by reason of the above described conduct in that:

- (a) The Town has higher expenses as a consequence of the defendants’ wrongdoing;
- (b) Because budgeted monies are being devoted to DiBartolo’s personal interests – rather than to serving the people of the Town of Yorktown – the Town is not able to supply the highest quality of services to its residents.

89. By reason of its injury, the Town of Yorktown is entitled to treble damages, costs and reasonable attorneys fees pursuant to 18 U.S.C. 1964 (c) and any other relief the Court deems just and proper, including a full accounting of the financial affairs of the Town of Yorktown Highway Department, as well as DiBartolo’s myriad personal business dealings involving the Town, and an order directing that DiBartolo be enjoined from participating in any form of outside business, and such other relief as the Court may deem just and proper or as may

be warranted by the facts adduced.

Second Cause of Action

(Violation of 18 U.S.C. 1962 (d) - Racketeering Conspiracy)

90. Plaintiff repeats and realleges the foregoing allegations as though fully set forth herein.

91. The “enterprise” as that term is defined in 18 U.S.C. 1961 (4), that engages in, and the activities which affect interstate commerce, is in the alternative (a) the Town of Yorktown Highway Department (b) the Town of Yorktown and/or (c) defendant DiBartolo and a group of individuals named herein as John Doe defendants who are associated in fact and operate as a continuing criminal enterprise.

92. Defendant DiBartolo and John Does 1 through 10 have knowingly agreed to and conspired to conduct and/or participate, directly or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of repeated violations of the federal Mail Fraud Statute, 18 U.S.C. 1341, based upon the use of the United States mails to submit or cause to be submitted numerous fraudulent invoices seeking reimbursement for monies due and otherwise as more fully set forth above.

93. The predicate acts of mail fraud are and were essential to the operation of the criminal enterprise. Moreover, the enterprise has existed for an indeterminate period of time, the precise starting date not being known because its activities are concealed by the defendant; the activities of the enterprise are ongoing indefinitely into the future implying a threat of continued criminal activity.

94. Upon information and belief the defendants continue to engage in the

rackeering activity, continue to operate the enterprise and continue to loot the treasury of the Town of Yorktown.

95. The Town of Yorktown has been injured in its business and property by reason of the above described conduct in that:

(a) The Town has higher expenses as a consequence of the defendants' wrongdoing;

(b) Because budgeted monies are being devoted to DiBartolo's personal interests – rather than to serving the people of the Town of Yorktown – the Town is not able to supply the highest quality of services to its residents.

96. By reason of its injury, plaintiff is entitled to treble damages, costs and reasonable attorneys fees pursuant to 18 U.S.C. 1964 (c) and any other relief the Court deems just and proper, including a full accounting of the financial affairs of the Town of Yorktown Highway Department, as well as DiBartolo's myriad personal business dealings involving the Town, and an order directing that DiBartolo be enjoined from participating in any form of outside business, and such other relief as the Court may deem just and proper or as may be warranted by the facts adduced.

Third Cause of Action: Taxpayer Law Claim
(General Municipal Law Section 51)

97. Plaintiff repeats and realleges the foregoing allegations as though fully set forth herein.

98. As noted above, each of the plaintiffs is a taxpayer owning property within the Town of Yorktown having an assessed valuation in excess of \$1,000, and liable to pay taxes on

such assessment to the Town of Yorktown, at all times relevant and for more than one year prior to the commencement of this action.

99. Plaintiff brings this action in the name of the Town of Yorktown, to recoup funds wrongfully taken from the Town of Yorktown by its Highway Superintendent, Eric DiBartolo for his own enrichment and/or the enrichment of friends, business associates or others unknown to plaintiffs.

100. The issues complained about in this action do not involve the mere exercise of bad judgment; they are not matters about which reasonable people might differ. The claims in this case, largely corroborated by extensive documentary evidence including an audit by the New York State Comptroller's Office, involve egregious ethical violations and self-dealing by a person elected to and holding a position of utmost public trust.

101. Within the meaning of G.M.L. Section 51, the defendant is personally responsible to provide for the collection and repayment of sums due the Town, and to indemnify the Town for its losses.

102. The other defendants are liable to pay restitution and for such other equitable relief as the Court may deem just and proper.

103. Plaintiff is entitled to recoup, for the benefit of the Town, damages and an accounting as the facts may warrant.

104. Plaintiff has offered to, and will upon judicial determination, post a bond or undertaking in the amount established by the Court pursuant to General Municipal Law Section 51.

Fourth Cause of Action: Unjust Enrichment

105. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

106. As more fully set forth above, defendant has acquired money and property that, under the circumstances it would be unjust and inequitable for him to retain, and entitling the Town to an accounting and restitution.

Fifth Cause of Action: Constructive Trust

107. Plaintiffs repeat and reallege the foregoing allegations as though fully set forth herein.

108. Over the years, the Town of Yorktown entrusted to the defendant substantial sums of money, with the agreement and expectation that the defendant would use those funds for the exclusive benefit of the people of the Town of Yorktown, and to carry out the legitimate purposes of the department that he was entrusted to oversee.

109. Occupying his position as Highway Superintendent and Director of Labor Operations, the defendant owed to the Town of Yorktown and to its citizens and taxpayers, a fiduciary duty of trust.

110. The defendant has instead retained and enriched himself with portions of such funds, under such circumstances that in equity and good conscience he ought not to retain.

111. The defendant has kept for himself and used for personal and personal business benefit large amounts of money and property entrusted to him by the Town, under circumstances that render unconscionable and inequitable the continued holding of the money and property.

112. By reason of the foregoing, plaintiff is entitled to a Constructive Trust compelling the defendant to transfer to plaintiff the money and property, or its proceeds, and to account.

WHEREFORE, plaintiffs demands judgment, in favor of the Town of Yorktown and against the defendants as requested, including (1) damages and restitution as may be calculated, (2) equitable relief designed to divest the Highway Superintendent of any outside business interests, and (3) an award of attorneys fees and the costs and disbursements of this action.

Dated: February 21, 2012

DAVID O. WRIGHT, ESQ.


2025 Crompond Road
Yorktown Heights NY 10598
(914) 245-0455
Attorney for Plaintiffs

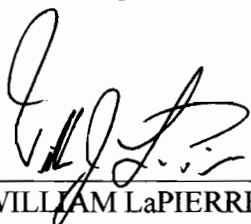
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STATE OF NEW YORK

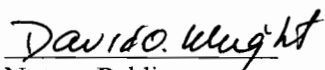
WESTCHESTER COUNTY

WILLIAM LaPIERRE, being duly sworn, states:

I am the plaintiff in this action. I hereby verify that the foregoing Verified Complaint is true to my knowledge, except where stated to be upon information and belief, in which case it is true to the best of my knowledge, information and belief. In such instance, my information is based upon review of documents supplied by counsel. This verification is made on behalf of co-plaintiff by the undersigned, because the co-plaintiff is a corporation, and I am an officer thereof.


WILLIAM LaPIERRE

Sworn to before me on
February 21, 2012


Notary Public

David O. Wright
Notary Public, State of New York
No. 4973920
Qualified in Westchester County
Commission Expires Nov. 5, 2014