

September 28, 2016

2nd Update on LOTEDC Bond Litigation

No Settlement at the August 30th Mediation

Despite an all-day mediation session with all the parties and their attorneys present, the pending case did not settle last week. Phase One of the Trial, a bench trial, is set to start October 17, 2016, in the Waukesha County Circuit Court before Judge Lazar.

Phase One of the Trial:

Phase One will focus on the Tribal Parties' defenses that the bond documents are invalid and Saybrook's claim that Stifel provided an implied warranty to Saybrook regarding the validity of the bond documents. If the Tribal Parties prevail in Phase One, their position in the litigation going forward will be greatly improved and their potential liability materially limited. If Saybrook prevails in its claims against Stifel in Phase One, this will also likely benefit the Tribal Parties. At this point, it is impossible to predict what will happen, but the trial team is working vigorously to advance the interests of the Tribal Parties. We expect Phase One will finish in early November, or earlier, but it could be several weeks before Judge Lazar issues a ruling on the issues raised, and there will likely be post-trial motion practice regardless of the results.

2nd Mediation:

Judge Lazar has ordered a 2nd mediation to be held on or before December 16, 2016. She will likely have ruled on the issues raised during Phase One of the Trial by then and wants the parties to again consider settlement before Phase Two of the Trial starts on January 30, 2017. Depending on the results of Phase One, the case may be in a better position to settle at that point.

Phase Two of the Trial:

As a result of the numerous claims and cross-claims, regardless of the result in Phase one of the Trial, the LOTEDC and the Tribe, as well as Stifel, Godfrey & Kahn, and Denton's, will try their respective claims against one another for bond liability, breach of contract, and tort claims such as misrepresentation and legal malpractice during Phase Two of the Trial, commencing January 30, 2017. Unlike Phase One, Phase Two of the Trial will be decided by a jury, not the judge.

Denton's has moved that there be a Phase Three of the Trial to determine the legal malpractice claims. We will keep you informed regarding whether the Court grants this motion.

We will also provide a further update after Phase One of the Trial, including how the results there may bear on the Tribal Parties' interests in Phase Two of the Trial.

For additional background on the litigation, please see the updates and information posted on the tribal website (<https://www.ldftribe.com/>).