UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM; WASHINGTON SUBURBAN SANITARY COMMISSION EMPLOYEES' RETIREMENT PLAN; ATLANTIC GLOBAL YIELD OPPORTUNITY MASTER FUND, L.P.; AND ATLANTIC GLOBAL YIELD OPPORTUNITY FUND, L.P., Plaintiffs, -and- THE CHICAGO TRANSIT AUTHORITY RETIREE HEALTH CARE TRUST, Intervenor-Plaintiff, -against- U.S. BANK NATIONAL ASSOCIATION, Defendant.	Civil Action No. 4:17-CV-04113-LLP **DEFENDANT U.S. BANK NATIONAL ASSOCIATION'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to D.S.D. Civ. LR 56.1, Defendant U.S. Bank National Association ("U.S. Bank" or "Trustee") submits the following statement of undisputed material facts.

I. The Issuer and the Bonds that Are the Subject of This Action

A. *The Issuer*

1. The Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota) is a Tribal entity recognized by and eligible for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian Tribe. 84 FR 1200.

2. The Wakpamni Lake District is a subordinate governmental unit of the Oglala Sioux Tribe. (Compl. Ex. A (Dkt. 1-1) ("August 2014 Trust Indenture") at Recitals, p. 1.)

3. The Wakpamni Lake Community is a subdivision of the Wakpamni Lake District. (August 2014 Trust Indenture at Recitals, p. 1.)

4. The Wakpamni Lake Community Corporation ("WLCC") is a corporation duly organized under the laws of the Oglala Sioux Tribe and the Wakpamni Lake Community, and is wholly-owned by the Wakpamni Lake Community, which was incorporated on April 1, 2012. (August 2014 Trust Indenture at Recitals, p. 1.)

B. *The Bonds*

5. The Indian Tribal Governmental Tax Status Act of 1982, as amended by the American Recovery and Reinvestment Act of 2009, which is codified in the Internal Revenue Code at 26 U.S.C. 7871, provides that Tribes are to be treated as equivalent to a State of the United States for purposes of issuing tax exempt bonds.

6. Tax-exempt bonds and privately placed bonds are exempt from the provisions of the Trust Indenture Act of 1939 ("TIA"), 15 U.S.C. §§ 77aaa-77bbbb.

7. In 2014 and 2015, WLCC issued the following series of taxable bonds:

> Series 2014 Economic Development Program Bonds. Trust Indenture dated as of August 25, 2014, by and between WLCC and the Trustee, pursuant to which $24,844,089 in principal amount of Special Limited Revenue Bonds (Taxable) Series of 2014 (Economic Development Program) were issued. (August 2014 Trust Indenture, pp. 1-2.)
>
> Series 2014A Economic Development Program Bonds. First Supplemental Trust Indenture (to the August 25, 2014 Indenture) dated as of August 27, 2014, by and between WLCC and the Trustee, pursuant to which $2,233,347 in principal amount of Special Limited Revenue Bonds (Taxable) Series of 2014A (Economic Development Program) were issued. (Declaration of Timothy G. Pillar ("Pillar Decl.") Ex. C at USB_SD0000002360, 2363.)

> Series 2014 (Town Center Development) Bonds. Trust Indenture dated as of September 15, 2014, by and between WLCC and the Trustee, pursuant to which $15,000,000 in principal amount of Special Limited Revenue Bonds (Taxable) Series of 2014 (Town Center Development) were issued. (Pillar Decl. Ex. D at USB_SD0000003125, 3129.)
>
> Series 2014A (Town Center Development) Bonds. First Supplemental Trust Indenture (to the September 15, 2014 Indenture) dated as of October 1, 2014, by and between WLCC and the Trustee pursuant to which $5,000,000 in principal amount of Special Limited Revenue Bonds (Taxable) Series of 2014A (Town Center Development) were issued. (Pillar Decl. Ex. E at USB_SD0000003267, 3270.)
>
> Series 2015 (Wakpamni Lake Distribution Project) Bonds. Trust Indenture dated as of April 1, 2015, by and between WLCC and the Trustee, pursuant to which $16,200,000 in principal amount of Special Limited Revenue Bonds (Taxable) Series of 2015 (Wakpamni Lake Distribution Project) were issued. (Compl. Ex. K (Dkt. 1-11) ("2015 Trust Indenture"), pp. 1-2.)

8. The Series 2014 and Series 2014A Economic Development Program Bonds are collectively referred to hereafter as the "August 2014 Bonds." The Series 2014 and Series 2014A Town Center Development Bonds are collectively referred to hereafter as the "September 2014 Bonds." The Series 2015 Wakpamni Lake Distribution Project Bonds are referred to hereafter as the "April 2015 Bonds." The August 2014 Bonds, the September 2014 Bonds, and the April 2015 Bonds are collectively referred to hereafter as the "WLCC Bonds."

9. The WLCC Bonds were not subject to the provisions of the TIA because they were not exempt from taxation under the Internal Revenue Code and were privately placed rather than publicly offered. TIA § 304, 15 U.S.C. §77ddd. The WLCC Bonds were not exempt from federal income taxation because they were private activity bonds, as well as because there was arbitrage between the interest rate being paid on the bonds and the return WLCC was to receive on the Annuity Investment. (Declaration of Michael R. McGinnis ("McGinnis Decl.") ¶12.)

II. Other Entities Connected to the WLCC Bond Transactions

A. *Plaintiffs*

10. Plaintiff The Water Works Board of the City of Birmingham ("Birmingham Water") is an Alabama public corporation, created pursuant to Alabama Code Section 11-50-230 *et seq.* (1975). Birmingham Water is an Alabama public water utility that owns August 2014 Bonds with a face value of $4,344,640. (Compl. (Dkt. 1) ("Compl.") ¶3.)

11. Plaintiff Washington Suburban Sanitary Commission Employees' Retirement Plan ("Washington Suburban") was established in May 1967 as a Section 401 trust for the Washington Suburban Sanitary Commission, a public water and sewer utility serving primarily Prince George's and Montgomery counties in Maryland that owns August 2014 Bonds with a face value of $4,118,076. (Compl. ¶4.)

12. Plaintiff Atlantic Global Yield Opportunity Fund, L.P. ("Atlantic Feeder Fund") is a Delaware limited liability partnership. The original general partner of Atlantic Feeder Fund is Atlantic GYOF GP, LLC. The replacement general partner of the Atlantic Feeder Fund is Goldin Associates, LLC. Both are Delaware limited liability companies. (Compl. ¶5; Declaration of William Z. Pentelovitch ("Pentelovitch Decl.") Ex. 12, 30(b)(6) Deposition of Marc Kirschner ("Kirschner Dep.") at 62:21-64:19; Pentelovitch Exs. 37-38.)

13. Plaintiff Atlantic Global Yield Opportunity Master Fund, L.P. ("Atlantic Master Fund") is a Cayman Islands exempted limited partnership that owns April 2015 Bonds with a face value of $16,200,000. The original general partner of Atlantic Master Fund is Atlantic GYOF GP, LLC, a Delaware limited liability company. The replacement general partner of the Atlantic Master Fund is Replacement GYOF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands. (Compl. ¶5; Pentelovitch Exs. 39, 41.)

14. Atlantic Feeder Fund is the sole owner of Atlantic Master Fund. (Compl. ¶ 5.)

15. Atlantic Feeder Fund invested all or substantially all of its assets in Atlantic Master Fund. (Compl. ¶5; Pentelovitch Decl. Ex. 12 at Kirschner Dep. 45:6-46:23.)

16. The Omaha School Employees' Retirement System ("OSERS"), which is not a Plaintiff herein, is the sole limited partner of Atlantic Feeder Fund. (Compl. ¶5; Pentelovitch Decl. Ex. 12 at Kirschner Dep. 46:12-15.)

17. Intervenor-Plaintiff The Chicago Transit Authority Retiree Health Care Trust ("RHCT") is a retiree welfare benefit plan established and governed by Illinois state law, 40 ILCS 5/22-101B, that owns August 2014 Bonds with a face value of $4,073,499. (Compl. in Intervention (Dkt. 68) ("RHCT Compl.") ¶¶1, 3.)

B. ***Defendant U.S. Bank National Association ("U.S. Bank" or "Trustee")***

18. The Office of Comptroller of the Currency ("OCC") is authorized to charter national banks pursuant to The National Bank Act, 12 U.S.C. § 38.

19. U.S. Bank National Association, Cincinnati, Ohio (Charter No. 24), is a national banking association formed under the laws of the United States and is authorized thereunder to transact the business of banking. (Pillar Decl. ¶4 & Ex. A.)

20. U.S. Bank's principal place of business is in Minneapolis, Minnesota. (Compl. ¶6; U.S. Bank's Answer and Counterclaim (Dkt. 69) ("Answer") ¶6; Pillar Decl. ¶5.)

21. Ohio law permits State banks in Ohio to serve as trustees. Ohio. Stat. § 1111.02(A)(2).

22. Pursuant to the National Bank Act, 12 U.S.C. ¶92a, the OCC is authorized and empowered to permit national banks to serve as "trustee . . . or in any other fiduciary capacity

in which State banks . . . which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located."

23. Pursuant to the National Bank Act, the OCC granted U.S. Bank National Association, Cincinnati, Ohio (Charter No. 24), the right to act in all fiduciary capacities authorized under the provisions of the Act of Congress approved September 28, 1962, 76 Stat. 668, 12 U.S.C. 92a, and that the authority so granted remains in full force and effect. (Pillar Decl. ¶6 & Ex. B.)

24. U.S. Bank is a member of the Federal Deposit Insurance Corporation ("FDIC"). (Pillar Decl. ¶7.)

25. U.S. Bank is a "financial institution" subject to the provisions of the Bank Secrecy Act ("BSA"), 31 U.S.C. §§ 5312(a)(2)(A) and (B).

26. U.S. Bank engages in the corporate trust business through its division called Global Corporate Trust Services ("GCTS"). As part of its corporate trust business, U.S. Bank serves as indenture trustee for bond issuances subject to the TIA as well as for bond issuances that are not subject to the TIA, such as taxable municipal and private placement bonds. (Pillar Decl. ¶8.)

27. As a national bank granted the powers to act as a trustee by the OCC, U.S. Bank is not required to seek or obtain a license to serve as an indenture trustee from South Dakota or any other state. (Pillar Decl. ¶9.) U.S. Bank complies with business registration and certification laws and regulations, which generally require U.S. Bank to pay a fee and establish that it has corporate authority to act, but do not require U.S. Bank (or its employees) to take any tests, pass any examinations, receive any specialized training, or subscribe to any ethical codes in order to serve as an indenture trustee. (Pillar Decl. ¶9.)

28. The GCTS business of U.S. Bank maintains offices in various parts of the United States, including in St. Paul, Minnesota, where the GCTS business is headquartered, and in Phoenix, Arizona, where it has an office. (Pillar Decl. ¶10.)

C. *Burnham Securities, Inc. ("Burnham")*

29. Burnham was an SEC-registered broker dealer based in New York, New York that was established in 1987. (*See* brokercheck.finra.org/firm/summary/22549.)

30. Burnham was registered as a broker deal with the U.S. Securities and Exchange Commission from October 25, 1988 to May 10, 2016. (*See* files.brokercheck.finra.org/firm /firm_22549.pdf.)

D. *Wealth Assurance Private Client Corporation ("WAPCC")*

31. WAPCC was incorporated in the British Virgin Islands on August 22, 2014. (Pentelovitch Decl. Ex. 1.) It was created by Gary Hirst. (Pentelovitch Decl. Ex. 49, Test. of Hugh Dunkerley, 6/4/18 Trial Tr. 1011:20-21, *USA v. Galanis, et al*., No. 1:16-cr-00371-PKC, (S.D.N.Y. filed Oct. 18, 2018) ("Galanis Trial") (Dkt. 653) ("Dunkerley 6/4/18 Tr.").)

32. WAPCC issued annuities in connection with the WLCC Bond transactions. (Compl. Ex. F (Dkt. 1-6) ("August Annuity"); Pillar Decl. Ex. F ("September Annuity"); Compl. Ex. J (Dkt. 1-10) ("April Annuity").)

E. *Private Equity Management LLC ("PEML")*

33. PEML was to be the intermediary between WLCC and WAPCC "both monitoring and advising on the use of funds for the bond placements." (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1015:17-21.)

34. PEML was the investment manager for the WAPCC annuities pursuant to agreements with WLCC and WAPCC. (Compl. Ex. H (Dkt.1-8) ("August Inv. Mgmt.

Agreement"); Pillar Decl. Ex. F at USB_SD0000003351-USB_SD0000003359 ("September Inv. Mgmt. Agreement").)

F. *Greenberg Traurig ("GT")*

35. GT is a law firm with offices throughout the United States as well as in other countries. (*See* www.gtlaw.com/en/locations.)

36. GT has an office in Denver, Colorado. (*See* www.gtlaw.com/en /locations/denver.)

37. GT was counsel to WLCC in connection with the WLCC Bond transactions. (McGinnis Decl. ¶9.)

G. *Dilworth Paxon ("Dilworth")*

38. Dilworth Paxon is a law firm with offices in Pennsylvania, New Jersey, and New York. (*See* www.dilworthlaw.com/AboutDilworth/Offices.)

39. Dilworth was counsel to Burnham in connection with the WLCC Bond transactions. (Declaration of Timothy B. Anderson ("Anderson Decl.") ¶13.)

H. *Hughes Capital Management ("Hughes")*

40. Hughes was a Registered Investment Advisor that for many years had served as an investment manager to each of Birmingham Water, Washington Suburban, and RHCT. (Compl. ¶¶13, 14; RHCT Compl. ¶12.)

41. Hughes acquired Atlantic through a merger in April 2015, and the surviving entity did business under Atlantic's name. (Compl. ¶43; Pentelovitch Decl. Exs. 40 at GYOF 000588; 3 at Item 1(C).)

I. *Atlantic Asset Management ("Atlantic")*

42. Atlantic was a Registered Investment Advisor that for many years had served as an investment manager for OSERS. (Compl. ¶ 43.)

43. Atlantic organized, promoted, and controlled the Master Fund and the Feeder Fund. (Pentelovitch Decl. Exs. 6, 30(b)(6) Deposition of Donald Erikson ("Erikson Dep.") at 31:6-15; 35:9-12; 37 at § 3.01; 30 at GYOF 008025; 31 at GYOF 008057.)

44. Atlantic was acquired by and merged into Hughes in April 2015, and the surviving company did business under Atlantic's name. (Compl. ¶43; Pentelovitch Decl. Ex. 40 at GYOF 000588; 3 at Item 1(C).)

III. Individual Witnesses and Players Connected to the WLCC Bond Transactions

A. *Timothy Anderson ("Anderson")*

45. At the time of the WLCC Bond transactions, Anderson was a partner in Dilworth. (Anderson Decl. ¶7.)

46. Anderson was counsel to Burnham, as Placement Agent, in the WLCC Bond transactions. (Anderson Decl. ¶13.)

47. Anderson is an attorney at law licensed to practice in the States of New York and Pennsylvania. (Anderson Decl. ¶3.)

48. Anderson's law practice is focused on public and private bond financings and economic development matters. (Anderson Decl. ¶4.)

49. Anderson has extensive experience as bond counsel and underwriter's counsel in tax-exempt and taxable bond issues. (Anderson Decl. ¶4.)

50. Anderson has been involved in approximately 200 bond issues as either bond counsel, issuer's counsel, underwriter's counsel, or placement agent's counsel. (Anderson Decl. ¶5.)

51. Anderson has been involved in numerous bond transaction by tribal entities. (Anderson Decl. ¶5.)

52. Anderson is a member of both the Pennsylvania Association of Bond Lawyers (of which he is a past President and a board member) and the National Association of Bond Lawyers. (Anderson Decl. ¶6.)

B. *Michael McGinnis ("McGinnis")*

53. McGinnis was counsel to WLCC in the WLCC Bond transactions. (McGinnis Decl. ¶9.)

54. McGinnis is licensed to practice law in Colorado. (McGinnis Decl. ¶3.)

55. McGinnis was at the time of the WLCC Bond transactions, and remains today, a shareholder in GT, and he is Co-Managing Shareholder of GT's Denver office. (McGinnis Decl. ¶4.)

56. McGinnis works in GT's Public Finance Practice, and his law practice is focused on complex municipal and public finance matters. (McGinnis Decl. ¶5.)

57. McGinnis has represented clients in the capacities of bond counsel, disclosure counsel, underwriter's counsel, purchaser's counsel, trustee's counsel, and borrower's counsel for approximately 32 years. (McGinnis Decl. ¶5.)

58. McGinnis is a member of The National Association of Bond Lawyers, the Corporation, Banking, and Business Law Section of the American Bar Association, and the Urban, State, and Local Government Law Section of the American Bar Association. (McGinnis Decl. ¶6.)

C. *Heather Dawn Thompson ('Thompson")*

59. Thompson holds a B.A. degree from Carnegie Mellon University, an M.A. degree from the University of Florida, and a J.D. degree from Harvard Law School. (Declaration of Heather Dawn Thompson ("Thompson Decl.") ¶2.)

60. Thompson is admitted to practice law in Alaska, Colorado, the District of Columbia, South Dakota, Virginia, the Oglala Tribal Court, the Puyallup Tribal Court, the U.S. District Court for the District of South Dakota, and the U.S. Court of Appeals for the Eighth Circuit. (Thompson Decl. ¶3.)

61. Thompson has held a variety of legal positions, including as an Assistant United States Attorney for the District of South Dakota, Indian Country Section and as a partner at a large international law firm. (Thompson Decl. ¶4.)

62. Thompson is employed as a Practice Group Attorney at GT. She resides in Rapid City, South Dakota and has offices in both Denver, Colorado and Washington, D.C. (Thompson Decl. ¶5.)

63. Thompson is a member of the Cheyenne River Sioux Tribe. (Thompson Decl. ¶6.)

64. WLCC is a client of Thompson's and she was one of the GT lawyers representing WLCC in connection with the WLCC Bonds. (Thompson Decl. ¶7.)

D. ***Michael Slania ("Slania")***

65. Slania was counsel to U.S. Bank in the WLCC Bond transactions.

66. Slania received undergraduate and law degrees from the University of Wisconsin. (Pentelovitch Decl. Ex. 14 Deposition of Michael Slania ("Slania Dep.") at 14:6-11.)

67. Slania has practiced in the area of municipal finance since graduation from law school in 1984, representing a variety of municipal finance clients including cities, counties, school districts, state governments, and banks. (Pentelovitch Decl. Ex. 14 at Slania Dep. 14:23-15:11; 17:2-13; 19:23-20:6.)

68. Slania has had experience as bond counsel, indenture trustee's counsel, issuer's counsel, and underwriters' counsel. (Pentelovitch Decl. Ex. 14 at Slania Dep. 17:7-13; 19:23-20:15.)

69. Since 1999, in an average year, twenty percent of Slania's legal work was as counsel for indenture trustees. (Pentelovitch Decl. Ex. 14 at Slania Dep. 22:18-21.)

70. Slania is a member of the National Association of Bond Lawyers. (Pentelovitch Decl. Ex. 14 at Slania Dep. 20:19-21:18.)

E. ***Scott Graham ("Graham")***

71. Graham is a vice president and managing director of Wilmington Trust National Association working in its global capital markets division. (Pentelovitch Decl. Ex. 8, Deposition of Scott Graham ("Graham Dep.") at 20:20-21:9.)

72. Graham holds a bachelor's degree in economics from Duke University and a law degree from the University of Illinois, and is licensed to practice law in Illinois. (Pentelovitch Decl. Ex. 8 at Graham Dep. 22:1-24; 23:17-20.)

73. After practicing law for four years, Graham was employed from 1986 to 2006 in various roles in the corporate trust departments of various banks. (Pentelovitch Decl. Ex. 8 at Graham Dep. 25:1-31:7.)

74. From 2006 to 2019 Graham was employed by U.S. Bank in its GCTS business as a business development officer seeking new trustee and agency appointments. (Pentelovitch Decl. Ex. 8 at Graham Dep. 31:8-32:21.)

F. *Keith Henselen ("Henselen")*

75. Henselen was employed by various banks in their corporate trust departments in operational capacities from the time he graduated college in 1999 until 2008. (Pentelovitch Decl. Ex. 10, Deposition of Keith Henselen ("Henselen Dep.") at 10:25-12:18.)

76. From 2008 to the present, Henselen has been employed by U.S. Bank GCTS in its Phoenix, Arizona office as a relationship manager (formerly called an account manager) working on corporate trust transactions, including as a relationship manager for engagements of U.S. Bank as indenture trustee. (Pentelovitch Decl. Ex. 10 at Henselen Dep. 12:19-13:13.)

G. *Robert Von Hess ("Von Hess")*

77. Von Hess received a bachelor's degree in economics from the University of Denver in 1980. (Pentelovitch Decl. Ex. 18, Deposition of Robert Von Hess ("Von Hess Dep.") at 8:1-7; 8:24-9:1.)

78. Since 1992, Von Hess has been a Certified Corporate Trust Specialist. Certification is awarded by the Institute of Certified Bankers to individuals who take a one week course in each of three separate years, pass an examination, and obtain thirty continuing education credits in each subsequent three year period. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 8:1-23.)

79. Von Hess has been employed in the corporate trust industry since 1981, and has been employed by U.S. Bank or its predecessor institutions in Phoenix, Arizona since 1985. U.S. Bank has been his employer since 2002. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 9:2-11:3.)

80. Von Hess has been an account manager throughout his employment at U.S. Bank, as well as an account manager manager, meaning he managed other account managers

(now referred to as relationship managers). (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 11:4-12:6.)

H. *Scott Strodthoff ("Strodthoff")*

81. Strodthoff is a Senior Vice President of U.S. Bank, working in GCTS as manager of its Default Group that works on GCTS accounts, including bond issues, that have been impacted by defaults, bankruptcy, litigation, or other unusual circumstances. (Pentelovitch Decl. Ex. 16, 30(b)(6) Deposition of Scott Strodthoff ("Strodthoff Dep.") at 6:8-23.)

82. Strodthoff has held his position for 26 years. (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 6:18-20.)

83. Strodthoff has a bachelor's degree in finance from the University of Minnesota and is a Chartered Financial Analyst. (Pentelovitch Decl. Ex. 16 at Strodthoff Dep 7:15-19.)

I. *Timothy Pillar ("Pillar")*

84. Pillar is an account officer at U.S. Bank GCTS working in the Default Group. (Pentelovitch Decl. Ex. 13, Deposition of Timothy Pillar ("Pillar Dep.") at 12:5-12.)

85. Pillar has held his position for 16 and one-half years. (Pentelovitch Decl. Ex. 13 at Pillar Dep. 12:13-19; 12:22-13:8.)

86. Pillar has a law degree and formerly practiced law, but has not held an active license since 2010. (Pentelovitch Decl. Ex. 13 at Pillar Dep. 13:9-25.)

87. Since approximately March 2016, Pillar has managed the accounts relating to the WLCC Bonds. (Pentelovitch Decl. Ex. 13 at Pillar Dep. 15:16-16:3.)

J. *Jeremiah Farrell ("Farrell")*

88. After graduating from Boston College in 1978, Farrell spent twenty-five years working in the corporate trust business of State Street Bank in Boston in a variety of roles,

including compliance and risk management. (Pentelovitch Decl. Ex. 7, 30(b)(6) Deposition of Jeremiah Farrell ("Farrell Dep.") at 7:15-8:19.)

89. Farrell has worked for U.S. Bank GCTS as its risk manager since it acquired State Street's corporate trust business in 2003. (Pentelovitch Decl. Ex. 7 at Farrell Dep. 7:15-24; 8:20-9:14.)

90. Farrell directly supervises a staff of over sixteen risk analysts in U.S. Bank's GCTS risk management department. (Pentelovitch Decl. Ex. 7 at Farrell Dep. 9:15-10:15.)

K. *Jason Galanis*

91. Jason Galanis was held out to be an investment banker and was involved in the ownership of Burnham, Hughes, and Atlantic. (Anderson Decl. ¶9; (Pentelovitch Decl. Exs. 48-49, Test. of Dunkerley 5/31/18 Tr. 932:14-22; 932:25-933:6 (Dkt. 651) ("Dunkerley 5/31/18 Tr."); 6/4/18 Tr. 1032:14-1033:3; 1090:6-10, 1091:19-23.)

L. *John "Yanni" Galanis*

92. John Galanis is the father of Jason Galanis.

M. *Hugh Dunkerley ("Dunkerley")*[1]

93. Prior to the events giving rise to this action, Dunkerley was an experienced investment banker who had also been the chief executive officer of several companies, had sat

[1] Dunkerley has pleaded guilty to at least one criminal offense in connection with the WLCC Bonds. He subsequently testified at the trial of several of the co-defendants with whom he was originally indicted. His testimony took place over several days in May and June 2018 before the Honorable Ronnie Abrams of the United States District Court for the Southern District of New York, before whom he had previously pled guilty. Dunkerley has not yet been sentenced. U.S. Bank subpoenaed Dunkerley in this action to appear for a deposition upon written questions in California where he resides. Dunkerley appeared but asserted his Fifth Amendment privilege against self-incrimination in response to most substantive questions. Pursuant to Fed. R. Evid. 804(b)(1), Dunkerley is unavailable as a witness and his prior testimony at the criminal trial is not excluded by the rule against hearsay. Unless otherwise noted, all citations to Dunkerley's testimony are to the transcript of the criminal trial of John

on the board of directors of numerous companies, and had been an official with the FDIC. (Pentelovitch Decl. Exs. 48 at Dunkerley 5/31/18 Tr. 901:2-903:6; 50 at Test. of Hugh Dunkerley, 6/5/18 Galanis Trial Tr. at 1356:16-23 (Dkt. 655) ("Dunkerley 6/5/18 Tr.").)

94. Dunkerley was the placement agent for Burnham for the WLCC Bonds. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 897:22-898:3.)

95. Dunkerley was also the sole managing member and director of WAPCC. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1011:17-19.)

96. Dunkerley was also a director of the parent company of Hughes and Atlantic. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 897:22-898:3.)

97. Dunkerley was president of Valor Group. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1133:4-6.)

N. ***Michelle Morton ("Morton")***

98. Morton was a registered investment advisor (*See* Advisorinfo.sec.gov/IAPD/Support/ReportViewer.aspx?indvl_pk=1123062.)

99. Morton became an owner and chief executive officer of Hughes in or about August 2014, and an owner and chief executive officer of Atlantic in or about April 2015. (Pentelovitch Decl. Exs. 48 at Dunkerley 5/31/18 Tr. 938:11-22; 49 at Dunkerley 6/4/18 Tr. 1032:14; 42 at GYOF 002153, GYOF002155; 2 at Item 1(K) & Schedule A.)

Galanis and others. A copy of his deposition transcript is also being submitted to this Court as Exhibit 5 to the Declaration of William Z. Pentelovitch.

O. *Gary Hirst ("Hirst")*

100. Hirst had JD and MD degrees. (Pentelovitch Decl. Exs. 67, Galanis Trial, 5/15/18 Hirst Plea Allocution Tr. 5:17-25 (Dkt. 460 filed 5/15/18) ("Hirst Plea Allocution"); 49 at Dunkerley 6/4/18 Tr. 1131:11-18.)

101. Hirst assisted Hughes as a consultant for several days, reporting to Morton. (Pentelovitch Decl. Ex. 67 at Hirst Plea Allocution 29:5-12.)

102. Hirst formed WAPCC. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1131:7-10.)

IV. The August 2014 Offering

A. *Origins*

103. In 2013, Anderson began doing legal work in the area of economic development for WLCC. (Anderson Decl. ¶8.)

104. In approximately April 2014, Anderson was in Las Vegas, Nevada, to attend a conference focused on tribal economic development. (Anderson Decl. ¶9.)

105. While Anderson was in Las Vegas, he was asked by WLCC to attend a meeting. At the meeting, Anderson was introduced to an individual who was identified to him as Yanni Galanis. (Anderson Decl. ¶9.)

106. At that meeting, Yanni Galanis presented the idea for issuing taxable revenue bonds to fund construction projects in the Wakpamni Lake Community. (Anderson Decl. ¶9.)

107. Anderson understood from Yanni Galanis that he was acting on behalf of his son, Jason Galanis, who Anderson was told by Yanni Galanis was an investment banker affiliated with Burnham. (Anderson Decl. ¶9.)

108. The idea that Yanni Galanis presented was to use an annuity as a repayment source for the revenue bonds, the basic premise being that the bulk of the proceeds from sale of

the bonds would be invested in an annuity designed to pay off the principal and interest on the bonds over their term and to finance certain tribal economic development projects, namely two commercial buildings, the construction of which were completed. (Anderson Decl. ¶10.)

109. Although various types of repayment sources are frequently used in governmental debt financings utilizing revenue bonds, including other types of guaranteed investment contracts similar to annuities, this was the first time Anderson had heard of the idea of using an annuity as the repayment source. (Anderson Decl. ¶11.)

110. Anderson knew of no legal reason why an annuity could not be used as a repayment source. (Anderson Decl. ¶11.)

111. Anderson conducted some basic internet research on Burnham and requested and received certain materials regarding Burnham and its business from Burnham. (Anderson Decl. ¶12.)

112. Burnham appeared to Anderson to be a respected investment bank that had been in operation through various name changes for a very long time and did not appear to have any securities-related or other regulatory issues. (Anderson Decl. ¶12.)

113. Anderson received written waivers of conflicts of interest from both Burnham and WLCC in order that he might represent Burnham, which would act as the Placement Agent in connection with the issuance of bonds by WLCC. (Anderson Decl. ¶13.)

114. The Placement Agent undertakes due diligence on the bonds, puts together the contracts, and then finds investors for the bonds. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1005:6-10.)

115. In the course of representing Burnham, Anderson's primary contact on the first two transactions was Jason Galanis. (Anderson Decl. ¶14.)

116. The economic structure that had been agreed upon by Burnham and WLCC contemplated that a portion of the bond proceeds would be used to build structures to house economic development projects in the Wakpamni Lake Community, while the majority of the bond proceeds would be used to purchase an annuity. (McGinnis Decl. ¶12.)

117. The economic structure contemplated that the bonds would be repaid from a combination of scheduled payments provided for in the annuity and from the revenue stream generated by economic activities conducted in the structures to be constructed in the Wakpamni Lake Community. Any proceeds of the annuity in excess of those necessary to repay bondholders was intended to fund future economic development activities by WLCC. (McGinnis Decl. ¶12.)

118. On June 9, 2014, John Galanis sent an email to Anderson to which was attached a document referred to in the "Attachments" line of the email as "Wakpamni Source & Use of Funds v9.docx." The attached document bore the title "Wakpamni Lake Community Corporation Quality of Life Enhancement Program." (Anderson Decl. ¶15 & Ex. A.)

119. On June 12, 2014, Anderson sent an email to Thompson and WLCC to which he attached two documents. One attached document was an unsigned draft letter on Burnham letterhead, ostensibly from Dunkerley, which was regarding "Engagement Agreement for issuance of $28,000,000 Wakpamni Lake Community Corporation ('WLCC') 5.62% Revenue Bonds maturing 7/01/2014 at par." The second document was described in the "Attachments" line of the email as "Wakpamni Source & Use of Funds v14.pdf," but the document was entitled "Wakpamni Lake Community Corporation Quality of Life Enhancement Program." (Anderson Decl. ¶16 & Ex. C.)

120. In a June 7, 2014 letter, Burnham stated to WLCC, among other things: "Burnham has recommended to the issuer that it invest the proceeds of the Bond in an annuity product issued by Wealth Assurance AG, a European based life insurance company. Wealth Assurance is indirectly controlled by entities that also have an economic interest in Burnham and its affiliates, and certain directors serve on both companies' boards of directors." The letter from Burnham was signed by Dunkerley in his capacity as Managing Director of Burnham. (McGinnis Decl. ¶13 & Ex. A.)

121. On June 16, 2014, John Galanis sent Anderson an email to which was attached a document referred to in the "Attachments" line of the email as "Wakpamni Source & Use of Funds v15.pdf." The attached document was entitled "Wakpamni Lake Community Corporation Quality of Life Enhancement Program." (Anderson Decl. ¶15 & Ex. B.)

122. The three documents entitled "Wakpamni Lake Community Corporation Quality of Life Enhancement Program" are referred to hereafter as "Quality of Life Enhancement Program." All citations are to the version ending "v14.pdf," which was attached to Anderson's email of June 12, 2014.

123. The Quality of Life Program stated that its "Goal" was to "Create a permanent endowment to provide a current income stream supporting economic development, which will provide significant long-term employment gains to the community thereby permanently enhancing the quality of life for tribal members." (Anderson Decl. Ex. C at GT000016.)

124. The Quality of Life Program also stated that "WLCC will borrow a sufficient amount to create an investment program that will pay the annual interest cost of the bond plus a return for the communities current programs with the principal being allocated to increase in

asset allocation strategy utilized by most pension and endowment funds." (Anderson Decl. Ex. C at GT000016.)

125. The Quality of Life Program also stated that there would be challenges to "successfully placing an unrated bond with a willing buyer or buyers. Additionally, once that hurdle has been achieved there is the need to find an investment strategy that provides a sufficient yield to service the borrowing costs. Finally, there is the requirement to identify a portfolio manager with access to the alternative investment opportunities that can grow to provide an endowment sufficient to sustain the communities social development programs." (Anderson Decl. Ex. C at GT000016.)

126. The Quality of Life Program states that the gross proceeds of the bond offering would be $28 million; that Burnham would receive $500,000 as a bond placement fee and other bond issuance costs; that $27.5 million would be invested to "Purchase annuity from Wealth Assurance;" and that from that $27.5 million there would be a $2.2 million loan made to WLCC for "Development of Warehouse/Distribution Center." (Anderson Decl. Ex. C at GT000017.)

127. On or about June 20, 2014, GT was retained by WLCC as bond counsel in connection with WLCC's issuance of revenue bonds to finance the development of a warehouse/distribution center. (McGinnis Decl. ¶11.)

128. When McGinnis initially became involved in the first WLCC bond issue in the summer of 2014, the basic economic structure of the transaction was already in place, having previously been agreed upon between WLCC and the placement agent for the bonds, Burnham. (McGinnis Decl. ¶12.)

B. *U.S. Bank Is Selected to Be Indenture Trustee*

129. After Anderson discussed the need for an indenture trustee with McGinnis and others, it was agreed that U.S. Bank would be an appropriate and competent trustee bank. (Anderson Decl. ¶18.)

130. McGinnis had been involved in other transactions in which U.S. Bank had served as indenture trustee and was satisfied with its work in those matters. He did not review or rely upon U.S. Bank's website or other promotional or advertising material of U.S. Bank regarding its indenture trustee services in connection with the WLCC bond offerings. (McGinnis Decl. ¶16.)

131. Anderson was tasked with contacting U.S. Bank to determine its interest and pricing to serve in such capacity. (Anderson Decl. ¶18.)

132. Anderson contacted a U.S. Bank representative he had previously worked with on tribal matters. (Anderson Decl. ¶18.)

133. Graham prepared a proposal for U.S. Bank's engagement as indenture trustee for the August 2014 Bonds. (Pentelovitch Decl. Ex. 36.)

134. Graham considered the proposed WLCC bond issue to be a municipal bond issuance. (Pentelovitch Decl. Ex. 8 at Graham Dep. 38:24-39:2.)

135. Graham believed that under U.S. Bank policies U.S. Bank was not required to perform any Know Your Customer inquiry regarding Burnham, Dunkerley, Jason Galanis, Anderson, Dilworth, McGinnis, GT, Weddle, Thompson, Wealth Assurance, or any other individuals. (Pentelovitch Decl. Ex. 8 at Graham Dep. 202:13-204:21.)

136. Graham proposed that U.S. Bank be paid a $3,250 administrative fee to set up the account and a $3,250/year annual fee to serve as Indenture Trustee. (Pentelovitch Decl. Ex. 36.)

137. Anderson, as counsel for Burnham, did not expect that the fees quoted by U.S. Bank would include any transactional due diligence to be performed by U.S. Bank other than that otherwise normally undertaken for its own internal purposes. (Anderson Decl. ¶18)

138. McGinnis, as counsel for WLCC, did not expect the Trustee or its counsel to undertake enquiries of any kind with respect to anyone other than WLCC. (McGinnis Decl. ¶24.)

139. Specifically, McGinnis did not expect the Trustee or its counsel would do any diligence on Burnham, WAPCC, PEML or the purchasers of the bonds. (McGinnis Decl. ¶24.)

140. U.S. Bank's fee proposal was accepted by WLCC and Burnham. (Anderson Decl. ¶18.)

C. *An Indenture Trustee's Role*

141. Indenture trustees carry out their obligations under the governing documents, typically an indenture. (Pentelovitch Decl. Ex. 8 at Graham Dep. 40:24-41:3; 75:7.)

142. The obligations of an indenture trustee are as set forth in the four corners of the governing documents. (Pentelovitch Decl. Ex. 8 at Graham Dep. 131:6-15.)

143. Indenture trustees comply with the law and regulations that apply to national banks. (Pentelovitch Decl. Ex. 8 at Graham Dep. 40:24-41:7.)

144. Indenture trustees administer bond issues that the other parties have put together. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 58:24-59:3.)

145. Indenture trustees perform a ministerial role until a default occurs. (Pentelovitch Decl. Ex. 14 at Slania Dep. 37:16-21.)

146. Indenture trustees do not structure transactions. (Pentelovitch Decl. Exs. 18 at Von Hess Dep. 58:24-59:3; 16 at Strodthoff Dep. 49:12-50:2.)

147. Indenture trustees do not evaluate the structure of transactions. (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 43:10-14.)

148. Indenture trustees do not do feasibility studies of a transactions. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 58:24-59:3.)

149. Indenture trustees do not evaluate "the players in the transaction." (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 43:10-14.)

150. Indenture trustees do not do an examination of transactions. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 58:24-59:3.)

151. Indenture trustees are not responsible for the economic outcome of transactions. (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 49:12-50:2.)

152. Indenture trustees do not get involved in whether there is an offering document for a bond issue. (Pentelovitch Decl. Ex. 14 at Slania Dep. 197:4-15.)

153. Indenture trustees do not get involved in the sale of the bonds. (Pentelovitch Decl. Ex. 14 at Slania Dep.197:4-15.)

154. Indenture trustees have no duties to bondholders prior to signing the indenture. (Pentelovitch Decl. Ex. 17, Deposition of Peter Vinella ("Vinella Dep.") at 205:22-206:3 (testifying that "pre-signing the indenture, the bank has no duties to bondholders" because "[t]here aren't any bondholders").)

155. Indenture trustees do not "have a role to look out for what the investors are getting into." (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 28:10-29:11.)

156. Prior to a bond default, indenture trustees are not liable except for the performance of such duties as are specifically set out in the indenture unless the indenture expressly provides otherwise. (TIA § 315(a)(1); 15 U.S.C. § 77ooo(a)(1).)

157. Indenture trustees may conclusive rely, as to the truth of the statements and the correctness of opinions therein, in the absence of bad faith on the part of such trustee, upon certificates conforming to the requirements of the indenture. (TIA § 315(a)(2), 15 U.S.C. § 77ooo(a)(2).)

158. Indenture trustees have no duties or obligations with respect to agreements to which they are not parties. (Pentelovitch Decl. Ex. 8 at Graham Dep. 145:7-19.)

159. Indenture trustees are not obligated to review transactional documents to which they are not parties. (Pentelovitch Decl. Ex. 8 at Graham Dep. 145:7-19.)

160. Von Hess "would not anticipate an account manager to read an investment management agreement between two different parties that [U.S. Bank] is not party to." (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 76:14-21.)

D. *U.S. Bank's Customer Identification Program*

161. In order to obtain the consent of the FDIC to exercise trust powers, U.S. Bank is first required to adopt the FDIC's Principles of Trust Department Management. (FDIC Trust Examination Manual ("FDIC Manual") § B.)

162. One of the FDIC's Principles of Trust Department Management provides that banks must "document the opening of all new trust department accounts." (FDIC Manual § B.1.1(b).)

163. Section H.2. of the FDIC Manual states:

> New provisions of the Bank Secrecy Act are intended to facilitate the prevention, detection and prosecution of money laundering and the financing of terrorism. Financial institutions are required to implement a Customer Identification Program (CIP) and establish reasonable procedures to:
>
> - Verify the identity of persons seeking to open an account.
> - Maintain records of information used to establish the identities of customers.
> - Determine whether any persons seeking to open an account appear on lists of known or suspected terrorist organizations.
>
> Note: for purposes of the law, *a customer includes all persons that open accounts.* It does not include existing customers if bank management is satisfied of the identification of the account holder. Furthermore, a person includes a trust, but does not include the beneficiary of the trust.
>
> The definition of an account specifically includes asset accounts, and accounts established to provide . . . trust services. * * *
>
> This is the minimum required identification information for the CIP when opening an account:
>
> - Name
> - TIN (tax identification number or social security number). * * *
> - for individual – date of birth
> - for individual – residence, if different, mailing address; or
> - for corporations, partnership, and trusts – principal place of business and, if different, mailing address.
>
> In order to verify the identity of a person other than an individual opening an account, various documents could be used to show the existence of the entity, including articles of incorporation, government-issued business licenses, partnership agreements, or trust instruments.

(https://www.fdic.gov/regulations/examinations/trustmanual/section_1/section_i.html#usa_patriot_act (italics added).)

The FDIC-mandated CIP requirement is often referred to as a "Know Your Customer" or "KYC" review. (Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 10:17-11:1.)

164. U.S. Bank has adopted Know Your Customer procedures to implement the CIP mandated by the FDIC pursuant to the Bank Secrecy Act. (Pillar Decl. Ex. L at USB_SD0000020518.)

165. Henselen was U.S. Bank's account manager for the August 2014 Bonds. (Pentelovitch Decl. Ex. 10 at Henselen Dep. 109:22-110:3.)

166. Henselen was responsible for ensuring that he understood the purpose of the transaction at issue and the underlying indenture. (Pentelovitch Decl. Ex. 7 at Farrell Dep. 69:22-70:22.)

167. WLCC was the only party for which a new GCTS account was being opened. (Pentelovitch Decl. Exs. 19, 30(b)(6) Deposition of Robert Von Hess ("Von Hess 30(b)(6) Dep.") at 56:16-18; 18 at Von Hess Dep. 136:7-15.)

168. In connection with the August 2014 Bonds, no new account at U.S. Bank was being opened by Burnham, WAPCC, PEML, GT, Dilworth, or any individuals. (Pentelovitch Decl. Exs. 19 at Von Hess 30(b)(6) Dep. 56:16-18; 18 at Von Hess Dep. 136:7-15; 8 at Graham Dep. at 202:13-204:21; 44, Def. U.S. Bank Nat'l Assoc.'s Answers to Pls.' First Set of Interrog. to Def. ("U.S. Bank Answers to Pls' Interrogs.") served 1/15/19 at No. 13.)

169. [redacted] (Pentelovitch Decl. Ex. 44, U.S. Bank Answers to Pls' Interrogs., No. 13.)

170. [redacted] (Pentelovitch Decl. Ex. 44 at U.S. Bank Answers to Pls.' Interrogs., No. 13.)

171. [redacted] (Pentelovitch Decl. Ex. 10 at Henselen Dep.161:25-162:4.)

172. [redacted] (Pentelovitch Decl. Ex. 44 at U.S. Bank Answers to Pls.' Interrogs., No. 13.)

173. [redacted] (Pentelovitch Decl. Ex. 44 at U.S. Bank Answers to Pls.' Interrogs., No. 13.)

174. [redacted] (Pentelovitch Decl. Ex. 10 at Henselen Dep. 205:15-206:4.)

175. [redacted] (Pentelovitch Decl. Ex.19 at Von Hess 30(b)(6) Dep. 56:16-18.)

176. [redacted] (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 28:22-29:11.)

177. [redacted] (Pentelovitch Decl. Ex. 44 at U.S. Bank Answers to Pls.' Interrogs., No. 13.)

178. [redacted] (Pentelovitch Decl. Exs. 18 at Von Hess Dep. 155:15-156:11; 10 at Henselen Dep. 40:17-41:2; Pillar Decl. Exs. L, and O at USB_SD0000020526.)

179. [redacted] (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 56:9-20.)

180. [redacted] (Anderson Decl. ¶26; Pentelovitch Decl. Ex. 52.) The WLCC Bonds were also listed with the Municipal Securities Regulatory Board. (*See* https://emma.msrb.org/IssuerHomePage/Issuer?id=CDC58CD2355B7E35A578B4C85102D674&type=G.)

181. [redacted] (Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 69:24-70:5.)

182. [redacted] (Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 15:1-24.)

183. [redacted] (Pentelovitch Decl. Ex. 7 at Farrell Dep. 112:25-113:8.)

184. [redacted] (Pentelovitch Decl. Ex.7 at Farrell Dep. 113:11-14.)

185. [redacted] (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 51:24-52:12.)

186. [redacted] (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 50:20-51:23.)

187. [redacted]

[redacted] (Pentelovitch Decl. Ex. 7 at Farrell Dep. 92:8-16.)

188. [redacted] (Pentelovitch Decl. Ex. 7 at Farrell Dep. 95:23-96:1; Pillar Decl. Ex. J.)

189. [redacted] (Pentelovitch Decl. Exs. 19 at Von Hess 30(b)(6) Dep. at 69:19-70:5; 7 at Farrell Dep. 91:4-6; Pillar Decl. Ex. J at USB-SD0000038445.)

190. [redacted] (Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) 34:14-35:5; Pillar Decl. Exs. O at USB_0000029999-USB_SD0000030005; and J.)

191. [redacted] (Pentelovitch Decl. Ex. 10 at Henselen Dep. 80:18-21.)

192. [redacted] (Pentelovitch Decl. Ex. 10 at Henselen Dep. 57:21-58:4; 205:15-206:12; *see also* Ex. 44 U.S. Bank Answers to Pls.' Interrogs., No. 13.)

193. [redacted]

(Pillar Decl. Ex. O at USB_SD0000030027.)

194. [redacted] (Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 45:24-46:22.)

195. [redacted] (Pentelovitch Decl. Ex. 7 at Farrell Dep. 170:10-20.)

196. WLCC did not maintain an operating account at U.S. Bank. (Pillar Decl. ¶16.)

197. [redacted]

(Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 45:24-46:22.)

198. [redacted] (Pentelovitch Decl. Ex. 7 at Farrell Dep. 175:6-16.)

199. [redacted] (Pentelovitch Decl. Ex. 10 at Henselen Dep. 158:22-159:6.)

200. There is no evidence in the record that WLCC was actually engaged in the business of payday lending.

201. The financial statement of WLCC for the years 2014 and 2015 shows no revenue or expenses attributable to the business of payday lending. (Pentelovitch Decl. Ex. 17 at Vinella Dep. 268:5-269:15; Pillar Decl. Ex. N at USB_SD000041156.)

202. There is no evidence in the record that WLCC was engaged in the business of gambling.

203. The financial statement of WLCC for the years 2014 and 2015 shows no revenue or expenses attributable to the business of gambling. (Pillar Decl. Ex. N at USB_SD000041156.)

E. ***Drafting the August 2014 Bond Transaction Documents***

204. In his role as counsel to Burnham, Anderson drafted the Term Sheet, the Indenture, the Bonds, and the Closing Statement, as well as the Closing Certificate. (Anderson Decl. ¶17; McGinnis Decl. ¶19.)

205. McGinnis drafted the Placement Agency Agreement between WLCC and Burnham. (McGinnis Decl. ¶21.)

206. Anderson was not involved in drafting the annuities that were issued by WAPCC. to WLCC. (Anderson Decl. ¶20.)

207. Anderson did not review the annuities on behalf of Burnham, other than to confirm the bond-related references such as the issuer's name and the dates were consistent. (Anderson Decl. ¶20.)

208. Throughout all of the transactions, Anderson understood from Jason Galanis and Burnham, as well as from the documents he was provided, that WAPCC was part of the European company known as Wealth Assurance. (Anderson Decl. ¶20.)

209. Anderson's understanding was confirmed on the face of each Annuity Investment issued by WAPCC, each of which states that WAPCC "is incorporated and authorized to do business in the British Virgin Islands and *is part of* the Wealth Assurance Group of Companies." (Anderson Decl. ¶20, italics added; August Annuity p. 2; September Annuity at USB_SD0000003343; April Annuity p. 2.)

210. McGinnis received a copy of the Annuity Investment that was to be issued by WAPCC and signed by his client WLCC shortly before the closing of the August 2014 bond issues. (McGinnis Decl. ¶21.)

211. McGinnis received a copy of the Investment Management Agreement with PEML to be signed by his client WLCC shortly before the closing of the August 2014 bond issues. (McGinnis Decl. ¶21.)

212. Both WAPCC and PEML were offshore entities, but that fact did not concern McGinnis as WLCC's counsel, because it is sometimes the case that foreign entities have a role in bond issues. (McGinnis Decl. ¶22.)

213. As counsel for the placement agent in the WLCC Bond transactions, Anderson assisted in coordinating the closings of the transactions in order to make sure that everything ran smoothly. (Anderson Decl. ¶23.)

F. *Burnham's Investment Committee Approves It Acting as Placement Agent*

214. Dunkerley prepared a memorandum to Burnham's Investment Committee accurately describing the proposed August 2014 Bond transaction. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1292:8-17.)

215. The members of Burnham's Investment Committee at that time were John Burnham, Sylvan Schefler, Devon Archer, Jason Sugarman, and Andrew Godfrey. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1007:12-15.)

216. Dunkerley attended the meeting of Burnham's Investment Committee relating to the August 2014 Bonds by conference call. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1010:25-1011:6.)

217. Burnham's Investment Committee approved Burnham acting as Placement Agent for the August 2014 Bond transaction based upon Dunkerley's accurate description of the proposed transaction. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1292:8-20.)

218. There was no discussion in the meeting of Burnham's Investment Committee (at which it approved Burnham acting as Placement Agent for the August 2014 Bond transaction) of the fact that Hirst and Galanis controlled WAPCC. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1410:10-13.)

219. There was no discussion or even hint in the meeting of Burnham's Investment Committee (at which it approved Burnham acting as Placement Agent for the August 2014 Bond transaction) that there would be a misappropriation of funds from WAPCC. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/19 Tr. 1410:7-9; 1425:7-11.)

220. As far as Dunkerley knew at the time of the meeting of Burnham's Investment Committee, there was nothing improper about the August 2014 Bond transaction. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1425:1-3.)

G. *Burnham Places the August 2014 Bonds with Hughes*

221. In a meeting at Jason Galanis' s house in Los Angeles, Jason Galanis and Dunkerley discussed the potential acquisition of an investment advisor firm, Hughes. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 932:14-22.)

222. Jason Galanis told Dunkerley that Morton was going to run Hughes after the acquisition. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 932:25-933:2.)

223. The primary reason for the purchase of Hughes was to provide a client base for the purchase of the WLCC Bonds. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 933:7-12.)

224. Morton had enough clients whose accounts over which she had discretionary control were not getting good returns on their investments that she would be able to sell the August 2014 Bonds to them. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1137:5-10.)

225. Morton never expressed concerns to Dunkerley about the execution of the August 2014 Bond transaction. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1133:18-1134:1.)

226. The buyers of the August 2014 Bonds were already selected before the bonds were ever issued. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1139:18-20.)

227. Dunkerley was not aware of any conflict with Hughes' clients regarding the August 2014 Bond placements. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1139:1-4.)

228. The transaction for the purchase of Hughes closed on August 11, 2014. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 937:3-4; 938:18-22.)

229. Gary Hirst was going to be the chief investment officer of Hughes. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 946:23-947:1.)

230. As the investment banker at Burnham working on the August 2014 Bond transaction, Dunkerley did not actually have to find any purchasers for the bonds because Hughes purchased all the bonds. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1005:11-18.)

H. *The August 2014 Indenture and Other Transaction Documents*

231. The Trust Indenture for the August 2014 Bonds is dated August 25, 2014. (August 2014 Trust Indenture.) The First Supplemental Trust Indenture for the August 2014 Bonds is dated August 27, 2014. (Pillar Decl. Ex. C.) The Trust Indenture and the First Supplemental Trust Indenture are substantially identical except as to the dollar amount of the bonds being issued and the dollar amount to be invested in the Annuity Investment. The Trust Indenture and the First Supplemental Trust Indenture for the August 2014 Bonds are collectively referred to herein as the "August Indenture." Unless otherwise noted, all section citations for the August Indenture are to the August 25, 2014 Trust Indenture.

232. U.S. Bank signed the Trust Indenture for the August 2014 Bonds. (August 2014 Trust Indenture.)

233. U.S. Bank signed the Closing Statement for the August 2014 Bonds. (Compl. Ex. E (Dkt. 1-5) ("August Closing Statement"), p. 3.)

234. U.S. Bank did not sign, and was not a party to, the Annuity Investment for the August 2014 Bonds. (Compl. Ex. F (Dkt. 1-6) ("August Annuity").)

235. U.S. Bank did not own the Annuity Investment for the August 2014 Bonds. (August Annuity, § 1.)

236. U.S. Bank was not the custodian of the Annuity Investment for the August 2014 Bonds. (*See generally* the August 2014 Trust Indenture.)

237. U.S. Bank was not granted a security interest in the Annuity Investment for the August 2014 Bonds. (*See generally* the August 2014 Trust Indenture.)

238. U.S. Bank, in its capacity as Trustee, was the Payee of the Annuity Investment for the August 2014 Bonds. (August Annuity, § 1.)

239. U.S. Bank, in its capacity as Trustee, was granted a security interest in the payment stream from the Annuity Investment for the August 2014 Bonds. (August 2014 Trust Indenture, p. 2; § 1.2, p. 10; Pillar Decl. ¶17 & Ex. G at USB_SD0000002242.)

240. U.S. Bank, in its capacity as Trustee, was granted a security interest in the revenue stream from the Project (as defined in the Indenture) to be constructed with proceeds from the August 2014 Bonds. (August 2014 Trust Indenture, p. 2; § 1.2, p. 10; Pillar Decl. ¶17 & Ex. G at USB_SD0000002242.)

241. U.S. Bank did not sign, and was not a party to, the Investment Management Contract for the August 2014 Bonds. (Compl. Ex. H (Dkt.1-8) ("August Inv. Mgmt. Agreement").)

242. U.S. Bank did not sign, and was not a party to, a Custodial Agreement related to the Investment Management Contract for the August 2014 Bonds. (August Inv. Mgmt. Agreement, § 2; Pentelovitch Decl. Ex. 18 at Von Hess Dep. 77:14-20; 130:3-9.)

243. The August Indenture is between WLCC, which is referred to therein as the "Corporation," and U.S. Bank, which is referred to therein as "Trustee." (August 2014 Trust Indenture, Recitals, p. 1.)

244. The August Indenture states that U.S. Bank has "a corporate trust office in Phoenix, Arizona." (August 2014 Trust Indenture, Recitals, p. 1.)

245. The August Indenture states that WLCC "in carrying out its designated purposes, intends to undertake the developing, constructing, equipping and operating of various economic development projects, including the development of a certain Junction 18 Development Project (described below)." (August 2014 Trust Indenture, Recitals, p. 1.)

246. The August Indenture states that proceeds from the August 2014 Bonds would be used to "(a) finance the purchase of a certain Annuity Investment (as described more fully herein); (b) finance economic development projects for the benefit of the Wakpamni Lake Community, without limitation projects near the junction of Routes 18 and 391, including, inter alia, a certain warehouse/distribution center and other revenue producing enterprises ('Junction 18 Development Project') and (c) pay the costs of issuance of the 2014 Bonds (together, the 'Project')." (August 2014 Trust Indenture, Recitals, pp. 1-2.)

247. Section 1.2 of the August Indenture states that:

> Annuity Investment means the contract in the notional purchase amount of $22,094,089, entered into on the date hereof between the Corporation and the Annuity Provider, whereby the Annuity Provider shall pay income to the Corporation at stated intervals and amounts, as provided therein. (August 2014 Trust Indenture, § 1.2, p. 4.)

The notional amount of the First Supplemental Trust Indenture for the August 2014 Bonds was $2,233,347. (Pillar Decl. Ex. C at USB_SD0000002360, 2363.)

248. The introductory paragraph to Section 1.2 of the August Indenture states that "[t]he terms defined in this Section 1.2, whenever used in this Indenture and in all Supplemental Indentures . . . shall have the meanings herein specified, unless the context clearly otherwise requires." (August 2014 Trust Indenture, § 1.2, p. 4.)

249. Section 1.2 of the August Indenture states that "Annuity Provider means a company that provides Annuity Investments as part of its regular trade or business." (August 2014 Trust Indenture, § 1.2, p. 4.)

250. Section 1.2 of the August Indenture states that "Bond Counsel means a nationally-recognized bond counsel firm." (August 2014 Trust Indenture, § 1.2, p. 5.)

251. Section 1.2 of the August Indenture states that "Closing Statement means the document executed at closing on the Bonds documenting the receipt of the Bond by the Purchaser and Bond proceeds by the Trustee and directing, inter alia, the uses of Bond proceeds." (August 2014 Trust Indenture, § 1.2, p. 5.)

252. Section 1.2 of the August Indenture states that "Investment Securities means and includes any of the following if and to the extent the same are at the time legal for investment of Corporation funds . . . (j) the Annuity Investment. The value of the above investments, which shall be determined as of the end of each month, shall be calculated as follows: . . . (iv) as to any investment not specified above, the value thereof established by agreement between the Corporation and the Trustee." (August 2014 Trust Indenture, § 1.2, pp. 6-9.)

253. Anderson, who drafted Section 1.2, did not understand the definition of Investment Securities in Section 1.2 to require either WLCC or the Trustee to value the Annuity Investment monthly. (Anderson Decl. ¶28.) McGinnis, WLCC's counsel, testifies that "[a]t the time the indentures were drafted I did not understand this provision to require the Trustee and WLCC to value the annuities monthly," and that, upon re-reading the Indenture recently, his "understanding is unchanged" because "the value of the Annuity Investment itself was fixed within the contract constituting the Annuity Investment." (McGinnis Decl. ¶30.)

254. Section 2.11 of the August Indenture ("Authentication and Delivery of the 2014 Bonds") sets forth what documents WLCC must deliver to U.S. Bank "upon the execution and delivery of this Indenture" for U.S. Bank's authentication of the bonds and delivery thereof. Among the items WLCC was required to deliver to U.S. Bank pursuant to Section 2.11 were:

> A Closing Statement signed by the President or Vice-President of the Corporation setting forth (i) the amount of the proceeds to be received by the Corporation from the sale of the 2014 Bonds for funding the purchase of the Annuity Investment and the development, acquisition, construction and equipping of the Junction 18 Economic Development Project; (ii) the amounts to be paid or reserved for the costs and expenses of the financing; and (iii) the amounts to be deposited in the funds established under this Indenture." (August 2014 Trust Indenture, § 2.11(f).)

255. Section 2.12 of the August Indenture states in pertinent part:

> The proceeds of the 2014 Bonds shall be paid over to the Trustee and deposited by the Trustee in the 'Settlement Account', which is hereby established. From the Settlement Account the Trustee shall make the payments, disbursements and deposits as set forth in the Closing Statement required by Section 2.11, including, inter alia, the amount of $22,094,089 for the purchase of the Annuity Investment. (August 2014 Trust Indenture, § 2.12.)

256. Section 5.1 of the August Indenture states that WLCC "shall invest the moneys in the Corporation Account only in Investment Securities." (August 2014 Trust Indenture, § 5.1.)

257. Section 5.8(a) of the August Indenture states in pertinent part that "The money and investments in the Revenue Fund, Debt Service and Sinking Fund, Corporation Account, the Bond Redemption and Improvement Fund and the Project Fund created herein, shall be held by the Trustee until disbursed as authorized by this Article V in trust for the benefit of the Registered Owners from time to time of the Bonds issued and Outstanding under this Indenture." (August 2014 Trust Indenture, § 5.8(a).)

258. Section 5.8(b) of the August Indenture states in pertinent part that "The Trustee shall, upon the written instructions of the Corporation, deposit or invest in Investment Securities as defined herein, funds from time to time held in the Revenue Fund, Debt Service and Sinking Fund, Corporation Account, the Project Fund and Bond Redemption and Improvement Fund which are not currently required to be applied to the current obligations of the Corporation." (August 2014 Trust Indenture, § 5.8(b).)

259. Section 5.8(d) indicates that, for the purpose of determining the amount of money in certain funds, the securities held in such funds "shall be valued annually as of the end of the Fiscal Year at their market value in accordance with the methods set forth in the definition of Investment Securities herein." (August 2014 Trust Indenture, § 5.8(d).)

260. Section 8.2 requires WLCC to "maintain its corporate existence and its rights, powers, franchises, permits and licenses as necessary to own the Annuity Investment and any Investment Securities and own and operate any Project Collateral." (August 2014 Trust Indenture, § 8.2.)

261. Section 9.2 of the August Indenture states:

> Upon the happening of any Event of Default specified in Section 9.1 and its continuance for the period, if any, specified in said Section, then, in every such case the Trustee, in its discretion may, and upon the written request of the Owners of twenty-five percent (25%) in principal amount of the Bonds then Outstanding, and upon receipt of indemnity to its satisfaction against the fees, costs, expenses and liabilities incurred or to be incurred therein or thereby, shall in its own right" take any of the actions set forth in Section 9.2(a) through (c). (August 2014 Trust Indenture, § 9.2.)

262. Section 10.1 of the August Indenture states:

> The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

The Trustee accepts and agrees to execute the trust hereby created, but only upon the additional terms set forth in this Article, to all of which the parties hereto, and the respective holders of the Bonds agree. The permissive rights of the Trustee shall not be construed as duties. The Trustee shall have no responsibility for the offering documents used in the sale of Bonds or for the security for the Bonds or the use of proceeds of the Bonds or representations made to the owners of the Bonds disbursed by the Trustee in accordance with this Indenture. (August 2014 Trust Indenture, § 10.1.)

263. Section 10.2 of the August Indenture states:

The recitals, statements and representations in the Indenture or in the Bonds contained, save only the Trustee's authentication upon the Bonds, shall be taken and construed as made by and on the part of the Corporation, and not by the Trustee, and the Trustee assumes and shall be under no responsibility or obligation for the correctness of same. (August 2014 Trust Indenture, § 10.2.)

264. Section 10.3 of the August Indenture states:

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it, by or through attorneys, agents, receivers, or employees, and shall be entitled to advice of counsel concerning all matters of trust hereof and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or employees selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or under any Supplemental Indenture, nor for anything whatever in connection with the trust, except only its own willful misconduct or negligence. The Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to within the discretion or power conferred upon it, or omitted to be taken by it in good faith and reasonably believed by it not to be within the power or discretion conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed under this Indenture or omitted to be taken by it by reason of the lack of direction or instruction required for such action, including but not limited to investment of funds hereunder. (August 2014 Trust Indenture, § 10.3.)

265. Section 10.6 of the August Indenture states in pertinent part:

Unless otherwise required pursuant to Section 9.2 hereof, the Trustee shall not be required to take notice, or be deemed to have notice, of any default under this Indenture except for payment defaults under Section 9.1(a) or (b) hereof unless either specifically notified in writing of such default by the Owners of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding or actual notice by the individual trust officer primarily responsible for the administration of the trust. . . . (August 2014 Trust Indenture, § 10.6.)

266. Section 10.9 of the August Indenture states in pertinent part:

> The Trustee shall be fully protected and shall incur no liability in acting or proceeding in good faith upon any resolution, opinion, notice, telegram, request, requisition, consent, waiver, certificate, statement, affidavit, voucher, bond, or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee may consult with counsel, who may or may not be counsel to the Corporation, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by it hereunder in good faith. In the exercise of the powers of the Trustee and its officers, employees and agents hereunder including (without limiting the foregoing) the application of moneys and the investment of funds, and otherwise generally in the exercise of any of the Trustee's duties hereunder, the Corporation shall, to the extent permitted by law, indemnify, protect, defend and save the Trustee and its agents and employees harmless for, from and against any and all losses, damages, injuries, costs or expenses (including reasonable attorneys fees) and for, from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person whatsoever arising in connection with the exercise of such duties hereunder and which are not due to its negligence or bad faith. (August 2014 Trust Indenture, § 10.9.)

267. Section 10.11 of the August Indenture provides that "The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof; and any construction of such provisions hereof by the Trustee in good faith shall be binding upon the Registered Owners." (August 2014 Trust Indenture, § 10.11.)

268. Section 12.4 of the August Indenture provides that "Nothing herein contained shall confer any right upon any person other than the parties hereto, if there is one, and the Owners of the Bonds." (August 2014 Trust Indenture, § 12.4.)

269. Section 12.11 of the August Indenture provides that "The laws of the [sic] South Dakota shall govern the construction of this Indenture and of all the Bonds issued hereunder." (August 2014 Trust Indenture, § 12.11.)

270. Section 12.12 of the August Indenture contains a limited waiver of sovereign immunity by WLCC. (August 2014 Trust Indenture, § 12.12.)

271. Section 12.13 of the August Indenture provides in pertinent part:

> The Trustee shall have the right to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provide, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Corporation by an authorized representative of the Corporation, who shall provide to the Trustee an incumbency certificate listing such designated persons . . . . If the Corporation elects to give the Trustee e-mail or facsimile instructions . . . and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Corporation agrees to assume all risks arising out of the use of such electronic methods . . . . (August 2014 Trust Indenture, § 12.13.)

272. On August 15, 2014, U.S. Bank proposed to Dilworth and GT that the following provision be included in the Indentures: "(p) The Trustee is authorized and directed to accept the Annuity Investment as an Investment Security and the Annuity Investment and the revenues from any Project Facility (as directed by the Corporation) as security for the Bonds . . . ." (Pillar Decl. Ex. Q at USB_SD000003328.)

I. *The Closing of the August 2014 Bond Transaction*

273. Among the documents delivered at the Closing of the August 2014 Bond Transaction were the August Indenture, the Closing Statement, the WAPCC Institutional Single

Premium Variable Annuity Contract signed by Dunkerley as President of WAPCC, opinion letters from Dilworth and GT, as well as other documents. (Compl. Ex. D.)

274. The opinion letter from GT stated, among other things, that as counsel to WLCC, GT had "examined and are familiar with the books, records and files of the Issuer, the executed Bonds, the Resolution, the Indenture, the Placement Agency Agreement, and such other documents . . . and information as we have considered pertinent." (McGinnis Decl. Ex. B at GT001321.)

275. The opinion letter from GT said that GT was of the opinion, among other things, that WLCC was duly organized, that WLCC had authority to execute, deliver, and perform its obligations under the Indenture and the Placement Agency Agreement, and to issue, sell and deliver the August 2014 Bonds. (McGinnis Decl. Ex. B at GT001321-001322.)

276. The opinion letter from GT also said that GT was of the opinion, among other things, that the August 2014 Bonds had been duly authorized, executed, and delivered and constituted the legal, valid and binding limited obligation of WLCC payable solely from the Pledged Revenue. (McGinnis Decl. Ex. B at GT001322.)

277. The opinion letter from Dilworth sets forth the documents it relied upon "as to questions of fact material to our opinion," including "the investor letter, dated the date hereof, relating to each investor's status as an 'accredited investor' under relevant securities laws." (Anderson Decl. Ex. E at USB_SD0000002352.)

278. The opinion letter from Dilworth stated, among other things, that the August 2014 Bonds "are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended." (Anderson Decl. Ex. E at USB_SD0000002353.)

279. The "investor letter" referred to in Dilworth's opinion was a letter from Hughes dated August 21, 2014 stating "[n]o person or entity may purchase this bond unless such person or entity is an 'accredited investor,' as that term is defined in regulation D promulgated under the securities act. The corporation and the trustee will be relying on the representations and warranties set forth by the purchaser as to the applicability to this offering of exemptions from the registration requirements of federal and state law." The letter represented and warranted "on behalf of," among others, Birmingham Water, Washington Suburban, and RHCT, that "[w]e have had such opportunity as we have deemed adequate to obtain from representatives of [WLCC] such information as is necessary to permit me to evaluate the merits and risks of our investment in [WLCC]," and that "[w]e have sufficient experience in business, financial, and investment matters to be able to evaluate the risks involved in the purchase of the [August 2014 Bonds] and to make an informed investment decision with respect to such purchase." (McGinnis Decl. ¶28 & Ex. G at GT001320.)

280. "Typically underwriter or underwriter's counsel are the ones that generate the closing statement." (Pentelovitch Decl. Ex. 14 at Slania Dep. 166:20-22.)

281. The Closing Statement for the August 2014 Bonds ("August Closing Statement") was signed by WLCC, U.S. Bank, and Burnham. (August Closing Statement, pp. 2-3.)

282. The August Closing Statement defines the word "Project" to mean "Financing the purchase of a certain Annuity Investment (as described more fully in the Indenture), financing certain economic development projects, including, the Junction 18 Development Project (as described more fully in the Indenture), and paying the costs of issuance of the 2014 Bonds." (August Closing Statement, p. 1.)

283. The August Closing Statement states:

> Issuer has delivered to the Trustee the 2014 Bonds as described above and hereby: * * * (3) authorizes and directs the Trustee to pay from the Settlement Account the expenses listed on Schedule B as attached hereto, it being stated that the payment of each expense is a proper cost in connection with the issuance of the 2014 Bonds, and to apply the balance remaining therein after the payment of such expenses in accordance with the Indenture and as shown on Schedule C attached hereto. (August Closing Statement, pp. 1-2.)

The August Closing Statement states that "Trustee hereby . . . confirms the application of such amounts in accordance with the immediately preceding paragraph." (August Closing Statement, p. 3.)

284. Schedule C to the August Closing Statement states:

Settlement Account Reconciliation

II. Disposition of Funds Available At Settlement:

Annuity Purchase Payment	$22,094,089
To Project Fund re: Junction 18 Development	2,250,000
To the Payment of Issuance Costs per Schedule B	500,000
Total:	$24,844,089

(August Closing Statement C-1.)

285. "The operational aspect of the payment oftentimes comes from another party that's involved in the financing; the issuer probably doesn't know where the payment is supposed to go, and that is true in this case as well as if you're settling securities, usually the issuer doesn't know. We get the instructions from a back office." (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 116:4-17.)

286. At the time he drafted the August Closing Statement, Anderson and the deal team had not yet been provided with the wire transfer information containing the address to which the Trustee was to send the Annuity Purchase Payment to WAPCC. (Anderson Decl. ¶24.)

287. Anderson did not include the wire transfer information (containing the address to which the Trustee was to send the Annuity Purchase Payment) in the draft Closing Statement. (Anderson Decl. ¶24.)

288. Neither WLCC nor McGinnis nor GT had the wire transfer information containing the address to which the Trustee was to send the Annuity Purchase Payment. (McGinnis Decl. ¶26.)

289. Neither WLCC nor McGinnis nor GT could provide the wire transfer information (containing the address to which to send the Annuity Purchase Payment) to the Trustee. (McGinnis Decl. ¶26.)

290. The Trust Indenture and the Closing Statement each authorized the Trustee to transmit the funds to purchase the Annuity Investment to the Annuity Provider. (August 2014 Trust Indenture § 2.12; August Closing Statement, pp. 1-2; Anderson Decl. ¶25; Pentelovitch Decl. Exs. 10 at Henselen Dep. 136:6-137:7; 18 at Von Hess Dep. 115:21-116:17; 117:21-118:16; 126:11-127:17.)

291. All counsel were aware, and expected, that Burnham would provide (directly or through Anderson) the wire transfer information to U.S. Bank as soon as the wire transfer information had been obtained. (Anderson Decl. ¶25.)

292. WLCC's bond counsel, McGinnis, did not understand or expect that the wire transfer information for the purchase of the Annuity Investment could only be provided to the Trustee by WLCC or GT. (McGinnis Decl. ¶26.)

293. "Typically either the underwriter, underwriter's counsel, or bond counsel are the ones that provide the wire instructions," and "[t]ypically underwriter or underwriter's counsel .

. . would be the ones to determine whether or not the wire instructions . . . came with the closing statement or not." (Pentelovitch Decl. Ex. 14 at Slania Dep. 166:14-25.)

294. Slania did not question why the Placement Agent was forwarding the wire transfer information to Anderson. (Pentelovitch Decl. Ex. 14 at Slania Dep. 169:8-13.)

295. Henselen did not find that receiving the wire transfer information from Anderson instead of from WLCC to be a "suspicious or unusual event." (Pentelovitch Decl. Ex. 10 at Henselen Dep. 193:2-12.)

296. "[W]e got directions to purchase the investment. The specific wire instructions for that investment did not come directly from the issuer and that is not uncommon. . . . Often we receive a direction to purchase an investment and then the instructions as far as how an investment is to be purchased comes from another party." (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 126:11-127:17.)

297. Anderson did not consider Section 12.13 of the Indenture, titled "Electronic Communications," as applying to ministerial communications to the Trustee such as providing the address for wiring funds, particularly for an item such as purchasing the Annuity Investment that had already been approved and as to which both the August Indenture and the August Closing Statement instructed the Trustee to do in writing. (Anderson Decl. ¶29.)

298. Anderson understood Section 12.13 of the Indenture to apply to substantive instructions to the Trustee such as the instruction to invest in the annuity (which instruction was actually included in both the Indenture and the Closing Statement and approved in WLCC's approving resolution, so no electronic instructions were necessary). (Anderson Decl. ¶29.)

299. McGinnis' understanding was that Section 12.13 did not apply to communication of the information regarding the address to which the Trustee was to wire funds for the purchase of the Annuity Investment. (Anderson Decl. ¶29; McGinnis Decl. ¶26.)

300. On August 26, 2014, the day after the closing of the first tranche of the August 2014 Bond issue, Jason Galanis emailed Anderson the wire transfer information for WAPCC for forwarding to US Bank. (Anderson Decl. ¶30 & Ex. F at DP00004064.)

301. The wire transfer information specified that the purchase price of the Annuity Investment should be sent to an account for "Wealth Assurance Private Client" at J.P. Morgan Chase Bank in Beverly Hills, California. (Anderson Decl. ¶30 & Ex. F at DP00004064.)

302. Anderson noted that Jason Galanis copied legal@wealthassurance.com on his email to Anderson, and based on that Anderson believed that appropriate personnel at WAPCC had been made aware of the information he had been provided and its accuracy. (Anderson Decl. ¶31 & Ex. F at DP00004064.)

303. Anderson forwarded the wire transfer information to Henselen, and Anderson understood that, per the information in Jason Galanis' email, U.S. Bank wired funds from the proceeds of the bond issuance to the designated account at J.P. Morgan Chase Bank. (Anderson Decl. ¶32.)

304. Anderson considered the email he forwarded to Henselen containing wire transfer information for WAPCC to be "quite ordinary and regular," and he was unaware of any reason to conclude the wire transfer information was not valid and proper and consistent with the executed closing documents. (Anderson Decl. ¶33.)

305. Anderson also believed that since the transmittal of funds to the Annuity Provider by the Trustee was already authorized by WLCC in the Closing Statement executed

by WLCC, the wire transfer information to Keith Henselen was supplemental information necessary to carry out the earlier "instructions and directions" contained in the Closing Statement and was not an item separately required by the Trust Indenture to be signed by an authorized representative of WLCC. (Anderson Decl. ¶33.)

306. Anderson's experience is that it is very usual and typical for an indenture trustee to accept wire information via email from an underwriter or placement agent (or its counsel) in a bond transaction. (Anderson Decl. ¶33.)

307. Henselen initiated the process for transmitting the purchase price for the Annuity Investment for the August 2014 Bonds as authorized in the Indenture and the Closing Statement to the wire address for WAPCC at J.P. Morgan Chase which had been provided to Henselen by Anderson. (Pentelovitch Decl. Ex. 10 at Henselen Dep. 129:4-9.)

308. Von Hess was required to approve the wire transfer and did so by following his normal practice of viewing a screen to verify that the address to which funds were being wired matched the address which U.S. Bank had been provided to which to wire funds, and to verify that no mistake had been made in setting forth that address. It was not Von Hess's normal practice to review indentures for payment instructions. (Pentelovitch Decl. Ex. 18 at Von Hess Dep. 101:5-102:7.)

309. Strodthoff testified that merely internally escalating a wire transaction to an offshore entity would not have necessary stopped the transaction from going forward. (Pentelovitch Decl. Ex. 16 at Strodthoff Dep. 132:2-133:8.)

310. To the best of Anderson's knowledge, information, and belief, all of the funds wired to WAPCC's account at J.P. Morgan Chase Bank in Beverly Hills, California, pursuant to the WAPCC wire information for the August 2014 Bonds were received by WAPCC.

Anderson was never advised to the contrary and has no reason to believe otherwise. (Anderson Decl. ¶32.)

311. The business records of J.P. Morgan Chase Bank show that the customer of the bank account to which U.S. Bank had wired the funds was WAPCC. (Declaration of Eric Hansen, Ex. A ("Hansen Report"), Sections III, IV; Pentelovitch Decl. Ex. 53.)

312. U.S. Bank, in its capacity as Trustee, did not deposit the Annuity Investment in any account described in Section 5.8 of the August 2014 Indenture. (Pillar Decl. ¶18.)

J. *Dunkerley Misappropriates the Purchase Price of the August 2014 Bonds from WAPCC's Bank Account*

313. The WAPCC bank account at J.P. Morgan Chase was opened by Hirst on August 6, 2014. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1012:24-1013:10.)

314. Dunkerley became a signer on WAPCC's bank account at J.P. Morgan Chase on August 21, 2014. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1013:11-15.)

315. Although the Annuity Investment said the WAPCC was part of the Wealth Assurance Group of Companies, WAPCC "legally" was not part of the Wealth Assurance Group of Companies, and the statement in the Annuity Investment was "a lie." (Pentelovitch Decl. Exs. 49 at Dunkerley 6/4/18 Tr. 1014:18-21; 50 at Dunkerley 6/5/18 Tr. 1340:4-10.)

316. Dunkerley believed that WAPCC would eventually become a part of Valor Group, a company with substantial assets. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1132:10-25.)

317. Valor Group was a real company with real assets making real money. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1133:1-3.)

318. PEML never provided Dunkerley with any advice or input on how to invest the proceeds of the WLCC Bonds. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1018:3-10.)

319. WAPCC had no money coming in other than from WLCC. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1018:25-1019:2.)

320. The money that U.S. Bank wired to WAPCC was not invested in a variable annuity contract, but was instead wired to "a series of corporations and people." (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 898:4-10.)

321. Jason Galanis gave Dunkerley orders and expected Dunkerley to follow those orders without asking many questions. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1118:7-21.)

322. Dunkerley did not do anything without the approval of Jason Galanis. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1228:2-16.)

323. Dunkerley told Jason Galanis "I'll do anything you ask" in a corporate context, "[e]ven if it was a fraudulent transaction." (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1428:12-24.)

324. If Jason Galanis told Dunkerley to do a transaction, he would do the transaction. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1428:20-22.)

325. Dunkerley committed crimes because Jason Galanis told him to do so. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1166:4-8.)

326. Dunkerley helped Jason Galanis cover up or attempt to cover up certain crimes. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1166:10-12.)

327. Dunkerley saw or heard Jason Galanis being dishonest with other people and didn't speak up about it. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1166:13-17.)

328. Jason Galanis used many fake e-mail addresses. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1220:13-14.)

329. Dunkerley lied to the federal government when first subpoenaed. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1166:21-23.)

330. As sole managing member of WAPCC, Dunkerley saw the money from U.S. Bank wired into the WAPCC account at J.P. Morgan Chase. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1019:3-1; 1021:4-16.)

331. Dunkerley then received instructions from Jason Galanis to wire the money out of the WAPCC account to certain individuals. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1019:12-15.)

332. Jason Galanis instructed Dunkerley to wire $2.35 million from the WAPCC account to Sovereign Nations Development Corporation. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1020:15-18.)

333. Dunkerley had no understanding of what Sovereign Nations Development Company was. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1020:19-21.)

334. Sovereign Nations Development Corporation was controlled by John Galanis. (Pentelovitch Decl. Ex. 55, Galanis Trial, 11/15/18 Op. and Order at pp. 9, 17 (Dkt. 690 filed 11/15/18).)

335. Jason Galanis instructed Dunkerley to wire $1 million to Katsky Korins, LLP, a law firm. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1020:22-1021:1.)

336. In addition to Dunkerley, Hirst made transfers out of the WAPCC account at J.P. Morgan Chase. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1022:5-7.)

337. Dunkerley transferred $15 million out of the WAPCC account at J.P. Morgan Chase to Thorsdale Fiduciary & Guaranty Limited. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1027:1-18.)

338. Thorsdale Fiduciary & Guaranty Limited was an entity owned by Jason Galanis. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1020:11-13.)

339. Within one week after the August 2014 Bonds were issued, over $7.35 million had been withdrawn from the WAPCC account at J.P. Morgan Chase. All but slightly more than $1.2 million had been withdrawn from that account within four weeks after the August 2014 Bonds were issued. (Hansen Report, Section VI; Pentelovitch Decl. Ex. 53.)

340. Jason Galanis lied to Dunkerley about various aspects of the WLCC Bonds. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1310:19-21.)

341. Up until the date that the August 2014 Bonds were issued, Dunkerley "had no inkling that there was anything wrong with this deal." (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1128:14-17; 1139:24-1140:5.)

342. Dunkerley's suspicions were not aroused until he wired the money "to different corporations and not putting it into a variable annuity." (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1140:6-11.)

343. Dunkerley hid information from people involved in the WLCC Bond transactions who were not involved in the criminal conspiracy. (Pentelovitch Decl. Ex. 51, Test. of Hugh Dunkerley, 6/6/18 Galanis Trial Tr. at 1540:18-21 (Dkt. 657) ("Dunkerley 6/6/18 Tr.").)

K. *Washington Suburban Discovers that Hughes Purchased the August 2014 Bonds Without Authorization, Suspects Fraud, But Fails to Notify WLCC, U.S. Bank, or Law Enforcement of Its Concerns*

344. Washington Suburban hired Hughes as one of its investment managers in 1997. (Pentelovitch Decl. Ex. 4, 30(b)(6) Deposition of Richard Baker ("Baker Dep.") at 18:12-15.)

345. Hughes had discretion to invest Washington Suburban's money without the prior approval of Washington Suburban. (Pentelovitch Decl. Ex. 4 at Baker Dep. 20:8-11.)

346. A person wanting to find out information about Hughes could have gone to the Securities and Exchange Commission website and found Hughes' form ADV, which showed that until summer 2014 Frankie Hughes was president and chief investment officer of Hughes. (Pentelovitch Decl. Ex. 4 at Baker Dep. 23:8-26:8; Ex. 20 at WSSC 000040; Ex. 21 at WSCC 000187.)

347. As late as July 1, 2014, Hughes' form ADV was not showing any imminent change in ownership. (Pentelovitch Decl. Exs. 4 at Baker Dep. 30:2-31:17; 5 at WSSC 000187.)

348. On August 20, 2014, Richard Deary called and wrote to Washington Suburban to inform it that GMT Duncan, "a Minority Woman Business Enterprise, founded by Michelle A. Morton, a seasoned investment professional with over 25 years experience," was in a transaction to purchase Hughes, and that Frankie Hughes was going to be retained for two years. Washington Suburban was also told that GMT Duncan planned to "enhance the existing team with the formation of an Investment Management Committee led by Gary Hirst, an industry veteran with over 30 years of fixed income investment management experience." (Pentelovitch Decl. Exs. 4 at Baker Dep. 31:21-32:23; 22 at WSSC 000002.)

349. Washington Suburban did nothing immediately to look into the backgrounds of Morton, Hirst, or Richard Deary. (Pentelovitch Decl. Ex. 4 at Baker Dep. 33:22-34:3.)

350. Washington Suburban did not consider asking Hughes to halt any trading for its account until it had a chance to understand the new ownership better. (Pentelovitch Decl. Ex. 4 at Baker Dep. 34:23-35:2.)

351. On September 1, 2014, Hughes filed a Form ADV with the Securities and Exchange Commission listing GMT Duncan as the owner of Hughes effective August 12, 2014,

and listing Morton and Deary as partners in GMT Duncan. (Pentelovitch Decl. Exs. 4 at Baker Dep. 71:19-73:22; 24 at WSSC 000343-344, 000348.)

352. There was no public notice of the sale of Hughes to GMT Duncan between August 12, 2014 and September 1, 2014. (Pentelovitch Decl. Ex. 4 at Baker Dep. 72:21-74:1.)

353. On September 2, 2014, Washington Suburban learned that Hughes had purchased August 2014 Bonds for its account as a result of making inquiries after it noticed that approximately $4 million was missing from its custodial account at Northern Trust in Chicago. (Pentelovitch Decl. Ex. 4 at Baker Dep. 38:1-40:24; 50:22-51:23.)

354. Washington Suburban was concerned that the purchase of the August 2014 Bonds took place just a matter of days after the change of ownership at Hughes, and that concern was expressed to Hughes. (Pentelovitch Decl. Ex. 4 at Baker Dep. 44:1-6.)

355. Washington Suburban then undertook due diligence on WLCC and then contacted Hughes and advised Hughes that the August 2014 Bond "is not a suitable investment for" Washington Suburban's holdings with Hughes. (Pentelovitch Decl. Ex. 4 at Baker Dep. 42:13-43:10.)

356. Hughes responded in a letter dated September 2, 2014, signed by Morton and Deary, which stated, among other things, that "we identified a non-gaming opportunity in the" August 2014 Bonds, and that the issuer was the "Oglala Sioux Tribe" which had "funded a long-term pension plan with the proceeds of the offering." (Pentelovitch Decl. Exs. 4 at Baker Dep. 44:7-10; 22 at WSSC 000005.)

357. Washington Suburban knew that the statement that a "long-term pension plan" had been funded was untrue, but that "wasn't particularly concerning relative to anything else." (Pentelovitch Decl. Ex. 4 at Baker Dep. 47:8-48:4.)

358. Washington Suburban also knew that the statement that the bonds were issued by the Oglala Sioux Tribe was not true. (Pentelovitch Decl. Ex. 4 at Baker Dep. 79:3-12.)

359. As of September 4, 2014, Washington Suburban was concerned that there may be something fraudulent or otherwise inappropriate about the purchase of the August 2014 Bonds beyond the wisdom of putting so much money into purchasing them. (Pentelovitch Decl. Ex. 4 at Baker Dep. 52:24-53:6.)

360. In a September 11, 2014 phone call, representatives of Hughes falsely represented to Washington Suburban that "as a local sovereign issue, the bond enjoys an implicit guarantee by the federal government." (Pentelovitch Decl. Exs. 4 at Baker Dep. 86:3-18; 27 at WSSC 000746.)

361. Although Washington Suburban had discussions about reporting its concerns to law enforcement, the Securities and Exchange Commission, the Department of Justice, or FINRA, it never did so. (Pentelovitch Decl. Ex. 4 at Baker Dep. 76:8-15; 87:9-12; 108:12-25.)

362. In the course of its inquiries regarding the August 2014 Bonds, Washington Suburban learned that U.S. Bank was the indenture trustee. (Pentelovitch Decl. Ex. 4 at Baker Dep. 46:20-47:2.)

363. Washington Suburban made no effort to contact U.S. Bank to inquire about the August 2014 Bond transaction. (Pentelovitch Decl. Ex. 4 at Baker Dep. 52:20-53:16; 87:13-88:3.)

364. Washington Suburban made no effort to contact WLCC to inquire about the August 2014 Bond transaction. (Pentelovitch Decl. Ex. 4 at Baker Dep. 98:14-20.)

365. Washington Suburban instructed Hughes to stop trading in its account on September 8, 2014. (Pentelovitch Decl. Exs. 4 at Baker Dep. 68:20-69:16; 23, 25 and 26.)

366. On September 26, 2014, Washington Suburban sent Hughes a letter notifying Hughes of the termination of its relationship with Washington Suburban. (Pentelovitch Decl. Exs. 4 at Baker Dep. 105:15-106:1; 28.)

367. Washington Suburban never demanded that Hughes repurchase the August 2014 bond from it. (Pentelovitch Decl. Ex. 4 at Baker Dep. 109:11-13.)

L. *Birmingham Water's Knowledge of the August 2014 Bonds*

368. Birmingham Water hired Hughes as one of its investment managers in 2002. (Pentelovitch Decl. Ex. 9, 30(b)(6) Deposition of Michael Johnson ("Johnson Dep.") at 81:6-16.)

369. Hughes had discretion to invest Birmingham Water's money without the prior approval of Birmingham Water. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 81:21-82:12.)

370. By letter dated August 20, 2014, Birmingham Water received notice of GMT Duncan's acquisition of Hughes. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 97:18-101:1.)

371. Upon learning about Hughes' acquisition, Birmingham Water did not perform any diligence on Morton, Hirst, or Deary. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 101:11-104:14.)

372. Birmingham Water did not ask Hughes to forego trading on its account until it had a better understanding of the new ownership. (*See* Pentelovitch Decl. Ex. 9 at Johnson Dep. 106:3-5, 109:10-110:12.)

373. By letter dated September 2, 2014, Birmingham Water received notice from Hughes that Hughes had purchased August 2014 Bonds for its account. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 97:6-8, 104:21-109:6.)

374. Birmingham Water also received monthly statements from Hughes starting in September 2014 that listed the August 2014 Bond as one of Birmingham Water's assets. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 206:23-209:4, 217:19-218:2.)

375. Despite such notice, Birmingham Water represents that, prior to December 2015, it had completely overlooked that it owned the August 2014 Bond as part of its portfolio. (Pentelovitch Decl. Ex. 9 at Johnson Dep. 86:6-87:2, 172:20-173:17.)

M. *RHCT's Knowledge of the August 2014 Bonds*

376. RHCT hired Hughes as one of its investment managers in 2009. (Pentelovitch Decl. Ex. 11, 30(b)(6) Deposition of John Kallianis ("Kallianis Dep.") at 17:1-16.)

377. Hughes had discretion to invest RHCT's money without the prior approval of RHCT. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 95:1-17.)

378. RHCT knew about GMT Duncan's acquisition of Hughes by August 22, 2014. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 41:7-42:14.)

379. RHCT's executive director, John Kallianis, testified that he knew of both Morton and Deary prior to this point and that one of Morton's prior companies—Pacific American Securities LLC—may have provided brokerage services for some of RHCT's investments. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 58:3-61:9, 68:1-71:3.)

380. Upon learning about Hughes' acquisition, RHCT did not perform any diligence itself, but it did task its investment consultant (Marquette Associates) to look into things. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 50:19-52:13.)

381. Following its investigation, Marquette Associates advised RHCT to terminate Hughes. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 74:22-75:10) By letter, dated October 27, 2014, RHCT notified Hughes that their relationship would terminate on November 28, 2014

and that Hughes should liquidate RHCT's portfolio by that point. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 85:19-87:23.)

382. Despite RHCT's instruction, Hughes did not sell the August 2014 Bond that was part of RHCT's portfolio. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 88:4-11.)

383. Over the course of several months, RHCT received multiple communications from Morton and others about Hughes' supposed efforts to sell the bond. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 167:15-168:8, 169:20-172:6.) Even though it believed that Morton was being dishonest, RHCT did not alert any government regulators about its concerns. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 171:20-172:6.) Nor did it relay those concerns to U.S. Bank. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 230:20-231:11.) Despite all of this, RHCT claims that it did not suspect there was any fraud relating to the WLCC Bonds until it learned about the SEC's investigation in December 2015. (Pentelovitch Decl. Ex. 11 at Kallianis Dep. 168:9-169:1.)

V. The September 2014 Offering

384. Neither the Plaintiffs nor the Intervenor-Plaintiff own any of the September 2014 Bonds. (Compl. ¶1; RHCT Compl. ¶1.)

385. As was true with respect to the August 2014 Bonds, with respect to the September 2014 Bonds WLCC, represented by GT was the Issuer; Burnham, represented by Dilworth, was Placement Agent; WAPCC was the Annuity Provider; and U.S. Bank, represented by Slania, was indenture trustee. (Compl. Ex. D.)

386. Except for the dates and amounts, the Trust Indenture, the Annuity Investment, the Investment Management Agreement, and the opinions of GT and Dilworth for the September 2014 Bonds were each substantially identical in form and substance to the

counterpart documents for the August 2014 Bonds. (Pillar Decl. Exs. D-F; Anderson Decl. Exs J-K; McGinnis Decl. Exs. D-E.)

387. Henselen requested that Anderson include the wire transfer information for payment to WAPCC for the Annuity Investment for the September 2014 Bonds in the Closing Statement. (Anderson Decl. ¶34.)

388. Anderson included the identical wire transfer information that Jason Galanis had earlier provided to him for the August 2014 Bonds in the Closing Statements for the September 2014 Bonds. (Anderson Decl. ¶34.)

389. The Closing Statements for the September 2014 Bonds were signed by WLCC, Burnham, and U.S. Bank. (Anderson Decl. ¶34 & Exs. G-H.)

390. Dunkerley withdrew $15 million of the proceeds from the August 2014 Bonds from the WAPCC bank account at J.P. Morgan Chase and transferred that same amount to the bank account of Thorsdale Fiduciary and Guaranty, which was owned by Jason Galanis; those funds were then used to purchase the September 2014 Bonds. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1312:8-14.)

391. Even though Dunkerley personally made that $15 million transfer from the WAPCC bank account to Thorsdale Fiduciary and Guaranty, Dunkerley did not know that the $15 million had been used to purchase the September 2014 Bonds until after he was indicted and arrested. (Pentelovitch Decl. Ex. 50 at Dunkerley 6/5/18 Tr. 1312:15-23.)

392. Within one week after the September 2014 Bonds were issued, $6.47 million had been withdrawn from WAPCC's bank account at J.P. Morgan Chase. All but $5,151.68 had been withdrawn from WAPCC's bank account at J.P. Morgan Chase within six weeks after the September 2014 Bonds were issued. (Hansen Report, Section VI; Pentelovitch Decl. Ex. 53.)

VI. The April 2015 Offering

A. *Hughes Acquires Atlantic And OSERS Consents to Assignment of its Agreement*

393. In the fall of 2014, Dunkerley became involved in the acquisition of Atlantic. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1032:14-19.)

394. Hughes was going to acquire Atlantic. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1032:20-21.)

395. Michelle Morton was an owner and CEO of Hughes. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1032:22-24.)

396. Dunkerley represented Wealth Assurance Holdings and the Valor Group to provide financing for Hughes' acquisition of Atlantic. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1032:25-1033:7.)

397. Atlantic had been the principal investment manager for OSERS since 1993. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 37:23-38:2; 38:19-23.)

398. By letter dated February 19, 2015 from Atlantic to Michael Smith, Executive Director of OSERS, Atlantic advised OSERS that Atlantic had signed a merger agreement with Hughes, and that the resulting combined business would use the Atlantic name. (Pentelovitch Decl. Ex. 40 at GYOF 000588.)

399. Smith asserted his Fifth Amendment privilege against self-incrimination at his deposition in this matter and declined to answer any substantive questions posed to him at his deposition by U.S. Bank. (Pentelovitch Decl. Ex. 15, Deposition of Michael Smith ("Smith Dep.") at 13:24-14:12.)

400. The February 19, 2015 letter from Atlantic to OSERS advised OSERS that Morton was the CEO of Hughes and that she would become CEO of Atlantic, and that Richard

Deary was president of Hughes and would become president of Atlantic. (Pentelovitch Decl. Ex. 40 at GYOF 000588.)

401. The February 19, 2015 letter from Atlantic to OSERS asked OSERS to sign a "consent" and return it to Atlantic. (Pentelovitch Decl. Ex. 40.)

402. On March 4, 2015, Ron Sellers ("Sellers"), then the chairman and CEO and an owner of Atlantic, made a presentation to OSERS recommending that OSERS invest an additional $25 million in the Atlantic Feeder Fund. (Pentelovitch Decl. Exs. 6 at Erikson Dep. 35:19-23; 81:11-83:8; 42 at GYOF 002150.)

403. At the same meeting, Sellers also represented to OSERS that he would continue to be involved with Atlantic after the merger with Hughes, and that the staff that OSERS had always dealt with were going to remain with the company. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 69:15-70:12.)

404. Because Sellers was OSERS' long-time trusted advisor whose recommendation OSERS trusted, OSERS relied on due diligence done by Atlantic on the individuals involved in Hughes and listened to the explanation from Ron Sellers "of what was going on, why it was going to be a good thing, and why it would be something that we should consider." (Pentelovitch Decl. Ex. 6 at Erikson Dep. 77:3-79:24; 84:9-23.)

405. The OSERS board did not meet with Michelle Morton or Richard Deary. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 84:1-3.)

406. The OSERS board approved continuation of the existing investment advisory agreement with Atlantic without dissent. (Pentelovitch Decl. Exs. 6 at Erikson Dep. 86:18-87:22; 32 at GYOF 008196.)

407. The Omaha Board of Education adopted the recommendation of the OSERS board. (Pentelovitch Decl. Exs. 6 at Erikson Dep. 88:14-91:9; 33, GYOF 002175-002179; and 34, GYOF 002172-002174.)

408. The Omaha Board of Education did no due diligence regarding the parties to the Hughes/Atlantic merger other than what was provided to it by OSERS. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 89:19-90:17.)

409. The "consent," which OSERS signed, dated March 16, 2015, and returned to Atlantic, stated that by signing OSERS acknowledged "receiving notice of the Merger described in this letter and agree to continue your existing investment advisory agreement or similar contract with Atlantic Asset Management, LLC (the entity resulting from the Merger) after the closing of the Merger." (Pentelovitch Decl. Ex. 40 at GYOF 000589.)

410. Had OSERS not given its consent to the Merger, Atlantic would have used "its commercially reasonable efforts to allow your redemption from GYOF [the Feeder Fund] at or prior to the Effective Date of the Merger." (Pentelovitch Decl. Ex. 40 at GYOF 000589.)

411. The Amended and Restated Limited Partnership Agreement of the Atlantic Master Fund provided, among other things, that its general partner could delegate "all or any part of its responsibilities hereunder to such parties (including without limitations [Atlantic] (the Investment Manager), an affiliate of the General Partner) as the General Partner deems necessary or advisable." It also provided that "The General Partner shall appoint the Investment Manager as its agent and delegate investment authority over the assets of the Partnership to the Investment Manager pursuant to an investment management agreement." (Pentelovitch Decl. Exs. 39, § 3.01; 12 at Kirschner Dep. 142:13-143:22; 6 at Erikson Dep. 29:4-30:19.)

B. *U.S. Bank's KYC/AML Procedures for the April 2015 Bonds*

412. [redacted] (Pentelovitch Decl. Exs. 8 at Graham Dep. 202:13-204:21; 19 at Von Hess 30(b)(6) Dep. 56:16-18; 16 at Strodthoff Dep. 28:22-29:11.)

413. [redacted] (Pillar Decl. Ex. P.) [redacted] (*See* Pillar Decl. Ex. O; Pentelovitch Decl. Ex. 19 at Von Hess 30(b)(6) Dep. 38:16-40:14; 69:19-70:14.)

C. *The April 2015 Bond Documents*

414. As was true with respect to the August 2014 Bonds and the September 2014 Bonds, with respect to the April 2015 Bonds WLCC, represented by GT, was the Issuer; Burnham, represented by Dilworth, was Placement Agent; WAPCC was the Annuity Provider; and U.S. Bank, represented by Slania, was indenture trustee. (Pillar Decl. Ex. H at USB_SD0000001034.)

415. The Trust Indenture for the April 2015 Bonds is dated April 1, 2015. (2015 Trust Indenture.)

416. U.S. Bank signed the Trust Indenture for the April 2015 Bonds. (2015 Trust Indenture.)

417. U.S. Bank signed the Closing Statement for the April 2015 Bonds. (April Closing Statement, p. 4.)

418. U.S. Bank did not sign, and was not a party to, the Annuity Investment for the April 2015 Bonds. (April Annuity.)

419. U.S. Bank did not own the Annuity Investment for the April 2015 Bonds. (April Annuity, § 1.)

420. U.S. Bank was not the custodian of any Annuity Investment for the April 2015 Bonds. (*See generally* the 2015 Trust Indenture.)

421. U.S. Bank did not have a security interest in the Annuity Investment for the April 2015 Bonds. (*See generally* the 2015 Trust Indenture.)

422. U.S. Bank, in its capacity as Trustee, was the Payee of the Annuity Investment for the April 2015 Bonds. (April Annuity, § 2, p. 3.)

423. U.S. Bank, in its capacity as Trustee, was granted a security interest in the payment stream from the Annuity Investment for the April 2015 Bonds. (2015 Trust Indenture, p. 2; § 1.2, pp. 9-10; Pillar Decl. Ex. I at USB_SD0000000966.)

424. U.S. Bank, in its capacity as Trustee, was granted a security interest in the revenue stream from the project (as defined in the Indenture) to be constructed with proceeds from the April 2015 Bonds. (2015 Trust Indenture, p. 2; § 1.2, pp. 9-10; Pillar Decl. Ex. I at USB_SD0000000966.)

425. U.S. Bank did not sign, and was not a party to, any Investment Management Contract for the April 2015 Bonds.

426. U.S. Bank did not sign, and was not a party to, any Custodial Agreement related to the Investment Management Contract for the April 2015 Bonds.

427. Except for the dates, amounts, and description of the Project, the Trust Indenture, the Annuity Investment, the Investment Management Agreement, and the opinions of GT and

Dilworth for the April 2015 Bonds were each substantially identical in form and substance to the counterpart documents for the August 2014 Bonds and the September 2014 Bonds. (2015 Trust Indenture; April Annuity; McGinnis Decl. Ex. F; Anderson Decl. Ex. L.)

428. Anderson included the identical wire transfer information that Jason Galanis had earlier provided to him for the August 2014 Bonds in the Closing Statements for the April 2015 Bonds. (Anderson Decl. ¶34 & Ex. I.)

429. The Closing Statement for the April 2015 Bonds was signed by WLCC, Burnham, and U.S. Bank. (Anderson Decl. ¶34 & Ex. I.)

D. *OSERS learns that Atlantic Master Fund Purchased the April 2015 Bonds*

430. On behalf of Atlantic, Morton executed a "big boy" letter in connection with the purchase of the entire April 2015 Bonds issue, which represented, warranted and covenanted, among other things, that "(b) We have had such opportunity as we have deemed adequate to obtain from representatives of [WLCC] such information as is necessary to permit us to evaluate the merits and risks of our investment in [WLCC]" and "(c) We have sufficient experience in business, financial and investment matters to be able to evaluate the risks involved in the purchase of the Securities and to make an informed investment decision with respect to such purchase." (Pillar Decl. Ex. M at USB_SD0000001005.)

431. The big boy letter did not state that the actual purchaser of the April 2015 Bonds was not Atlantic but instead would be the Atlantic Master Fund. (Pillar Decl. Ex. M USB_SD0000001005-1006.)

432. According to OSERS, the acquisition of the April 2015 Bonds by the Atlantic Master Fund violated the guidelines contained in OSERS' investment management agreement

with Atlantic and was, therefore, not a permissible investment. (Pentelovitch Decl. Exs. 6 at Erikson Dep. 93:25-94:19; Ex. 12 at Kirschner Dep. 48:23-49:9; 52:9-13.)

433. OSERS did not learn about Atlantic's purchase of the April 2015 Bonds for the Atlantic Master Fund until April 23, 2015, which was after the bonds had already been purchased. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 94:20-24; 97:2-6.)

434. The funds that Atlantic used to purchase the April 2015 Bond for the Atlantic Master Fund came out of the $25 million additional investment that OSERS had made in the Atlantic Feeder Fund in March 2015 on the recommendation of Atlantic. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 107:7-109:2.)

435. When OSERS discovered that Atlantic had purchased April 2015 Bonds for the Atlantic Master Fund, OSERS complained to Atlantic and demanded that the transaction be reversed and that the purchase price be placed back into the Atlantic Master Fund. (Pentelovitch Decl. Exs. 6 at Erikson Dep. 108:24-109:25; Ex. 12 at Kirschner Dep. 48:23-49:9; 35 at GYOF 014158.)

436. OSERS did not report the actions of Atlantic in acquiring the April 2015 Bonds for the Atlantic Master Fund to any regulators such as the Securities and Exchange Commission. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 115:15-116:7.)

437. At the time of the purchase of the April 2015 Bonds by the Atlantic Master Fund, OSERS was not aware that U.S. Bank had served as indenture trustee for previous WLCC Bond transactions. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 146:1-25.)

438. OSERS did not notify U.S. Bank about the actions of Atlantic. (Pentelovitch Decl. Ex. 6 at Erikson Dep. 116:8-15.)

439. On August 9, 2017, the replacement general partner of the Atlantic Master Fund, on behalf of the Atlantic Master Fund, executed a letter to WLCC in connection with the contemplated transfer and reissuance of the April 2015 Bonds which stated, among other things, that the Atlantic Master Fund was an "accredited investor;" that the Atlantic Master Fund was "sufficiently knowledgeable and experienced in financial and business matters, including the purchase and ownership of taxable revenue bonds, to be able to evaluate the risks and merits of the investment." (Pentelovitch Decl. Ex. 43 at GYOF 011577-011578.)

E. *The Bond Proceeds of the April 2015 Bonds Are Misappropriated from WAPCC's Bank Account*

440. Immediately prior to the April 2015 Bond transaction, the balance in WAPCC's bank account at J.P. Morgan Chase was $54.66. (Hansen Report, Section VI; Pentelovitch Decl. Ex. 53.)

441. After funds from the April 2015 Bond transaction were wired by U.S. Bank to WAPCC's bank account at J.P. Morgan Chase, such funds were withdrawn and used for, among other things, working capital for Hughes and to purchase a corporation, Fondinvest, of which Dunkerley was president. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1041:12-1042:22; 1047:13-1048:5.)

442. Within one week after the April 2015 Bonds were issued, $6.47 million had been withdrawn from WAPCC's bank account at J.P. Morgan Chase. Within four weeks after the April 2015 Bonds were issued all but $20,993.30 had been withdrawn from the account. (Hansen Report, Section VI; Pentelovitch Decl. Ex. 53.)

VII. The Aftermath

A. *WLCC's Efforts to Obtain Payments From WAPCC*

443. In approximately late September or early October 2015, WLCC requested a $1.25 million loan secured by the Annuity Investments from WAPCC, which was a loan provided for in the Annuity Investments. (Thompson Decl. ¶11.)

444. Dunkerley advised WLCC that certain instruments would have to be prepared and executed to document the transaction and that WAPCC would assist WLCC in documenting the loan. (Thompson Decl. ¶11 & Ex. A at GT004391.)

445. Dunkerley also advised WLCC that WAPCC would process WLCC's request for variable distributions of $250,000 and $280,000, as provided in the Annuity Investments. (Thompson Decl. ¶11 & Ex. A at GT00439.)

446. In response to a letter from WLCC, Dunkerley sent WLCC Annual Statements of Account dated October 14, 2015 for the annuities issued by WAPCC on August 26, 2014 and on September 26, 2014. (Thompson Decl. ¶¶12-13 & Ex. B at GT000783; Ex C at GT000793, 795.)

447. On November 5, 2015, Thompson sent Anderson and Dunkerley an email to which was attached a Mutual Release and Addenda to the Annuity Investments which had been signed by WLCC. (Thompson Decl. ¶18 & Ex. I.)

448. On November 5, 2015, Anderson returned the Mutual Release signed by Francisco Martin. (Thompson Decl. ¶19 & Ex. J at GT007214.)

449. Dunkerley sent Thompson a copy of the accounting statement for the third Annuity Investment on November 5, 2015. (Thompson Decl. ¶20 & Ex. K at DP00011217.)

450. Dunkerley knowingly provided WLCC false account statements showing that the bond proceeds had been invested into an annuity, that the balance was protected, and that interest was being paid. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1051:4-9; 1051:14-25.)

451. Jason Galanis provided Dunkerley with the false account statements that Dunkerley provided to WLCC. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1052:1-5.)

452. Jason Galanis and Dunkerley created fake documents and falsified documents to cover up their fraud. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 927:6-20; 6/4/18 Tr. at 1222:16-1223:23.)

453. One of the crimes to which Dunkerley pleaded guilty was obstruction of justice and falsification of documents to the government. (Pentelovitch Decl. Ex. 48 at Dunkerley 5/31/18 Tr. 927:6-13.)

454. Dunkerley created false documents because Jason Galanis told him to do so. (Pentelovitch Decl. Ex. 49 at Dunkerley 6/4/18 Tr. 1226:16-20.)

B. *The Bondholders Do Not Direct the Trustee to Take Actions Against Third Parties*

455. On or about April 21, 2016, Washington Suburban entered into a Common Interest and Confidentiality Agreement (and Direction) (hereafter "Confidentiality Agreement" with U.S. Bank relating to the WLCC Bonds. (Pentelovitch Decl. Ex. 29.)

456. Paragraph 2 of the Confidentiality Agreement states that "The undersigned Bondholder hereby acknowledges that the Trustee's duties are only those set forth in the respective Indentures and that the Trustee is preserving all of its rights and all limitations upon its duties under the Indentures." (Pentelovitch Decl. Ex. 29.)

457. Washington Suburban consulted with counsel before signing the Confidentiality Agreement. (Pentelovitch Decl. Ex. 4 at Baker Dep. 123:12-23.)

458. The bondholders did not direct U.S. Bank to take actions against any third parties to try and recover damages as a result of the WLCC Bonds. (Pentelovitch Decl. Ex. 4 at Baker Dep. 126:11-24.)

C. *The SEC and Department of Justice Take Action*

459. Atlantic (including Hughes) was placed into receivership by the United States District Court for the Southern District of New York upon the petition of the Securities and Exchange Commission. (Pillar Decl. Ex. K.)

460. Burnham last filed an audit report with the Securities and Exchange Commission in 2015, has not been registered as a broker-dealer since 2016, and appears to no longer be in business. (*See* https://sec.report/Document/9999999997-15-007469/.)

461. On January 19, 2017, Jason Galanis pled guilty in the United States District Court for the Southern District of New York to securities fraud, conspiracy to commit securities fraud, and conspiracy to commit investment adviser fraud in connection with the WLCC Bond transactions. (Pentelovitch Decl. Ex. 57, Galanis Trial, 1/19/17 Jason Galanis Plea Allocution Tr. at 21:3-22:10 (Dkt. 138 filed 2/2/17) ("Jason Galanis Plea Allocution").)

462. According to Jason Galanis' plea allocution, he agreed with others to withhold material information related to conflicts of interest in connection with the purchase and sale of bonds, and he agreed with others to engage in deceptive and manipulative business transactions in connection with an investment adviser. (Pentelovitch Decl. Ex. 57 at Jason Galanis Plea Allocution 21:19 to 22:1.)

463. On August 11, 2017 the Court sentenced Jason Galanis to 173 months imprisonment. He was also ordered to forfeit $43,277,436. (Pentelovitch Decl. Ex. 58, Galanis Trial, 8/11/17 Sentencing Tr. at 38:11-16; 40:14-20 (Dkt. 230 filed 8/22/17).)

464. On October 28, 2019, the United States Court of Appeals for the Second Circuit remanded Jason Galanis' case back to the district court for a hearing upon his claim that he had ineffective assistance of counsel in connection with his guilty plea. (Pentelovitch Decl. Ex. 59, Galanis Trial, 10/28/19 Order (Dkt. 817 filed 10/28/19).)

465. On November 26, 2019, the Court granted Jason Galanis' November 15, 2019 motion to vacate his conviction in order to "facilitate a resolution of the case by a plea in the above two cases" (Court File Numbers 16-cr-371-PKC (Wakpamni matter) and 15-cr-643-PKC (Gerova matter)). (Pentelovitch Decl. Exs. 60-62, Galanis Trial, 11/15/19 Notice of Mot. to Vacate Conviction (Dkt. 824 filed 11/15/19); 11/26/19 Orders (Dkt. 828, 829 filed 11/26/19).)

466. On June 28, 2018, a jury in the United States District Court for the Southern District of New York found John Galanis guilty of conspiracy to commit securities fraud and securities fraud in connection with the WLCC Bond transactions. (Pentelovitch Decl. Ex. 54, Galanis Trial, 6/28/18 Jury Verdict Tr. at 4195-4196 (Dkt. 607 filed 8/22/18).)

467. On November 15, 2018, the Court denied all of John Galanis' post-trial motions. (Pentelovitch Decl. Ex. 55 , Galanis Trial, 11/15/18 Op. and Order at pp. 1, 59 (Dkt. 690 filed 11/15/18).)

468. On March 8, 2019, the Court sentenced John Galanis to 120 months imprisonment to be followed by a three year term of supervised release. He was also ordered to forfeit $2,585,000 and to make restitution of $43,785,176. (Pentelovitch Decl. Ex. 56, Galanis Trial, 3/8/19 Sentencing Tr. at 39:8-19; 42:5-9 (Dkt. 740 filed 3/25/19).)

469. On June 13, 2017, Dunkerley pleaded guilty in the United States District Court for the Southern District of New York to conspiracy to commit securities fraud, two counts of securities fraud, bankruptcy fraud, and falsification of records with the intent to obstruct a government investigation. (Pentelovitch Decl. Ex. 63, Galanis Trial, 6/13/17 Dunkerley Plea Allocution Tr. 9:1-8; 20:18-21:9 (Unsealed 7/20/18) ("Dunkerley Plea Allocution).)

470. According to Dunkerley's plea allocution, Dunkerley pleaded guilty to, among other things, misappropriating proceeds of several bond issuances by making or directing transfers of proceeds to persons and entities not entitled to the funds, and by submitting false documents in connection with subpoenas served by the Securities and Exchange Commission. (Dunkerley Plea Allocution 21:13-25.)

471. Dunkerley's sentencing has been rescheduled several times and is now set for January 17, 2020. (Pentelovitch Decl. Ex. 47, Galanis Trial, 7/18/19 Docket Entry.)

472. On May 16, 2018, Morton pled guilty to investment fraud and conspiracy to commit securities fraud in the United States District Court for the Southern District of New York. (Pentelovitch Decl. Ex. 64, Galanis Trial, 5/16/18 Morton Plea Allocution Tr. 17:1-5; 20:7-12 (Dkt. 503 filed 6/11/18) ("Morton Plea Allocution").)

473. Morton's guilty plea only related to actions she took as chief executive officer of Atlantic in connection with the April 2015 Bond transaction. As described by Morton, her crime was that she "agreed with others to purchase bonds for a client account at Atlantic. I knew there was a material conflict of interest in connection with the bonds and did not disclose it to the client before making the purchase." (Morton Plea Allocution 20:15-25.)

474. On June 20, 2018, Morton made a motion to withdraw her guilty plea. Morton renewed her motion on May 17, 2019. The Court has not yet been ruled upon Morton's motion.

(Pentelovitch Decl. Exs. 65-66, Galanis Trial, 7/20/18 Notice of Mot. to Withdraw Guilty Plea (Dkt. 548 filed July 20, 2018); 5/17/19 Notice of Michelle Morton's Renewed Mot. to Withdraw Her Guilty Plea (Dkt. 754 filed 5/17/19).)

475. Hirst pleaded guilty in the United States District Court for the Southern District of New York to conspiracy to commit securities fraud, securities fraud, conspiracy to commit investment advisor fraud, and investment advisor fraud. (Pentelovitch Decl. Ex. 67 , Galanis Trial, 5/15/18 Hirst Plea Allocution Tr. 2:13-17; 25:25-26:11 (Dkt. 460 filed 5/15/18) ("Hirst Plea Allocution").)

476. According to Hirst's plea allocution, he agreed with others to deceive certain clients of Hughes by not disclosing conflicts of interest of which he was aware prior to Hughes purchasing certain bonds on behalf of its clients and knowing that the clients would have wanted to know about those conflicts of interest before approving the bond purchase, though there was "debate about whether" giving advance notice was "necessary." Hughes signed the trade tickets for the August 2015 Bonds as a part of the unlawful agreement. (Hirst Plea Allocution 26:14-27:8.)

477. On September 11, 2019, Hirst moved to vacate, set aside, or correct his sentence. The Court has not ruled on Hirst's motion. (Pentelovitch Decl. Ex. 68 Galanis Trial, 9/3/19 Mot. Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Dkt. 807 filed 9/11/19).)

478. In performing his work as counsel to Burnham, Anderson worked closely with Jason Galanis for nearly one year, and throughout that entire period of time Anderson never had any reason to believe Jason Galanis or his associates were engaged in any untoward conduct or criminal behavior. (Anderson Decl. ¶37.)

479. At no time during Anderson's representation of Burnham Securities did Anderson ever learn or have any reason to believe that the funds wired to the bank account of WAPCC had been misappropriated. (Anderson Decl. ¶37.)

480. Throughout all of the WLCC bond transactions, Anderson was unaware that Jason Galanis directly or indirectly controlled Burnham, WAPCC, other Wealth Assurance entities, Hughes, or Atlantic. (Anderson Decl. ¶21.)

481. On October 18, 2019, RHCT filed a lawsuit in Cook County, Illinois against Dilworth, Anderson and GT for negligence, aiding and abetting in breach of fiduciary duty, civil conspiracy and tortious interference with contract based on the WLCC bond transaction. (Pentelovitch Decl. Ex. 69.)

Respectfully submitted:

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