UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM; WASHINGTON SUBURBAN SANITARY COMMISSION EMPLOYEES' RETIREMENT PLAN; ATLANTIC GLOBAL YIELD OPPORTUNITY MASTER FUND, L.P; AND ATLANTIC GLOBAL YIELD OPPORTUNITY FUND, L.P.,	Civil Action No. 17-4113
Plaintiffs,	**COMPLAINT**
-against-	
U.S. BANK NATIONAL ASSOCIATION,	
Defendant.	

Plaintiffs The Water Works Board of the City of Birmingham ("Birmingham Water"); the Washington Suburban Sanitary Commission Employees' Retirement Plan ("Washington Suburban"); Atlantic Global Yield Opportunity Master Fund, L.P ("Master Fund"); and Atlantic Global Yield Opportunity Fund, L.P. ("Feeder Fund," together with the Master Fund "GYOF") (collectively, "Plaintiffs"), by and through their attorneys, bring this action against U.S. Bank National Association ("U.S. Bank," "Defendant," or "Indenture Trustee"), and allege as follows:

PRELIMINARY STATEMENT

1. This case arises out of the purchase by Plaintiffs of approximately $25 million in bonds issued by a South Dakota Native American tribal organization, the Wakpamni Lake Community Corporation ("Wakpamni Corp."), an affiliate of the Oglala Sioux Nation. Those offerings took place in August 2014 ("August 2014 Offering") and April 2015 ("April 2015 Offering"). Birmingham Water is a public utility located in

Alabama and the other Plaintiffs are investment vehicles for employee retirement plans involving participants in Nebraska and Maryland. U.S. Bank was the indenture trustee for both offerings.

2. 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 both 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, that made the purchases on behalf of the Plaintiffs (collectively, the "Criminal Defendants"). As a result, the bonds owned by Plaintiffs are now worthless. U.S. Bank is liable for the Plaintiffs' losses because, *inter alia*, it improperly released the net proceeds of both offerings 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 offerings. In releasing the funds, U.S. Bank breached the agreements and either was grossly negligent or simply turned a blind eye to the suspicious nature of the August 2014 and April 2015 Offerings and numerous red flags in the closing documents themselves.

PARTIES

3. Plaintiff Birmingham Water is an Alabama public corporation, created pursuant to Ala. Code § 11-50-230, *et seq.* (1975). Birmingham Water is an Alabama public water utility that invested $4,344,640.00 in the August 2014 Offering.

4. Plaintiff Washington Suburban was established in May 1967 as a Section 401 trust for the Washington Suburban Sanitary Commission, a public water and sewer

utility serving primarily Prince George's and Montgomery counties in Maryland, which invested in $4,118,076.00 the August 2014 Offering.

5. Plaintiff Master Fund is a Cayman Islands exempted limited partnership that invested $16,200,000.00 in the April 2015 Offering. Its general partner is REPLACEMENT GYOF GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands. Plaintiff Master Fund is wholly owned by Plaintiff Feeder Fund. Feeder Fund is a Delaware limited liability partnership; its general partner is Goldin Associates, LLC. Feeder Fund invested all or substantially all of its assets in Master Fund. The Omaha School Employees' Retirement System ("OSERS"), based in Omaha, Nebraska, is the sole limited partner of Feeder Fund, and is thus the ultimate beneficial owner of Master Fund.

6. Defendant U.S. Bank is a federally chartered banking association headquartered in Minneapolis, Minnesota, with offices relevant hereto in Phoenix, Arizona and Chicago, Illinois.

JURISDICTION AND VENUE

7. Plaintiffs reallege each allegation set forth in the proceeding paragraphs above as if fully set forth herein.

8. The 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.

9. U.S. 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. 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. Wakpamni Corp. issued the bonds in South Dakota. The trust indenture agreements for the offerings ("Indenture" or "Indentures"), and the bonds themselves are explicitly governed by South Dakota law. In addition, U.S. 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 U.S. Bank in South Dakota within the meaning of South Dakota's Long-Arm Statute.

10. 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

11. 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 ("Galanis"), the main architect of the scheme, pled guilty in February 2017.

12. 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. The trust indenture for the August 2014 Offering 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 the annuity to finance development projects for the tribe.

I. The Criminal Defendants Orchestrated the August 2014 Offering

A. The Criminal Defendants Acquired a Registered Investment Advisor

13. 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.

14. Hughes had been the trusted investment advisor of numerous clients, including Plaintiffs Birmingham Water and Washington Suburban for many years, with total assets under management of $900 million. Hughes had discretionary authority over the accounts of these Plaintiffs.

B. Plaintiffs Purchased Tribal Bonds in the August 2014 Offering

15. On 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 U.S. Bank as Trustee under an Indenture Agreement dated the same date. On August 26, 2014, the Birmingham Water and Washington Suburban accounts controlled by Hughes purchased $8,462,720 worth of tribal bonds in the offering.

16. Hughes purchased the bonds on behalf of these Plaintiffs without consulting with them pursuant to investment agreements which gave Hughes discretionary trading authority over their accounts.

C. U.S. Bank's Role as Indenture Trustee

17. 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. U.S. 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.

18. In connection with the closing of the August 2014 Offering, Wakpamni Corp. and U.S. Bank entered into a Trust Indenture, dated August 25, 2014 (the "2014 Indenture"). Ex. A. Pursuant to the 2014 Indenture, U.S. 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 2014 Indenture and the other offering documents pertaining thereto. Such disbursements included payment of offering fees and expenses, after which U.S. 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, U.S. Bank had continuing duties to administer the trust in accordance with the 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.

19. By accepting the trust, U.S. Bank was contractually obligated to act only in accordance with the terms of the 2014 Indenture and in good faith. In addition, U.S. Bank had a common law duty to perform ministerial acts required by it under the 2014

Indenture with due care and undivided loyalty. Thus, U.S. Bank was responsible for complying with its obligation to disburse the net proceeds of the August 2014 Offering in compliance with the instructions of Wakpamni Corp. "for the purchase of the Annuity Investment" under Indenture Section 2.12 with due care and proper diligence. In addition, U.S. Bank's reliance on such instructions had to be in "good faith" under Section 10.9 of the 2014 Indenture. Moreover, under Section 1.2, 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 (a) "required to be deposited with the Trustee" in accordance with schedule attached to the 2014 Indenture, and (b) constituted "property" subject to the lien and security interest conveyed to U.S. Bank under the 2014 Indenture.

1. U.S. Bank Ignored (or Failed to Recognize) Multiple Red Flags in Connection with the August 2014 Offering

20. U.S. 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, LLC ("Burnham") served as placement agent; and Hugh Dunkerley ("Dunkerley") was a principal of both Burnham and the offshore annuity provider.[1] U.S. Bank may have been aware that a series of offerings was planned, and was thus

[1] U.S. Bank's obligation to diligently investigate the Criminal Defendants' fraud if it was on inquiry notice dovetails with its obligations under the Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") regulations. Under both legal regimes, U.S. Bank had a duty to not turn a blind eye to suspicious activities. In this regard, the Office of the Comptroller of the Currency found deficiencies in U.S. 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.

incentivized to be less vigilant in following up on its suspicions so that it could maintain its relationships with the Criminal Defendants.

21. By the time U.S. 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:

a. Red Flags Related to the 2014 Indenture

i. The Final Draft of the 2014 Indenture Omitted the Requirement that Wakpamni Corp. Identify the Annuity Provider

22. A draft of the indenture circulated to U.S. Bank and the other offering participants required that upon final execution of the indenture Wakpamni Corp. was to execute and deliver to U.S. 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." Ex. B § 2.11(e). Wealth Assurance AG is a real Lichtenstein insurance company. Similarly, the Offering Distribution List, which identified the parties involved in the August 2014 Offering, and the Closing Agenda all listed "Wealth Assurance AG" as the "Annuity Provider." Exs. C, D. However, the final draft of the indenture completely omitted subsection (e) quoted above, which required the submission of a letter of appointment for Wealth Assurance AG.

23. 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.

Ex. A § 2.11(f).

24. 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. § 2.12 (emphasis added).

25. Thus, the 2014 Indenture required no transactional document appointing and identifying the annuity provider prior to release of the proceeds for investment in the annuity and simply required a "Closing Statement." 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. Ex. E. As the Indenture Trustee responsible for releasing those funds, U.S. Bank should have found these omissions irregular and troubling.

ii. The 2014 Indenture Required U.S. Bank to Determine a Valuation for the Annuity Investment, Which Was Never Done

26. Section 1.2 of the 2014 Indenture also required U.S. Bank to make or determine monthly valuations of the "Annuity Investment," which was defined as an "Investment Security. Ex. A § 1.2. The applicable valuation method set forth in that section, was "by agreement between the [Wakpamni] Corporation and the Trustee [U.S.

Bank]." *Id.* Any reasonable attempt by Wakpamni Corp. and U.S. Bank to determine a valuation for the Annuity Investment would have led to the discovery that no investment was ever made.

b. Red Flags Related to the Annuity Contract

i. At Closing, a Different Entity Was Identified as the Issuer of the Annuity

27. At the closing, U.S. Bank received a copy of a 25-year term annuity contract in the amount of $25,250,000 ("Annuity Contract"). Ex. F. However, instead of Wealth Assurance AG issuing the Annuity Contract as the draft 2014 Indenture mandated, an entity named Wealth Assurance Private Client Corporation ("Wealth Assurance BVI"), which the Annuity Contract identified as a British Virgin Islands entity, issued it. Dunkerley had incorporated that entity in the British Virgin Islands only three days before, on August 22, 2014, in furtherance of the fraudulent scheme.

28. Dunkerley also was the signatory for Wealth Assurance BVI on the Annuity Contract. U.S. Bank knew that Dunkerley was the primary representative of Burnham, the Placement Agent and the signatory on the Placement Agency Agreement. This was suspicious because other than Wakpamni Corp. and U.S. Bank itself, the two other entities that were parties to the deal shared the same principal.

ii. U.S. Bank Received Payment Instructions that Contradicted the Indenture and Annuity Contract

29. On August 26, 2014, U.S. Bank finally received wire instructions for transferring proceeds of the bond issuance to the annuity provider. Ex. G. The 2014 Indenture required written instructions from Wakpamni Corp. as did U.S. 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 U.S. Bank by counsel for Burnham. According to the government, 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 U.S. Bank regarding to disbursement of the proceeds. Thus, in its role as Indenture Trustee, U.S. Bank disbursed more than $22 million based solely upon the instructions of a stranger – not a representative of its counterparty on the 2014 Indenture – and disbursed those funds to an entity created in furtherance of a criminal conspiracy conceived and realized by that stranger.

30. The instructions directed U.S. 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. *Id.* at 982. Wealth Assurance US was not the same Wealth Assurance BVI entity identified in the Annuity Contract, but rather an identically named corporation incorporated in Florida only a few days before by Dunkerley, as sole shareholder. 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).

iii. U.S. Bank Released Funds in Contradiction to the Annuity Contract

31. U.S. Bank transferred the proceeds of the bond transaction to the Beverley Hills bank account of Wealth Assurance US. This release of the funds to a bank account in the U.S. contradicted the explicit terms of the Annuity Contract.

32. *First*, the funds were transferred to Wealth Assurance US, not Wealth Assurance BVI.

33. *Second*, the Annuity Contract explicitly states that Wealth Assurance BVI "is not authorized to do business in any jurisdiction other than the British Virgin Islands." Ex. F at ii. 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.

34. *Third*, the Annuity Contract, as to which U.S. 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). 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.

35. Rather than fulfilling even the most basic ministerial role in connection with the August 2014 Offering, U.S. 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 Plaintiffs' dollars:

Document	Annuity Provider	Location Of Annuity Provider	Other Key Provisions
Draft 2014 Indenture	Wealth Assurance AG Ex. B § 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 . . ." Ex. A § 2.11(f).
Annuity Contract	Wealth Assurance Private Client Corporation ("Wealth Assurance BVI") Ex. F	Tortola, British Virgin Islands	• "Wealth Assurance BVI is not authorized to do business in any jurisdiction other than the British Virgin Islands." Ex. F at ii. • 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. • "The purchase payment must be received at the Home Office [in Tortola, British Virgin Islands]." *Id.* at 3
Payment Instructions	Wealth Assurance Private Client Corporation ("Wealth Assurance US") Ex. G at 982	Santa Monica, California	• "Bank Name: JPMorgan Chase Bank, NA" Ex. G at 982 • "Bank Address: Beverley Hills, CA" *Id.*

iv. After Closing, U.S. Bank Never Served as Custodian or Received a Valuation of Any Assets

36. 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"). Ex. F. Private Equity was a fake entity made up by the Criminal Defendants. Under the terms of the Investment Management Agreement between the Wakpamni Corp. and Private Equity, which U.S. Bank received, U.S. Bank was identified as the intended custodian of the investment portfolio. Ex. H. Since the net proceeds of the bond offering were never invested, it follows that no custodial account was ever opened or maintained at U.S. Bank, and U.S. Bank never served as a custodian of any investments. U.S. Bank obviously must have known that it was not serving in this role governed by the Annuity Contract.

37. The Annuity Contract and the Investment Management Agreement were inconsistent as to who had authority to direct investments. 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." Ex. F at 7. 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." Ex. H ¶ 3.

38. In addition, U.S. 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. U.S. Bank could easily have requested those required valuations. Since the

Annuity Investment was part of the Trust Estate, U.S. Bank could not ignore how it was invested.

* * *

39. The foregoing facts demonstrate that omissions, inconsistencies and contradictions existed on the face of key documents related to U.S. 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 U.S. Bank, which was required at a minimum to know and understand them pursuant to its obligations under the 2014 Indenture.

II. The Criminal Defendants Orchestrated the October 2014 Offering

40. 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.

41. 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 them to purchase $15 million worth of newly issued Tribal Bonds (the "October 2014 Offering"). The October 2014 Offering was 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. The SEC alleges 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.

III. The Criminal Defendants Orchestrated the April 2015 Offering

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

A. The Criminal Defendants Acquired a *Second* Registered Investment Advisor

43. 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.

B. Plaintiffs Purchased Tribal Bonds in the April 2015 Offering

44. AAM had full discretion over GYOF. AAM caused GYOF to invest $16.2 million in Tribal Bonds as part of an offering structured in the same manner as the August 2014 Offering. *See* ¶¶ 15-19 *supra*. GYOF was the sole investor in the April 2015 Offering.

C. U.S. Bank *Again* Ignored (or Failed to Recognize) Multiple Red Flags in Connection with the April 2015 Offering

45. Closing Statement. The Closing Statement for the April 2015 Offering included payment instructions signed by both Wakpamni Corp. *and* Burnham. Ex. I. Again, U.S. 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.*

46. 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. Ex. 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 to proceeds to the wrong entity in the U.S. was still in violation of the terms of the Annuity Contract.

47. Investment Management Agreement. On information and belief, the Investment Management Agreement for the April 2015 Offering also listed U.S. 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 Offering, U.S. Bank never served as a custodian of any investments.

48. Trust Indenture. The Indenture for the April 2015 Offering (the "2015 Indenture") also required U.S. Bank to make or determine monthly valuations of the "Annuity Investment." Ex. K § 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 [U.S. Bank]" because none of the other methods would be applicable. *Id.* No valuations were ever delivered. Any reasonable attempt by Wakpamni Corp. and U.S. Bank to determine a valuation for the Annuity Investment would have led to the discovery that no investment was ever made.

49. U.S. Bank should have found these inconsistencies – now appearing for a second time – doubly suspicious.

50. In connection with the April 2015 Offering, U.S. Bank did not disclose to 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 October 2014 Indenture was well).

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

51. 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 Plaintiffs. 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 U.S. Bank to

cover the interest payments due in connection with the August and October 2014 Offerings. U.S. Bank distributed these funds to the investors.

52. No further interest payments were made to any investors in the Tribal Bonds, including any of the Plaintiffs.[2]

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Breach of Contract)

53. Plaintiffs repeat and reallege each allegation set forth in the proceeding paragraphs above as if fully set forth herein.

54. The 2014 and 2015 Indentures are valid and binding contracts entered into between U.S. Bank, the trust established therein, and Wakpamni Corp., which establishes U.S. Bank's contractual duties and obligations, in its capacity as Trustee, to the Trust and the bondholders thereunder.

55. As current holders of the bonds covered by such Indentures, Plaintiffs are express, intended third party beneficiaries under the indenture applicable to them and are entitled to enforce their terms against the Trustee.

56. 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, U.S. Bank had to be sure that the instructions were genuine, signed by the appropriate party, reasonable, and appropriate under the circumstances.

[2] 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 Plaintiffs' claims are against the indenture trustee – U.S. Bank – itself.

57. U.S. Bank breached its contracts by acting in the absence of appropriate instructions as required under the terms and conditions of both the 2014 and 2015 Indentures and its undertakings as Indenture Trustee.

58. U.S. Bank failed to exercise due care and acted contrary to accepted trustee practice. In doing so, U.S. Bank transcended its purely ministerial function and exercised its discretion in disbursing the proceeds of the August 2014 and April 2015 Offerings. In exercising such discretion, U.S. Bank was affirmatively obligated to conduct further investigation before releasing the funds.

59. U.S. Bank breached its obligations under both the 2014 and 2015 Indentures by failing to disburse the net proceeds of the August 2014 and April 2015 Offerings to the proper person for the purchases of the Annuity Investments in accordance with the terms of the Indentures and other governing documents. Instead, U.S. Bank sent the proceeds to a sham entity controlled by the Criminal Defendants.

60. U.S. 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.

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

62. U.S. Bank also failed in its obligations under the Indentures to value or cause to be valued the Annuity Investments on a monthly basis in accordance with the methodology set forth therein.

63. Finally, U.S. Bank failed to use due care and proper due diligence in alerting Wakpamni Corp. and Plaintiffs as bondholders to material facts concerning its breaches of the Indentures and other information it possessed concerning the substantial possibility that the August 2014 and April 2015 Offerings were fraudulent.

64. The specific provisions evidencing the breaches by U.S. Bank are further detailed in the Exhibits hereto.

65. U.S. Bank's breach of its duties as set forth above caused Plaintiffs' bonds to become worthless.

66. Plaintiffs have performed any obligations they had under the Indentures.

67. U.S. Bank is liable to Plaintiffs for the losses they suffered as a direct result of U.S. Bank's failure to perform its contractual obligations under the 2014 and 2015 Indentures.

SECOND CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

68. Plaintiffs repeat and reallege each allegation set forth in the proceeding paragraphs above as if fully set forth herein.

69. U.S. Bank failed to use good faith in its performance of its obligations in connection with the August 2014 and April 2015 Offerings.

70. The 2014 Indenture failed to name the annuity provider, which had previously been identified in a draft of the indenture. The Annuity Contract later identified a different entity as the annuity provider, and the payment instructions

identified an entity with the same name, but with an address in a different country. In addition, U.S. Bank did not receive those payment instructions from Wakpamni Corp., U.S. Bank's contractual counterparty, but rather from Galanis, one of the Criminal Defendants. Because the 2014 Indenture was silent as to the annuity provider and payment instructions, U.S. Bank was required to act in good faith when it finally received instructions as to those missing terms in the contract. Good faith demanded that U.S. Bank do more than blindly follow instructions sent by a stranger to the contract.

71. In connection with the April 2015 Offering, U.S. Bank again transferred the proceeds to an annuity provider based in the United States, and not the British Virgin Islands entity identified in the Annuity Contract. Based on its experience with the August 2014 Offering, good faith required U.S. Bank to question the recurrence of that discrepancy and ensure itself of the appropriateness of the transfer instructions.

72. By failing to act in good faith in the performance of its obligations in connection with the August 2014 and April 2015 Offerings, the proceeds of those offerings were transferred to entities controlled by the Criminal Defendants. As a result, U.S. Bank completely prevented Plaintiffs – third party beneficiaries to the Indentures – from receiving any of the benefits of the contracts entered into by Wakpamni Corp. in the bond offerings.

THIRD CLAIM FOR RELIEF
(Negligence and Gross Negligence)

73. Plaintiffs repeat and reallege each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

74. U.S. Bank owed the bondholders, including Plaintiffs, extra contractual duties to perform ministerial acts with due care, act with undivided loyalty and avoid

conflicts of interest. As described above, U.S. Bank performed or failed to perform its responsibilities in a grossly inadequate and negligent manner.

75. Defendant breached its duties owed to the Plaintiffs and engaged in willful and wanton misconduct in several respects, including but not limited to:

a. Failing to use due care before acting on instructions for the disbursal of the proceeds;

b. Failing to ensure that disbursement instructions were genuine;

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

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

e. Failing to conduct a proper investigation before releasing the funds;

f. Failing to use due care and proper diligence in disbursing the net proceeds of the August 2014 and April 2015 Offerings to the proper entity for the purchases of the Annuity Investments in accordance with the terms of the Indentures and other governing documents;

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

h. 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.

i. Failing to use due diligence prior to releasing the net proceeds;

j. Failing to investigate and resolve any material omissions and inconsistencies in the Indentures and other offering documents necessary for U.S. Bank to meet the duties it owed to the Plaintiffs;

k. Failing to ensure the proper value of the Annuity Investments on a monthly basis; and

l. Failing to alert Wakpamni Corp. and Plaintiffs as bondholders to material facts concerning its breaches of the Indentures and other information it possessed concerning the substantial possibility that the August 2014 and April 2015 Offerings were fraudulent.

76. As a direct and proximate cause of U.S. Bank's negligence and deliberate and reckless misconduct, Plaintiffs have sustained injuries, including but not limited to, the ability to collect the principal and interest due on their bonds and such bonds being rendered worthless.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for damages against the Defendant as follows:

(1) For Plaintiffs' compensatory damages in an amount that the jury deems just and proper under the circumstances;

(2) Punitive damages in an amount that the jury deems just and proper under the circumstances;

(3) For the Plaintiffs' costs and disbursements herein;

(4) For prejudgment and post-judgment interest; and

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury on all issues triable by jury.

DATED: August 23, 2017
Sioux Falls, SD

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