UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

BONWICK CAPITAL PARTNERS, LLC, Plaintiff, v. U.S. BANK NATIONAL ASSOCIATION, Defendant.	4:20-cv-4122 PLAINTIFF'S COMPLAINT

Plaintiff Bonwick Capital Partners LLC, by and through its attorneys, sues Defendant U.S. Bank National Association and, in support thereof, alleges as follows:

INTRODUCTION

I. This Court has a related case, *Waterworks Board of the City of Birmingham et al vs. U.S. Bank National Association*, 4:17-cv-04113-LLP

1. This case arises out of the purchase by Bonwick Capital Partners LLC ("Bonwick" or "Plaintiff") of a $5,000,000 bond issued by the Wakpamni Lake Community Corporation ("WLCC").

2. WLCC is a corporation organized under the laws of the Oglala Sioux Tribe, a federally-recognized Indian Tribe, and the Wakpamni Lake Community.

3. The bond sale to Bonwick was based on a series of related WLCC bond offerings that began on or about August 25, 2014 ("August 2014 Offering"). The first bonds were issued in or about August 25, 2014. Wakpamni Corp. issued $24,844,089 worth of Special Limited Revenue Bonds (Taxable), Series of 2014, and delivered them to US Bank as Trustee under an Indenture Agreement dated on or about the same date.

4. Bonwick's bond was part of the WLCC Series 2014A bond issue, which occurred in or about October 1, 2014, and under a very similar Trust Indenture agreement, as the bonds issued to other bond purchasers (Series 2014), such as The Water Works Board of the City Of Birmingham ("BWWB"), the Chicago Transit Authority Retiree Health Trust ("RHCT"), and the Washington Suburban Sanitary Commission Employees' Retirement Plan ("WSSC") all of whom have also sued the Defendant in another case pending before this Court, styled *Waterworks Board of the City of Birmingham et al vs. US Bank National Association*, Case No 4:17-cv-04113-LLP (hereinafter "Waterworks case"). BWWB, RHCT, and WSSC are collectively referred to as the "Other Bondholders".

5. On May 29, 2015, $5 million of the WLCC Series 2014A Bonds were delivered to the Plaintiff (the "Plaintiff's Bond").

6. US Bank National Association ("USB" or "US Bank") serves as Trustee under a Trust Indenture ("the "Indenture") by and between the Trustee, and the Wakpamni Lake Community Corporation ("Wakpamni"), as issuer.

7. Plaintiff is one of multiple victims that lost millions of dollars as the result of a fraudulent scheme created by Jason Galanis and John Galanis to misappropriate the proceeds of Wakpamni Lake Bonds ("the Bonds"). The essence of the scheme involved Jason Galanis, along with his co-conspirators Gary Hirst, John Galanis, a/k/a "Yanni," Hugh Dunkerley, Michelle Morton, Devon Archer, and Bevan Cooney, and possibly others (sometimes collectively referred to as the "Criminal Defendants"), to engage in the

following acts:

A. Setting up the Bond transaction to supposedly invest the proceeds in an "annuity" that was entirely fake.

B. Placing co-conspirators in control of each entity involved with every aspect of the Bond transaction and carrying out their conspiracy with those persons.

C. Acquiring ownership and control of investment management companies in order to steal retirement funds entrusted to those companies by "investing" those funds in fraudulent bonds.

D. Using their conspiratorial cooperation to force client funds into the purchase of the issued tribal bonds or selling the fraudulently issued bonds to third parties, such as Plaintiff.

E. Raiding the proceeds from closing the Bonds.

8. The U.S. Department of Justice described the fraudulent scheme, as follows:

II. The Tribal Bond Scheme

9. From March 2014 through April 2016, Jason Galanis, along with his co-conspirators Gary Hirst, John Galanis, a/k/a "Yanni," Hugh Dunkerley, Michelle Morton, Devon Archer, and Bevan Cooney, engaged in a fraudulent scheme to misappropriate the proceeds of bonds issued by the Wakpamni Lake Community Corporation ("WLCC"), a Native American tribal entity (the "Tribal Bonds"), and to use funds in the accounts of clients of asset management firms controlled by Jason Galanis and his co-defendants to purchase the Tribal Bonds, which the clients were then unable to redeem or sell because the Bonds were illiquid and lacked a ready secondary market.

10. Documents governing the Tribal Bonds specified that an investment manager would invest the proceeds of the Tribal Bonds in investments that would generate annuity payments sufficient to pay interest on the Tribal Bonds and provide funds to the WLCC to be used for tribal economic development purposes. In fact, none of the proceeds of the Tribal Bonds were turned over to the investment manager specified in the closing documents. Instead, significant portions of the proceeds were misappropriated by GALANIS and his codefendants for their own personal use.

11. Specifically, the proceeds of the Tribal Bonds were deposited into a bank account in the name of Wealth Assurance Private Client Corporation ("WAPCC")[1], an entity controlled by Dunkerley and Hirst. Dunkerley transferred more than $38 million from the WAPCC account to an account controlled by GALANIS, who then misappropriated more than $8.5 million of the proceeds for his personal use, including for expenses associated with his home, jewelry, clothing purchases, travel, entertainment, and restaurant meals.

12. There was no ready secondary market for the Tribal Bonds. Nonetheless, without prior notice to their clients, Morton and Hirst, acting at the direction of Galanis, used funds belonging to clients of two related investment advisers, Hughes Capital Management, Inc. ("Hughes"), and Atlantic Asset Management, LLC ("Atlantic") to purchase the Tribal Bonds, even though GALANIS, Hirst, and Morton were well aware

[1] . In this complaint, Plaintiff refers to Wealth Assurance Private Client Corp as "Wealth Assurance US" or WAPCC.

that material facts about the Tribal Bonds had been withheld from clients in whose accounts they were placed, including the fact that the Tribal Bond purchases fell outside the investment parameters set forth in the investment advisory contracts of certain Hughes clients and of the Atlantic pooled investment vehicle in which the Tribal Bonds were purchased. When Hughes and Atlantic clients learned about the purchase of the Tribal Bonds in their accounts, several of them demanded that the Tribal Bonds be sold. However, because there was no ready secondary market for the Tribal Bonds, no Tribal Bonds have been sold from any Hughes or Atlantic client accounts. In addition, GALANIS and his codefendants failed to apprise clients of Hughes and Atlantic regarding substantial conflicts of interest with respect to the issuance and placement of the Tribal Bonds before the Tribal Bonds were purchased on these clients' behalf.

13. In addition, a portion of the misappropriated proceeds was recycled and provided by Galanis to entities affiliated with Archer and Cooney in order to enable Archer and Cooney to purchase subsequent Tribal Bonds issued by the WLCC. As a result of the use of recycled proceeds to purchase additional issuances of Tribal Bonds, the face amount of Tribal Bonds outstanding increased and the amount of interest payable by the WLCC increased, but the actual bond proceeds available for investment on behalf of the WLCC did not increase. *See* https://www.justice.gov/usao-sdny/pr/jason-galanis-pleads-guilty-manhattan-federal-court-multiple-fraudulent-schemes.

14. As described above, and according to federal criminal and civil proceedings filed in the District Court for the Southern District of New York in 2016,

substantially all the proceeds of the August 2014 Offering (and subsequent related offerings) were stolen by certain principals and affiliates of a New York broker dealer, now defunct, and an SEC Registered Investment Advisor, now in receivership (collectively the "Criminal Defendants").

15. As a result, the Plaintiff's Bond, believed to be assigned Cusip No. 931130ADO, is now worthless.

16. A critical part of Jason Galanis' plan to misappropriate the Bond proceeds involved having US Bank send Bond proceeds to a fictitious company under Galanis' control.

17. US Bank is liable for the Plaintiff's losses because, *inter alia,* it improperly released the net proceeds of the bond offerings in August 2014, September 2014, October 2014, and April 2015, to the wrong entity – an entity controlled by the Criminal Defendants – in violation of the terms of the indenture agreements and other documents governing the August 2014, September 2014 October 2014, and the April 2015 Offerings. In releasing the funds, US Bank breached the Trust Indenture Agreements and was either grossly negligent or simply turned a blind eye to the suspicious nature of all the WLCC bond offerings and numerous red flags in the closing documents themselves. Jason Galanis and his coconspirators were able to obtain bond proceeds from the multiple WLCC Bond Offerings because of US Bank's misconduct, which began with the first bond offering that closed on or about August 27, 2014, and which fraudulent conduct continued through the April

2015 WLCC bond offering. US Bank announced a default in the WLCC bonds in March, 2016.

18. Had US Bank properly performed its functions as indentured trustee, the Plaintiff would not have lost $5 million in a WLCC bond. The losses caused by US Bank's misconduct was foreseeable, as more fully set forth in this complaint.

PARTIES

19. Plaintiff Bonwick Capital Partners LLC is a New York LLC with its principal place of business in New York.

20. US Bank is a federally chartered banking association with its main office in Minneapolis, Minnesota. U.S. Bancorp (NYSE: USB) is the parent company of US Bank, one of the largest commercial banks in the United States, and its subsidiaries, US Bank Wealth Management and U.S. Bancorp Investments, Inc. According to US Bank's website and SEC filings, the company operates more than 3,000 banking offices and nearly 5,000 ATMs, and provides a comprehensive line of banking, brokerage, insurance, investment, mortgage, trust, and payment-services products to consumers, businesses and institutions. Today, US Bank is the fifth-largest bank in the country, with more than 70,000 employees and $495 billion in assets as of December 31, 2019.

JURISDICTION AND VENUE

21. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332(a)(1) in that the matter in controversy is between citizens of different states and

exceeds $75,000.

22. US Bank is subject to personal jurisdiction in this district because, *inter alia,* it contracted with Wakpamni Corp., the issuer of the bonds, to act as Indenture Trustee in the offerings in this district.

23. Wakpamni Corp. is a tribally chartered corporation, wholly owned by the Wakpamni Lake Community, a subordinate governmental unit of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.

24. Wakpamni Corp. issued the bonds in South Dakota.

25. The Trust Indenture Agreements for the offerings ("Indenture" or "Indentures"), and the bonds themselves are explicitly governed by South Dakota law.

26. In addition, US Bank had numerous contacts with Wakpamni Corp. in South Dakota in furtherance of the offerings and thereafter in performance of its obligations under the Indentures. The aforementioned activities constituted the transaction of business by US Bank in South Dakota within the meaning of South Dakota's Long-Arm Statute.

27. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) in that "a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated" in South Dakota.

STATEMENT OF FACTS

28. According to government filings, the Criminal Defendants concocted a

scheme involving a series of sham Native American tribal bonds (the "Tribal Bonds") that were to be sold to unsuspecting investors, with the profits redirected to the Criminal Defendants and their associates. Jason Galanis, the main architect of the scheme, pled guilty in February 2017.

29. In March 2014, the Criminal Defendants convinced the Wakpamni Corp. to issue the first series of Tribal Bonds in exchange for promises of community improvements.

30. The Trust Indentures for the August, September and October 2014 Offerings provided that the net bond proceeds from the purchase of the bonds would be invested in a variable annuity so as to fund interest and principal payments on the bonds. Wakpamni Corp. in turn could draw certain amounts from annuity to finance development projects for the tribe.

31. Similarly, the Trust Indentures with USB dated September 15, 2014 and October 1, 2014 also contemplated that the bond proceeds would be invested in an annuity so as to fund interest and principal payments on the bonds.

I. The History of the Bonds and the Participation by Anderson, Burnham and WLCC

32. In 2013, Timothy Anderson ("Anderson") began doing legal work in the area of economic development for the WLCC.[2] ("*Waterworks* case, Statement of Material

[2] Some of the facts pled herein are quoted from the Statement of Material Facts (designated as "SOMF"), in the case of *Waterworks Board of the City of Birmingham et al vs. U.S. Bank National Association*, Case No. 4:17-cv-04113-LLP, 2020 WL 3077147 (S.D. 2020) (referred to as "*Waterworks*"), from testimony filed in the *Waterworks* case, and from the *Waterworks*

Facts (hereafter "SOMF.") (SOMF 103.)

33. WLCC is a corporation organized under the laws of the Oglala Sioux Tribe, a federally-recognized Indian Tribe, and the Wakpamni Lake Community, and is wholly-owned by the Wakpamni Lake Community. (SOMF 4.)

34. In approximately April 2014, while Anderson was a partner in the law firm Dilworth Paxson, LLP, he attended a conference focused on tribal economic development and while there, was asked by WLCC to attend a meeting wherein John Galanis, father of Jason Galanis, presented the idea for issuing taxable revenue bonds to fund construction projects in the Wakpamni Lake Community. (SOMF 103-106.)

35. John Galanis (a/k/a "Yanni") connected Anderson with Burnham Securities, Inc. ("Burnham") based in New York, New York, and his son, Jason Galanis, to serve as the Placement Agent in the WLCC Bond Offerings. (SOMF 107.).

36. Hugh Dunkerley ("Dunkerley") was an investment banker at Burnham Securities working on the WLCC bond deal. (Pentelovitch Decl. Ex. 49, 1005:11-13.)

37. Burnham hired Anderson and his firm, Dilworth Paxon, to serve as its counsel in the WLCC bond offerings. (SOMF 38, 45-46.)

38. Anderson received written conflict waivers from Burnham and WLCC in order to represent Burnham in the WLCC bond issuances. (SOMF 113.)

Court's opinion. The *Waterworks* case is related to this case because it arises out of the same series of bond offerings and the same indentured trustee agreement with USB.

II. Acquisition of Hughes Investment Management by GMT Duncan

39. On the eve of the first bond offering, an entity controlled by one or more of the Criminal Defendants purchased Hughes Capital Management LLC ("Hughes"), an SEC Registered Investment Advisor located in Alexandria, Virginia. According to government filings, the purchase was intended to facilitate the Criminal Defendants' scheme by providing access to investors for the Tribal Bonds.

40. Hughes had been the trusted investment advisor of numerous clients for many years, with total assets under management of $900 million. Hughes had discretionary authority over the accounts of what would become other WLCC bondholders.

41. Dunkerley and Jason Galanis planned to acquire Hughes Capital Management, owned by Frankie Hughes, and have Morton, then a founder and CEO of GMT Duncan, run Hughes after the acquisition. (Pentelovitch Decl., Ex. 48, Trial Tr. 932:17-933:15; SOMF 222.)

42. Hughes was a Registered Investment Advisor that had served for many years as the investment manager to each of Birmingham Water, Washington Suburban, and The Chicago Transit Authority Retiree Health Care Trust ("RHCT"). (SOMF 40.) Hughes had discretionary authority to invest money for these entities within certain guidelines. (Pentelovitch Decl. Ex. 4, Baker Dep. 20:8-21:2; Ex. 9, Johnson Dep. 82:2-12.)

43. The purchase of Hughes Capital would thus provide a client base for the

bonds. (Pentelovitch Decl. Ex. 48, Trial Tr. 933:9-12.)

44. In late August 2014, the Washington Suburban Sanitary Commission Employees Retirement Plan and the Water Works Board of the City of Birmingham were informed that GMT Duncan, owned by Morton, would be purchasing Hughes and that Frankie Hughes would be retained for two years after the purchase. (Pentelovitch Decl. Ex. 4, Baker Dep., 32:7-23; Ex. 9, Johnson Dep. 98:8-13.)

45. 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 Richard Deary ("Deary") as partners in GMT Duncan. (SOMF 351.)

III. US Bank's Role as Indenture Trustee

46. Anderson had suggested the US Bank National Association ("USB") would be a good fit as the indenture trustee on the WLCC Bond Offerings because USB was a well-known and reputable financial institution with "serious experience in tribal Indian Country." (Murzyn Decl. Ex. 122, Trial Tr. 527-28.)

47. USB is a member of the Federal Deposit Insurance Corporation ("FDIC") and is a "financial institution" subject to the provisions of the Bank Secrecy Act ("BSA"). (SOMF 24, 25.)

48. USB is engaged in the corporate trust business through its division called Global Corporate Trust Services ("GCTS") and was known in the corporate trust industry as being one of the largest and most active indenture trustees in the market. (SOMF 26;

Murzyn Decl. Ex. 7, Graham Dep. at 58:19-59:16.)

49. It is generally recognized in connection with the private placement of securities such as bonds that the purpose of having an indenture trustee is to protect investors. US Bank had a responsibility to protect the interests of investors within the scope of its duties. Indeed, trustees are required to be active and vigilant in performing their administrative functions to ensure that if there is a default, the investors have the security for which they bargained.

50. In connection with the closing of the August 2014 Offering, Wakpamni Corp. and US Bank entered into a Trust Indenture, dated August 25, 2014 (the "August 2014 Indenture"), a true copy which is appended hereto as **Exhibit A**.

51. Pursuant to the August 2014 Indenture, US Bank, as Indenture Trustee, had responsibility for taking possession of the gross proceeds of the offering from the investors and then disbursing them in accordance with the terms of the August 2014 Indenture and the other offering documents pertaining thereto. Such disbursements included payment of offering fees and expenses, after which US Bank was to transfer the net proceeds to the annuity provider for the purchase of the annuity (the "Annuity Investment"). After the offering proceeds were disbursed, US Bank had continuing duties to administer the trust in accordance with the August 2014 Indenture, including taking possession of investment income or principal distributions from the annuity and disbursing them to bondholders, and to Wakpamni Corp. for the Corporation's economic development project in accordance with the

terms of the bonds and the 2014 Indenture. US Bank had similar duties in the subsequent Trust Indenture issued September 15, 2014, as supplemented.

52. US Bank entered into a Trust Indenture with WLCC dated as of September 15, 2014, appended hereto as **Exhibit L**, which was supplemented on October 1, 2014, appended hereto as **Exhibit M**. The September 15, 2015 Trust Indenture, as amended, has essentially the same terms and conditions as the August 25, 2014 Trust Indenture.

53. For purposes of this complaint, Plaintiff submits that a breach of the August 25, 2014 Trust Indenture is also a breach of the September 15, 2014 Trust Indenture, as supplemented and amended on October, 1, 2014, because the WLCC Bond Offerings in August 2014, September 2014, October 2014, and April 2015, were all related Bond Offerings, were intended for the same project, and involved the same investment bankers, brokers, Criminal Defendants, and other parties to the WLCC Bond deal. The August, 25, 2014 Trust Indenture and September 15, 2014 Trust indenture, as supplemented October 1, 2014, and the April, 2014 Trust Indenture, are collectively referred to as the "2014 Trust Indentures" or "Trust Indentures."

54. By accepting the trust, US Bank was contractually obligated to act only in accordance with the terms of the Trust Indentures and in good faith. In addition, US Bank had a common law duty to perform ministerial acts required under the Trust Indentures with due care and undivided loyalty. Thus, US Bank was responsible for complying with its obligation to disburse the net proceeds of the Trust Indentures in

compliance with the instructions of Wakpamni Corp. for the purchase of "the Annuity Investment" under Indenture Section 2.12 (August 2014 Indenture), under Section 2.11 (f) (September 2014 Indenture), and Section 2.3(e) (October, 2014 Indenture), with due care and proper diligence. In addition, US Bank's reliance on such instructions had to be in "good faith" under Section 10.9 of the August 2014 Indenture, and Section 10.3 September 2014 Indenture, as supplemented by the First Supplemental Indenture of October 2014.

55. Moreover, under Section 1.2 of the August and September 2014 Trust Indentures, as supplemented, both the net proceeds of the offering and the principal and income from the Annuity Investment are defined to be part of the "Trust Estate" because such funds were both: (1) "required to be deposited with the Trustee" in accordance with schedule attached to the 2014 Indentures, and (2) constituted "property" subject to the lien and security interest conveyed to US Bank under the 2014 Indentures.

IV. Relevant Banking Regulations

56. US Bank's duties include establishing and maintaining a Bank Secrecy Act ("BSA")[3] and Anti Money Laundering (AML) compliance program sufficient to comply with

[3] The BSA, also known as the Currency and Foreign Transactions Reporting Act, is a United States law requiring financial institutions in the United States to assist U.S. government agencies in detecting and preventing money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion or other criminal activities. Importantly, for this case, under Section 326 of the USA Patriot Act, financial institutions have the authority place

Federal Regulations.

57. US Bank is a member of the Federal Reserve System under the Federal Reserve Act, and its deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"). US Bank is thus subject to federal laws and regulations promulgated by the Federal Reserve System and the FDIC.

58. Federal law requires banks to know their customers and understand their customers' banking behavior. Under applicable regulations, a bank must maintain procedures that allow it to "form a reasonable belief that it knows the true identity of each customer." 31 C.F.R. §§ 1020.220(a)(1) and (2). Thus, banks are required to collect information about the holder of each account. Where an entity opens an account, the bank must obtain information concerning the individuals who control the account.

59. The Financial Industry Regulatory Authority ("FINRA") likewise imposes know-your-customer requirements and mandates "reasonable diligence, in regard to the opening and maintenance of every account," including the obligation "to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer."

60. US Bank is obligated to comply with the BSA, 12 C.F.R. § 21.21, including regulations broadening its anti-money laundering provisions.

61. The BSA requires US Bank to develop, administer, and maintain a program

limits on new accounts until the account holder's identity has been verified. Had the bank properly verified the identity of the account holders that were part of the bond transaction, the bank would have learned that the Criminal Defendants controlled a key account holder.

to ensure compliance. The program must be approved by the bank's board of directors and noted in the board meeting minutes. It must: (1) provide for a system of internal controls to ensure ongoing BSA compliance; (2) provide for independent testing of the bank's compliance; (3) designate an individual to coordinate and monitor compliance; and (4) provide training for appropriate personnel.

62. US Bank also must develop a customer due diligence program to assist in predicting the types of transactions, dollar volume, and transaction volume each customer is likely to conduct, thereby providing the bank with a means for identifying unusual or suspicious transactions for each customer. The customer due diligence program allows the bank to maintain awareness of the financial activity of its customers and the ability to predict the type and frequency of transactions in which its customers are likely to engage.

63. Customer due diligence programs should be tailored to the risk presented by individual customers, such that the higher the risk presented, the more attention is paid. Where a customer is determined to be high risk, banks should gather additional information about the customer and accounts, including determining: (1) purpose of the account; (2) source of funds; (3) proximity of customer's residence to the bank; and (4) explanations for changes in account activity.

64. Additionally, US Bank must designate a BSA compliance officer who is a senior bank official responsible for coordinating and monitoring compliance with the BSA. The compliance officer must, in turn, designate an individual at each office or branch to monitor the bank's day-to-day BSA compliance.

65. The federal government established the Federal Financial Institutions Examination Council ("FFIEC") in 1979 to prescribe uniform principles, standards, and report forms and to promote uniformity in the supervision of financial institutions. The FFIEC's Bank Secrecy Anti-Money Laundering Manual ("FFIEC Manual") summarizes BSA and anti-money laundering compliance program requirements, risks and risk management expectations, industry sound practices, and examination procedures. The FFIEC Manual is based on BSA laws and regulations and BSA and anti-money laundering directives issued by federal banking agencies, such as the Federal Reserve, the FDIC, and the Office of the Comptroller of Currency. (*See* FFIEC BSA/AML Examination Manual at p. 5 (2010).)

66. Banks must also ensure that their employees follow BSA guidelines. Banks make compliance a condition of employment and incorporate compliance with the BSA and its implementing regulations into job descriptions and performance evaluations. Banks are, therefore, required to train all personnel whose duties may require knowledge of the BSA on that statute's requirements.

67. Banks and their personnel must be able to identify and take appropriate action once put on notice of any of a series of money laundering "red flags" set forth in the FFIEC BSA/AML Examination Manual. These red flags include: (1) repetitive or unusual fund transfer activity; (2) fund transfers sent or received from the same person to or from different accounts; (3) transactions inconsistent with the account holder's business; (4) transfers of funds among related accounts; (5) depositing of funds into

several accounts that are later consolidated into a single master account; (6) large fund transfers sent in round dollar amounts; (7) multiple accounts established in various corporate names that lack sufficient business purpose to justify the account complexities; (8) multiple high-value payments or transfers between shell companies without a legitimate business purpose; (9) payments unconnected to legitimate contracts or revenue sources; (10) fund transfers containing limited content or related party information; (11) transacting businesses sharing the same address; and (12) an unusually large number of persons or entities receiving fund transfers from one company.

68. The FFIEC Manual identifies "lending activities" and "nondeposit account services"—including nondeposit investment products—as services requiring enhanced due diligence and carrying a high risk of money laundering because they facilitate a higher degree of anonymity and involve high volumes of currency. Thus, the FFIEC Manual requires heightened due diligence on the part of banks when such services occur, including determining the purpose of the account, ascertaining the source and funds of wealth, identifying account control persons and signatories, scrutinizing the account holders' business operations, and obtaining explanations for account activity.

69. Thus, US Bank's obligation to diligently investigate the Criminal Defendants' fraud, as it was on inquiry notice, dovetails with its obligations under the BSA/Anti Money Laundering ("BSA/AML") regulations. Under both legal regimes, US Bank had a duty to not turn a blind eye to suspicious activities.

70. US Bank must have a BSA compliance program. National banks, as

outlined in 12 CFR § 21.21, must develop, administer, and maintain a program that ensures and monitors compliance with the BSA, including record keeping and reporting requirements.

71. A bank's compliance program must be written, approved by the board of directors, and noted as such in the board meeting minutes. The program must also contain: (1) a system of internal controls to ensure ongoing BSA compliance; (2) daily coordination and monitoring of compliance by a designated person; (3) training for appropriate personnel; and (4) independent testing of compliance (by internal auditors or an outside party).

72. Under BSA/AML rules, banks must "know their customers." Knowing customers, including depositors and other users of bank services, requiring appropriate identification, and being alert to unusual or suspicious transactions deters and detects money laundering and terrorist financing schemes, as well as prevents what happened here in this case. Effective due diligence systems are also fundamental to help ensure compliance with suspicious activity reporting regulations.[4]

[4] The first and most essential step in effective customer due diligence is verifying the identity of the customer. Present guidelines for the opening of personal accounts include: obtain satisfactory customer identification; consider the proximity of the customer's residence or place of business; call-verify the customer's residence or place of employment; consider the source of funds used to open the account; and check prior banking references for larger accounts. Additional steps may include third-party references, verification services, and the use of Internet search techniques. In addition to verifying the legal status of businesses opening accounts, bankers should determine the source of funds and the beneficial owners of all accounts. The existence of most businesses can be verified through an information-reporting agency, banking references, or by visiting the customer's business. The USA PATRIOT Act addresses several aspects of due diligence at account opening. Verification of Identification - Prescribes minimum

73. In this regard, the Office of the Comptroller of the Currency[5] found deficiencies in US Bank's BSA/AML compliance program, including failures to identify suspicious activity and an inadequate system of internal controls, during the same 2014-2015 time period at issue here. *See, In the Matter of U.S. National Association,* Case: AA-EC 2015-77 AKA #2015-113, US Department of the Treasury, Office of the Comptroller of the Currency (the "OCC Case 2015-113").

74. In fact, the OCC made findings of fact which include, but are not limited to:

A. The OCC's examination findings from 2014 and 2015 establish that the Bank has deficiencies in its BSA/AML compliance program. These deficiencies have resulted in a BSA/AML compliance program violation under 12 U.S.C. § 1818(s) and its implementing regulations 12 C.F.R. § 21.21 (BSA Compliance Program). In addition, US Bank has violated 12 C.F.R. § 21.11 (Suspicious Activity Report Filings).

---

standards that financial institutions must follow to verify the identity of both foreign and domestic customers at account opening. Financial institutions must consult U.S. government-provided lists of known or suspected terrorists or terrorist organizations and keep records of the information used to verify each customer's identity. Special Due Diligence for Correspondent and Private Banking Accounts - Sets forth general due diligence standards and provides additional standards for certain correspondent accounts and minimum standards for private banking accounts of non-U.S. persons. Once the bank has established a customer relationship, it should be alert for unusual transactions. Although attempts to launder money through a financial institution can emanate from many different sources, certain products and services, types of entities, and geographic locations are more vulnerable than others. Accordingly, greater due diligence standards should occur for higher risk relationships, both at the account opening and ongoing account activity stages. *See* https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-money-laundering-bankers-guide-avoiding-probs.pdf.

[5] The Office of the Comptroller of the Currency ("OCC") is an independent bureau within the United States Department of the Treasury that was established by the National Currency Act of 1863 and serves to charter, regulate, and supervise all national banks and thrift institutions and the federally licensed branches and agencies of foreign banks in the United States.

B. US Bank has failed to adopt and implement a compliance program that adequately covers the required BSA/AML program elements due to an inadequate system of internal controls, ineffective independent testing, and inadequate training, and the Bank failed to file all necessary Suspicious Activity Reports ("SARs") related to suspicious customer activity.

C. Some of the critical deficiencies in the elements of the Bank's BSA/AML compliance program, resulting in a violation of 12 U.S.C. § 1818(s)(3)(A) and 12 C.F.R. § 21.21, include the following:

I. US Bank has an inadequate system of internal controls, ineffective independent testing, and inadequate training.
II. US Bank has systemic deficiencies in its transaction monitoring systems, which resulted in monitoring gaps.
III. US Bank has systemic deficiencies in its customer due diligence processes.

D. US Bank failed to identify certain suspicious activity and file the required SARs concerning suspicious customer activities, in violation of 12 C.F.R. § 21.11.

See OCC Case 2015-113.

75. As a result of OCC Case 2015-113, US Bank was ordered by the OCC, inter alia, to establish a compliance committee; create and submit "a plan containing a complete description of the actions that are necessary and appropriate to achieve full compliance with Articles IV through VIII of this Order ("BSA/AML Action Plan");" provide an action plan for the completion of an evaluation of the Bank's BSA/AML and Office of Foreign Asset Control ("OFAC") compliance programs to the Examiner-in-Charge for a written determination of no supervisory objection;" submit its policies and procedures for customer due diligence to the Examiner-in-Charge, to "ensure that appropriate customer due diligence policies, procedures, processes, and training are developed, all in accordance with the FFIEC BSA/AML Examination Manual and other applicable

regulatory guidance;" to develop and thereafter shall maintain a written program of policies and procedures to ensure, pursuant to 12 C.F.R. § 21.11, 12 the timely and appropriate review and disposition of BSA/AML suspicious activity alerts, and the timely filing of Suspicious Activity Reports ("SARs"); and to submit an acceptable action plan to the Examiner-in Charge for a written determination of no supervisory objection for conducting a review of account and transaction activity (collectively, the "Look-backs") covering areas to be specified in writing by the Examiner-in Charge (the purpose of the Look-backs is to determine whether suspicious activity was timely identified by the Bank, and, if appropriate to do so, was then timely reported by the Bank in accordance with 12 C.F.R. § 21.11); to the Bank shall revise, implement, and maintain an effective program to audit the Bank's BSA/AML Compliance Program ("Audit Program").[6]

V. US Bank Ignored Multiple Red Flags in Connection with the August 2014 Offering

76. US Bank should have been suspicious of the Tribal Bond offerings from the very nature of the deal. Common sense, and even the most passing acquaintance with the three other main parties to the deal, made it look suspect: An impoverished and financially unsophisticated tribal entity was to gain easy access to over $20 million for economic development; a small, thinly capitalized New York broker dealer, Burnham Securities, Inc. ("Burnham") served as placement agent; and Hugh Dunkerley ("Dunkerley") was a principal of both Burnham and the newly created offshore annuity

[6] The terms and provisions of the Consent Order apply to the Bank and all of its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order. US Bank further waived any and all rights to challenge or contest the validity of the Consent Order.

provider. US Bank may have been aware that a series of offerings was planned, and was thus incentivized to be less vigilant in following up on its suspicions so that it could maintain its relationships with the Criminal Defendants.

77. By the time US Bank was called upon to disperse funds in connection with the August 2014 Offering, on or about August 26, 2014, a number of specific inconsistencies and irregularities should have been readily apparent, which constituted "red flags" related to the 2014 Indenture:

VI. The Final Draft of the 2014 Indenture Reflected a "Red Flag," Being a Last Second Change Regarding the Identity of the Annuity Provider

78. A draft of the indenture circulated to US Bank and the other offering participants required that upon final execution of the indenture, Wakpamni Corp. was to execute and deliver to US Bank a number of additional closing documents, including "A letter of appointment appointing Wealth Assurance AG, as the investment manager with respect to the Annuity Investment." **Exhibit B** at § 2.1l(e).

79. Wealth Assurance AG is a real Lichtenstein insurance company.

80. Similarly, the Offering Distribution List, appended hereto as **Exhibit C,** identified the parties involved in the August 2014 Offering, and the Closing Agenda, appended hereto as **Exhibit D,** all listed "Wealth Assurance AG" as the "Annuity Provider."

81. However, the final draft of the indenture completely omitted subsection (e) quoted above, which required the submission of a letter appointing Wealth

Assurance AG as the annuity provider.

82. The 2014 Indenture provided merely that at the closing Wakpamni Corp. was to execute and deliver to the Indenture Trustee:

> A Closing Statement signed by the President or Vice-President of the [Wakpamni] Corporation setting forth (i) the amount of the proceeds to be received by the [Wakpamni] Corporation from the sale of the 2014 Bonds for funding the purchase of the Annuity Investment . . .; (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.

Exhibit A at § 2.11(f).

83. The 2014 Indenture also specified:

> 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. Any reserves which shall be established in the Settlement Account shall be disbursed from time to time by the Trustee pursuant to further written directions of the President or Vice-President of the [Wakpamni] Corporation.

Id. at § 2.12 (emphasis added).

84. That Closing Statement, executed by Wakpamni Corp., specified the amount to be paid to the Annuity Provider for the Annuity Investment, but failed to direct the Trustee as to (a) the identity of the annuity provider, or (b) the bank and bank account number to which the proceeds were to be sent. **Exhibit E**. As the Indenture Trustee responsible for releasing those funds, US Bank did not act in good faith because these glaring omissions were, on their face, irregular and troubling.

XI. After Closing, US Bank Failed Its Duty to Serve as Custodian or Received a Valuation of Any Assets

85. US Bank obviously knew it was not fulfilling the role as custodian of a custodial account as governed by the Annuity Contract.

86. The Annuity Contract and the Investment Management Agreement were inconsistent as to who had authority to direct investments.

87. Under the Annuity Contract, Wakpamni Corp. had no authority "to select, identify or recommend, nor will it contact any Investment Manager(s) for the purpose of influencing, any particular investment or group of investments to be made directly or indirectly with the assets of the Separate Account." **Exhibit F** at 7.

88. The Investment Management Agreement, on the other hand, contemplated that Wakpamni Corp. would provide investment guidelines to the manager, had the right to modify them, and could instruct the Manager to "buy, sell or retain any investment." **Exhibit H** at ¶ 3.

89. In addition, US Bank knew or should have known, as the Payee on the Annuity, that under the terms of the Annuity Contract, fair value determinations of the investments were supposed to have been done at least quarterly by Wealth Assurance BVI. US Bank could easily have requested those required valuations. Since the Annuity Investment was part of the Trust Estate, US Bank could not ignore how it was invested.

90. The foregoing facts demonstrate that omissions, inconsistencies and

contradictions existed on the face of key documents related to US Bank's role in the Offering, including the draft indenture, Closing Agenda, Distribution List, Annuity Contract, Investment Management Agreement, Closing Statement, email wiring instructions for disbursement of the proceeds, as well as the 2014 Indenture itself. The SEC recognized such "sloppy" offering documents and the lack of a private placement memorandum – also absent here – as a red flag that the offering was a scam. All of those documents were in the possession of US Bank, which was required at a minimum to know and understand them pursuant to its obligations under the 2014 Indenture.

VII. The 2014 Indenture Required US Bank to Determine a Valuation for the Annuity Investment, Which Was Never Done.

91. Section 1.2 of the 2014 Indenture also required US Bank to make or determine monthly valuations of the "Annuity Investment," which was defined as an "Investment Security. (**Exhibit A** at § 1.2.) The applicable valuation method was set forth in Section 1.2. (*Id*.) Any reasonable attempt by Wakpamni Corp. and US Bank to determine a valuation for the Annuity Investment would have led to the discovery that no investment was ever made.

VIII. Red Flags Related to the Annuity Contract

92. The Red Flags related to the Annuity Contract included, but are not limited to:

A. At Closing, a different entity other than Wealth Assurance AG was identified as the issuer of the Annuity, which was a material departure

from the original draft offering documents.

B. Section 1.2 of the executed 2014 Indenture defines the term "Annuity Provider" as "a company that provides Annuity Investments as part of its regular trade or business." (**Exhibit A** at § 1.2 ("Annuity Provider").)

C. Section 1.2 defines the Annuity Investment as "the contract, in the notional purchase amount of $22,094,089, entered into on the date hereof between the [Wakpamni Corp.] and the Annuity Provider, whereby the Annuity Provider shall pay income to the [Wakpamni Corp.] at stated intervals and amounts, as provided therein."

D. At the closing, US Bank received a copy of a 25-year term annuity contract in the amount of $25,250,000 ("Annuity Contract"). (**Exhibit F.**)

E. However, instead of Wealth Assurance AG issuing the Annuity Contract as the draft 2014 Indenture mandated, the Annuity Contract was issued by an entity named Wealth Assurance Private Client Corporation ("Wealth Assurance BVI"), which the Annuity Contract identified as a British Virgin Islands entity.

F. Dunkerley had incorporated that entity in the British Virgin Islands only three days before, on August 22, 2014, in furtherance of the fraudulent scheme.

G. The Annuity Contract mandated that the funds used to purchase the annuity "shall be wire transferred by the [Wakpamni Corp.] to the [Annuity Provider] at a bank to be selected by the [Annuity Provider] which bank shall be a bank without any offices and/or branches in the United States." (**Exhibit F** at 7, § 5.)

H. Dunkerley also was the signatory for Wealth Assurance BVI on the Annuity Contract.

I. US Bank knew that Dunkerley was a primary representative of Burnham, the Placement Agent and the signatory on the Placement Agency Agreement. This was suspicious because other than Wakpamni Corp. and US Bank itself, the two other entities that were parties to the deal shared the same principal.

J. On information and belief, Wealth Assurance BVI had never issued an

annuity before (the company was three days old), had no operations or assets that would allow it to operate as an annuity provider, and therefore did not provide "Annuity Investments" as part of Wealth Assurance BVI's "regular trade or business" as required by Section 1.2 of the 2014 Indenture.

K. As such, Wealth Assurance BVI was unqualified to serve as the Annuity Provider under the 2014 Indenture.

L. US Bank Received Payment Instructions that Contradicted the Indenture and Annuity Contract. On August 26, 2014, US Bank finally received wire instructions for transferring proceeds of the bond issuance to the "Annuity Provider." (**Exhibit G**.) The 2014 Indenture required written instructions from Wakpamni Corp. as did US Bank's own internal procedures, which, upon information and belief, required payment authorization from the customer. Instead, the instructions originated from Galanis, one the Criminal Defendants, and were forwarded to US Bank by counsel for Burnham. Galanis, in fact, had no official position with Burnham and certainly held no position at Wakpamni Corp. Wakpamni Corp. was not copied on the email, and Wakpamni Corp. sent no specific instructions to US Bank regarding to disbursement of the proceeds.

93. Thus, in its role as Indenture Trustee, US Bank disbursed more than $22 million based solely upon the instructions of a stranger – not a representative of its counterparty on the 2014 Indenture.

94. In its role as Indentured Trustee, US Bank improperly disbursed those funds to an entity created in furtherance of a criminal conspiracy conceived and realized by that stranger.

95. The instructions directed US Bank to transfer the annuity purchase amount not to Wealth Assurance BVI, as stated in the Annuity Contract, but to an entity named "Wealth Assurance Private Client Corporation" ("Wealth Assurance

US") located in Santa Monica, California, with a JPMorgan Chase N.A. bank account in Beverly Hills, California. (*See* **Exhibit G** at p 2.)

96. Wealth Assurance US was not the same Wealth Assurance BVI entity identified in the Annuity Contract or Wealth Assurance AG identified in the draft of the August 2014 Indenture.

97. Wealth Assurance US was an identically named corporation incorporated in Florida on July 7, 2014, by Dunkerley, as sole officer, director, and believed to be its only shareholder. (*See* **Exhibit N**.)

98. Therefore, three of the most important documents related to the bond offering identified three completely different "Wealth Assurance" entities: (i) draft 2014 Indenture (Wealth Assurance AG, which was omitted from the final 2014 Indenture); (ii) Annuity Contract (Wealth Assurance BVI); and (iii) payment instructions (Wealth Assurance US).

99. Like Wealth Assurance BVI, on information and belief, Wealth Assurance US had never issued an annuity before, was not licensed by any regulator to sell annuities, had no operations or assets that would allow it to operate as an annuity provider, had no appointed agents licensed to sell annuities, and therefore did not provide "Annuity Investments" as part of Wealth Assurance US "regular trade or business," as required by Section 1.2 of the 2014 Indenture.

100. As such, Wealth Assurance US was also unqualified to serve as the

Annuity Provider under the Trust Indentures.

IX. US Bank Released funds in contradiction of the Indenture and Annuity

101. US Bank released funds in contradiction to the 2014 Indenture and the Annuity Contract, as more fully set forth below.

102. US Bank transferred the proceeds of the bond transaction to the Beverley Hills bank account of Wealth Assurance US.

103. This release of the funds to a bank account in the United States contradicted the explicit terms of the 2014 Indenture and the Annuity Contract.

104. First, the funds were transferred to companies that did not constitute "Annuity Providers" under the 2014 Indenture because they did not provide Annuity Investments as part of their regular trade or business.

105. Second, the funds were transferred to Wealth Assurance US, not Wealth Assurance BVI as identified in the Annuity Contract.

106. Third, the Annuity Contract explicitly states that Wealth Assurance BVI "is not authorized to do business in any jurisdiction other than the British Virgin Islands." (**Exhibit F** at ii.)

107. Thus, an instruction to send the proceeds to a bank account other than in the British Virgin Islands and in contravention of the plain terms of the Annuity Contract was doubly suspicious.

108. Fourth, the Annuity Contract, as to which US Bank was designated

Payee, explicitly provided that the annuity purchase payment "shall be wire transferred by the [Wakpamni Corp.] to [Wealth Assurance BVI] at a bank to be selected by [Wealth Assurance BVI] which bank shall be a bank without any offices and/or branches in the United States." (*Id*. at 7 (emphasis added).)

109. It further provided that "[t]he purchase payment must be received at the Home Office," which was in the British Virgin Islands. (*Id*. at 3.)

110. Rather than fulfilling even the most basic ministerial role in connection with the August 2014, September 2014, October 2014 and April 2015 Offerings, US Bank chose to bury its head in the sand and ignore obvious red flags pointing to something peculiar about where it was being told to send millions of the bond investors' dollars:

Red Flag Document	**Annuity Provider**	**Location of Annuity Provider**	**Other Key Information**
Draft 2014 Indenture	Wealth Assurance AG (**Exhibit B** at § 2.11(e))	Lichtenstein	
Final 2014 Indenture	Silent	Silent	"A Closing Statement signed by the President or Vice-President of the [Wakpamni] Corporation setting forth (i) the amount of the proceeds to be received by the [Wakpamni] Corporation from the sale of the 2014 Bonds for funding the purchase of the Annuity Investment . . ." (**Exhibit A** at § 2.11(1).)
September 15, 2015 Trust Indenture	Silent		

Annuity Contract	Wealth Assurance BVI (**Exhibit F**)	Tortola, British Virgin Islands	"Wealth Assurance BVI is not authorized to do business in any jurisdiction other than the British Virgin Islands." (**Exhibit F** at ii)
Annuity Contract	Wealth Assurance BVI (**Exhibit F**)		The annuity purchase payment "shall be wire transferred by [Wakpamni Corp.] to [Wealth Assurance BVI] at a bank to be selected by [Wealth Assurance BVI] which bank shall be a bank without any offices and/or branches in the United States." (*Id.* at 7)
Annuity Contract	Wealth Assurance BVI (**Exhibit F**)		"The purchase payment must be received at the Home Office [in Tortola, British Virgin Islands]." (*Id*. at 3)
Payment Instructions	Wealth Assurance US (**Exhibit G** at 982)	Santa Monica, California	"Bank Name; JP Morgan Chase bank, NA" (**Exhibit G** at 982) "Bank Address: Beverly Hills, CA" (*Id*.)

XVI. The October, 2014 Bond Offering Raised More Red Flags.

106. Despite all the red flags that arose with the initial offering of Tribal Bonds in August 2014, U.S Bank agreed to act as indenture trustee in a new offering of Tribal Bonds two months later in October 2014 involving the same parties.

107. According to the SEC, in October 2014 the Criminal Defendants used $15 million of the proceeds of the August 2014 Offering, which they had stolen and used to purchase $15 million worth of newly issued Tribal Bonds (the "October 2014 Offering").

108. The September 2014 and October 2014 WLCC Bond Offerings were structured in substantially the same manner as the August 2014 Offering. Most of the proceeds of the October 2014 Offering were also sent to Wealth Assurance US and,

rather than invest in an annuity investment, were in effect recycled by the Criminal Defendants into purchases of the additional Tribal Bonds.

109. The Securities and Exchange Commission alleged that this was part of a scheme by the Criminal Defendants to use the newly issued bonds as currency in various other transactions and to bolster Burnham's net capital.

110. On October 1, 2014, Jason Galanis illegally used $15 million of the $27 million that Hughes' clients invested in the August 2014 issuance of the Tribal Bonds to fund the acquisition of a new $15 million issuance of Tribal Bonds by RSB, an entity wholly owned by Archer. In other words, instead of having Wealth Assurance US, the Florida corporation, invest the first bond issuance's proceeds in an annuity and assure repayment of the bonds' principal and interest, Jason Galanis used $15 million of those proceeds to invest in more Tribal Bonds, causing WLCC to issue $15 million more in obligations even though it was not, in actuality, receiving any additional proceeds to fund an annuity that would be the only source for repayment of the bonds.

111. The point of this recycling scheme was to allow Jason Galanis to use the Bonds as currency in various transactions, including to bolster Burnham Securities' net capital.

112. To coordinate Archer's purchase of the $15 million Tribal Bonds, Jason Galanis arranged for $15 million to be sent from Thorsdale to RSB. RSB then wired $15 million to the indenture trustee for the benefit of WLCC to purchase the newly issued Tribal Bonds. Most of the funds received in this issuance were sent again to

Wealth Assurance US as purchase money supposedly for a new annuity. Prior to receiving these funds, RSB's account balance was about $2 million.

113. Jason Galanis then recycled a portion of the funds again, this time to fund the acquisition of a new $5 million issuance of Tribal Bonds by Cooney. Between October 2 and 6, 2014, Dunkerley, at Jason Galanis' direction or with his knowledge, sent back to Thorsdale a large portion of the funds Wealth Assurance US had received from WLCC in connection with the $15 million sale of Tribal Bonds to RSB.

114. On October 8, 2014, Jason Galanis sent $5 million of the money that Thorsdale received to Cooney, who used it to purchase Tribal Bonds. By twice recycling a portion of the proceeds from the initial bond issuance, Jason Galanis and his cohorts caused WLCC to issue $47 million of Tribal Bonds in exchange for $27 million (minus transaction related fees) in proceeds.

115. Archer and Cooney then used their illegitimate Tribal Bonds to benefit Burnham Securities, an entity in which they each held an ownership interest. In April 2015, Archer used RSB's Tribal Bonds to purchase shares of Valor Group with Dunkerley signing the documents on Valor Group's behalf. In May 2015, one of Valor Group's wholly-owned subsidiaries transferred $2.6 million of the Tribal Bonds to Burnham Securities to boost its net capital in order to meet regulatory requirements.

116. Similarly, in May 2015, Cooney transferred his $5 million Tribal Bonds to Burnham Securities in a transaction devised by Jason Galanis "to get Cooney some reliable income while getting Burnham Net Cap it can commercialize." In an e-mail

dated April 24, 2015, to Cooney, Archer, and Burnham Financial Group's President, Jason Galanis instructed them: "if we hustle, we can get the $5 mm on to Burnham's balance sheet this month. This would require Bevan [Cooney] getting the physical bond delivered to US Bank for transfer into Burnham's name."

117. Eventually, on May 29, 2015, Cooney directly transferred the $5 million Tribal Bonds, on Burnham Securities' behalf, to Plaintiff in partial consideration of Burnham Securities' purchase of an interest in Plaintiff.

118. So, in essence, US Bank's negligence and breach of the August and September 2014 Trust Indentures, as amended, permitted the Criminal Defendants to recycle the August 2014 Bond proceeds into the purchase of the September 2014 and October 2014 Bond Offerings, and then resell $5 million of the October, 2014 bonds to the Plaintiff.

119. But for US Bank's negligence and breach of the Trust Indentures, the WLCC Bonds would not have been created or sold to the public, including the Plaintiff.

XVI. The Criminal Defendants Orchestrated the April 2015 Offering

120. In early 2015, U.S Bank agreed to act as indenture trustee in a third offering of Tribal Bonds involving the same parties.

121. In early April 2015, shortly before the April 2015 Offering, the parent company of Hughes, an entity controlled by the Criminal Defendants, acquired Atlantic Asset Management LLC ("AAM"), and caused it to merge with Hughes. AAM had been a trusted advisor to OSERS since 1993. The Criminal Defendants

orchestrated the acquisition of AAM to gain access to new investors for yet another fraudulent Tribal Bond offering. AAM became the surviving entity following the merger.

122. $16.2 million in Tribal Bonds were structured in the April 2015 Offering in the same manner as the August 2014 Offering.

123. But, US Bank again ignored (or failed to recognize) multiple red flags in connection with the April 2015 Offering.

124. The April 2015 offering is relevant because it demonstrates a pattern or practice of US Bank not following or failing to establish reasonable Anti Money Laundering protocols that would have revealed the fraud in the August 2014 Offering.

125. The Closing Statement for the April 2015 Offering included payment instructions signed by both Wakpamni Corp. and Burnham. (**Exhibit I**.) Again, US Bank was directed to send the proceeds of the bond offering to Wealth Assurance US, but this time to yet a different bank account which was not in Santa Monica, California. No payments were ever sent to Wealth Assurance BVI, the entity to which payment was supposed to be made pursuant to the Annuity Contract. (*Id*.)

126. As to the Annuity Contract: First, as in the 2014 Annuity Contract, the 2015 version also identified Private Equity, the same fake entity, as the "Independent Manager" for the "Separately Managed Account" to hold the investments. (**Exhibit J**.) The 2015 Annuity Contract also had been revised to remove the requirement of

sending the proceeds to a bank outside the United States. (*Id.)* However, the Annuity Contract still contained the prominent legend: "The issuer is not authorized to do business in any jurisdiction other than the British Virgin Islands," and further provided that "the purchase payment must be received at the Home Office" (defined as the British Virgin Islands). (*Id* at 88, 91-92.) Thus, despite the transparent attempt to fix the discrepancy relating to the destination of the proceeds, the problem in the August 2014 Offering was not actually fixed, and sending the proceeds to the wrong entity in the United States was still in violation of the terms of the Annuity Contract.

127. On information and belief, the Investment Management Agreement for the April 2015 Offering also listed US Bank as the custodian for the annuity investments. According to the government, as with the net proceeds of the previous two offerings, the Criminal Defendants stole most or all of them, using a significant portion to support stock purchases in an initial public offering of a company partially owned and/or affiliated with the Criminal Defendants. Thus, as in the August 2014, September 2014, and October 2014 Offerings, US Bank never performed their role as a custodian of any investments, though they were designated as such.

128. The Indenture for the April 2015 Offering (the "2015 Indenture") also required US Bank to make or determine monthly valuations of the "Annuity Investment." (**Exhibit K** at § 1.2.) As with the 2014 Indenture, the applicable valuation method set forth in that section, was "by agreement between the [Wakpamni] Corporation and the Trustee [US Bank]" because none of the other

methods would be applicable. Id.

129. But no valuations were ever delivered. Any reasonable attempt by Wakpamni Corp. and US Bank to determine a valuation for the Annuity Investments would have led to the discovery that no investment was ever made.

130. US Bank should have found these inconsistencies – now appearing several times – doubly suspicious.

131. In connection with the April 2015 Offering, US Bank did not disclose to bond investors the material facts about the red flags alleged above relating to the prior offerings, including that it had not performed the required investment valuations under the Indenture for the August 2014 Offering (and almost certainly the September 2014 and October 2014 Indentures as well).

XVII. Witness Testimony to Date Shows USB's Failure to Heed Red Flags

132. Anderson contacted Keith Henselen ("Henselen") at USB to determine USB's interest and pricing to serve as indenture trustee on the WLCC Bond issuances. (Murzyn Decl. Ex 8, Henselen Dep. 27:10-21.)

133. USB's counsel, who had practiced in the area of indenture trusts and public finance since 1982, had not previously heard of Burnham prior to the WLCC Bond transactions, and neither Henselen, nor his supervisor Robert Von Hess ("Von Hess"), had any prior experience with Burnham. (Murzyn Decl. Ex. 14, Slania Dep. 193:3-6; Ex. 8, Henselen Dep. 32:8-10; Ex. 16, Von Hess Dep. 47:8-15.)

134. A FINRA Broker Check Report indicates that Burnham had been sanctioned

for disclosure issues prior to the WLCC Bond Issuances. (Murzyn Decl. Ex. 113.)

135. Henselen, Von Hess, and USB counsel, prior to this deal, were also unfamiliar with WLCC and the Annuity Provider, Wealth Assurance Private Client. (Murzyn Decl. Ex. 14, Slania Dep. 192:3-18; Ex. 8, Henselen Dep. 22-25, 32:5-7, 205:15-206:4.)

136. USB did not perform any due diligence on the deal team members. (SOMF 192.)

137. As part of its Know Your Customer review, USB obtained WLCC's name, address, federal tax identification number, and a copy of WLCC's Articles of Incorporation. (SOMF 169, 191.)

138. At the time of the August 2014 Bond Issuance, USB policy classified customers engaging in payday loan activities as "high risk," and under USB policy, such accounts may require enhanced due diligence, formal approval, and increased monitoring. (Murzyn Decl. Ex. 65.)

139. There were articles on the internet showing that WLCC may have been involved with payday lending although USB did not perform an internet search on WLCC prior to the August 2014 bond issuance. (SOMF 191; Murzyn Decl. Ex. 18, Woodward Dep. at 57-59, 102-105; Ex. 51.)

140. Henselen testified that he could not recall doing any inquiry on WLCC's business type. (Murzyn Decl. Ex. 8, Henselen Dep. 152:7-19.)

August 2014 Bond Issuance

141. USB classified the WLCC bonds as municipal bonds. (SOMF 179.)

142. Most municipal bonds are issued to finance a particular project, but the nature of the tribal development project supporting the bond issuance was unclear from the start which counsel for USB acknowledged as being unusual. (Murzyn Decl. Ex. 14, Slania Dep. 195:3-15; 205:8-16.)

143. A term sheet sent by Anderson to USB on July 1, 2014, suggested that part of the proceeds would be used to build a "distribution facility" without any additional detail about what would be distributed from the facility. (Murzyn Decl. Ex. 7, Graham Dep. 78:6-79:8; Ex. 24.)

144. A draft of the indenture dated July 23, 2014, that was provided to USB's counsel suggested that the Bond proceeds would be used to build a "gaming facility." (Murzyn Decl. Exs. 35, 55.)

145. Under USB policy existing at the time, gaming was designated under USB policy as an additional risk factor that may render a customer account high risk, thus requiring additional due diligence. (Murzyn Decl. Ex. 65.)

146. Typically, a private placement memorandum describing the business purpose of the municipal bond transaction is provided, but no such memorandum was ever prepared with the WLCC Bond Issuances. Contrary to custom and practice in the industry, no construction budget or plans for the development project were produced. (Murzyn Decl. Ex. 14, Slania Dep. 204:22-205:16; Ex. 13, Pillar Dep. 104:17-105:04; Ex. 89.)

147. Henselen testified at his deposition that he could not recall what the economic development project was for the August 2014 bond issuance and did not recall ever seeing a construction budget. (Murzyn Decl. Ex. 8, Henselen Dep. 206:13-23.)

148. The deal team members changed throughout the August 2014 bond deal. In a draft Indenture emailed to USB on August 15, 2014, the designated Issuer changed from Wakpamni Lake Community Development Corporation to Wakpamni Lake Community Corporation and provided that WLCC shall deliver a letter to USB at closing appointing Wealth Assurance AG as the Investment Manager. (Murzyn Decl. 8, Henselen Dep. 78:1-15.)

149. The draft Indenture received by USB on August 25, 2014, two days prior to closing, showed a change in the Investment Manager from Wealth Assurance AG to Private Equity Management, LLC. (Murzyn Decl. Ex. 81.)

150. Pursuant to the Annuity Contract, the funds were to be deposited into a separate segregated account and managed exclusively by an independent investment advisor, identified as Private Equity Management, LLC ("Private Equity"). (**Exhibit F**.)

151. Private Equity was a fake entity made up by the Criminal Defendants.

152. Under the terms of the Investment Management Agreement between the Wakpamni Corp. and Private Equity, which US Bank received, US Bank was identified as the intended custodian of the investment portfolio. (**Exhibit H**.)

153. Since the net proceeds of the Bond Offering were never invested, it

follows that no custodial account was ever opened or maintained at US Bank, and US Bank never served as a custodian of any investments.

154. Ultimately, the Trust Indenture was executed on August 25, 2014, and provided that WLCC would be issuing $24,844,089[7] Special Limited Revenue Bonds (Taxable) to finance the purchase of an annuity investment in the amount of $22,094,089, as well as economic development projects for the benefit of the Wakpamni Lake Community, including "projects near the junction of Routes 18 and 391, including a certain warehouse/distribution center and other revenue producing enterprises." In addition to the development project being ill-defined, another unique aspect of the deal was that it involved an annuity. Deal team members and USB's expert testified that they had never been involved with a bond issuance involving an annuity, especially one that would finance nearly ninety percent of the principal and interest payments to bondholders. (SOMF 109; Ex. 14, Slania Dep. 148:5-9; Ex. 1, Ambriz-Reyes Dep. 107:12-15; Ex. 16, Von Hess Dep. 22:19-23; Ex. 6, Gadsen Dep. 49:21-25.)

155. Despite the unusual structure of this bond issuance, Henselen indicated on the "Establish Deal" form that the sources for all assets and cash transfers were coming from known sources that fit the standard profile for this product. (Pillar Decl., Ex.O.)

156. The Annuity Contract provided that the bond proceeds were to be invested in an annuity provided by Wealth Assurance Private Client in the British Virgin Islands.

[7] WLCC issued a second tranche on August 27, 2014, in the amount of $2,233,347. The August 25, 2014, and the August 27, 2014 Bonds are collectively referred to as the "August 2014 Bonds." (SOMF 7.)

The August 2014 Annuity Contract stated, wrongly, that Wealth Assurance Private Client was part of the Wealth-Assurance Group of Companies. (Anderson Decl., Ex. D; Pentelovitch Decl., Ex. 49; Trial Tr., 1014:18-21.)

157. It happened that Wealth Assurance Private Client was not incorporated in the British Virgin Islands until August 22, 2014, just three days prior to the bond closing. (Pentelovitch Decl., Ex. 1.)

158. USB was not a signor to the Annuity Contract, but was the designated Payee and was granted a security interest in the payment stream from the Annuity Investment and in the revenue stream from the development project, but was not granted a security interest in the Annuity Investment. (SOMF 237-239.)

159. USB's expert testified that it is important for an indenture trustee to ensure it is the payee on the guaranteed investment contract like the annuity contract in this case. (Murzyn Decl. Ex. 6; Gadsen Dep. 63:23-64:6.)

160. However, Henselen testified that it was not his practice to review a guaranteed investment contract such as the Annuity Contract if USB was not a signor thereto. (Murzyn Decl. Ex. 8; Henselen Dep. 63:22-64:4.)

161. The fact that the Annuity Provider was an overseas entity, that the Annuity Investment would be custodied overseas, and that the Annuity Contract was governed under the laws of the British Virgin Islands were all unusual components of this deal. Henselen was first informed that the Annuity Provider was a British Virgin Islands entity in July 2014 when he was emailed a "distribution list" listing all of the deal team members,

their representatives, and associated contact information. (Murzyn Decl. Ex. 26.)

162. Had Henselen reviewed the Annuity Contract that had been emailed to him a couple of weeks prior to the August 2014 closing 3 on the August 2014 Bonds, he would have again seen that Wealth Assurance Private Client with its principal office in Tortola, British Virgin Islands was the designated Annuity Provider to which USB would be wiring over $22 million of the bond proceeds for the purchase of the Annuity Investment. (Murzyn Decl. Ex. 22.)

163. Henselen testified that he was required to know about any overseas wires USB would make because there were certain reporting requirements associated with overseas wires. (Murzyn Decl., Ex. 14; Slania Dep. 106-08, Ex. 7; Graham Dep. 76-77, Ex. 1; Ambriz-Reyes Dep. 77-79.)

164. Henselen's manager said that he would have expected Henselen to have reviewed any overseas annuity contract and to have brought to his attention that USB would be making overseas wires, but Henselen never did so. (Murzyn Decl. Ex. 16; Von Hess Dep. at 54-55.)

165. The Annuity Contract provided that it was to be governed under the laws of the British Virgin Islands, although Henselen checked on the "Establish Deal" sheet that "[a]ll aspects of the transaction governed by U.S. Law." (Pillar Decl., Ex. O.)

166. The Annuity Contract also provided that Wealth Assurance Private Client was "not authorized to do business in any jurisdiction other than the British Virgin Islands" and that the purchase payment must be received at the Home Office in the British Virgin

Islands. (Murzyn Decl., Ex. 27.)

167. In the text of an email, Anderson wrote "Updated annuity contract and BVI attorney signed-off annuity documents." (Murzyn Decl., Ex. 27.)

168. The August 2014 Indenture provided that the proceeds of the August 2014 Bonds shall be deposited in USB's Settlement Account and from there, that USB would make payments, disbursements and deposits as set forth in the Closing Statement, including "the amount of $22,094,089 for the purchase of the Annuity Investment." The Closing Statement, signed by authorized representatives of WLCC, provided that the August 2014 Bonds would be allocated as follows: (1) $22,094,089 for annuity purchase payment; (2) $2,250,000 for project fund; and (3) $500,000 for issuance costs, but did but not provide any instructions on where or how USB would transfer the $22,094,089 to Wealth Assurance Private Client.

169. "Annuity Investment" was defined in the August 2014 Indenture as "the contract, in the notional purchase amount of $22,094,089, entered into on the date hereof between [WLCC] and the Annuity Provider." "Annuity Provider" was defined in the August 2014 Indenture as "a company that provides Annuity Investments as part of its regular trade or business."

170. Section 12.3 of the August 2014 Indenture provided that: the Trustee shall have the right to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission, or other similar unsecured methods, provided, however, that the instructions or directions shall be signed by a person as may

be designated and authorized to sign for the Corporation, who shall provide the Trustee an incumbency certificate listing such designated persons.

171. The persons designated and authorized to sign for WLCC relating to the August 2014 Bond Indenture, as detailed in the Certificate provided to USB, were Geneva Lone Hill, President of WLCC, and Wilma Standing Bear, Secretary of WLCC. (Murzyn Decl., Ex. 95.)

172. On August 26, 2014, Jason Galanis, the Placement Agent with Burnham, sent an email to Anderson with wire instructions for the $22,092,089 that was to be transferred out of USB's settlement account for the purchase of the Annuity Investment and payment of certain closing costs ("the Galanis/Anderson email"). The wire instructions were to a JP Morgan Chase Bank account in Beverly Hills, California, and the account holder was designated as Wealth Assurance Private Client with an address in Santa Monica, California.

173. Neither WLCC nor its counsel was copied on the Galanis/Anderson email, and WLCC did not consent to any change in the Annuity Provider from Wealth Assurance Private Client, British Virgin Islands, to Wealth Assurance Private Client in California.

174. The next day, on August 27, 2014, Henselen's manager confirmed that the bank account information provided in the Galanis/Anderson email matched the wire information before USB completed the $22,092,089 wire to the JPMorgan Chase Account in California. (Murzyn Decl., Ex. 16; Von Hess Dep. 101:5-102:7.)

175. Wealth Assurance Private Client in the United States had been created by

Gary Hirst in July 2014 as a Florida corporation. (Pentelovitch Decl., Ex. 49; Trial Tr. 1011:20-1012:4.) Dunkerley was the sole managing member and director. (*Id.*)

176. On August 6, 2014, Hirst opened a bank account for Wealth Assurance Private Client at JP Morgan Chase and Dunkerley became a signor on the account on August 21, 2014. (Pentelovitch Decl., 1013:2-15, Ex. 49.)

A. Hughes Uses Discretion to Purchase Bonds for Customer Accounts As Part of the Fraud

177. Hughes, as a discretionary investment advisor, had discretion to purchase securities for its customers' accounts. It used that discretion as part of the fraud to purchase WLCC Bonds for Hughes' customer accounts.

178. On or around September 2, 2014, after noticing that money was missing from its custodial account at Northern Trust in Chicago, Washington Suburban learned that Hughes had purchased August 2014 Bonds with a face value of $4,118,076 for its account. (SOMF 11, 353.)

179. When Washington Suburban advised Hughes that the WLCC bonds were not a suitable investment for Washington Suburban's holdings with Hughes, Hughes responded in a letter dated September 2, 2014, signed by Morton and Deary, stating that they had "identified a non-gaming opportunity" in the WLCC bonds and stated, untruthfully, that the issuer was the "Oglala Sioux Tribe" which had "funded a long-term pension plan with the proceeds of the offering." (SOMF 356.)

180. Washington Suburban instructed Hughes to stop trading in its account on

September 8, 2014, and by letter dated September 26, 2014, notified Hughes that it was terminating its investment advisor relationship. (SOMF 366.)

181. The Chicago Transit Authority Retiree Health Care Trust ("RHCT") learned of GMT Duncan's acquisition of Hughes by letter dated August 22, 2014. (SOMF 378.)

182. RHCT asked its consultant to analyze whether RHCT should continue to engage the firm. (SOMF 378.)

183. Following the investigation, RHCT was advised to terminate Hughes because of changes in ownership and management. (Pentelovitch Decl., Ex. 11; Kallianis Dep. 83:14-87:10.)

184. 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. (SOMF 381.)

185. Over the course of several months, RHCT[8] received multiple communications from Morton and others about Hughes' supposed efforts to sell the bonds, but Hughes was unable to liquidate the WLCC Bonds. (SOMF 383; Pentelovitch Decl., Ex. 11; Kallianis Dep. 87:20-88:11.)

186. By letter dated September 2, 2014, Birmingham Water received notice from Hughes that Hughes had purchased the August 2014 WLCC Bonds for its account. (SOMF 373.)

[8] On May 6, 2020, USB and RHCT filed a Stipulation for Dismissal with Prejudice, which the Court granted on May 7, 2020. (*See* Docs. 150, 151.) RHCT is no longer a party to the *Waterworks* case.

B. Depletion of Funds from JPMorgan Account

187. Dunkerley testified that he was the sole managing member and director of Wealth Assurance Private Client and had been designated by Hirst as a signor on the JPMorgan Chase Account on August 21, 2014. (SOMF 314; Pentelovitch Decl., Ex. 49; Trial Tr. 1011:17-19.)

188. Once USB had wired the $22,094,089 bond proceeds to the JPMorgan Chase account, Dunkerley received instructions from Jason Galanis to wire the money out of the account to certain individuals and corporations. (SOMF 320, 331.)

189. One week after the August 2014 Bonds were issued, over $7.35 million had been withdrawn from the Wealth Assurance Private Client J.P. Morgan Chase Account. (SOMF 339.)

190. All but slightly more than $1.2 million had been withdrawn from the account within four weeks after the August 2014 Bonds were issued. (SOMF 339.)

C. Acquisition of Atlantic by Hughes

191. Atlantic Investment Management, LLC ("Atlantic Investment Management") was a Registered Investment Advisor that for many years had served as an investment manager for the Omaha School Employees' Retirement System ("OSERS"). (SOMF 42.)

192. Atlantic Investment Management set up the Master Fund and Feeder Fund and made investments for the funds. (SOMF 43; Murzyn Decl., Ex. 4; Erikson Dep. 31:6-32:15.)

193. The Feeder Fund is the sole owner of the Master Fund and invested

substantially all of its assets in the Master Fund. (SOMF 14-15.)

194. In 2013, OSERS invested $100 million in the Feeder Fund and became the sole limited partner of the Feeder Fund. (SOMF 16; Pentelovitch Decl., Ex. 6; Erickson Dep. 81:21-25.)

195. By letter dated February 19, 2015, from Atlantic Asset Management to Michael Smith, Executive Director of OSERS, Atlantic advised OSERS that it had signed a merger agreement with Hughes, and that the resulting combined business would use the Atlantic name. (SOMF 398.)

196. The letter advised OSERS that Morton was the CEO of Hughes and would become CEO of Atlantic, and that the Richard Deary was president of Hughes and would become president of Atlantic. (SOMF 400.)

197. The letter furthermore asked OSERS to sign and return a "consent" to assignment of its investment management agreement to the newly merged entity. (SOMF 401.) On March 4, 2015, Ron Sellers ("Sellers"), then the chairman and CEO and owner of Atlantic, made a presentation to OSERS recommending that OSERS invest an additional $25 million in the Atlantic Feeder Fund. At the same meeting, Sellers represented to OSERS that he would continue to be involved with Atlantic after the merger with Hughes and represented that the staff that OSERS had always dealt with would remain with the company. (SOMF 403.) Because Sellers was OSERS' long-time trusted advisor, OSERS relied on Sellers' recommendation and on March 16, 2015, approved continuation of the existing investment advisory agreement with Atlantic.

(SOMF 404, 406, 409.) The Omaha Board of Education adopted the recommendation of the OSERS board. (SOMF 407.)

198. The merger between Hughes and Atlantic was finalized in April 2015. (SOMF 41.)

D. April 2015 Bond Issuance, $16.2 Million Face Value

199. USB's account acceptance procedures changed after the August 2014 bond issuance. The "Establish Deal" template was revised to include check boxes indicating whether a customer was involved with internet gambling, payday lending, or was a casino because such businesses were identified as prohibited and restricted business types. (Pillar Decl., Ex. O; Murzyn Decl., Ex. 5; Farrell Dep. 162:4-171:8.)

200. The account acceptance template also included a check box indicating whether negative news has been obtained about the customer via a "Google" search on the internet. (Pillar Decl., Ex. O.) In the April 2015 "Establish Deal" form, Henselen indicated that WLCC was not involving in gaming or payday lending and that negative news had not been obtained via a "Google' search on the internet although he could not recall at his deposition doing any inquiry on WLCC's business type. (Pillar Decl., Ex. O; Murzyn Decl., Ex. 8; Henselen Dep. 152:7-19.)

201. There were articles available on the internet linking WLCC to payday lending and gaming prior to the August 2014 bond issuance. (Murzyn Decl., Ex.18, Woodward Dep. 57-59, 102-105, Ex. 51.)

202. On behalf of Atlantic, Morton executed a "big boy" letter in connection with

the purchase of the entire April 2015 bonds issue, wherein she 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." (SOMF 430.)

203. The big boy letter failed to state that the actual purchaser of the April 2015 bonds was not Atlantic but instead would be the Atlantic Master Fund. (SOMF 431.)

204. The funds that Atlantic used to purchase the April 2015 bond for the Atlantic Master Fund came from the $25 million additional investment that OSERS had made in the Atlantic Feeder Fund in March 2015 on the recommendation of Sellers, the then-CEO of Atlantic. (SOMF 434.)

205. Atlantic Master Fund is the beneficial owner of the entire 2015 WLCC bond issuance with a face value of $16.2 million and the Atlantic Feeder Fund is the beneficial owner of Atlantic Master Fund's interest. (Pentelovitch Decl., Ex. 2; Kirschner Dep. 46:1-6.)

206. As was true with respect to the August 2014 Bonds, with respect to the April 2015 Bonds, Burnham was the Placement Agent, Wealth Assurance Private Client in the British Virgin Islands was the Annuity Provider, and USB was Indenture Trustee. (SOMF 414.)

207. USB signed the Indenture for the April 2015 bonds on April 1, 2015, and the Closing Statement on April 16, 2015. (SOMF 415-417.)

208. The 2015 Indenture indicated that WLCC would be issuing $16,200,000 Special Limited Revenue Bonds (Taxable), the proceeds of which would be used to help finance the purchase of an annuity investment with a nominal purchase amount of $19,650,000 and to finance the Economic Development Project which was defined therein as "a consumer goods distribution project to be located on the Tribe's lands, including the equipment, inventory, operating capital and infrastructure, and other legal purposes for the benefit of the Wakpamni Lake Community."

209. The April 2015 Annuity Contract provided that the purchase payment for the annuity was payable in two installments by WLCC. The first installment of $15,850,000 was payable on or before the Contract Date of April 16, 2015, and the second payment of $3,800,000 was payable on or before thirty days form the Contracted Date. The April 2015 Annuity Contract provided for the adjustment of incoming payments in the event the second payment was not made.

210. As with the August 2014 Bond Issuance, USB was identified as the Payee and was granted a security interest in the payment stream from the Annuity Investment and in the revenue stream from the project, but was not granted a security interest in the Annuity Investment. (SOMF 237-39,418, 423-24.)

211. In large part, the August 2014 and April 2015 Indentures and Annuity Contracts were substantially identical in form and substance. (SOMF 427.)

212. The purchase price of the April 2015 Annuity Investment was $19,650,000 and was for a seven-year term. On the front page of the 2015 Annuity Contract term sheet, the annuity provider was designated as Wealth Assurance Private Client with a principal place of business in Tortola, British Virgin Islands and provided that it was "not authorized to do business in any jurisdiction other than the British Virgin Islands."

213. The April 2015 Annuity Contract also provided that the purchase payment was to be received by Wealth Assurance Private Client at its home office in the British Virgin Islands.

214. Private Equipment Management LLC was identified in the Annuity Contract as the Investment Manager, although it appears no investment agreement was executed for the 2015 bond issuance. (SOMF 427.)

215. The April 2015 Closing Statement differed from the August 2014 Closing Statement in that it included the wire instructions to Wealth Assurance Private Client's JP Morgan Chase bank account in Beverly Hills, California, which was the same account specified in wire instructions provided in the Galanis/Anderson email to USB in August 2014, and to which USB wired the August 2014 Bond proceeds.

E. Post-April 2015 Bond Issuance

216. On April 23, 2015, OSERS discovered that Atlantic had purchased the April 2015 WLCC Bonds. (SOMF 433, 435.)

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

agreement with Atlantic because, among other reasons, the investment was too large. (SOMF 432; Pentelovitch Decl., Ex. 4; Erikson Dep. 94:10-19; Kirschner Dep. 48:23-49:9, 52:9-13.)

218. OSERS complained to Atlantic and demanded that the transaction be reversed and that the purchase price be placed back in the Master Fund. (SOMF 435.)

219. Immediately prior to the April 2015 bond transaction, the balance in Wealth Assurance US' bank account at JP Morgan Chase was $54.66. (SOMF 440.)

220. After funds from the April 2015 bond transaction were wired by USB to Wealth Assurance US's bank account at JP Morgan Chase, such funds were withdrawn and used for, among other things, working capital for Hughes and to purchase the corporation Fondinvest, of which Dunkerley was president. (SOMF 441.)

221. Within one week after the April 2015 Bonds were issued, $6.47 million had been withdrawn from Wealth Assurance US's bank account at JP Morgan Chase. (SOMF 442.)

222. Within four weeks after the April 2015 Bonds were issued, all but $20,993.30 had been withdrawn from the account. (SOMF 442.)

223. Atlantic Asset Management and Hughes were 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. (SOMF 459.)

XVIII. The Criminal Defendants Orchestrated Interest Payments on the August, 2014 and October 2014 Offerings

224. In the fall of 2015, Wealth Assurance BVI was obligated to make interest

payments to the investors in the August and October 2014 Offerings, including Plaintiff. Since the proceeds of those Offerings had been misappropriated and not invested in annuity contracts, the Criminal Defendants scrambled to assemble funds from other sources to make the payments and prevent the exposure of their fraudulent scheme. Upon information and belief, the Criminal Defendants sent $2.72 million to US Bank to cover the interest payments due in connection with the August, September and October 2014 Offerings. US Bank distributed these funds to the investors, including Plaintiff.

225. No further interest payments were made to any investors in the Tribal Bonds, including the Plaintiff.[9]

XIX. Criminal Charges

226. On January 19, 2017, Jason Galanis pleaded 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 advisor fraud in connection with the WLCC Bond transactions. (SOMF 461.)

227. 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

[9] Failure to pay interest when due is an event of default under the 2014 and 2015 Indentures. Ordinarily, the Indentures prohibit bondholders from suing to enforce the bonds without first having given notice and made a demand upon the trustee. Such a demand in this case would be futile as Plaintiff's claim is against the indenture trustee – US Bank – itself.

manipulative business transactions in connection with an investment advisor. (SOMF 462.)

228. On August 11, 2017, the court sentenced Jason Galanis to 173 months imprisonment and he was ordered to forfeit $43,277,436. (SOMF 463.)

229. 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. (SOMF 464.)

230. 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 plea in the WLCC Bond case, as well as another criminal case pending against Jason Galanis. (SOMF 465.)

231. 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. (SOMF 469.)

232. According to Dunkerley's plea allocution, he pleaded guilty to, among other things, misappropriating proceeds of several bond issuances by making or directing transfer 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. (SOMF 470.)

233. On May 16, 2018, Morton pleaded guilty to investment fraud and conspiracy to commit securities fraud in the United States District Court for the South District of New York. (SOMF 472.)

234. Morton's guilty plea related to actions she took as chief executive officer of Atlantic Asset Management in connection with the April 2015 Bond transactions. (SOMF 473.)

235. As described by Morton, her crime was that she "agreed with others to purchase bonds for a client account at Atlantic . . . and 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." (SOMF 473.)

236. On June 20, 2018, Morton made a motion to withdraw her guilty plea, and renewed her motion on May 17, 2019. (SOMF 474.)

237. The district court held three-day evidentiary hearing from March 2, 2020, until March 5, 2020, on Morton's Renewed Motion to Withdraw Guilty Plea. *USA v. Morton*, Case No. 1:16-cr-00371 (S.D.N.Y). On April 2, 2020, Morton and the Government both filed post-hearing memorandums of law with regard to Morton's Renewed Motion to Withdraw Guilty Plea. (*See* Docs. 873, 874.) The Court has not yet ruled on Morton's motion.

238. 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. (SOMF 475.)

239. 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. (SOMF 475.)

240. On September 11, 2019, Hirst moved to vacate, set aside, or correct his sentence. The court has not ruled on Hirst's motion. (SOMF 477.)

XX. Duties of USB and Red Flags

241. USB had various duties as an Indenture Trustee of the WLCC Bond Offerings, which were breached. Those duties are more fully described in this Complaint.

242. Further, USB had notice of one or more red flags and had a duty to act when each red flag event occurred, or failed to occur.

243. It is generally recognized that one who undertakes to provide professional services has a duty to the person from whom the services are performed to use such skill and car ordinarily exercised by others in the same profession. Liability in tort for breach of that duty may arise as a result of negligence during the performance of the contract, even if there has been no breach of contract.

244. The existence of a duty, i.e., whether a relation exists between the parties such that the law will impose upon the defendant a legal obligation or reasonable conduct for the benefit of the plaintiff is for the court to determine, as a matter of law.

245. Plaintiff submits that the WLCC Bonds should not have been classified as

municipal bonds because, among other things, they were taxable and because an annuity was the primary source of principal and interest repayment.

246. Plaintiff submits that USB should have done further inquiry rather than acting on instructions from persons other than contractually authorized persons of WLCC, not Jason Galanis or Timothy Anderson.

247. USB had a duty under the Indentures to value the Annuity Investments on a monthly basis.

248. USB failed to comply with its internal policies and procedures relevant to the WLCC Bond transactions.

249. USB held itself out as and was known as experienced and reputable indenture trustee in the corporate trust industry.

250. Anderson had suggested that USB would be a good fit as the indenture trustee on the WLCC Bond Offerings because it was a large, well-known and reputable financial institution with "serious experience in tribal Indian Country." (Murzyn Decl., Ex. 122; Trial Tr. at 527-28.)

251. In fact, USB was known in the corporate trust industry as one of the largest and most active indenture trustees in the market. (Murzyn Decl., Ex.7; Graham Dep. 58:19-59:16.)

252. USB's expert testified that the WLCC bonds were a complex municipal transactions there were several features of these bond transactions that were outside USB's typical municipal bond experience. (*See* Murzyn Decl., Ex. 6; Gadsen Dep.

160:19-161:13.)

253. USB's expert, and others, testified that a trustee should understand the purpose of a municipal bond issuance since they are typically made to finance specific projects. (Murzyn Decl., Ex. 6; Gadsen Dep. 159:12-160:18; Slania Dep. 204:8-21, Ex. 14; *see also* Pentelovitch Decl., Ex. 7; Farrell Dep. 69:22-70:22.)

254. From the outset, however, the nature of the WLCC development project was ill-defined. (Murzyn Decl., Ex. 14; Slania Dep. 195:12-15 (recognizing that it was unusual to have no defined development project at the outset of a bond transaction)).

255. A term sheet sent by Anderson to USB on July 1, 2014, suggested that part of the proceeds would be used to build a "distribution facility" without any additional detail about what would be distributed from the facility. (Murzyn Decl., Ex. 7; Graham Dep. 78:6-79:8, Ex. 24.)

256. A draft of the indenture dated July 23, 2014, that was provided to USB and its counsel suggested that the bond proceeds would be used to build a "gaming facility." (Murzyn Decl., Exs. 35, 55.)

257. USB policy required an account manager to escalate a review of a transaction if gaming was an intended use and by the time the 2015 Bonds were issued, internet gambling was officially designated on the "Establish Deal" form as a prohibited business and payday lending, a "restricted business." (Murzyn Decl., Ex. 8; Henselen Dep. 151:1-18, 152:3-10, Ex. 16; Von Hess Dep. 65:17-66:3.)

258. Henselen's supervisor testified that if he had been made aware as an

account manager that a client was potentially involved in gaming, he would raise that issue with his manager. (Murzyn Decl., Ex. 16; Von Hess Dep. 65:17-67:9.)

259. Additionally, USB never received a private placement memorandum which was unusual in a private placement bond offering. (Murzyn Decl., Ex. 6; Gadsen Dep. 122:1-123:1, Ex. 1; Ambriz-Reyes Dep. 124:24-125:18.)

260. Ambriz-Reyes, an account manager at USB, testified that in her thirty-five years of corporate trust experience, she could not remember any bond transaction in which she had been involved with as an indenture trustee in which there was no private placement or offering memorandum prepared for the transaction. (Murzyn Decl., Ex. 1; Ambriz-Reyes Dep. 124:24-125:18.)

261. Additionally, it was unusual in municipal bond transactions for an issuer not to produce a budget or construction plans. (Murzyn Decl., Ex. 14; Slania Dep. 204:22-205:16, Ex. 13; Pillar Dep. 104:17-105:4, Ex. 89.)

262. Henselen testified that he did not recall ever seeing a construction budget for the development projects associated with the WLCC Bonds. (Murzyn Decl., Ex. 8; Henselen Dep. 206:13-23.)

263. In addition to understanding the purpose of a municipal bond issuance, USB's expert testified that an indenture trustee must understand the characteristics of a bond transaction. (Murzyn Decl., Ex. 6; Gadsen Dep. 159:12-160:18.)

264. There were several attributes of the WLCC bond transactions that were unique and USB's own policies flagged some of these attributes as escalating the risks

associated with the deal. While the details of the development project were unclear, what was clear from the beginning was that approximately ninety percent of debt associated with the August 2014 WLCC Bond issuance would be serviced by an annuity investment. Neither the parties, their representatives, nor experts in this case had ever heard of a municipal bond transaction involving an annuity. (SOMF 109; Slania Dep. 148:5-9, Exs. 1, 14; Ambriz-Reyes Dep. 107:12-15, Ex. 16; Von Hess Dep. 22:19-23, Ex. 6; Gadsen Dep. 49:21-25.)

265. Despite the presence of this unique attribute, Henselen, the account manager of the WLCC Bond issuances at USB, indicated on the "Establish Deal" form that the sources for all assets and cash transfers were coming from known sources that fit the standard profile for this product. (Pillar Decl., Ex. O.)

266. It was also known at the outset of the deal that the Annuity Provider was an entity in the British Virgin Islands. On July 11, 2014, Henselen received an email from one of the lawyers in the 2014 WLCC bond deal which attached a "distribution list" identifying all of the parties, their representatives, and associated contact information. (Murzyn Decl., Ex. 26.)

267. Therein, it identified the Annuity Provider as Wealth Assurance Private Client with a home office in Tortola, British Virgin Islands. (Murzyn Decl., Ex. 26.)

268. On August 7, 2014, Henselen received an email from Anderson with an updated draft of the Annuity Contract and in the text of the email Anderson wrote: "Updated annuity contract and BVI attorney signed-off annuity documents." (Murzyn

Decl., Ex. 27.) The front page of the draft annuity attached to the email showed that the nominal purchase price of the annuity contract was $25,250,000 and capitalized on the front page of the term sheet was the name of the annuity provider, Wealth Assurance Private Client in Tortola, British Virgin Islands. (*Id.*)

269. Henselen testified that it was his practice to only review documents to which USB was a signor which, in this case, was the indenture agreement. (Murzyn Decl., Ex. 8; Henselen Dep. 63:22-64:4.)

270. This was so even though USB's expert testified that it is important for an indenture trustee to ensure it is the payee on the guaranteed investment contract, like the annuity contract in this case, which would require review of the Annuity Contract. In addition, Henselen also testified that it was his responsibility to determine whether or not a deal involved a foreign wire. (Murzyn Decl., Ex. 6; Gadsen Dep. 63:23-64:6, Ex. 8; Henselen Dep. 90:16-24.)

271. Henselen testified that USB must be aware whether a transaction involves a foreign wire because there are certain reporting requirements for foreign wires. (Murzyn Decl., Ex.8; Henselen Dep. 90:16-24.)

272. Additionally, according to USB policy, the presence of a foreign wire escalates the risks related to a particular deal. (Murzyn Decl., Ex. 8; Henselen Dep. 91:22-25.) Henselen's supervisor testified that under USB policies, account managers are supposed to be aware if USB would be making an overseas wire for the payment of an investment and that he would have expected an account manager to review a

guaranteed investment contract if it was an overseas contract. (Murzyn Decl., Ex. 16; Von Hess Dep. 53:11-55:14.)

273. In the "Establish Deal" form for the August 2014 WLCC bond offering, Henselen indicated that "[a]ll aspects of the transaction governed by U.S. Law" despite the choice of law clause in the Annuity Contract providing that the contract would be governed under the laws of the British Virgin Islands. (Murzyn Decl., Ex. 27.) Henselen would not have been aware of the foreign law component as he had not reviewed the Annuity Contract.

274. USB's expert testified in the *Waterworks* case that an indenture trustee should understand unique characteristics of this bond transaction:

> **Counsel:** Based on your view of industry customs and practices would a reasonable trustee looking at whether to accept this deal ask the question of why an entity of an impoverished tribe would be dealing with a small broker-dealer, New York broker-dealer placement agent to a project that is going to be funded mostly from an overseas annuity?
>
> **Expert**: I guess I would say that the trustee would understand the characteristics of the transaction which include those in this case and it would be part of the trustee's thinking and account acceptance process.

(Murzyn Decl., Ex. 6; Gadsen Dep. 159:20-160:18.)

275. Approximately $22-$23 million dollars of the $25 million August 2014 bond proceeds were to be wired to an overseas entity in the British Virgin Islands which Vinella identified as a jurisdiction at risk for financial fraud. (Druck Decl., Ex.A; Vinella Rpt. 81(e).)

276. Although USB was not always the custodian of a guaranteed investment in a bond offering, neither Henselen nor USB's counsel had ever worked on a bond issuance

where assets would be custodied outside the United States. (Murzyn Decl., Ex. 8; Henselen Dep. 26:17-24, Ex. 14; Slania Dep. 34:17-35:16.)

277. An employee of USB's corporate trust risk management department testified that whether or not bond funds will remain onshore is a factor to consider in terms of account acceptance. (Murzyn Decl., Ex. 15; Strodthoff Dep. 79:19-80:8.)

278. Despite the language in the Annuity Contract providing that the purchase payment must be received at the "Home Office" (defined in the Annuity Contract as the British Virgin Islands), on August 26, 2014, acting upon directions in an email from Galanis and forwarded by Anderson (an email in which neither WLCC nor its counsel was copied), USB wired $22,092,089 to an entity named Wealth Assurance Private Client located in Santa Monica, California, with a JP Morgan Chase N.A. bank account in Beverly Hills, California.

279. Neither WLCC nor its counsel was copied on the wire instructions email despite the fact that Section 12.13 of Indenture Agreement limited USB's authority to act on email instructions relating to the Indenture to those provided by authorized representatives of WLCC.

280. No payments were ever sent to Wealth Assurance Private Client in the British Virgin Islands, the entity to which payment was supposed to be made pursuant to the Annuity Contracts in all of the WLCC Bond Issuances.

281. It is worth noting that in addition to the "red flags" present on the face of this deal, USB was unfamiliar with many of the parties to this transaction. Representatives

from USB were not familiar with, nor had ever worked with Burnham, WLCC, nor Wealth Assurance Private Client prior to this deal. (Murzyn Decl., Ex. 14; Slania Dep. 193:3-18, Ex. 8; Henselen Dep. 22-25, 32:5-10, 205:15-206:4; Ex. 16; Von Hess Dep. 47:8-15.)

282. A FINRA Broker Check Report indicates that Burnham had been sanctioned for disclosure issues in the past and ultimately, Wealth Assurance Private was not created until August 22, 2012, just three days prior to closing of the August 2014 Bond Issuance. (Murzyn Decl., Ex. 113; Pentelovitch Decl., Ex. 1.)

283. As a provider of professional services, the Court, in the case of *Waterworks Board of the City of Birmingham et al vs. US Bank National Association*, Case No. 4:17-cv-04113-LLP, 2020 WL 3077147 (S.D. 2020) concluded that at a minimum, USB owed bondholders an independent duty to understand the structure of this complex transaction, the nature of the development project, and to recognize the "red flags" present on the face of this deal, and if present, to investigate them further.

284. As more fully set forth in this complaint, there were several red flags that USB knew or should have detected, and in response thereto, should have refused to close the WLCC Bond Issuance, and alerted, at a minimum, the Securities and Exchange Commission, and state securities regulators in South Dakota and New York.

285. As set forth in this Complaint, there were actions that USB should and would have taken if USB had acted in accordance with industry customs and standards and USB policies.

286. Further, had USB met the standards of care of an indenture trustee, the

WLCC Bonds would not have been issued and Plaintiff's losses would have been averted.

287. An experienced and knowledgeable trust department would have declined to serve as indenture trustee to the WLCC Bond deal.

288. The criminal acts of third parties in this case were foreseeable and within the scope of the risk created by the conduct and inaction by USB negligent, for several reasons as alleged in this Complaint, including but not limited to:

A. The August 2014 Bond Issuance involved an undefined development project that as, contrary to custom and practice in the industry, primarily funded by an annuity, the provider of which was located in a country, which was in a jurisdiction at risk of financial fraud.

B. The WLCC Bond deal involved unfamiliar deal team members to USB, many of whom changed throughout the transaction.

C. At least one of the deal team members had securities regulatory issues.

D. At least one of the affiliated team members had a prior criminal past.

E. USB was asked to wire bond proceeds to an entity that had been created just days before the 2014 Bond closing.

F. USB was asked to wire bond proceeds to an entity that was not part of the originally drafted bond documents.

G. USB was asked to wire bond proceeds by persons other than those authorized under the Indenture Trust Agreement.

H. Given the scope and nature of the red flags that USB encountered, there was a foreseeable risk created by USB, and it should have erred on the side of refusing to close on any WLCC Bond issuances and reported the red flags to securities regulators.

289. Section 12.13 of the August 2014 Indenture prohibited USB from releasing

bond proceeds based on email instructions from Galanis, forwarded by Anderson, because the emails were not signed by authorized representatives of WLCC.

290. Section 12.13, which is titled Electronic Communications, provides in relevant part: The Trustee shall have the right to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Corporation, who shall provide to the Trustee an incumbency certificate listing such designated persons . . . if the Corporation elects to give the Trustee email 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 . . ." (SOMF 271.)

291. Section 12.13 gives USB the right to act upon instructions pursuant to the Indenture sent by unsecured e-mail, but only if such instructions or directions are from a person designated and authorized to sign for WLCC. Any other construction of Section 12.13 would render meaningless the limitation on USB's right to accept unsecured email directions pursuant to the Indenture and would have the effect of allowing USB to accept

electronic instructions from anyone, not just authorized WLCC signers. A contract must be interpreted in a manner that does not render a portion of the contract meaningless.

292. USB did not have a good faith belief the Galanis/Anderson email was "passed or signed by the proper board or person" or was otherwise "furnished pursuant to any of the provisions of [the Indenture]." (*See* Indenture, Section 10.9.)

293. While Section 12.13 of the August 2014 Indenture provided that USB was entitled to rely on electronic instructions only from authorized representatives of WLCC, Galanis and Anderson were not authorized representatives of WLCC.

294. In addition, Henselen, a USB employee, testified that he never looked at the Indenture to see if the wire instructions complied with the Indenture's terms. (Murzyn Decl. 132:17-131:13, Ex. 8.)

295. Thus, one could thus reasonably infer from this that USB did not have a good faith belief that the wire instructions email was "passed or signed by the proper board or person" or was otherwise "furnished pursuant to any of the provisions of [the Indenture]." If a party fails to make an inquiry for the purpose of remaining ignorant of facts, he may be found to have acted in bad faith.

XXI. Section 1.2 - Payment to Annuity Provider and Valuation

A. Payment to Annuity Provider – August 2014 Bonds

296. The Indentures provided that USB was required to pay bond proceeds as set forth in the Closing Statement 12 and for the purchase of the Annuity Investment.

297. Specifically, Section 2.12 of the Indentures provided: The proceeds of the [

] 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.

298. The Closing Statement did not specify to whom USB was to deliver bond proceeds for the purchase of the Annuity Investment. Instead, it specified that the $24,844,089 in bond proceeds would be disbursed as follows: $22,094,089 annuity purchase payment; $2,250,000 for the Project Fund re: Junction 18 Development; and $500,000 for Payment of Issuance Costs.

299. USB's argued that the August 2014 Indenture did not prohibit USB from relying on the directions in Anderson's email requesting that USB wire $22,094,089 for the purchase of the Annuity Investment because neither the Indenture nor the Closing Statement identified the Annuity Provider or the address to which to send the purchase price of the Annuity Investments.

300. Section 2.11 of the Indenture clearly allows USB to make payments and disbursements as provided in the Closing Statement, signed by authorized representatives of WLCC.

301. Just because the Closing Statement did not provide to whom or where USB was supposed to make payments for the purchase of the Annuity Investment does not mean that USB was contractually free to disburse more than $22 million in bond proceeds

to any entity designated in the Galanis/Anderson email.

302. The terms of the Indenture do not give USB this discretion. What the terms of the Indenture do provide is that USB shall make a payment of $22,094,089 for the purchase of the "Annuity Investment," defined in Section 1.2 of the Indenture as: [T]the contract, in the notional purchase amount of $22,094,089, entered into on the date hereof between [WLCC] and the Annuity Provider, whereby the Annuity Provider shall pay income to [WLCC] at stated intervals and amounts, as provided therein.

303. The $22,094,089 Annuity Contract referenced in the Indenture designates as the Annuity Provider Wealth Assurance Private Client, a British Virgin Islands corporation, with a home office located in Tortola, British Virgin Islands. In lieu of alternate wire instructions in the Closing Statement, the Court concluded that USB was contractually obligated to wire the bond proceeds to the Annuity Provider designated in the Annuity Contract that was referenced in Section 1.2 of Indenture.

304. USB argued that it had no contractual obligation to determine whether or not Wealth Assurance Private Client satisfied the definition of an "Annuity Provider"—a company that provides Annuity Investments as part of its regular trade or business—provided in the Indenture. (*See* Reply Br. at pp. 19-20.) But if USB had no contractual limitation on the annuity provider to which it could wire the bond proceeds, and no implied duty to investigate whether the entity designated as the recipient of the funds was an Annuity Provider, USB would be free to wire the money to any entity designated in the Anderson/Galanis email, which is illogical, as it ignores USB's duty to wire bond proceeds

only upon instruction of authorized persons of WLCC (neither of which was Anderson or Galanis), and again, only to the Annuitant Provider designated in the indenture, again which, USB failed to perform.

305. USB acknowledges in its brief that "WLCC chose [Wealth Assurance Private Client] as the Annuity Provider before the Closing Statement was signed and delivered to [USB]." (*Id.* at p. 19.) USB is correct. As shown in the distribution sheet emailed to Henselen (account manager of the WLCC bonds at USB) at the early stages of the deal, and as shown in the Annuity Contract that had been emailed to Henselen prior to closing, WLCC chose Wealth Assurance Private Client, a British Virgin Islands company as the Annuity Provider.

306. Yet, without WLCC's consent, USB proceeded to wire $22,094,089 to a completely different entity – Wealth Assurance Private Client in Santa Monica, California.

307. The fact that USB was not a signor to the Annuity Contract does not mean that the Court may not interpret the Annuity Contract and the Indenture together.

308. Under South Dakota law, all writings that are executed together as part of a single transaction are to be interpreted together. And, it is not critical whether the documents were executed at exact the same time or whether the parties to each agreement were identical. Where several writings are connected by internal references to each other, even if they . . . were not among all of the same parties, they will constitute a single contract as long as they involve the same subject matter and prove to be parts of an entire transaction.

309. South Dakota law, which controls the liability of USB in this action, requires that these two contracts be interpreted together. In this case, there was the hinging of one contract upon the execution of another contract, which heightens the need for joint interpretation. Further, courts also consider whether contracts were executed on the same day and whether one contract references another. Such factors evince whether two contracts "'represent successive steps'" in the same transaction and thus, whether the parties intended them to be read as one. Here, the August 2014 Indenture and the August 2014 Annuity Contract were executed within one day of each other on August 25 and August 26, respectively. Although USB was not a signor to the Annuity Contract, it received copies of the Annuity Contract to keep as Trustee and because it was the designated therein as the Payee of the Annuity Investment. USB received and retained copies of the Indenture and Closing Statement as well. The August 2014 Indenture specifically references not only the Closing Statement, but also the Annuity Contract. Section 2.12 provides that USB shall pay bond proceeds for the purchase of the Annuity Investment, defined as "the contract, in the notional purchase amount of $22,094,089, entered into on the date hereof between [WLCC] and [the Annuity Provider] . . ."

310. Although the Annuity Contract does not expressly state that it was entered into in reliance upon the Indenture, the Annuity Contract does reference and define the Trust Indenture as "that certain Trust Indenture executed and delivered prior to the execution and delivery of [the Annuity Contract] by and between [WLCC] and [USB]." So the Annuity Contract has no meaning outside the context of the Indenture Agreement and

the parties would not have entered into the Annuity Contract absent the Indenture Agreement. This shows that the two contracts 'represent successive steps' in the same transaction and thus, that the parties intended them to be read as one.

311. Also, the Closing Statement, which is also referenced in the Indenture, must be interpreted together with the Indenture. So, absent directions in the Closing Statement as to whom and where USB was to make payment for the purchase of the Annuity Investment, USB was contractually obligated to make payment to Wealth Assurance Private Client, a British Virgin Islands corporation. This, USB failed to do.

B. Valuation – August 2014, September, 2014, October, 2104 and April 2015 Bonds

313. USB was required under Section 1.2 of the August 2014, September, 15, 2015 (as supplemented), and April 2015 Indentures to value the Annuity Investment on a monthly basis.

314. No evidence has been discovered to date of any valuation of the annuities on a monthly basis by USB.

315. Section 2.12 of the Indentures provides that the bond proceeds are to be transferred by USB to the Settlement Account out of which, per Section 2.12's terms, USB was to make payment for the purchase of the "Annuity Investment."

316. Under Section 1.2, an "Annuity Investment" is defined as an "Investment Security" whose value "shall be determined as of the end of each month" as "established by agreement between [WLCC] and [USB.]" USB failed to purchase a valid annuity investment.

XXII. Unauthorized Requisition Payments

317. USB breached the Indentures by paying operating expenses of the Project Fund without having requisitions signed by the President or Vice President of WLCC.

318. For example, USB paid several requisition requests signed by Raycen Raines, who was not the President or Vice President of WLCC and was not otherwise an authorized signor for WLCC. (Murzyn Decl., Ex. 54.)

319. Section 5.7(b) of the Indentures provides that "payments shall be made from the Project Fund by the Trustee for Costs" of the Tribe's development project "upon the order for [WLCC], and receipt of a requisition [ ] signed by the President or the Vice-President of the Corporation and by its Secretary, and approved by the Developer . . .."

320. Section 8.9 of the Indentures provides that "[WLCC] shall not make any payment or requisition for Operating Expenses in excess of the amount of the annual budget then in effect."

321. USB breached Section 8.9 of the Indentures because it made payment for Project Operating Expenses without having an annual budget.

322. Plaintiff submits that additional money would have been available for Plaintiff's recovery absent USB's conduct since Section 5.7(a) of the Indentures provides that in the event of default, "amounts on deposit in the Project Fund shall not be disbursed, but shall instead by applied to the payment of debt service or redemption price of the [ ] Bonds to the extent other funds are not available to make such payments."

XXIII. The 2014 and 2015 Bond Offerings Are Related

323. The WLCC 2014 Bond Offering, 2015 Bond Offering, and all related bond investor claims arise from the same set of facts, are substantially similar, and witnesses and evidence are largely be duplicative between the two sets of claims.

324. Further, USB's actions and inactions during both the 2014 and 2015 Bond Offerings show a pattern and practice of USB in its role as indenture trustee that demonstrates its motive, intent, plan or scheme as the trustee. Such actions or inactions during these related bond offerings are relevant to USB's lack of good faith.

325. Plaintiff submits that there is no prejudice, let alone unfair prejudice, to USB will result by trying the claims in a single trial.

XXVI. Conditions Precedent

326. All conditions precedent to this action occurred, were performed, were waived, or would be futile to perform.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Breach of Contract)

327. Plaintiff repeats and realleges the previous paragraphs of this Complaint as though fully set forth herein.

328. In this case, there is: (1) an enforceable promise; (2) a breach of the promise; and (3) resulting damages.

329. The September 15, 2014 Indenture (**Exhibit L**), as amended by the

October 1, 2014 Supplement (**Exhibit M**), is a valid and binding contract entered into between US Bank, the trust established therein, and Wakpamni Corp., which establishes US Bank's contractual duties and obligations, in its capacity as Trustee, to the Trust and the bondholders thereunder.

330. As current holder of a bond covered by the September 15, 2014 Indenture, as supplemented, Plaintiff is an express, intended third party beneficiary and is entitled to enforce its terms against the Trustee.

331. Established practice in connection with the private placement of securities such as bonds required that before acting on instructions for the disbursal of the proceeds, US Bank had to be sure that the instructions were genuine, signed by the appropriate party, reasonable, and appropriate under the circumstances.

332. US Bank breached its contracts by acting in the absence of appropriate instructions as required under the terms and conditions of the 2014 Indenture and its undertakings as Indenture Trustee. It violated Sections 1.2, 2.11, 2,12, 5.7 and 12.13.

333. Section 1.2, for example, provides that the "Annuity Provider" "means a company that provides Annuity Investments as part of its regular trade or business."

334. The "Annuity Provider" that was designated in the September 15, 2014 Trust Indenture was Wealth Assurance Private Client Corp. (*See* **Exhibit L** at p. 65.)

335. Wealth Assurance Private Client Corporation was not a company that provided Annuity Investments as part of its regular trade or business.

336. In fact, it was set up as a sham corporation set up in July, 2014, about a month before the first WLCC Bond deal by Hugh Dunkerly (*see* **Exhibit N**) to issue a sham annuity, and not a genuine annuity. It did not sell Annuity Investments. It provided nothing more than fraudulent documents, just for the WLCC Bond deals.

337. Under Section 2.12, USB was to purchase "the Annuity Investment."

338. USB failed to purchase a valid annuity investment, as the so-called annuity contract was issued by a sham corporation that did not provide annuities as part of its regular trade or business.

339. Under Sections 2.12 and 5.7, the "Proceeds of the Bonds in the amount as set forth in the Closing Statement required by Section 2.11, shall be transferred from the Settlement Account to the Project Fund created in Section 5.7 to be expended on Costs relating to the Town Center Development Project, all as more fully set forth in Section 5.7. USB failed to perform this requirement of the Indenture.

340. Under Section 12.13, USB cannot accept instructions from anyone other than an authorized representative of WLCC. Yet, USB collected proceeds from the October, 2014 bond offering and paid them back to the Criminal Defendants without proper authorization, upon information and belief.

341. US Bank failed to exercise due care and acted contrary to accepted trustee practice.

342. In doing so, US Bank transcended its purely ministerial function and

exercised its discretion in disbursing the proceeds of the August and related October 2014 Offerings.

343. In exercising such discretion, US Bank was affirmatively obligated to conduct further investigation before releasing the funds, because of its role as an Indenture Trustee and because Bank Anti Money Laundering regulations required them to perform a reasonable investigation.

344. US Bank breached its obligations under both the 2014 Indenture by failing to disburse the net proceeds of the August 2014 Offering to a qualified and proper entity for the purchase of the Annuity Investments in accordance with the terms of the Indenture and other governing documents. Instead, US Bank sent the proceeds to a sham entity controlled by the Criminal Defendants.

345. US Bank also failed to use due care and proper diligence by not requiring specific proper written instructions signed by Wakpamni Corp. and consistent with the Annuity Contracts and other governing documents concerning where to send the net proceeds for the Annuity Investments.

346. US Bank also failed to use due care, prior to releasing the net proceeds, to investigate and resolve any material omissions and inconsistencies in the Indenture and other offering documents necessary for US Bank to exercise its duties in good faith and with due care and proper diligence.

347. US Bank also failed in its obligations under the Indenture to value or

cause to be valued the Annuity Investments on a monthly basis in accordance with the methodology set forth therein.

348. Finally, US Bank failed to use due care and proper due diligence in alerting Wakpamni Corp. and Plaintiff as bondholders to material facts concerning its breaches of the Indentures and other information it possessed concerning the substantial possibility that the August 2014, the related September and October 2014 Series 2014A Offerings, and April 2015 Offering were fraudulent.

349. The specific provisions evidencing the breaches by US Bank are further detailed in the Exhibits appended to this Complaint.

350. US Bank's breach of its duties as set forth above caused Plaintiff's losses, including by causing its funds to be distributed contrary to the 2014 Indenture and ancillary agreements, in turn causing its bond to become valueless and unable to pay interest or return of principal.

351. Plaintiff's Bonds were part of the Series 2014A Bonds issued in October 2014, and authorized by the August 2014 Bond Offering. The proceeds of this Bond Offering were acquired by the Criminal Defendants due to actions and inactions of USB, in violation of the Trustee Indenture and the Annuity.

352. Plaintiff performed any obligations they had under the Indentures.

353. US Bank is liable to Plaintiff for the losses it suffered as a direct result of US Bank's failure to perform its contractual obligations under the 2014 Indenture and the related documents thereto.

SECOND CLAIM FOR RELIEF
(Negligence and Gross Negligence)

354. Plaintiff repeats and realleges the previous paragraphs of this Complaint as though fully set forth herein.

355. One who undertakes to provide professional services has a duty to the person from whom the services are performed to use such skill and care ordinarily exercised by others in the same profession. That legal duty is independent of a contract.

356. USB held itself out as and was known as experienced and reputable indenture trustee in the corporate trust industry. Anderson had suggested that USB would be a good fit as the indenture trustee on the WLCC Bond Offerings because it was a large, well-known and reputable financial institution with "serious experience in tribal Indian Country."

357. In fact, USB was known in the corporate trust industry as one of the largest and most active indenture trustees in the market.

358. USB's expert testified that the WLCC Bonds were a complex municipal transactions.

359. As alleged in this Complaint, there were several features of these Bond transactions that were outside USB's typical municipal bond experience.

309. Also, as alleged in this Complaint, there were various policies and procedures at USB that were not followed by USB employees in the course of the

WLCC Bond Offerings that should have been followed.

310. There were also numerous red flags about the parties to the transaction, the nature of the transaction, and contradictions in the drafts and final versions of the deal documents which USB knew about, but blindly ignored.

311. As a provider of professional services, at a minimum, USB owed bondholders an independent duty to understand the structure of this complex transaction, the nature of the development project, and to recognize the "red flags" present on the face of this deal, and if present, to investigate them further.

312. US Bank owed the bondholders, including Plaintiff, a duty to perform acts with due care, act with undivided loyalty, and avoid conflicts of interest. As described above, US Bank performed or failed to perform its responsibilities in a grossly inadequate and negligent manner.

313. Defendant breached its duties owed to Plaintiff and engaged in willful and wanton misconduct in several respects, or in acts of recklessness or willful blindness, including but not limited to:

A. Failing to use due care to understand the structure of the WLCC Bond Offerings, which were complex transactions, and to investigate them further.

B. Failing to use due care to understand the nature of the development project, and to investigate them further.

C. Failing to recognize the "red flags" present on the face of the WLCC Bond Offerings, and to investigate them further.

D. Filing to verify the proper WLCC persons who could authorize

disbursements before acting on instructions for the disbursal of the proceeds.

E. Failing to ensure that disbursement instructions were genuine.

F. Failing to ensure that disbursements were signed by the appropriate party.

G. Failing to ensure that disbursements were reasonable and appropriate under the circumstances.

H. Failing to conduct a proper investigation before releasing the funds.

I. Failing to use due care and proper diligence in disbursing the net proceeds of the August 2014 Offering, the October, 2014 offering and the 2015 offering to the proper entity for the purchases of the Annuity Investments in accordance with the terms of the Indentures and other governing documents.

J. Sending proceeds to a sham entity controlled by the Criminal Defendants.

K. Failing to require specific proper written instructions signed by Wakpamni Corp. and consistent with the Annuity Contracts and other governing documents concerning where to send the net proceeds for the Annuity Investments.

L. Failing to use due diligence prior to releasing the net proceeds.

M. Failing to investigate and resolve any material omissions and inconsistencies in the Indentures and other offering documents necessary for US Bank to meet the duties it owed to the Plaintiff.

N. Failing to ensure that the "Annuity Provider" was a company that provided Annuity Investments as part of its regular trade or business.

O. Failing to conduct any or a proper valuation of the Annuity Investments on a monthly basis,

P. Failing to escalate a review of the bond deal because USB policy required an account manager to escalate a review of any transaction

where gaming was an intended use – and a "bingo hall" was mentioned in the September 2014 Trust Indenture.

Q. Failing to alert Wakpamni Corp. and Plaintiff as bondholders to material facts concerning its breaches of the Indentures and other information it possessed concerning the substantial possibility that the August 2014 Offering, September 2014 Offering, and October 2014 Offering was fraudulent.

R. Failing to conduct proper due diligence on the parties and representatives of the parties to the transaction.

S. Failing to follow internal company policies and procedures.

T. Failing to conduct proper due diligence on the bond transaction before agreeing to act as indenture trustee.

314. As a direct and proximate cause of US Bank's negligence and deliberate and reckless misconduct or willful blindness, Plaintiff has sustained injuries, including but not limited to, the ability to collect the principal and interest due on its bond and such bond being rendered worthless.

315. Due to the numerous red flags, USB's violation of its own internal procedures, policies and industry standards, what was known to USB and what USB should have known about in connection with the parties, the documents and the events surrounding the WLCC Bond Offerings, the criminal acts of third parties as described in this complaint were foreseeable and within the scope of the risk created by the conduct of USB.

316. The August 2014 Bond Issuance and subsequent related offerings involved an undefined development project that was, contrary to custom and practice

in the industry, primarily funded by an annuity, the provider of which was located in a country which Plaintiff's expert identified as a jurisdiction at risk of financial fraud. The deal involved unfamiliar deal team members, many of whom changed throughout the transaction. Under the facts of this case, there was foreseeable risks created by USB' alleged negligence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bonwick Capital Partners LLC respectfully prays for damages against Defendant U.S. Bank National Association as follows:

1. For Plaintiff's compensatory damages in an amount that is just and proper under the circumstances.

2. Punitive damages in an amount that is just and proper under the circumstances.

3. For Plaintiff's costs and disbursements herein.

4. For prejudgment and post-judgment interest.

5. For such other and further relief as the Court determines to be just and proper.

Dated: August 14, 2020.

FULLER, WILLIAMSON, NELSEN
& PREHEIM, LLP

Eric T. Preheim
7521 South Louise Avenue
Sioux Falls, SD 57108
(605) 333-0003
epreheim@fullerandwilliamson.com
Local Attorney for Plaintiff

SONN LAW GROUP PA
Jeffrey R. Sonn, Esq. (FL Bar No. 773514)
19495 Biscayne Blvd. Suite 607
Aventura, FL 33180
T: (305) 912 3000
F: (786) 485 1501
jsonn@sonnlaw.com
service@sonnlaw.com
Attorney for Plaintiff (pro hac to be filed)

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Bonwick Capital Partners, LLC

(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Derek A. Nelsen and Eric T. Preheim
Fuller, Williamson, Nelsen & Preheim, LLP
7521 S. Louise Ave., Sioux Falls, SD 57108,(605) 333-0003

DEFENDANTS
U.S. Bank National Association

County of Residence of First Listed Defendant Hennepin County, MN
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☒ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332(a)(1)
Brief description of cause:
Alleged breach of contract and negligence related to trust indenture

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*: JUDGE Lawrence Piersol DOCKET NUMBER 4:17-cv-04113-LLP

DATE 8-14-2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE