

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

_____, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  vs.  ROBERT W. BAIRD & CO. INCORPORATED,  Defendants.	Civil Action No.  CLASS ACTION  <u>DEMAND FOR JURY TRIAL</u>
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**COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS**

Plaintiff \_\_\_\_\_, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against Defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, inter alia, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, United States Securities and Exchange Commission (“SEC”) filings, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendant Robert W. Baird & Co. Incorporated (“Baird”) who purchased the Community High School District Number 210 Will and Cook Counties, Illinois (Lincoln-Way) Refunding School Bonds, Series 2013A (“Series 2013A Bonds”) and Capital Appreciation Refunding School Bonds, Series 2013B (“Series 2013B Bonds”) (collectively, the “Bonds”)

pursuant to the Official Statement dated February 21, 2013, seeking to recover damages caused by Defendants' violations of federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Defendant defrauded Plaintiff and other members of the Class by making fraudulent material misrepresentations and omissions regarding how the proceeds of the Lincoln-Way Bonds would be spent and the Lincoln-Way High School District 210 (the "District")'s financial condition.

3. As discussed below, at the time the Bonds were sold to the public, Defendant knew and failed to disclose that the Bonds were not a viable or creditworthy investment and that they were being misrepresented to the public.

4. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the District's Bonds, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

5. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein arise under §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

7. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b) as a substantial part of the conduct complained of herein occurred in this District and the Company conducts business in this district.

8. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

9. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased the Bonds from Baird pursuant to the Official Statement and has been damaged thereby.

10. Defendant Baird is a broker-dealer engaged in the securities business. Baird was the underwriter for the Bonds.

### **FACTUAL ALLEGATIONS**

11. The District is located in Illinois, close to Chicago, Illinois.

12. Lawrence Wyllie (“Wyllie”) was the former Superintendent of the District between 1989 and 2013.

13. The District has been issuing bonds going back to at least 2006, in order to construct the North and West high schools in the District and to improve the Central and East high schools.

14. On February 21, 2013, Baird published the Official Statement which provided investors details about purchasing the Lincoln-Way Bonds.

15. The Lincoln-Way Bonds were issued in two classes: Series 2013A, \$130,840,000 Refunding School Bonds and Series 2013B \$47,673,843.40 Capital Appreciation Refunding School Bonds.

16. The Official Statement detailed how the proceeds of the Lincoln-Way Bonds would be used, stating in relevant part:

#### **AUTHORITY AND PURPOSE**

The Bonds are being issued pursuant to the School Code of the State of Illinois (the “*School Code*”), the Local Government Debt Reform Act of the State of

Illinois (the “*Debt Reform Act*”), and all laws amendatory thereof and supplementary thereto, and a bond resolution (the “*Bond Resolution*”) adopted by the Board of Education of the District (the “*Board*”) on the 10th day of January, 2013, as supplemented by a notification of sale.

Proceeds of the Bonds will be used to (i) refund certain of the District’s outstanding General Obligation Capital Appreciation School Bonds, Series 2006, dated May 8, 2006 (the “*Series 2006 Bonds*”), and General Obligation School Building Bonds, Series 2007, dated February 1, 2007 (the “*Series 2007 Bonds*,” and those Series 2006 Bonds and Series 2007 Bonds being refunded, the “*Refunded Bonds*”), and (ii) pay costs associated with the issuance of the Bonds.

17. Baird sold several million dollars worth of Bonds to the public.

18. In March 2015, the District was put on the Illinois State Board of Education’s Financial Watch List. As a result, the District’s Board of Education was required to work on a deficit reduction plan to be submitted by September 2015.

19. In November 2015, the District hired independent accounting firm Crowe Horwath LLP (“Crowe”) to conduct a comprehensive agreed-upon procedures examination of the District’s May 2006, February 2007, and December 2009 bond issues for the construction of Lincoln-Way North and West high schools as well as improvements to Lincoln-Way Central and East high schools and for expenditures during the period from May 8, 2016 through October 31, 2015.

20. The statements referenced in ¶¶ **Error! Reference source not found.** through 19 above, were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts, which were known to Defendant or recklessly disregarded by them at the time they sold the Bonds to Plaintiff and members of the Class that: (1) proceeds from the sale of the Bonds were not being used as described in the Official Statement; (2) the misappropriation of Bond proceeds prompted government scrutiny; and (3) as a result of the foregoing, the Official Statement was materially false and misleading at all relevant times.

**THE TRUTH BEGINS TO MATERIALIZE AND EMERGE**

21. On April 14, 2016, the District’s school board held a meeting. At this meeting, the District officials revealed a report from Crowe (the “Crowe Report”) which detailed the misappropriation of the Bonds’ money under the leadership of former superintendent Wyllie. The Crowe Report alerted the public and the District officials to accounting irregularities, stating in relevant part:

*However, some expenditures, that were less than the amount of the interest income earned, was spent on supplies that cannot be expensed to the Capital Projects Fund. Instead, the supplies should have been expensed to the Education Fund. All of the expenditures of the bond were documented in the general ledger through either invoice expenditures, electronic transfer fund payments for expenditures, journal entries or transfers to other funds*

\* \* \*

*The 2009 bond issue (proceeds and expenditures) were recorded in the Life Safety Fund of the financial statements. According to IPAM, the Life Safety Fund should be used only when bonds are issued for purposes of fire prevention, safety, energy conservation, or school security. The purpose of the 2009 bonds, according to the bond documents was to improve the sites of and build and equip two high school buildings and improve the sites of and alter, repair and equip the Lincoln-Way Central and East High School Buildings. Based on this, the transactions of the 2009 bond should have been recorded in a Capital Projects fund which is defined as a fund to account for proceeds from a bond issue used to finance a capital project. Also, the Capital Projects Fund was closed at the end of fiscal year 2011 without Board approval. This included a transfer of interest that was not approved by the Board.*

*In addition, the transfers of interest income to Operations and Maintenance Fund and the Life Safety Fund that were identified in procedure 2 did not follow the proper approval requirements as outlined in IPAM. The transfers that were made on 6/18/2008 were approved by the Board. The other three transfers were never presented to the Board or approved. IPAM allows for the transfer of interest income from bond proceeds to other District funds when there is appropriate approval from the School Board.*

\* \* \*

The following table documents *the District's use of bond funds for temporary loans to cover expenditures in the General Bank Account, Payroll Bank*

*Account and the Student Activity Bank Account.* All funds that were transferred to these bank accounts were transferred back to the bond proceeds bank account.

(Emphasis added).

22. At the April 14, 2016, District school board meeting, the District’s attorney, John Izzo, read a resolution stating that from March 2010 to October 2012, \$4,340,713.14 in Bond money was used to fund noncapital expenditures that were presented to the District’s school board as being part of the operations fund. The District also spent \$306,649.77 to fund noncapital expenditures that were presented to the school board as being from the transportation fund. According to Izzo, this happened when: “The superintendent at the time, without the board’s knowledge or approval, directed the bookkeeping department to record fund journal entries reclassifying the original expenditures as capital expenditures in those two amounts.”

23. On April 22, 2016, the District’s school board released a statement admitting that the District’s “true financial condition” had been “masked by improper accounting.” The District’s school board also “fully acknowledge the findings” of the Crowe Report “which indicated improper accounting and management of bond proceeds from 2006 to 2012.” The District’s school board statement further stated:

It is apparent that a proper system of checks and balances was not in place, and that the previous superintendent took unauthorized action; for this, we take responsibility... This board was presented with annual audits giving the district a financial “clean bill of health” for years. While there were findings of recommended corrective actions, the true financial condition of our district was masked by improper accounting.

24. On April 29, 2016, as a result of this news of the misappropriation of the Bond proceeds and restricted funds, Moody’s Investors Services lowered the Bonds’ ratings from A1 to Baa3, one notch above “junk” status and a negative outlook was assigned to the Bonds. According to Moody’s the downgrade was due to:

The downgrade to Baa3 reflects the weakened financial position of the district, which has necessitated the issuance of tax anticipation warrants (TAWs) to support operations. The rating also considers the recent discovery of misappropriation of bond proceeds and restricted funds, the resolution of which will exacerbate the district's budget pressures. The district has an elevated debt burden that includes accreted interest on capital appreciation bonds (CABs). Debt service costs will significantly increase in the medium term. The rating is also based on the district's sizable but declining tax base located in the Chicago (Ba1 negative) metropolitan area and above average residential income indices.

#### Rating Outlook

The negative outlook reflects the likelihood that the district's financial position will continue to narrow in fiscal 2016 and beyond. District management is pursuing the closure of one of its four high schools in order to achieve savings, but this solution has met considerable public opposition. The outlook further incorporates the district's elevated debt burden and debt service costs, which are expected to rise considerably in fiscal 2021.

25. On May 23, 2016, it was revealed that the U.S. Department of Justice ("DOJ") issued a subpoena on May 4, 2016 requesting records as well as subpoenaed the District to appear before a grand jury on May 18, 2016. The DOJ subpoena inquired into information regarding the compensation for former Superintendent Wyllie during his tenure from 1989 to 2013.

26. On June 6, 2016, the SEC served a subpoena on the District requiring documents to be produced by June 27, 2016. The SEC subpoena asked for several documents pertaining to the 2009 bond offering, 2013 bond offer, 2013 escrow agreement, and 2015 bond offering, including documents concerning the District's use of the proceeds of the bonds.

27. As a result of the foregoing, the value of the Bonds declined, damaging acquirers of the Bonds.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who purchased the

Bonds pursuant to the Official Statement and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

29. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds of members in the proposed Class. Members of the Class may be identified from records maintained by Defendants and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

30. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

31. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by Defendant's acts as alleged herein;
- (b) whether Illinois securities laws were violation by Defendant's acts as alleged herein;

- (c) whether statements made by Defendant to the investing public during the Class Period misrepresented material facts about the use of the Bonds' proceeds; and
- (d) to what extent the members of the Class have sustained damages, and the proper measure of damages.

33. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

34. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- (a) Defendant made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the Bonds are traded in an efficient market;
- (d) the Bonds are liquid and traded with moderate to heavy volume during the Class Period;
- (e) the Bonds were covered by multiple analysts;
- (f) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Bonds; and Plaintiff and members of the Class purchased, acquired and/or sold the Bonds between the time the Defendant

failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

35. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

36. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendant omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

**FIRST CLAIM**  
**Violation of Section 10(b) of**  
**The Exchange Act and Rule 10b-5**  
**Promulgated Thereunder Against Defendant**

37. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

38. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (2) cause Plaintiff and other members of the Class to purchase the Bonds at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendant took the actions set forth herein.

39. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for the Bonds in violation of Section 10(b) of the

Exchange Act and Rule 10b-5 promulgated thereunder. Defendant are sued as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

40. Defendant directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of the Bonds as specified herein.

41. Defendant employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure the Bonds purchasers value and performance and continued substantial growth, which included the making of, or participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about the Bonds and the use of the Bonds' proceeds in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of the Bonds during the Class Period.

42. Defendant had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that it failed to ascertain and to disclose such facts, even though such facts were available to it. Such Defendant's material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the use of the Bonds' proceeds from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendant's misstatements and/or omissions of the use of the Bonds' proceeds throughout the

Class Period, Defendant, if it did not have actual knowledge of the misrepresentations and omissions alleged, was reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

43. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of the Bonds was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Bonds were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendant, or upon the integrity of the market in which the Bonds trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendant but not disclosed in public statements by Defendant during the Class Period, Plaintiff and the other members of the Class acquired the Bonds during the Class Period at artificially high prices and were or will be damaged thereby.

44. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the use of the Bonds' proceeds, which was not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired the Bonds, or, if they had acquired the Bonds during the Class Period, they would not have done so at the artificially inflated prices that they paid.

45. By virtue of the foregoing, Defendant has violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

46. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Bonds during the Class Period.

47. This action was filed within two years of discovery of the fraud and within five years of each plaintiff's purchases of securities giving rise to the cause of action.

**SECOND CLAIM**  
**Violation of Illinois Securities Law of 1953, 815 ILCS 5/12 and 5/13**  
**Against Defendant**

48. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

49. Defendant's sales of the Bonds to Plaintiff and the Class constituted the sale of "securities" defined in §2.1 of the Illinois Securities Law of 1953, 815 ILCS 5/2.1.

50. During the course of the sale of the Bonds, Defendant made statements of material fact that were in fact untrue, and which Defendant knew were untrue. During the course of the sale of the Bonds, Defendant made material omissions.

51. Defendant's actions, misrepresentations, and omissions were made with the intent that Plaintiff and the Class rely on them in determining whether to acquire the Bonds and pay Defendant for the Bonds.

52. Plaintiff and the Class reasonably relied upon the honesty and truthfulness of Defendant's actions, misrepresentations, and omissions in deciding to make his payments for the Bonds.

53. Defendant's actions, misrepresentations, and omissions were materially false and misleading.

54. But for Defendant's actions, misrepresentations, and omissions, Plaintiff would not have purchased the Bonds.

55. Plaintiff has suffered rescission damages and costs and expenses as a result of Defendant's actions.

56. Defendant's misconduct constitutes a violation of the Illinois Securities Law of 1953 because: (1) Defendant engaged in transactions, practices or course of business in connection with the sale or purchase of the Bonds which worked or tended to work a fraud or deceit upon Plaintiff and the Class; (2) Defendants obtained money through the sale of the Bonds by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstance under which they were made, not misleading; and/or (3) Defendants employed a device, scheme or artifice to defraud in connection with the sale of the Bonds to Plaintiff and the Class, directly or indirectly.

57. Plaintiff is entitled to his reasonable attorneys' fees and costs based on Defendant's violation of the Illinois Securities Law of 1953. *See* 815 ILCS 5/13.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

(d) Rescinding the sale of the Bonds;

(e) Awarding Plaintiff and the Class the full amount paid for the Bonds, together with any interest;

(f) Awarding Plaintiff and the Class consequential damages as a result of prosecuting this action; and

(g) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.