Expert Report

of

David B. H. Martin

In the Matter of Laurie Bebo, and John Buono, CPA, AP File No. 3-16293
(U.S. Securities and Exchange Commission)

I. Introduction

I have been retained as an expert witness in this case by Reinhart Boerner Van Deuren s.c., counsel to Laurie A. Bebo ("Bebo"). I am a senior counsel in the law firm of Covington & Burling LLP and am being compensated at my standard hourly rate within the firm (currently $1,035). This rate, and that of other attorneys in the firm, is generally adjusted upwards annually on January 1.

This report contains a summary of my qualifications, including publications that I have authored or co-authored and a list of other cases in which I have testified as an expert, all in the last ten years. The report also provides a statement of the opinions that I will express in this case and the basis and reasons for those opinions, including the information I have considered.

II. Qualifications

I received my J.D. degree from the University of Virginia School of Law in 1976 and became a member of the Virginia Bar in 1976 and the District of Columbia Bar in 1977. Currently, I am a senior counsel in the law firm of Covington & Burling LLP, where previously I have been co-head of our firm's Corporate Practice area and of our Securities and Capital Markets Practice group. My business address is 850 10th Street, NW, Washington, D.C. 20001.

I have over 32 years of private practice experience, most of which have been focused on corporate, corporate governance, corporate finance and securities law. In my practice, I advise companies, including their boards and senior management teams, on general corporate and securities law matters, including corporate finance, federal securities law disclosure requirements and standards, corporate governance principles and practices, and other related matters. I have assisted in transactions, compliance programs and litigation and law enforcement proceedings.

I have also served for seven years with the U.S. Securities and Exchange Commission ("SEC"), including as the Director of the Division of Corporation Finance. This is the division that is responsible for administering the SEC's disclosure system for public companies, including the review of filings made by companies to the SEC. Prior to that I served in a variety of other

positions, including as an examiner of company filings and in the chief counsel's office of the Division of Corporation Finance and as a special counsel to the Chairman of the SEC.

My curriculum vitae, which also lists articles and other publications that I have authored or co-authored in the last ten years and recent speaking engagements, is included with this report at **Appendix A.**

I have testified as an expert in the following matters within the last ten years: *Robert Facciola, et al. v. Greenberg Traurig LLP, et al.* (USDC, D. AZ. No. 2:10-cv-01(025-FJM) in 2012 (testimony under seal); *Dennis J. Buckley, as Trustee of the DVI Liquidating Trust v. Clifford Chance LLP and Clifford Chance US LLP* (USDC, E.D.PA Civil Action No. 2:06-cv-1003 (LDD)) in 2009; *Heitman & Murphy v. Interland, Inc. et al* (Cir. Ct. of Jackson County, MO, Case No. 03CV203073) in 2007; *Micrel, Inc., v. Deloitte & Touche LLP* (Sup. Ct. of Santa Clara County, CA, Case No. CV 816477) in 2005; and a confidential arbitration before the International Court of Arbitration of the International Chamber of Commerce in 2004.

III. Opinions

A. Basis for Opinions

I have based my opinions on my general knowledge and experience in corporate and securities law and disclosure and transaction practices thereunder. In forming my opinions, I have also considered various documents and other information made available to me and listed below at **Appendix B,** with particular focus on those referred to below in this report, any of which, or of the information contained therein, I may use as exhibits to support my opinions.

B. Summary of Opinions

It is my opinion that ALC could reasonably have concluded that the Amended and Restated Lease Agreement between Ventas Realty, Limited Partnership (an affiliate of Ventas, Inc. ("Ventas")) and eight subsidiaries of Assisted Living Concepts, Inc. ("ALC"), dated as of January 1, 2008 (the "Lease"), was not a "material definitive agreement" or "material contract" under the disclosure rules of the SEC applicable to ALC and, accordingly, would not have been required to be disclosed or filed as an exhibit by ALC in its Form 8-K filed on January 7, 2009, Forms 10-K for the years ending December 31, 2009, 2010 and 2011 and Forms 10-Q for the

first three quarters of 2008-2011 (together, the "ALC Reports").[1] I am further of the opinion that ALC could reasonably have concluded that it was not omitting material information in its disclosures regarding compliance with certain covenants under the Lease.

C. Opinions

1. ***ALC Could Reasonably Have Concluded that the Lease Was Not a Material Contract under SEC Disclosure Rules.***

a. Summary of SEC Disclosure Rules for Material Contracts. The SEC's specific rules applicable to the ALC Reports for non-financial statement disclosure of "material definitive agreements" and "material contracts" are contained in two places: Item 1.01 of Form 8-K and Item 601(b)(10) of Regulation S-K.[2]

i. *Disclosure of Entry into Material Definitive Agreement.* Under Item 1.01 of Form 8-K, upon entry into a material definitive agreement, a public company is required to disclose, within four business days, the date upon which the agreement was entered into, the parties to the agreement, any material relationship between the company and the other party or parties and a brief description of the terms and conditions of the agreement that are material to the company. The material definitive agreement being disclosed is not required to be filed with the Form 8-K as an exhibit.

ALC disclosed the Lease for the first time in a Form 8-K filed with the SEC on January 7, 2008 (the "Lease 8-K"). I see nothing in the record to the effect that ALC's disclosure of the Lease in this filing was incomplete or incorrect. The mere fact that ALC disclosed the Lease in the Lease 8-K, however, does not mean that ALC had arrived at a judgment that the Lease was a material contract requiring disclosure. In this respect, there is nothing which prevents a company from disclosing an agreement which is not material under this item of Form 8-K, and, in my experience as a securities practitioner, I am familiar with practices by companies to do just this

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[1] ALC assumed the obligations of its eight subsidiaries under the Lease pursuant to a Guaranty of Lease Agreement which it entered into with Ventas as of January 1, 2008, the same day on which the Lease became effective. Throughout this opinion, references to the Lease include this guaranty agreement.

[2] The former term is used in Form 8-K; the latter is used in Item 601(b)(10) of Regulation S-K. There is no effective difference in the meaning of these two terms for purposes of the SEC disclosure rules.

in situations where an agreement might become material or otherwise significant at a later date. In addition, although it was not required to do so, ALC chose voluntarily to file the Lease as an exhibit to the Lease 8-K. This, too, in my experience as a securities practitioner, is a common practice for companies as a means to complement disclosure about the agreement being provided in the form.

Form 8-K provides that a material definitive agreement means an agreement that provides for obligations that are material to and enforceable against the company, or rights that are material to the company and enforceable by the company against one or more other parties to the agreement, in each case whether or not subject to conditions. The form's instructions, however, go on to clarify the meaning of material definitive agreement by borrowing from the definition of that term in Item 601(b)(10) of Regulation S-K (see next sub-section below). Specifically, Instruction 1 to Item 1.01 of Form 8-K provides that (a) a material definitive agreement not made in the ordinary course of the registrant's business must be disclosed, and (b) an agreement is deemed to be not made in the ordinary course of the company's business, even if the agreement ordinarily accompanies the kind of business conducted by the registrant, if it involves any of the subject matters identified in subparagraphs (A)-(D) of Item 601(b)(10)(ii) of Regulation S-K (which are described below).

ii. *Filing of Material Contract as an Exhibit.* Under Item 601(b)(10) of Regulation S-K, a public company must include with its periodic SEC filings (i.e. quarterly and annual reports) as an exhibit any material contract not made in the ordinary course of the company's business which is to be performed in whole or in part at or after the filing of the applicable report or was entered into not more than two years before such filing. Item 601(b)(10)(ii) goes on to provide that if the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of four specified categories, in which case it shall be filed except where immaterial in amount or significance. These categories, which are the ones to which Item 1.01 of Form 8-K refers, are as follows:

> (A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase

> or sale of current assets having a determinable market price, at such market price;
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> (B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;
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> (C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or
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> (D) Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

As indicated above, although not required to do so, ALC elected to file the Lease with the Lease 8-K. Thereafter, ALC included the Lease as an exhibit to the other ALC Reports.

b. ALC Could Reasonably Have Concluded that the Lease Was Not a Material Contract. As indicated above, determining whether an agreement must be disclosed and filed under the SEC's specific disclosure rules regarding material contracts involves a multi-part judgment.

i. *Is the Contract "Material?"* First, a company must make a judgment as to whether or not a contract, in itself, is material. Materiality is a mixed question of law and fact. Broadly speaking, however, courts have found that information is material when there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision regarding a company's securities. Stated another way, there must be a substantial likelihood that a reasonable investor would view the information "as having significantly altered the 'total mix' of information" available about a company.[3] Material information can include positive or negative information about a company.

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[3] *TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)*("*TSC*"). *TSC* was later cited approvingly in another landmark case regarding securities disclosure (*Basic Incorporated, et.al., v. Max L. Levinson,* 485 U.S. 224 (1988)("*Basic*")), which noted that in *TSC*, in the context of omitted information, the Court acknowledged "that certain information concerning corporate (continued...)

Here, ALC would have had a reasonable basis to conclude that as a general matter the Lease was not material. At the time ALC entered into the Lease, it operated 208 assisted and independent living residences in 17 states in the United States.[4] ALC operated about the same number of facilities for all of the periods covered by the ALC Reports, with 211 facilities in 20 states as of the end of 2011.[5] At the time it signed the Lease, ALC owned the majority of the facilities it operated (153), but it also leased a substantial number (63).[6] Thus, the eight properties covered by the Lease when it was signed accounted for only 3.8% of ALC's overall facilities and only 12.7% of its leased facilities.

In terms of units, the properties covered by the Lease when it was signed had 541 units. As a result, ALC operated over 9,076 units at this time, and the eight properties covered by the Lease comprised less than 6.0% of ALC's total units at the time it entered into the Lease.[7]

From a revenue standpoint, ALC generated over $228 million in revenue per year throughout the relevant time period.[8] It also reported income from operations ranging from $29.8 million in 2008[9] to a high of $43.6 million in 2011.[10] The properties covered by the Lease represented a small portion of that revenue and operating income. In 2011, the eight properties

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developments could well be of 'dubious significance'.... [and] was careful not to set too low a standard of materiality; it was concerned that a minimal standard might bring an overabundance of information within its reach, and lead management 'simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decision-making.'" *Id. at 231.*

[4] *See* ALC's Form 10-K for the year ended December 31, 2007 at p. 3.

[5] *See* ALC's Form 10-K for the year ended December 31, 2011 at p. 14. *See also* ALC's Forms 10-K for the years ended December 31, 2008 at p. 16, December 31, 2009 at p. 16 and December 31, 2010 at p. 16.

[6] *See* ALC's Form 10-K for the year ended December 31, 2007 at p. 15.

[7] *Id.*

[8] *See* ALC's Forms 10-K for the years ended December 31, 2008 at p. 21, December 31, 2009 at p. 21, December 31, 2010 at p. 21 and December 31, 2011 at p.19.

[9] *See* ALC's Form 10-K for the year ended December 31, 2008 at p. 21.

[10] *See* ALC's Form 10-K for the year ended December 31, 2011 at p. 19. In 2009. ALC reported income from operations of $15.4 million, but this included a one-time goodwill impairment expense of $16.3 million. *See* ALC's Form 10-K for the year ended December 31, 2009 at p. 21.

covered by the Lease had revenues of $13.3 million and operating loss of $(1.7) million.[11] Thus, in 2011, the properties covered by the Lease represented 5.6% of ALC's revenues but a reduction of its operating income.

While there are other metrics and ways of analyzing the significance of the Lease to ALC at the time it was signed, based on my review of the record and the ALC Reports, I am of the opinion that ALC would have had a reasonable basis to conclude that information about the Lease as a general matter would not be significant to a reasonable investor's investment decision or significantly alter the total mix of information that was available about ALC. Indeed, during the period covered by the ALC Reports, the business of the properties under the Lease was not discussed in the ALC Reports generally, other than as a part of the aggregated presentation of ALC's entire business. Viewed through this lens, ALC would have had no obligations under Item 1.01 of Form 8-K or Item 601(b)(10) of Regulation S-K to disclose information about the Lease, much less file it as an exhibit to the ALC Reports. As noted above, however, there was nothing which prevented ALC from doing so in order to provide its shareholders more information regarding its business.

ii. *Is the Contract Made Outside the Ordinary Course of Business?*

Whether it deemed the Lease material or simply believed the analysis was unclear, ALC would next have needed to make a judgment as to whether the Lease was made outside the "course of ordinary business," in which case both disclosure on Form 8-K and an exhibit filing in periodic reports would have been required by Item 1.01 of Form 8-K and Item 601(b)(10) of Regulation S-K, respectively. The term "ordinary course of business" is undefined by the SEC and enjoys a common sense reading by public companies and securities practitioners. It is, however, amplified somewhat in both of the relevant disclosure rules which establish that contracts made in the ordinary course of business are those that "ordinarily accompan[y] the kind of business conducted by" the company and its subsidiaries.

Based on my experience as a securities practitioner and my knowledge of the securities laws, I am of the opinion that ALC would have had a reasonable basis to conclude that the Lease was made in the ordinary course of business. In this regard, it would have been reasonable to

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[11] *See* ALC's Form 8-K filed on May 14, 2012.

determine that the Lease was the kind of agreement that would ordinarily accompany the business being conducting by ALC, i.e. operating assisted living facilities through a portfolio of properties, more than a quarter of which were leased.[12] The fact that ALC chose to disclose the Lease and file it as an exhibit to the ALC Reports did not establish that ALC was required to have done so because the Lease was made outside the ordinary course of its business; it merely establishes that ALC chose to provide this information in its reports.

iii. *Is the Lease in One of the Categories of Material Contracts Which Must be Disclosed?* Assuming ALC did determine that the Lease was made in the ordinary course of its business, it still would have had one final step in its analysis. Under the SEC's disclosure rules, even if a material contract is made in the ordinary course of business it may have to be disclosed and filed if it falls within any of four categories set forth in Item 601(b)(10)(ii)(A)-(D) of Regulation S-K and cross-referenced in the instructions to Item 1.01 of Form 8-K. One of these is not relevant to the Lease,[13] but the other three should be considered.

(a) Item 1.01 of Regulation S-K and Item 601(b)(10)(ii)(B) require disclosure and exhibit filing, respectively, for a contract upon which the company's "business is substantially dependent." The item says that this would be as in the case of

> continuing contracts to sell the major part of a [company's] products or services or to purchase the major part of [a company's] requirements of goods, services, or raw materials or any franchise or license or other agreement to use a patent, formula , trade secret, process or trade name upon which a [company's] business depends to a material extent.

It is hard to reason that the Lease was a contract upon which ALC's business was substantially dependent. In my view, there is no reasonable basis to conclude that the Lease was within this category.

(b) Item 1.01 of Regulation S-K and Item 601(b)(10)(ii)(C) require disclosure and exhibit filing, respectively, for a contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the company on a consolidated basis. While the Lease did not involve purchase of any

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[12] *See* ALC's Form 10-K for the year ended December 31, 2007 at p. 15.

[13] Item 601(b)(10)(ii)(A) applies to contracts with interested parties.

property, plant or equipment, it did involve purchase of leasehold interests from the prior leaseholder for $14.1 million.[14] At December 31, 2007, ALC reported property and equipment, net of $395.1 million.[15] To the extent that the Lease was deemed covered by this item and assuming that the purchase price for the leaseholder interests was the "consideration" for those interests, the contract price did not exceed 15% of ALC's fixed assets, or $59.2 million. In my view, there is no reasonable basis to conclude that the Lease fell within this category.

(c) Item 1.01 of Regulation S-K and Item 601(b)(10)(ii)(D) require disclosure and exhibit filing, respectively, for a contract which is a material lease under which a part of the property described in the applicable report is held by the company. Above, I have expressed my view that ALC would have had a reasonable basis to conclude that the Lease was not significant to a reasonable investor's investment decision or significantly alter the total mix of information that was available about ALC. For the same reasons, it is my view that ALC would have had a reasonable basis to conclude that the Lease was not picked up by this provision.

2. ***ALC Could Reasonably Have Concluded that It Was Not Omitting Material Information in its Disclosures Regarding Compliance with Certain Covenants under the Lease.***

Irrespective of whether or not the Lease was a material contract, ALC would still have had to make a judgment as to whether some aspect of the Lease could result in a material unfavorable impact on ALC. In effect, if the Lease contained a provision that could result in a material adverse impact on ALC based on future facts and circumstances, then would ALC have a duty to disclose this potentiality? This is a completely separate question from whether or not the Lease was a material contract. It involves whether and at what level a company has an obligation to disclose a possible future event. In this regard, the test for this consideration, as articulated by the US Supreme Court, demands an assessment of both the potential magnitude of the possible event and the potential likelihood of that event's occurrence.[16]

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[14] *See* ALC's Form 8-K filed on January 7, 2008.

[15] *See* ALC's Form 10-K for the year ended December 31, 2007 at p. 21.

[16] *See, e.g., Basic* at 238. The Court in *Basic* gave credit to the Second Circuit for this formulation, noting that "Even before this Court's decision in TSC Industries, the Second Circuit had explained the role of the materiality requirement of Rule 10b-5, with respect to contingent or (continued...)

In its Form 10-Q for the quarter ended September 30, 2008, ALC started including disclosure regarding a possible unfavorable impact of a provision of the Lease. This disclosure, which appeared under the caption "Future Liquidity and Capital Resources," provided as follows:

> We believe that cash from operations, together with other available sources of liquidity, including borrowings available under our $120 million revolving credit facility and other borrowings which may be obtained on currently unencumbered properties, will be sufficient to fund operations, expansions, acquisitions, stock repurchases, anticipated capital expenditures, and required payments of principal and interest on our debt for the next twelve months.
>
> Recent turmoil in financial markets has severely restricted the availability of funds for borrowing. We believe the lenders under our $120 million revolving credit facility will continue to meet their obligations to fund our borrowing requests. However, given the current uncertainty in financial markets, we can not provide assurance of their continued ability to meet their obligations under the credit facility. We believe that existing funds and cash flow from operations will be sufficient to fund our operations, expansion program, and required payments of principal and interest on our debt until the maturity of our $120 million credit facility in November, 2011. In the event that our lenders were unable to fulfill their obligations to provide funds upon our request under the $120 million revolving credit facility, it could have a material adverse impact on our ability to fund future expansions, acquisitions and share repurchases.
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> *In addition, the failure to meet certain operating and occupancy covenants in the CaraVita operating lease[17] could give the lessor the right to accelerate the lease obligations and terminate our right to operate all or some of those properties. We were in compliance with all such covenants as of September 30, 2008, but declining economic conditions could constrain our ability to remain in compliance in the future. Failure to comply with those obligations could result in our being required to make an accelerated payment of the present value of the remaining obligations under the lease through its expiration in March 2015 (approximately $28.6 million as of September 30, 2008), as well as the loss of*

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speculative information or events, in a manner that gave that term meaning that is independent of the other provisions of the Rule. Under such circumstances, materiality 'will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.' SEC v. Texas Gulf Sulphur Co., 401 F.2d, at 849." *Id.*

[17] This was the defined term for the Lease in the ALC Reports.

future revenue and cash flow from the operations of those properties. [Italics added][18]

The SEC has alleged that the italicized language in this disclosure, or some reasonably similar form of this disclosure which appeared in ALC's Forms 10-K for the years ended December 31, 2009, 2010 and 2011 and its Forms 10-Q for the first three quarters of those years, omitted material information.

In its Forms 10-Q for the second and third quarters of 2011 and Form 10-K for the year ended December 31, 2011, ALC added to the above "Future Liquidity and Capital Resources" disclosure the following statement: "Based upon current and reasonably foreseeable events and conditions, ALC does not believe that there is a reasonably likely degree of risk of breach of the CaraVita covenants."[19] This was added in response to an SEC staff comment following its review of ALC's filings. The SEC has alleged that this representation omitted material information.

The SEC's allegations regarding material omissions are based on what it calls the "improper inclusion of employees and other non-residents" in the calculations that ALC was making to measure its compliance with the financial coverage ratio and occupancy covenants in Section 8.2.5 of the Lease (the "Covenants").[20] Other than to note the ambiguity of these Covenants and the communications between ALC and Ventas as to how the Covenants were to work with respect to unit rentals to employees and other non-residents, I have no opinion on whether ALC was properly or improperly including unit rentals related to employees and other non-residents in its calculations regarding compliance with the Covenants. Based on my experience as a securities practitioner and with the practices of public companies in making disclosure judgments regarding possible future events, however, I am of the view that ALC would have had a reasonable basis to conclude that its disclosures regarding its compliance with the Covenants did not omit information which would have been material to investors.

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[18] See ALC's Form 10-Q for the quarter ended September 30, 2008 at p. 26.

[19] *See* ALC's Forms 10-Q for the quarter ended June 30, 2011 at p. 36 and for the quarter ended September 30, 2011 at p. 37 and Form 10-K for the year ended December 31, 2011 at p. 43.

[20] *See* Order Instituting Public Administrative and Cease-and-Desist Proceedings, *In the Matter of Laurie Bebo and John Buono*, AP File No. 3-16293 at paragraph 43.

This opinion is formed based on the Supreme Court's holding in *Basic* as to how to assess the materiality of omitted information in the context of disclosure regarding possible future events. *Basic* taught that in order to be actionable, omitted information itself must be material in the full context of the other information being disclosed. While the materiality standard set forth in *TSC* (and discussed above) for historical facts is direct enough - to be material the historical fact must be significant to a reasonable investor in making his or her investment decision - the same cannot be said for its application to possible future events. In this case, the test under *Basic* is not to assume that information becomes material by virtue of a public statement that denies that information but rather to analyze the materiality of the omitted information regarding the future event in the context both of the potential magnitude and the likely occurrence of the future event.

Here, the SEC has alleged that ALC's failure to disclose certain information regarding its compliance with the Covenants was a material omission. Based on the disclosure which ALC did provide regarding Covenant compliance and the record as I understand it, I am of the opinion that ALC could have reasonably concluded that it was not omitting information that was material to investors. I hold this opinion based on the following observations.

ALC did disclose the existence of the Covenants in some detail and filed the Lease as an exhibit, even if, as addressed above, no such disclosure or filing may have been affirmatively required. Accordingly, shareholders had full information as to the existence and the language of the Covenants.

ALC disclosed the full magnitude of the impact of being deemed in breach of the Covenants. The operative liquidated damages for a default under the Lease based on a breach of the Covenants was set forth the ALC Reports. Accordingly, shareholders had information of the worst case scenario regarding any potential default under the Lease for failure to meet the Covenants, without any equivocation regarding the enforceability of the liquidated damages provision of the Lease or conditionality regarding the likelihood that Ventas would assert a default if ALC were in breach of the Covenants.[21]

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[21] Uncertainty as to computation of damages, enforceability of damage claims or commercial viability of default scenarios, among others, were all factors which would have informed the analysis of the probability and magnitude of a possible default under the Lease.

As to the likelihood of ALC incurring a Covenant-based default under the Lease, ALC disclosed various factors that could challenge its compliance with the Covenants, thereby putting shareholders on notice of this potential risk. ALC also disclosed that it was in compliance with the Covenants. This was necessarily a judgment call involving, among other things, ALC's legal analysis of the Covenants and consideration of its course of dealing with Ventas under the Lease. The SEC disagrees with ALC's judgment on this point, and I express no opinion as to whether or not ALC's judgment in this regard was objectively reasonable. But, at a minimum, my review of the materials suggests that ALC's disclosure that it was in compliance with the Covenants was a belief it could reasonably have held. In any event, only Ventas could affirm compliance with the Covenants, and ALC's disclosure does not represent that Ventas had made such an affirmation. Accordingly, ALC shareholders were on notice as to ALC's views regarding the likely occurrence of a Covenant-based default.

The theory of the SEC's case, therefore, has to be that ALC omitted facts about the likelihood of a Lease default that would have been material to investors notwithstanding the disclosure that was provided on this topic. It is not clear, however, what those omitted facts would have looked like and why they would have put investors in a materially different informational position than they were already.

First, explaining how the Covenants were to be calculated and administered based on the Lease itself is far from obvious. Such an explanation might have been interesting as a technical matter but also likely to have resulted in the kind of "overabundance of information" questioned by the Court in *TSC*. Moreover, given the uncertainty as to how the Covenants worked, it is not clear that ALC could have provided a more detailed and accurate explanation than it did without diluting that explanation with numerous conditions.

Second, even if one assumes that ALC could have and should have attempted a more fulsome discussion of how the Covenants worked, that discussion could only speculate as to how Ventas would act in the face of any failure to meet the Covenants, including as to whether Ventas would have declared the Lease in default and sought liquidated damages. There does not appear to have been a time when ALC could reasonably have believed that a notice of default from Ventas for failure to comply with the Covenants was likely prior to the May 2012. Based on all the circumstances, including that ALC had little indication of Ventas's views on ALC's Covenant compliance, ALC's disclosure can best be read as stating its views of the facts

surrounding Covenant compliance and the possibility of a default under the Lease for breach of the Covenants.

Finally, it also appears that a default under the Lease for breach of the Covenants may not have been material to investors in any event. On May 9, 2012, ALC received a notice of default under the Lease from Ventas for, among other things, submission of "fraudulent information to the Landlord in respect of Tenant's compliance with Section 8.2.5 of the Lease. ...[which] included treating units leased to employees as bona fide rentals by third parties."[22] ALC disclosed this in a Form 8-K filed on May 14, 2012.[23] Two important facts should be noted about this disclosure. In the Form 8-K, ALC laid out the possible range of damages it could incur should Ventas succeed in its claims regarding a breach of the Covenants. On their face, from a strictly financial standpoint and assuming complete success by Ventas in its litigation, it is not clear that those damages were presumptively material. This would have supported a judgment that at this particular point in time when the Lease had only three more years to run, the magnitude of the possible damage from a potential Covenant default was not material. Second, counsel for Ms. Bebo have informed me that another expert witness will opine that ALC's stock price did not decline in a statistically significant way following ALC's disclosure of Ventas's notice of default for breach of the Covenants. The lack of share price reaction would further support my opinion that ALC could reasonably have concluded that it was not omitting material information in its disclosures regarding compliance with the Covenants.

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I hold the opinions set forth above to a reasonable degree of professional certainty. If additional arguments are raised, if there are further expert witness opinions or if I become aware

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[22] *See* SEC Testimony Exhibit 407

[23] In this Form 8-K, ALC also disclosed developments in a pending lawsuit which Ventas had against ALC for failure to comply with other provisions of the Lease. One of the developments was Ventas's filing of a motion to amend the complaint in that litigation on May 10, 2012. This amendment, however, did not include a claim for violation of the Covenants that had been stated in the May 9, 2012 notice of default.

of additional discovery or facts, I reserve the right to change or supplement the opinions I have set forth above.

March 13, 2015

David B. H. Martin

APPENDIX A

CURRICULUM VITAE

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Professional Experience

David Martin is a senior counsel in Covington & Burling LLP's securities practice and advises public companies, non-profit organizations, directors, financial professionals, investors and other clients in corporate, corporate governance, securities regulation and transactional matters. He has led teams of lawyers in public offerings, spin-offs, business combination and other change of control transactions, proxy contests and a variety of corporate financings. He counsels boards, senior executives and investors in governance practices and procedures. His practice also includes enforcement cases before the U.S. Securities and Exchange Commission, internal investigations and corporate compliance issues. Mr. Martin is a frequent lecturer and author of articles.

Mr. Martin's career includes seven years of service with the SEC, where he was the Director of the Division of Corporation Finance, the senior executive officer for the agency's program for review of reports of public companies to securities markets and investors, and also served as special counsel to the Chairman.

Education

- University of Virginia School of Law, J.D.
  - *Virginia Law Review*, Managing Editor
- Yale University, B.A.

Bar Admissions

- Virginia
- District of Columbia

Honors and Rankings

- *Chambers USA*, Nationwide Leading Individual, Securities: Regulation: Advisory (2006-2014)
- *The Best Lawyers in America* (2005–2014)
- *The Best Lawyers in America*, Washington Corporate Compliance Lawyer of the Year (2013-2014)
- Euromoney, Guide to the World's Leading Experts (2006-2008)
- *Washington D.C. Super Lawyers* (2010-2014)
- *Washingtonian*, Best Lawyers (2009, 2011, 2013)
- *The International Who's Who of Corporate Governance Lawyers* (2013-2015)
- The BTI Client Service All-Star Team (2006, 2010, 2013, 2015)

Additional Information

- Member, Corporate Laws Committee, Business Law Section, American Bar Association
- Board of Trustees, Securities and Exchange Commission Historical Society
- Four years of active duty service in U.S. Navy

Publications

- "Reminders for the 2015 Proxy Season," Covington Advisory (11/10/2014), Co-Author
- "D.C. Circuit Court of Appeals Invalidates Key Part of Conflict Minerals Rule," Covington Advisory (4/15/2014), Co-Author
- "SEC Proposes Rules for Crowdfunding," Covington Advisory (10/30/2013), Co-Author
- "Dodd-Frank Anti-Retaliation Provisions: Fifth Circuit Narrows Scope, Rejects SEC and District Court Interpretations," Covington Advisory (7/29/2013), Co-Author
- "Significant Changes to Rules for Private Securities Offerings," Covington Advisory (7/17/2013), Co-Author
- "D.C. District Court Vacates SEC's Resource Extraction Payment Rule," Covington Advisory (7/3/2013), Co-Author
- "STOCK Act Opens Up New Front for Insider Trading Cases," Covington E-Alert (5/16/2013), Co-Author
- "SEC Endorses Social Media as Public Disclosure Channel," Covington E-Alert (4/3/2013), Co-Author
- "Rule 10b5-1 Trading Plans: Avoiding the Heat," Bloomberg BNA Securities Regulation & Law Report (3/11/2013), Co-Author
- "Greenlight Capital v. Apple and Its Potential Impact on the 2013 Proxy Season," Covington E-Alert (3/4/2013), Co-Author
- "Something to Watch This Proxy Season: Next Generation Executive Compensation Lawsuits," Covington E-Alert (2/12/2013), Co-Author
- "Required Communications between Auditors and Audit Committees," Insights (February 2013), Co-Author
- "Required Communications Between Auditors and Audit Committees," Covington Advisory (1/29/2013), Co-Author
- "Conflict Mineral Rules: Frequently Asked Questions," Covington Advisory (1/3/2013), Co-Author
- "Significant Changes to Rules for Private Securities Offerings," Journal of Investment Compliance (2013), Co-Author
- "SEC Proposes to Permit Public Communications in Private Placement Rules," Covington Advisory (9/10/2012), Co-Author
- "SEC Adopts Resource Extraction Payment Rules," Covington Advisory (8/29/2012), Co-Author
- "SEC Adopts Conflict Minerals Rules," Covington E-Alert (8/24/2012), Co-Author
- "SEC Issues First Whistleblower Program Award," Covington E-Alert (8/22/2012), Co-Author
- "The IPO Climate: In the Wake of Facebook, Are IPOs Really Broken?," Wall Street Lawyer (8/1/2012), Co-Author

- "Dodd-Frank Update: SEC Adopts Rules on Compensation Committee Independence and Compensation Advisers," Covington Advisory (6/25/2012), Co-Author
- "The JOBS Act: New Rules for Emerging Growth Companies, Private Placements and "Crowdfunding"," Covington Advisory (4/2/2012), Co-Author
- "STOCK Act Spotlights Trading on Government Information," Covington E-Alert (3/28/2012), Co-Author
- "Rating Agency Regulation After The Dodd-Frank Act: A Mid-Course Review," Insights (December 2011), Co-Author
- "SEC Guidance on Disclosure Related To Cybersecurity," Covington Advisory (10/17/2011), Co-Author
- "Shareholder Access Litigation and Beyond," Covington Advisory (8/3/2011), Co-Author
- "Supreme Court Decision in Janus Litigation," Covington E-Alert (6/14/2011), Co-Author
- "Dodd-Frank Anti-Retaliation Provisions: First Federal Court Weighs In," Covington Advisory (5/20/2011), Co-Author
- "Matrixx Litigation: Supreme Court Throws Out 'Statistical Significance' Standard for Pleading Securities Fraud," Corporate Accountability Report (4/1/2011), Co-Author
- "SEC Proposes Controversial Whistleblower Rules," The Corporate Governance Advisor (January/February 2011)
- "Dodd-Frank Act: SEC Proposes Whistleblower Rules," Covington Advisory (11/8/2010), Co-Author
- "SEC Rule-Making Implementing New Disclosure and Due Diligence Reporting Requirements for Companies Manufacturing Products Using Conflict Minerals from the Democratic Republic of the Congo," Covington E-Alert (10/15/2010), Co-Author
- "SEC Adopts "Shareholder Access" Rules," Covington Advisory (8/25/2010), Co-Author
- "Dodd-Frank Act: Enhanced Protection for Whistleblowers Against Employer Retaliation," Covington Advisory (7/29/2010), Co-Author
- "Dodd-Frank Act: New Disclosure Rules Relating to Extractive Industries," Covington Advisory (7/22/2010), Co-Author
- "Dodd-Frank Act: Enhanced Protection of Investors and Other Changes to Securities Regulations," Covington Advisory (7/21/2010), Co-Author
- "Dodd-Frank Act: Executive Compensation and Corporate Governance," Covington Advisory (7/21/2010), Co-Author
- "Senate Conferees Propose to Effectively Overrule Gustafson V. Alloyd," Covington E-Alert (6/24/2010), Co-Author
- "Financial Regulatory Reform Legislation - Investor Protection Enhancements," Covington E-Alert (5/27/2010), Co-Author
- "Financial Regulatory Reform Legislation - Executive Compensation and Corporate Governance," Covington E-Alert (5/24/2010), Co-Author

- "Senate Financial Reform Legislation Addresses Proprietary Trading," Covington E-Alert (3/19/2010), Co-Author
- "Financial Services Regulatory Reform Legislation," Covington Advisory (3/16/2010), Co-Author
- "SEC Climate Change Disclosure," Bloomberg Podcasts (March 2010)
- "SEC Ushers in New Season for Climate Change Disclosure," Covington Advisory (1/28/2010), Co-Author
- "The SEC's New Cooperation Policy for Individuals: Only Time Will Tell its Effectiveness," Covington E-Alert (1/14/2010), Co-Author
- "Important Changes for the 2010 Proxy Season and Beyond (Updated)," Covington Advisory (1/5/2010), Co-Author
- "Enhanced Protection of Investors and Other Changes to Securities Regulations," Journal of Investment Compliance (2010), Co-Author
- "SEC Changes Approach to Shareholder Proposals on Risk Assessment and CEO Succession," Covington Advisory (11/9/2009), Co-Author
- "Update on Private Fund Adviser Registration," Covington E-Alert (10/29/2009), Co-Author
- "SEC Publishes Rule Proposal to Curb Investment Adviser "Pay-To-Play" Abuses," Covington E-Alert (8/5/2009), Co-Author
- "Say-on-Pay and Compensation Committee Legislation-And More," Covington E-Alert (7/20/2009), Co-Author
- "Registration of Advisers to Private Investment Funds," Covington E-Alert (7/16/2009), Co-Author
- "Anticipating a New Federal "Pay-To-Play" Rule For Investment Advisers," Covington E-Alert (7/6/2009), Co-Author
- "SEC Nixes Broker Voting In Director Elections," Covington Advisory (7/1/2009), Co-Author
- "Obama Administration Outlines Proposal for Comprehensive Financial Regulatory Reform," Covington E-Alert (6/17/2009), Co-Author
- "Obama Administration Outlines Executive Compensation Reform Plans," Covington E-Alert (6/10/2009), Co-Author
- "SEC Proposes Adoption of "Shareholder Access" Rule," Covington Advisory (5/21/2009), Co-Author
- "Possible SEC Registration of Investment Funds," Covington E-Alert (4/17/2009), Co-Author
- "Treasury Outlines Framework for Financial Regulatory Reform," Covington E-Alert (3/27/2009), Co-Author
- "Information You Can Use – SEC Requires Financial Information in XBRL Format," Covington Advisory (2/3/2009), Co-Author
- "Stockholder Proposals in the 2009 Proxy Season: What to Expect and How to Prepare," Covington E-Alert (12/17/2008), Co-Author

- "Company Websites and the Securities Laws," 40th Annual Institute on Securities Regulation (August 2008)
- "Disclosure Implications of Fair Value Accounting and the Subprime Mortgage Crisis," 40th Annual Institute on Securities Regulation (August 2008)
- "Resales of Securities—An Expanded Safe Harbor: Revisions to Rules 144 and 145," *Covington Advisory* (1/9/2008), Co-Author
- "Retooling the Internal Control Process—A Welcome Relief," *Insights: The Corporate & Securities Law Advisor* (August 2007), Co-Author
- "Considering Director Independence," *Covington Advisory* (7/12/2007), Co-Author
- "Retooling the Internal Control Process—A Welcome Relief," *Covington Advisory* (7/2/2007), Co-Author
- "Tellabs, Inc. v. Makor Issues & Rights, Ltd.: A Uniform Test for Pleading Scienter in Securities Fraud Cases," *Covington E-Alert* (6/29/2007), Co-Author
- "New SEC Rules for Foreign Company Deregistration," *Covington Advisory* (4/6/2007), Co-Author
- "Electronic Proxy Delivery: SEC Adopts "Notice and Access" Rules," *Covington Advisory* (3/19/2007), Co-Author
- "SEC Amends Disclosure Rules for Stock-Based Compensation," *Covington Advisory* (12/28/2006), Co-Author
- "New Securities Law Disclosures and Listing Standards for 2007," *Covington Advisory* (12/19/2006), Co-Author
- "New Executive Compensation Disclosure Rules," *Covington Advisory* (8/23/2006), Co-Author
- "SEC Adopts Sweeping Changes to Executive Compensation Disclosure Rules," *Covington Advisory* (7/27/2006), Co-Author
- "SEC Rejects Company's Argument That Majority Voting Policy Substantially Implements Majority Vote Shareholder Proposal," *BNA Corporate Counsel Weekly* (1/18/2006), Co-Author
- "Exchange Act Reporting Update," *Covington Advisory* (1/9/2006), Co-Author
- "Corporate Penalty Guidelines," *Covington Advisory* (1/7/2006), Co-Author
- "Securities Registration: Will Free Writing Prospectuses Be Used?," *Insights: The Corporate & Securities Law Advisor* (October 2005), Co-Author
- "A Breath of Fresh Air: The SEC Adopts Securities Offering Reform Amendments," *Covington Advisory* (7/26/2005), Co-Author
- "In Search of Internal Control—A Mid-Course Correction?," *BNA Corporate Accountability Report* (7/8/2005), Co-Author
- "In Search of Internal Control—A Mid-Course Correction?," *Covington Advisory* (6/16/2005), Author
- "New Securities Law Disclosures in 2004—U.S. and Foreign Private Issuers," *Covington Advisory* (11/1/2004), Co-Author
- "New Deferred Compensation Legislation: Corporate and Securities Law Issues for Companies Amending Compensation Plans and Arrangements," *Covington Advisory* (10/29/2004), Co-Author

Representative Recent Speaking Engagements

- "46th Annual Institute on Securities Regulation," (Moderator), Practising Law Institute (New York, NY) (11/05/2014)
- "Private Placements and Other Financing Alternatives 2014," (Presenter), Practising Law Institute (New York, NY) (3/25/2014)
- "Regulation D Offerings and Private Placements," (Faculty), ALI-CLE (Scottsdale, AZ) (3/13-15/2014)
- "When Bad Things Happen to Good Companies," (Panelist), Delaware Law Issues Update (Society of Corporate Secretaries and Governance Professionals, University of Delaware (Newark, DE) (11/20/2013)
- "Plenary Panel: SEC Corp Fin Heads Speak," (Co-Presenter), 2013 National Conference, Society of Corporate Secretaries and Governance Professionals (Seattle, WA) (7/11/2013)
- "Conflict Minerals Q&A Session," (Co-Presenter), ITI Environmental Leadership Council Spring Meeting (Arlington, VA) (5/20/2013)
- "Private Placements and Other Financing Alternatives," (Presenter), Practising Law Institute (New York, NY) (4/15/2013)
- "Regulation D Offerings and Private Placements," (Faculty), ALI-CLE (Scottsdale, AZ) (03/14-16/2013)
- "44th Annual Institute on Securities Regulation," (Panelist), Practising Law Institute (New York, NY) (11/18/2012)
- "JOBS ACT 2012: What You Need to Know Now," (Co-Chair), Practising Law Institute (New York, NY) (5/30/2012)
- "SEC Hot Topics Institute 2012," (Panelist), RR Donnelley and Society of Corporate Secretaries & Governance Professionals (Seattle, WA) (5/22/2012)
- "Private Placements and Other Financing Alternatives," (Presenter), Practising Law Institute (New York, NY) (4/16/2012)
- "Regulation D Offerings and Private Placements," (Faculty), ALI-ABA (Scottsdale, AZ) (3/15-3/17/2012)
- "SEC Corporation Finance Directors Past and Present," (Panelist), Corporate Governance - A Master Class 2012, Practising Law Institute (New York, NY) (2/15/2012)
- "43d Annual Institute on Securities Regulation," Practising Law Institute (New York, NY) (November 2011)
- "The New SEC Whistleblower Rules: What Will They Mean in Practice?," Covington & Burling Webinar (6/23/2011)
- "The SEC Whistleblower Rules: A New Era in Fraud Investigation," West LegalEd Center (June 6, 2011)
- "Private Placements and Other Financing Alternatives," Practising Law Institute (New York, NY) (April 2011)
- "Regulation D Offerings and Private Placements," ALI-ABA (Scottsdale, AZ) (March 2006-2011)

- "Private Placements and Other Financing Alternatives," Practising Law Institute (New York, NY) (April 2010)
- "Private Placements and Regulation D Offerings," Presentation to Law & Entrepreneurship class, University of Florida Frederic G. Levin College of Law (March 26, 2010)
- "41st Annual Institute on Securities Regulation," Practising Law Institute (New York, NY) (November 2009)
- "40th Annual Institute on Securities Regulation," Practising Law Institute (New York, NY) (November 2008)
- "Postgraduate Course in Federal Securities Law," ALI-ABA (San Francisco, CA) (June 2008)
- "Securities & Accounting Issues Affecting Foreign Private Issuers," 2007 CFO Conference of the Organization for International Investment, Washington, DC (10/26/2007)
- "Solicitation, Media and IR Strategies: After E-Proxy and the Loss of Broker Non-Votes" and "'Say on Pay' and Other Equity Compensation Legislation: The View from Inside Washington," Annual Conference of the National Association of Stock Plan Professionals (San Francisco, CA) (10/10/2007)
- "Beyond Borders: A New Approach to the Regulation of Global Securities Offerings," SEC Historical Society Annual Meeting (Washington, DC) (6/7/2007)
- "Developments in Executive Compensation Disclosure," ERISA Industry Committee Conference (Washington, DC) (4/25/2007)
- "Sarbanes-Oxley Section 404 -- The Pros and Cons of Financial Statement Certification," The Securities Law Program at Catholic University School of Law (Washington, DC) (3/7/2007)
- "Corporate Governance and Compliance," Executive Enterprise Institute's Advanced SEC Reporting and Sarbanes-Oxley Compliance (New York, NY) (11/30/2006)
- "Sarbanes-Oxley Compliance and Wish List for Reform!," Organization for International Investment (Washington, DC) (10/17-19/2006)
- "Implementing the SEC's New Executive Compensation Disclosures: What You Need to Do Now!," The CorporateCounsel.net (Washington, DC) (9/11-12/2006)

Appendix B

- Order Instituting Public Administrative Cease-And-Desist Proceedings, *In the Matter of Laurie Bebo and John Buono, CPA*, AP File No. 3-16293
- Laurie Bebo Wells Submission Dated August 1, 2014
- SEC Testimony Transcripts referenced in the attached 2/19/2015 letter from Ryan Stippich
- SEC Testimony Exhibits 1-727
- ALC_SEC0073528-29
- ALC_SEC0282545-282555
- ALC0033263-64
- GT-SEC 805428-34
- GT-SEC 600230-40
- Documents referenced in attached 2/19/15 e-mail from Ryan Stippich
- Documents referenced in the attached 2/24/2015 letter from Ryan Stippich
- Documents referenced in attached 2/27/15 e-mail from Ryan Stippich

Reinhart
Attorneys at Law

Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
Milwaukee, WI 53201-2965

1000 North Water Street
Suite 1700
Milwaukee, WI 53202

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Facsimile: 414-298-8097
Toll Free: 800-553-6215
reinhartlaw.com

February 19, 2015

Ryan S. Stippich
Direct Dial: 414-298-8264
rstippich@reinhartlaw.com

David B. H. Martin, Esq.
Covington & Burling LLP
One CityCenter
850 Tenth Street N.W.
Washington, D.C. 20001

Dear David:

Re: In the Matter of Laurie Bebo and John Buono, CPA
File No. 3-16293

I enclose the following transcripts of testimony taken from witnesses by the Securities and Exchange Commission in the above referenced matter:

Current or former employees of ALC

- Laurie Bebo
- Kathy Bucholtz
- John Buono
- Eric Fonstad
- Tony Ferreri
- Dan Grochowski
- Robin Herbner
- David Hokeness
- Walter Levonowich
- Sean Schelfout
- Mary Zak-Kowalczyk

Ventas Personnel

- Joy Butora
- Tim Doman
- William Johnson
- Joseph Solari

Grant Thornton Personnel

- Jamal Black
- Kyle Borsheim
- Robert Fox
- Amy Henselin
- Vijay Kamdar
- Melissa Koeppel
- Stephanie Liebl
- Melissa Oberst
- Jeffrey Robinson
- Jim Trouba

Quarles & Brady Attorneys

- Matt Flynn
- Ryan Morrison
- Mike Zeka

Yours very truly,

Ryan S. Stippich

31414620

Encs.

From: Ryan S. Stippich
Sent: Thursday, February 19, 2015 6:50 PM
To: dmartin@cov.com
Cc: Mark A. Cameli
Subject: Laurie Bebo Materials
Attachments: 2015.02.19 Stippich to Martin enc. Testimony of Witnesses in SEC Taken D....pdf

Hi David,

Testimony transcripts should arrive tomorrow, per the attached.

Also, several of the challenged ALC filings with the SEC are linked below. The challenged statement is generally contained in the "Future Liquidity and Capital Resources" sections:

2009 Form 10-K filed on 3/11/2010:
http://www.sec.gov/Archives/edgar/data/929994/000095012310023507/c97565e10vk.htm

2010 First Quarter 10-Q filed on 5/6/2010:
http://www.sec.gov/Archives/edgar/data/929994/000095012310045593/c00374e10vq.htm
2010 Second Quarter 10-Q filed on 8/9/2010:
http://www.sec.gov/Archives/edgar/data/929994/000095012310074982/c04513e10vq.htm
2010 Third Quarter 10-Q filed on 11/4/2010:
http://www.sec.gov/Archives/edgar/data/929994/000095012310100644/c07820e10vq.htm
2010 Form 10-K filed on 3/10/2011:
http://www.sec.gov/Archives/edgar/data/929994/000095012311024204/c13949e10vk.htm

2011 First Quarter 10-Q filed on 5/5/2011:
http://www.sec.gov/Archives/edgar/data/929994/000095012311045521/c16589e10vq.htm
2011 Second Quarter 10-Q filed on 8/8/2011:
http://www.sec.gov/Archives/edgar/data/929994/000114036111040285/form10q.htm
2011 Third Quarter 10-Q filed on 11/8/2011:
http://www.sec.gov/Archives/edgar/data/929994/000114036111052194/form10q.htm
2011 Form 10-K filed on 3/12/2012:
http://www.sec.gov/Archives/edgar/data/929994/000114036112014936/form10k.htm

Finally, here is the SEC Comment Letter:
http://www.sec.gov/Archives/edgar/data/929994/000000000011044343/filename1.pdf

And ALC's response:
http://www.sec.gov/Archives/edgar/data/929994/000095012311072988/filename1.htm

Best regards,
Ryan

Ryan S. Stippich
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700 | Milwaukee, WI 53202
Office: 414-298-8264 | Cell: 414-687-6920 | Fax: 414-298-8097
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February 24, 2015

Ryan S. Stippich
Direct Dial: 414-298-8264
rstippich@reinhartlaw.com

DELIVERED BY COURIER

David B. H. Martin, Esq.
Covington & Burling, LLP
One City Center
850 Tenth Street, NW
Washington, D.C. 20001

Dear Mr. Martin:

Re: In the Matter of Laurie Bebo and John Buono, CPA)

I enclose a set of 5 binders containing the attached list of the Bates numbered documents. If you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

Ryan S. Stippich

31445932

Encs.

ALC_SEC0004264

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VSEC0015428

VSEC0016012

VSEC0016019

VSEC0016503

VSEC0016672

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VSEC0017427

VSEC0017429

VSEC0017483

From: Ryan S. Stippich
Sent: Friday, February 27, 2015 2:54 PM
To: dmartin@cov.com
Cc: Mark A. Cameli
Subject: SEC v. Bebo - Additional Information

David,

Set forth below is some additional information you requested about disclosures related to the Ventas lease.

Form 8-K with a copy of the Lease filed with the SEC on 1/8/2008 -
http://www.sec.gov/Archives/edgar/data/929994/000095013708000115/c22707e8vk.htm :

Item 1.01. Entry into a Material Definitive Agreement.

On December 31, 2007, subsidiaries of Assisted Living Concepts, Inc. (the "Company") entered into a master lease agreement with Ventas Realty, Li and independent living communities located in the southeast United States. The lease is effective as of January 1, 2008. The eight communities are: Car Marietta Georgia; Highland Terrace in Inverness, Florida; Peachtree Estates in Dalton, Georgia; Tara Plantation in Cumming, Georgia; The Inn at Senec Georgia; and Winterville Retirement Center in Winterville, Georgia. The communities comprise 541 units, consisting of a combination of independent interests were purchased by a subsidiary of the Company from BBLRG, LLC, doing business as CaraVita, also effective January 1, 2008, for a purchase March 31, 2015. The Company has three (3) five-year renewal options beyond the initial term. The lease is a "triple net" lease pursuant to which the Co interest on any debt associated with the properties. Rent for the first year of the lease is $4.86 million. Rent under the lease increases annually effective exercise of the first renewal option and by 2.5% annually during the balance of the first renewal term. Rent for the second renewal option increases annu Rent for first year of the third renewal option will be the greater of the prior year's rent or the fair market rent as determined by a third party appraiser and renewal term. The lease contains customary representations and warranties and affirmative and negative covenants, including financial covenants requi the portfolio to maintain a coverage ratio of 1.0 to 1.0; each community to maintain quarterly occupancy of at least 65% and trailing twelve month occu twelve month occupancy of at least 82%. The lease is guaranteed pursuant to a guaranty of lease dated January 1, 2008 made by the Company for the be

The foregoing summaries of the master lease agreement and guaranty of lease are qualified in their entirety by reference to the text of such documents and incorporated herein by reference.

From Q1 2008 Form 10-Q filed 5/8/2008 -
http://www.sec.gov/Archives/edgar/data/929994/000095013708007074/c26594e10vq.htm :

6. ACQUISITION

On January 1, 2008, ALC acquired the operations of eight assisted and independent living residences consisting of a total of under its $100 million credit facility. In connection with the assumed lease, the Company guarantees certain quarterly minimum event of default under the lease. At March 31, 2008, ALC was in compliance with all covenants.

From Q2 2008 Form 10-Q filed 8/7/2008 -
http://www.sec.gov/Archives/edgar/data/929994/000095013708010392/c34572e10vq.htm :

6. ACQUISITION

On January 1, 2008, ALC acquired the operations of BBLRG, LLC, doing business as CaraVita, consisting of eight a including fees and expenses of $14.8 million. The master lease has an initial term expiring in March 2015 with three fiv credit facility. In connection with the master lease, ALC guarantees certain quarterly minimum occupancy levels and is minimum fixed charge coverage ratios. Failure to comply with these covenants could result in an event of default under

From Q3 2008 From 10-Q filed 11/6/2008 -
http://www.sec.gov/Archives/edgar/data/929994/000095013708013483/c47516e10vq.htm :

6. ACQUISITION

On January 1, 2008, ALC acquired the operations of BBLRG, LLC, doing business as CaraVita, consisting of eight assis including fees and expenses of $14.8 million. The master lease has an initial term expiring in March 2015 with three five-ye credit facility. In connection with the master lease, ALC guarantees certain quarterly minimum occupancy levels and is subj minimum fixed charge coverage ratios. Failure to meet certain operating and occupancy covenants in the Cara Vita operatir right to operate all or some of those properties. At September 30, 2008, ALC was in compliance with all covenants.

In the same 10-Q the following also appears in the filing in the "Future Liquidity and Capital Resources" section:

Future Liquidity and Capital Resources

We believe that cash from operations, together with other available sources of liquidity, including borrowings available und obtained on currently unencumbered properties, will be sufficient to fund operations, expansions, acquisitions, stock repurchas our debt for the next twelve months.

Recent turmoil in financial markets has severely restricted the availability of funds for borrowing. We believe the lenders un fund our borrowing requests. However, given the current uncertainty in financial markets, we can not provide assurance of thei existing funds and cash flow from operations will be sufficient to fund our operations, expansion

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program, and required payments of principal and interest on our debt until the maturity of our $120 million credit facility in No provide funds upon our request under the $120 million revolving credit facility, it could have a material adverse impact on our

In addition, the failure to meet certain operating and occupancy covenants in the CaraVita operating lease could give the les some of those properties. We were in compliance with all such covenants as of September 30, 2008, but declining economic co comply with those obligations could result in our being required to make an accelerated payment of the present value of the ren $28.6 million as of September 30, 2008), as well as the loss of future revenue and cash flow from the operations of those proper

Best regards,
Ryan

Ryan S. Stippich
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Reinhart