

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

**SAYBROOK TAX EXEMPT INVESTORS,  
LLC,**

401 Wilshire Blvd., Suite 850  
Santa Monica, CA 90401;

**LDF ACQUISITION, LLC,**

401 Wilshire Blvd., Suite 850  
Santa Monica, CA 90401; and

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION,**

MAC N9311-115  
625 Marquette Avenue, 11th Floor  
Minneapolis, MN 55479,

Plaintiffs,

v.

**LAC DU FLAMBEAU BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS,**

William Wildcat Tribal Center  
P.O. Box 67  
Lac du Flambeau, WI 54538;

**LAKE OF THE TORCHES ECONOMIC  
DEVELOPMENT CORPORATION,**

510 Old Abe Road  
Lac du Flambeau, WI 54538;

**STIFEL, NICOLAUS & COMPANY, INC.,**

309 N. Water Street, Suite 150  
Milwaukee, WI 53207;

**STIFEL FINANCIAL CORP.,**

510 N. Broadway,  
St. Louis, MO 63102; and

**GODFREY & KAHN, S.C.,**

780 N. Water Street  
Milwaukee, WI 53202,

Defendants.

12CV00187

Case No. \_\_\_\_\_

30301 Money Judgment

30303 Other-Contracts

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## COMPLAINT

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Plaintiffs, Saybrook Tax Exempt Investors, LLC, LDF Acquisition, LLC, and Wells Fargo Bank, N.A., by their undersigned counsel, complain against the Defendants as follows:

### Nature of the Case

This action stems from the default and repudiation of \$50 million in Taxable Gaming Revenue Bonds (the "Bonds") by Defendant Lake of the Torches Economic Development Corporation ("EDC") and from misrepresentations made by Defendants EDC, investment bank Stifel, Nicolaus & Company, Inc. ("Stifel"), and the law firm of Godfrey & Kahn, S.C. ("Godfrey & Kahn") in connection with the sale of the Bonds to Plaintiff LDF Acquisition, LLC, a special purpose vehicle of Plaintiff Saybrook Tax Exempt Investors, LLC (together, "Saybrook").

This Complaint asserts causes of action against EDC for breach of the Bonds and equitable contract remedies, or rescission of the same, conversion, and misrepresentation. In the alternative, in the event that EDC does not fully perform its obligations to Saybrook pursuant to the Bonds, this Complaint includes causes of action against Stifel for breach of contract (arising out of Stifel's sale of the Bonds to Saybrook) or rescission of the same, as well as claims based on misrepresentations Stifel made to Saybrook in connection with the sale of the Bonds. As to Stifel's securities-based misrepresentations, Stifel Financial Corp. ("Stifel Financial") is liable as a controlling person of Stifel. Saybrook also brings claims against Godfrey & Kahn for misrepresentations it made to Saybrook and for legal malpractice. Saybrook further seeks a declaration that the guaranty entered by the Lac du Flambeau Band of Lake Superior Chippewa Indians (the "Tribe") to secure EDC's promise to repay the Bonds remains valid and enforceable,

and that the Tribe must pay Saybrook all amounts outstanding pursuant to the Bonds when the guaranty matures if EDC has not fully performed under the Bonds.

### **THE PARTIES**

1. Plaintiff LDF Acquisition, LLC, is a limited liability company, created as a special purpose vehicle by Plaintiff Saybrook Tax Exempt Investors, LLC, to purchase the Bonds. It has numerous members, at least one of whom is a resident of the State of Wisconsin.

2. Plaintiff Saybrook Tax Exempt Investors, LLC, is a limited liability company. Saybrook Tax Exempt Investors, LLC, is the manager and a member of Plaintiff LDF Acquisition, LLC.

3. Plaintiff Wells Fargo Bank, National Association (“Wells Fargo”) is a national banking association with trust powers, with its principal place of business in Sioux Falls, South Dakota; Wells Fargo’s Corporate Trust Division has its principal place of business in Minneapolis, Minnesota. At all relevant times, Wells Fargo has acted as Trustee on behalf of the bondholders.

4. Defendant EDC is a corporation chartered by the Tribe pursuant to Article VI, Section 1(o) of the Tribe’s constitution.

5. Defendant Tribe is an Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 461 *et seq.*) and recognized by the federal government.

6. Defendant Stifel is a brokerage and investment banking corporation organized under the laws of Missouri; its principal place of business is in St. Louis, Missouri. Stifel is a wholly owned subsidiary of Defendant Stifel Financial. Stifel has a place of business at 18000 Sarah Lane, Suite 180, Brookfield, Wisconsin, which was a primary location of its activity in this matter.

7. Defendant Stifel Financial is a brokerage and investment banking firm, organized under the laws of Delaware; its principal place of business is in St. Louis, Missouri. Stifel Financial is the parent of Stifel. According to the “About Us” page on its website (attached hereto as Exhibit R), Stifel Financial “provides securities brokerage, investment banking, trading, investment advisory, and related financial services through its wholly owned subsidiaries, primarily [Stifel], to individual investors, professional money managers, businesses, and municipalities.” (Ex. R at 1.)

8. Defendant Godfrey & Kahn is a service corporation organized under the laws of Wisconsin. Godfrey & Kahn maintains an office at N21 W23350 Ridgeview Parkway, Waukesha, Wisconsin. It also has offices in Milwaukee, Madison, Green Bay, Appleton, and Washington, D.C.

#### **JURISDICTION AND VENUE**

9. This Court, as a court of general jurisdiction, has subject matter jurisdiction over this action pursuant to Wis. Const. Art. VII, § 8, Wis. Stat. § 753.03, and the terms of the Bonds and other instruments (as hereinafter defined and described) at issue in this proceeding.

10. Defendant EDC is subject to personal jurisdiction in this Court because it is engaged in substantial and not isolated activities within Wisconsin and Plaintiffs’ injuries arose out of EDC’s acts or omissions within this state. Wis. Stat. §§ 801.05(1)(d), 801.05(3). Further, EDC has expressly waived its immunity to suit in the courts of Wisconsin.

11. Defendant Tribe is subject to personal jurisdiction in this Court because it is engaged in substantial and not isolated activities within Wisconsin. Wis. Stat. § 801.05(1)(d). Further, the Tribe has expressly waived its immunity to suit in the courts of Wisconsin.

12. Defendant Stifel is subject to personal jurisdiction in this Court because it is engaged in substantial and not isolated activities within Wisconsin and Plaintiffs' injuries arose out of Stifel's acts or omissions within this state. Wis. Stat. §§ 801.05(1)(d), 801.05(3).

13. Defendant Stifel Financial is subject to personal jurisdiction in this Court because it is engaged in substantial and not isolated activities within Wisconsin and Plaintiffs' injuries arose out of Stifel Financial's acts or omissions within this state. Wis. Stat. §§ 801.05(1)(d), 801.05(3).

14. Defendant Godfrey & Kahn is subject to personal jurisdiction in this Court because it is engaged in substantial and not isolated activities within Wisconsin and Plaintiffs' injuries arose out of Godfrey & Kahn's acts or omissions within this state. Wis. Stat. §§ 801.05(1)(d), 801.05(3).

15. Venue is appropriate in this Court because a defendant does substantial business in Waukesha County and Plaintiffs' claims arose there. Wis. Stat. §§ 801.50(2)(a), (c). Venue is also proper in this Court because it is the county designated by the plaintiffs. Wis. Stat. § 801.50(2)(d).

16. Plaintiffs have sought leave to file a substantially similar version of this Complaint in the United States District Court for the Western District of Wisconsin.<sup>1</sup> *See Wells Fargo, Nat'l Ass'n et al. v. Lake of the Torches Econ. Dev. Corp. et al.*, No. 3:09-cv-00768-rtr. EDC agreed in the Bonds (attached hereto as Exhibit A) that "in the event (but only in the event) the said federal court fails to exercise jurisdiction," the courts of the state of Wisconsin constitute the proper forum. (Ex. A at 5.) Similarly, the Tribe agreed in a Tribal Agreement (attached

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<sup>1</sup> In accordance with Local Court Rule 5.6(c), Plaintiffs have filed copies of non-Wisconsin authorities relied upon in this Complaint, including their motion for leave to amend in the District Court and their proposed Second Amended Complaint.

hereto as Exhibit I) that “in the event (but only in the event) the said federal court fails to exercise jurisdiction,” the courts of the state of Wisconsin constitute the proper forum. (Ex. I at 5). In the event the District Court fails to exercise jurisdiction over the claims against EDC and the Tribe, jurisdiction over EDC and the Tribe is proper in the courts of the state of Wisconsin. Moreover, as to the remaining defendants, no federal cause of action is alleged and no diversity jurisdiction exists. Therefore, jurisdiction as to each of the remaining defendants is proper in this Court.

## **FACTUAL BACKGROUND**

### **The Sale of the Bonds**

17. EDC is a wholly owned entity of the Tribe, established under tribal law to own and operate the Lake of the Torches Resort Casino in Lac du Flambeau, Wisconsin (the “Casino Facility”).

18. In order to refinance and consolidate certain EDC debt associated with the operation of the Casino Facility, and to fund another unrelated business venture of the Tribe, EDC sought financing through the bond markets.

19. Specifically, EDC had approximately \$28 million in existing debt, spread across different lenders, that EDC wished to refinance. Some of that debt was due to mature in early 2008. The Tribe, through a different corporation, was also engaged in a non-Indian casino construction project in Natchez, Mississippi, that had construction deadlines and other financial pressures that the Tribe, through EDC, was seeking to resolve through the bond financing.

20. EDC charged Stifel with marketing the Bonds.

21. In or around October 2007, Michael Schinzer, an employee in Stifel’s Brookfield office, approached Saybrook to solicit Saybrook’s interest in purchasing the Bonds.

22. After engaging in due diligence and negotiating the terms under which the Bonds would be issued and sold, Saybrook decided to purchase the Bonds.

23. The Bonds were sold pursuant to SEC Rule 144A, exempting them from registration requirements under federal securities law. Under Rule 144A, Stifel acted as the Initial Purchaser of the Bonds from EDC with the intent to immediately resell them to Saybrook, a Qualified Institutional Buyer (as defined by Rule 144A).

24. Under the agreed-upon structure of the transaction, on or about January 18, 2008, EDC issued Bonds with a principal amount of \$50,000,000 and sold them to Stifel for \$49,125,000. Stifel immediately, on January 18, 2008, resold the Bonds to Saybrook, with Wells Fargo as Trustee. The “trade ticket” for the sale of the Bonds by Stifel to Saybrook, attached hereto as Exhibit S, reflects that the sale of the \$50,000,000 in principal amount of the Bonds at issue here was executed by Michael Schinzer, Stifel’s Brookfield employee. (Ex. S at 1.)

25. Saybrook paid Stifel \$49,500,000 for the Bonds. Stifel retained \$375,000 of the Bond proceeds as an Initial Purchaser’s discount—essentially, its fee for the transaction. Upon closing, Wells Fargo certified that Wells Fargo received \$49,125,000 of proceeds of the Bond issue. Wells Fargo distributed funds to satisfy EDC’s bank debt and financial obligations and to cover the costs of the sale of the Bonds, including fees of \$125,000 to Godfrey & Kahn. Wells Fargo distributed the remaining funds to EDC, which accepted and utilized the funds.

26. EDC promised to repay \$50,000,000 over a period of five years, with interest.

27. The Bonds contain EDC’s promise to pay. The Bonds provide for repayment by EDC of the principal and—twice a year, on April 1 and October 1—payment of 12 percent interest on the Bonds.

28. The corresponding Trust Indenture (the “Indenture”), which provided the means by which EDC would repay its debt, required EDC to make annual payments toward reducing

the outstanding principal on the Bonds (beginning on October 1, 2009) according to the following schedule:

2009: \$3,385,000

2010: \$3,790,000

2011: \$4,245,000

2012: \$38,580,000

29. The outstanding principal on the Bonds would be reduced by the above amounts each year, with the balance of the original \$50,000,000 debt—\$38,580,000—due on October 1, 2012.

30. As of the time of this Complaint, the amount outstanding under the Bonds is approximately \$46,615,000 in principal. In addition, accrued interest is also due.

31. The Tribe issued a guaranty to further secure the Bond debt.

32. Saybrook and Wells Fargo fully and wholly performed their obligations under the various agreements entered in connection with the sale of the Bonds, including the Indenture and the Bonds.

33. As part of the sale of the Bonds, EDC entered into, issued, or caused to be issued a number of documents, including the following:

- (a) The Bonds, issued on or about January 18, 2008 (the specimen bond is attached hereto as Exhibit A).
- (b) A Limited Offering Memorandum (“Offering Memo”), dated January 18, 2008, prepared and drafted by Stifel, bearing Stifel’s mark, and signed by an officer of EDC (attached hereto as Exhibit B).
- (c) A Bond Purchase Agreement, dated January 18, 2008, between EDC and Stifel (attached hereto as Exhibit C).
- (d) An Indenture, entered into on or about January 18, 2008, and dated as of January 1, 2008, between EDC and Wells Fargo (attached hereto as Exhibit D). The Indenture was signed by officers of EDC and drafted by Godfrey & Kahn.



- (e) An Opinion Letter, dated January 18, 2008, and issued by Godfrey & Kahn as counsel for EDC and the Tribe ("Issuer Opinion Letter"), specifically addressed to Stifel, Wells Fargo, and Saybrook (attached hereto as Exhibit E).
- (f) An Opinion Letter, dated January 18, 2008, by Godfrey & Kahn as Bond Counsel ("Bond Counsel Opinion Letter"), specifically addressed to EDC, Wells Fargo, Stifel, and Saybrook (attached hereto as Exhibit F).
- (g) A Closing Certificate of President and Secretary of Corporation, dated January 18, 2008 ("Closing Certificate"), and signed by officers of EDC (attached hereto as Exhibit G).
- (h) A Bond Resolution attached as the last document to the Closing Certificate, Resolution No. 1(08) of EDC ("Bond Resolution"), certified by an officer of EDC (attached hereto as Exhibit H).
- (i) A Tribal Agreement, dated January 1, 2008 ("Tribal Agreement") entered by the Tribe in favor of Wells Fargo, as Trustee (attached hereto as Exhibit I).
- (j) A Resolution of the Tribal Council, No.1(08) (attached hereto as Exhibit J).

**EDC's Waivers of Sovereign Immunity and Consent to Jurisdiction**

34. As a condition precedent to paying \$49,500,000 of its investors' money for EDC's bonds, Saybrook required EDC to waive its sovereign immunity. EDC did so, both in the Bond Resolution and in several agreements related to the sale of the Bonds. These documents confirm that EDC (1) waived its sovereign immunity, both independently in the Bond Resolution and also in each of the agreements among the parties; (2) consented to jurisdiction in both Wisconsin federal and state courts; and (3) agreed that the laws of the State of Wisconsin shall apply to the Bonds and related agreements.

35. EDC, Stifel, and Godfrey & Kahn represented in various documents that the Bonds and the Indenture were legally enforceable obligations of EDC and that EDC's waivers of sovereign immunity were valid.

36. In the Bonds, EDC stated in relevant part as follows:

This Bond shall be governed by and construed in accordance with the law of the State of Wisconsin. . . . [EDC] hereby *expressly waives its sovereign immunity from suit . . . should an action be commenced on this Bond*, the Indenture, the Security Agreement, or the Bond Resolution, or regarding the subject matter of the Indenture. . . . This waiver:

\* \* \*

(b) is granted solely to the Trustee and [Saybrook],  
[and]

(c) shall extend only to a suit to enforce the obligations of [EDC] under the Indenture, the Bond Resolution, the Security Agreement, or the Bond Placement Agreement[.]

\* \* \*

*[EDC] expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin . . . and, in the event (but only in the event) the said federal court fails to exercise jurisdiction, the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, for the adjudication of any dispute or controversy arising out of this Bond, the Indenture, or the Bond Resolution . . . , or to any transaction in connection therewith . . . .*

(Ex. A at 4-5 (emphasis added).)

37. In the Offering Memo, EDC and Stifel stated as follows:

In the Indenture, the Security Agreement, the Tribal Agreement, the Tribal Resolution[,], the Bond Resolution[,], and the Bond Purchase Agreement (the "Bond Documents"), *[EDC] and the Tribe have waived their sovereign immunity and consented to suits against them* only in connection with the Bonds and the Bond Documents.

(Ex. B at 4 (emphasis added).)

38. In the Bond Resolution, EDC stated in relevant part as follows:

*Whereas*, the Board of Directors [of EDC] has been advised that as a condition to the issuance of the Bonds, [EDC] will be required to agree to various legal provisions . . . that will provide for (a) a limited *waiver of its sovereign immunity with respect to suits or other legal actions or proceedings arising because of disputes*

*related to the Bonds* or the foregoing named documents or other agreements related thereto . . . .

\* \* \*

***Resolved***, that all legal Provisions in the Bond Documents are hereby approved; more ***specifically and expressly [EDC] (i) waives its immunity from suit*** [and] (ii) agrees that the laws of the State of Wisconsin shall apply . . . with respect to any dispute or controversy arising out of the Indenture, the Security Agreement, the Bond Placement Agreement, the Bonds, this Bond Resolution . . . or to any transaction in connection therewith . . . .

(Ex. H at 2-3 (emphasis added).)

39. In the Bond Purchase Agreement, EDC pledged:

[EDC] hereby ***expressly waives its sovereign immunity from suit*** . . . should an action be commenced under this Agreement or regarding the subject matter thereof. This waiver . . . is granted solely to the Trustee and the Holders from time to time or its assignee . . . .

(Ex. C at 19 (emphasis added).)

40. Godfrey & Kahn, as counsel to the Tribe and EDC, represented in the Issuer

Opinion Letter:

[EDC] has duly ***waived its sovereign immunity in accordance with the terms of each of the Bond Documents and the Tribe has duly waived its sovereign immunity in accordance with the terms of the Tribal Agreement*** and such waivers are valid and enforceable against [EDC] and the Tribe in accordance with their terms.

(Ex. E at 7 (emphasis added).)

41. Further, in the Issuer Opinion Letter, Godfrey & Kahn also represented that the Indenture and the Bonds were legally enforceable obligations that did not violate any laws, that ***“[a]ll approvals required to be obtained from any . . . state or federal agency . . . for the execution . . . or performance . . . of the Bond Documents . . . [had] been obtained,*** including all necessary approvals of the Secretary of the Interior, the Bureau of Indian Affairs and the

National Indian Gaming Commission,” and that the *Bond Documents*—which included the Indenture—*were neither “management contracts” nor “collateral agreements” to a management contract as defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 et seq.* (Ex. E ¶¶ 12, 21, 31, 34 (emphasis added).)

42. Godfrey & Kahn, as Bond Counsel, confirmed in the Bond Counsel Opinion Letter addressed to Saybrook that:

The consents to suit given by [EDC] in the Indenture and the Bond Purchase Agreement constitute *a valid and enforceable waiver of [EDC’s] sovereign immunity from suit*, and in a suit for the enforcement of the Indenture or the Bonds the sovereign immunity of [EDC] shall not constitute a valid defense to the enforcement thereof.

(Ex. F at 2 (emphasis added).)

43. The Indenture, which has since been declared void, also contained a waiver of sovereign immunity by EDC. (Ex. D § 13.02.)

44. Each of the above provisions, *see* ¶¶ 36-43 *supra*, evinces EDC’s unequivocal intent to subject itself to suit for all the issues and causes of action raised against it in this Complaint.

**EDC Breaches the Indenture and Repudiates the Bonds; The Indenture Is Declared Void**

45. EDC substantially performed on the Bonds and the Indenture throughout 2008 and most of 2009.

46. From the issuance of the Bonds in January 2008 until at least November 2009, EDC substantially complied with the requirement that it make deposits of revenues from the Casino Facility into an account controlled by the Trustee.

47. EDC made interest payments as follows: \$4,216,667 on or around October 1, 2008; \$3,000,000 on or around April 1, 2009; and \$3,000,000 on or around October 1, 2009.

48. The first bi-annual payment of principal on the Bonds was due on October 1, 2009. On or around October 1, 2009, EDC made the required principal payment in the amount of \$3,385,000.

49. Beginning in or around November 2009, EDC stopped making deposits of Casino Facility revenues into the account controlled by the Trustee and committed other breaches of the Indenture.

50. On December 21, 2009, Wells Fargo filed a Complaint in the United States District Court for the Western District of Wisconsin (Case No. 3:09-cv-00768), alleging that EDC breached the Indenture and seeking relief on that basis.

51. In January 2010, the District Court issued an order and opinion declaring, *inter alia*, that the Indenture was void *ab initio* because it was an unapproved “management contract” under 25 C.F.R. § 533.7. Because the Indenture was held to be void *ab initio*, the District Court held that EDC’s waiver of sovereign immunity in the Indenture was also void and that the District Court therefore lacked jurisdiction over Wells Fargo’s claims. *See generally Wells Fargo Bank, Nat’l Ass’n v. Lake of the Torches Econ. Dev. Corp.*, 677 F. Supp. 2d 1056 (W.D. Wis. 2010). Wells Fargo appealed.

52. While the appeal was pending, counsel for EDC advised Wells Fargo that as a result of the District Court’s decision, EDC was of the view that it had been relieved of “all further obligations.” A copy of EDC’s counsel’s letter of February 3, 2010, is attached as Exhibit K.

53. In fact, EDC did not make any further payments of interest or principal on the Bonds, including those due on April 1, 2010; October 1, 2010; April 1, 2011; and October 1, 2011.

54. The United States Court of Appeals for the Seventh Circuit (hereafter the “Seventh Circuit”) affirmed the District Court’s determinations that (1) the Indenture was an unapproved management contract and was therefore void *ab initio*, and (2) EDC’s waiver of sovereign immunity in the Indenture was therefore void. *See generally Wells Fargo Bank, Nat’l Ass’n v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684 (7th Cir. 2011). The Seventh Circuit remanded for further proceedings related to the other documents associated with the sale of the Bonds, specifically including the Bonds themselves. *Id.*

55. The legal proceedings to date have invalidated the Indenture and created uncertainty about the validity of other documents associated with the sale of the Bonds. Some of the other agreements contain some, but not all, of the provisions found by the District Court and the Seventh Circuit to be indicia of management contracts for Indian gaming facilities. These documents were drafted by Defendants, and uncertainty surrounding the status of the documents has injured Saybrook.

#### **Negotiations in Connection with the Sale of the Bonds**

56. The terms under which the Bonds were issued and sold by EDC, initially to Stifel and ultimately to Saybrook, were negotiated among Saybrook, Stifel, EDC, the Tribe, and Godfrey & Kahn, who acted as counsel to EDC and the Tribe and also as Bond Counsel. Negotiations took place between October 2007 and January 18, 2008.

57. Stifel approached Saybrook and solicited Saybrook to purchase EDC’s Bonds. For its role in the sale of the Bonds, Stifel received \$375,000 from the proceeds of the sale.

58. Stifel acted as EDC’s agent for purposes of negotiating the terms of the Bonds and related agreements.

59. Godfrey & Kahn's fee for its role in the sale of the Bonds was \$125,000. On information and belief, Godfrey & Kahn derived significant fees from other aspects of its relationship with the Tribe and EDC.

60. EDC's waiver of sovereign immunity was central to Saybrook's decision to purchase the Bonds and was repeatedly highlighted during the negotiations for the Bonds.

61. On or about October 22, 2007, Stifel sent Saybrook by email an Executive Summary of the proposed terms for the sale of the Bonds (attached hereto as Exhibit L). The Executive Summary listed the waiver of sovereign immunity as security for the Bonds. (Ex. L at 2.)

62. On or about November 2, 2007, Saybrook sent Stifel a Preliminary Term Sheet outlining revised terms under which Saybrook may be willing to provide financing of the Bonds (attached hereto as Exhibit M). The Preliminary Term Sheet included a section entitled "Waiver of Sovereign Immunity." This section required that the Tribe waive its sovereign immunity to enable Saybrook to enforce the terms of the Bonds and related documents in federal court and Wisconsin state court. (Ex. M at 2.)

63. On or about November 21, 2007, Stifel sent Saybrook another draft Executive Summary for the sale of the Bonds (attached hereto as Exhibit N). The draft November 21, 2007, Executive Summary contained a section entitled "Waiver of Sovereign Immunity" stating that "[t]he Tribe shall waive its immunity from uncontested suit and other legal proceedings to permit suit" to enforce the terms of the Bonds and related documents in federal court and Wisconsin state court. (Ex. N at 5.)

64. Once it appeared that Saybrook might be interested in the Bonds, Saybrook undertook due diligence to aid it in deciding whether to pursue its interest in the Bonds.

65. In response to Saybrook's due diligence requests, EDC and Stifel gathered information and documents and provided Saybrook with the same.

66. Throughout negotiations, EDC, through Stifel, told Saybrook that EDC needed to close the deal quickly.

67. Time was of the essence because certain EDC debt, which was to be satisfied by the proceeds of the Bonds, was due in early 2008. Further, the project for which EDC had designated some of the Bond proceeds, the construction of a separate non-Indian casino in Natchez, Mississippi, required quick financing to avoid the risk of shutting down.

68. Due diligence requests are a standard practice in the course of a securities transaction conducted pursuant to SEC Rule 144A and do not constitute a commitment to purchase the investment security at issue. In fact, Saybrook was under no obligation to purchase the Bonds until January 18, 2008, the date of the closing.

69. Stifel drafted the Offering Memo that set forth the terms under which the Bonds would be offered for sale to Saybrook. The Offering Memo bears Stifel's mark. Stifel also incorporated some of the information requested by Saybrook in due diligence into the Offering Memo.

70. The Offering Memo represented to Saybrook that EDC and the Tribe "have waived their sovereign immunity and consented to suits against them" in connection with the Bonds and related agreements. (Ex. B at 4.)

71. The Offering Memo also incorporated and adopted the Bond Counsel Opinion Letter, written and signed by Godfrey & Kahn. (*Id.* at app. G.)

72. Bond Counsel, such as Godfrey & Kahn, play a specialized role in debt issuance. A recent publication by the National Association of Bond Lawyers ("NABL") explains the modern role of bond counsel as follows:



Today, the primary function of bond counsel continues to be rendering the bond opinion. Bond counsel are lawyers engaged to provide an objective legal opinion with respect to the validity of bonds and other subjects, particularly the tax treatment of interest on the bonds. The opinion is an objective judgment rather than the partisan position of an advocate. It ordinarily is required by both issuers and investors. As practice has evolved, bond counsel frequently perform other functions . . . . Some of those functions (e.g., preparation and supervision of bond proceedings) may be incidental to giving the bond opinion. Other functions (e.g., assisting in structuring or evaluating the structure of a bond issue to ensure compliance with applicable law) go beyond what is required to render the bond opinion. Whether bond counsel performs these additional functions for one of the parties to the transaction depends on the terms of the engagement between bond counsel and the client.

NAT'L ASS'N OF BOND LAWYERS, THE FUNCTION AND PROFESSIONAL RESPONSIBILITIES OF BOND COUNSEL 6 (3d ed. 2011).

73. The recent NABL publication also notes the typical scope of bond-counsel opinions:

Bond counsel's opinion usually addresses the following subjects:

- (1) that the bonds have been duly authorized and executed by and are valid and binding obligations of the issuer; [and]
- (2) the source of payment or security for the bonds . . . .

\* \* \*

The opinion should be based upon an examination of material legal and factual sources (including certifications regarding relevant facts provided by persons in a position to have knowledge) regarding the subjects addressed therein.

(*Id.* at 10-11.)

74. By incorporating and adopting the Bond Counsel Opinion Letter in the Offering Memo, Stifel represented to Saybrook that (1) the Bonds, the Indenture, and the Bond Purchase Agreement were valid and enforceable against EDC, and (2) EDC's waiver of sovereign

immunity in the Indenture was valid and enforceable. Saybrook relied upon Stifel's representations.

75. In the Bond Counsel Opinion Letter, Godfrey & Kahn stated that the Bonds, the Indenture, and the Bond Purchase Agreement "have been duly and validly authorized, executed, and delivered by [EDC] and are the valid and binding obligations of [EDC] enforceable in accordance with their terms." (Ex. F at 2.)

76. In the Bond Counsel Opinion Letter, Godfrey & Kahn stated that EDC's waiver of sovereign immunity in the Indenture "constitute[s] a valid and enforceable waiver of [EDC's] sovereign immunity from suit, and in a suit for the enforcement of the Indenture or the Bonds the sovereign immunity of [EDC] shall not constitute a valid defense to the enforcement thereof." (*Id.*)

77. In the Bond Counsel Opinion Letter, Godfrey & Kahn incorporates the Issuer Opinion Letter, which it also authored, signed, and addressed to Plaintiffs. The Bond Counsel Opinion Letter concludes with the following limited disclaimer:

As Bond Counsel, we have not been engaged, and have not undertaken, to review the accuracy, completeness or sufficiency of the Limited Offering Memorandum or any other offering material . . . and, *except as otherwise stated therein or in our separate letter of even date addressed to . . . Saybrook Tax-Exempt Investors, LLC*, we express no opinion relating thereto.

(*Id.* (emphasis added).) That disclaimer specifically excepts from its scope statements made "in our separate letter of even date [*i.e.*, the Issuer Opinion Letter] addressed to . . . Saybrook Tax-Exempt Investors, LLC." (*Id.*)

78. In addition to its statements in the Bond Counsel Opinion Letter, *see* ¶¶ 75-77 *supra*, Godfrey & Kahn made representations in the Issuer Opinion Letter, again stating, "This opinion letter is solely for the addressees hereof [one of which is Saybrook] and no one other

than addressees is entitled to rely on the opinion without our prior consent.” The Opinion Letter, written solely for the addressees, including Saybrook, includes the following representations:

- (a) Godfrey & Kahn reviewed listed documents in connection with the Issuer Opinion Letter. These documents are referred to collectively as the “Bond Documents.”
- (b) Godfrey & Kahn examined various laws and statutes, including specifically the Indian Gaming Regulatory Act, defined to encompass 25 U.S.C. §§ 2701-2721 and regulations promulgated thereunder.
- (c) “In addition [Godfrey & Kahn has] examined such other laws, have made such legal and factual examinations and have made such inquiries and examined such other documents and proceedings as we have deemed necessary or appropriate for the purposes of this opinion.”
- (d) “The Bond Resolution [passed by EDC and approving the terms of the Bond Documents, including the waiver of sovereign immunity] constitutes a valid action of the Board of the Directors of [EDC], binding and enforceable upon [EDC] in accordance with its terms.”
- (e) “The Bonds . . . have been duly authorized, executed and delivered . . . and constitute valid and binding obligations of [EDC] enforceable in accordance with their terms . . . .”
- (f) “All approvals required to be obtained from any . . . federal agency, body or instrumentality for the execution, delivery or performance of the Bond Documents by [EDC] . . . have been obtained, including all necessary approvals of . . . the National Indian Gaming Commission.”
- (g) “[EDC] has duly waived its sovereign immunity in accordance with the terms of each of the Bond Documents and the Tribe has duly waived its sovereign immunity in accordance with the terms of the Tribal Agreement and such waivers are valid and enforceable against [EDC] and the Tribe in accordance with their terms.”
- (h) “None of the Bond Documents nor the Tribal Agreement . . . constitute a ‘management contract’ or an agreement that is a ‘collateral agreement’ to a management contract that relates to a gaming activity regulated by IGRA pursuant to 25 U.S.C. §2711. None of the Bond Documents nor the Tribal Agreement . . . requires approval pursuant to 25 U.S.C. §81.”
- (i) “[EDC] was not required to obtain any consent, approval, authorization, or order of any governmental agency for the issuance, delivery, and sale of the Bonds, including approvals of the Secretary of Interior, the Bureau of Indian Affairs, and the National Indian Gaming Commission.”

- (j) The letter was qualified by “[t]he possibility that certain rights, remedies, waivers, and other provisions of the Bond Documents [and] the Tribal Agreement . . . may not be enforceable; *nevertheless, such unenforceability will not render any of the Bond Documents or the Tribal Agreement . . . invalid as a whole.*”

(Ex. E (emphasis added).)

79. The Bond Counsel Opinion Letter and the Issuer Opinion Letter were addressed to Saybrook and Wells Fargo who, as addressees, were entitled to rely on the opinion. (*See, e.g.*, Ex. D § 9.01 (Trustee may “conclusively rely” upon the Opinion Letters); Ex. E at 11; Ex. F at 2.) Saybrook in fact relied on the Opinion Letters.

80. Each of the Parties knew that the sale of the Bonds would not be consummated unless Godfrey & Kahn stated that the Bonds were valid and enforceable and stated further that each of the other agreements and proclamations described in the Opinion Letters as “Bond Documents” were likewise valid and enforceable, did not constitute management contracts for Indian gaming facilities, and contained valid waivers of sovereign immunity. (*See* Ex. C § 9(i)(5)–(6); Ex. D § 2.08(e), (g).)

81. Saybrook reasonably believed that the Bonds and each related agreement were valid and enforceable.

82. Saybrook would not have purchased the Bonds had it known that any document related to the Bonds, including the Indenture, was a management contract and therefore not enforceable against EDC.

83. Saybrook would not have purchased the Bonds had it known that EDC’s waiver of sovereign immunity in any document related to the Bonds, including the Indenture, was not valid and enforceable.

84. The District Court and the Seventh Circuit held that the Indenture is an unapproved management contract and that the Indenture, including the waiver of sovereign immunity therein, is invalid and unenforceable against EDC.

**Inclusion of Flawed Provisions**

85. The District Court and the Seventh Circuit identified the following provisions of the Indenture which, when taken together, rendered the Indenture a “management contract”:

- (a) EDC must obtain the consent of a majority of bondholders to incur capital expenditures that exceed by 25 percent the prior year’s capital expenditures (“Capital Expenditure Provision”). (Ex. D § 6.18.)
- (b) The bondholders can require EDC to retain an independent management consultant—with sufficient experience in, and knowledge of, the gaming industry, and who is approved by the bondholders—if the Debt Service Coverage Ratio falls below 2 to 1 (“Management Consultant Provision”). (*Id.* § 6.19.)
- (c) EDC may not remove key personnel of the Casino Facility without the consent of a majority of the bondholders (“Replacement of Key Management Provision”). (*Id.* § 6.20.)
- (d) In the event of default, a majority of bondholders can require EDC to replace its management; approval of a majority of the bondholders is required for the new management (“New Management in Default Provision”). (*Id.* § 8.02.)

86. EDC, Stifel, and Godfrey & Kahn were aware that the flawed provisions were in the Indenture. Each of the flawed provisions was highlighted, discussed, and eventually approved by all parties in the negotiations for the sale of the Bonds.

87. On December 13, 2007, Saybrook emailed Stifel regarding the addition of new terms to the Indenture, namely the Management Consultant Provision and the New Management in Default Provision (attached hereto as Exhibit O).

88. On December 17, 2007, Godfrey & Kahn emailed Saybrook and Stifel with a redlined version of the Indenture (email and relevant excerpts from the attachment are attached hereto as Exhibit P). The redlined version highlighted the addition of the Capital Expenditure

Provision, Management Consultant Provision, and New Management in Default Provision. (Ex. P at 38, 41.)

89. On December 19, 2007, Saybrook sent Godfrey & Kahn and Stifel a redlined version of the Indenture (email and relevant excerpts from the attachment are attached hereto as Exhibit Q). The body of the email describes the addition of the Replacement of Key Management Provision. (Ex. Q at 1.) The changes to the provision in the redlined version of the Indenture used the words “*management*,” “*manager*,” and “*controller*.” (*Id.* at 36 (emphasis added).) The redline also highlighted further changes to the Management Consultant Provision, including language cited as indicia of a management contract by the District Court and the Seventh Circuit. (*See id.* at 35-36.)

90. On December 21, 2007, two days after significant changes were made to the Indenture, Godfrey & Kahn circulated drafts of both the Issuer Opinion Letter and the Bond Counsel Opinion Letter.

91. Godfrey & Kahn knew that some or all of the proposed terms were uncommon in financing transactions related to Indian casinos regulated under IGRA.

92. Godfrey & Kahn knew that management contracts for Indian gaming facilities are subject to approval by the NIGC.

93. Godfrey & Kahn specifically held out its attorneys as experts in Indian law and the financing of Indian gaming facilities. For example, since at least 2005, one or more Godfrey & Kahn attorneys delivered lectures to the Wisconsin State Bar Association concerning “Recent Developments in Indian Law” and authored an article that discussed legislative developments related to IGRA.

94. On information and belief, Godfrey & Kahn attorneys, as experts in Indian law and the financing of Indian gaming facilities, had experience and expertise in determining

whether provisions in Indian casino financing agreements were indicia of management that would cause the agreements to be management contracts under IGRA, and therefore void unless approved by the NIGC.

95. During the negotiations surrounding the sale of the Bonds, Godfrey & Kahn on multiple occasions communicated directly with Saybrook over language in the agreements related to the Bonds.

96. Stifel drafted the Offering Memo. In its Appendix, the Offering Memo states that “Congress delegated to the NIGC authority to . . . approve management contracts for gaming facilities.” (Ex. B app. F at F-3.) Stifel knew that management contracts for Indian gaming facilities are subject to approval by the NIGC.

97. Stifel represented to Saybrook that it had significant prior experience in handling transactions related to financing Indian gaming facilities.

98. It was never Saybrook’s intent—and on information and belief, it was never any other party’s intent—that Plaintiffs would have any role in managing the Casino Facility or instructing EDC on how to manage the Casino Facility. None of the Plaintiffs provided any management services to EDC or the Casino Facility at any time.

## **COUNT I (AGAINST EDC)**

### **Breach of the Bonds**

99. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 98 as if set forth fully herein.

100. EDC issued and sold the Bonds to Stifel, who in turn sold the Bonds to Saybrook.

101. The Bonds are certificated securities for purposes of Article 8 of the Wisconsin Uniform Commercial Code, Wis. Stat. § 408.101 *et seq.* Saybrook is a purchaser for value of the Bonds without notice of any defect, EDC received substantial consideration for the Bonds, and

the stated purpose of the Bond issue was within EDC's power to borrow money and issue the Bonds.

102. Under the Bonds, EDC is obligated to pay "the principal amount set forth [in the Bonds] on the maturity date specified [in the Bonds] . . . and to pay . . . interest on such principal amount at the interest rate specified [in the Bonds] . . . on April 1 and October 1 of each year, commencing on October 1, 2008, until said principal amount is paid." (Ex. A at 2.)

103. The Bonds specify principal in the amount of \$50,000,000 and interest at a rate of 12 percent.

104. EDC made the following payments on the Bonds: \$4,216,667 in interest on or around October 1, 2008; \$3,000,000 in interest on or around April 1, 2009; and \$3,385,000 in principal and \$3,000,000 in interest on or around October 1, 2009.

105. EDC has repudiated the Bonds, and counsel for EDC has advised that EDC believes it has no further obligation to repay the Bonds.

106. EDC is bound by the terms of the Bonds to pay all amounts due under the Bonds—both principal and interest.

107. EDC failed to make payments due on April 1, 2010; October 1, 2010; April 1, 2011; and October 1, 2011, in breach of the terms of the Bonds.

108. EDC's repudiation of the Bonds and failure to make payments under the terms of the Bonds constitute a total breach of the Bonds.

109. Plaintiffs have been damaged by EDC's failure to make payments under the Bonds and are entitled to a judgment against EDC in the full amount outstanding under the Bonds plus interest accrued, and for such further relief as the Court deems proper.



## **COUNT II (AGAINST EDC)**

### **Unjust Enrichment**

110. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 109 as if set forth fully herein.

111. A benefit has been conferred upon EDC by Plaintiffs in the form of \$49,125,000 transferred to EDC in connection with Saybrook's purchase of the Bonds.

112. EDC has acknowledged the benefit of these monies.

113. EDC's acceptance and retention of this benefit, under the circumstances, would be inequitable without payment to Plaintiffs of the value of the benefit, or the return of the benefit itself to Plaintiffs.

114. Plaintiffs are entitled to a judgment for full restitution from EDC under Wisconsin law of unjust enrichment, and for such further relief as the Court deems proper.

## **COUNT III (AGAINST EDC)**

### **Conversion**

115. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 114 as if set forth fully herein.

116. EDC lawfully came into possession of Plaintiffs' property in the amount of not less than \$49,500,000 as a result of Saybrook's purchase of the Bonds and EDC's entry into other agreements related to the sale of the Bonds.

117. EDC wrongfully refused to surrender this property to Plaintiffs after Plaintiffs demanded that it be returned.

118. Plaintiffs are entitled to the return of the property.

119. EDC's withholding of the property has seriously interfered with Plaintiffs' ability to control and use the property. As a result, Plaintiffs have been damaged in an amount to be determined at trial and are entitled to a judgment against EDC.

#### **COUNT IV (AGAINST EDC)**

##### **Securities Fraud in Violation of Wis. Stat. § 551.41(2)**

120. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 119 as if set forth fully herein.

121. EDC and its agents made numerous representations that EDC waived its sovereign immunity, including in various documents associated with the sale of the Bonds. *See, e.g., ¶¶ 36-43 supra.*

122. EDC represented that no approval of the NIGC was "required for the valid and lawful execution and delivery by [EDC] of . . . the Indenture and the assumption by [EDC] of its obligations hereunder and thereunder." (Ex. C at 7.)

123. EDC is responsible for each of the statements made by itself and its agents, Stifel and Godfrey & Kahn, during the course of negotiating the terms of the Bonds and the related agreements.

124. Each of the misrepresentations by EDC and its agents was made in connection with the negotiation and sale of the Bonds to EDC.

125. Each of the misrepresentations by EDC and its agents was material.

126. EDC was an active participant in the sale of the Bonds to Saybrook. EDC and its agents solicited Saybrook's purchase of the Bonds.

127. Saybrook purchased the Bonds for value, which directly benefited EDC.

128. Based on the prior rulings of the District Court and the Seventh Circuit, the statements of EDC and its agents were untrue, deceptive, or misleading.

129. At the time that EDC and its agents made the statements, they knew of facts incompatible with their statements—namely, that the Indenture contained provisions relating to management and that management contracts for Indian gaming facilities require the approval of the NIGC.

130. In reasonable reliance on these statements, Saybrook believed that the Bonds and each agreement related to the Bonds were valid and enforceable. Saybrook did not know that the Indenture, including its waiver of sovereign immunity, was a management contract or that it required NIGC approval. Further, Saybrook did not know that the Indenture, including its waiver of sovereign immunity, was not valid and enforceable against EDC.

131. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by EDC and its agents that the Bonds and Tribal Agreement are valid and enforceable also would be untrue, deceptive, or misleading.

132. The misrepresentations of EDC and its agents caused Plaintiffs to suffer pecuniary loss. Plaintiffs seek a judgment for consideration paid for the security (less the amount of any income received on the security), plus interest at the legal rate from the date of the purchase, costs, and reasonable attorney's fees pursuant to Wis. Stat. § 551.509.

#### **COUNT V (AGAINST EDC)**

##### **Statutory Misrepresentation in Violation of Wis. Stat. § 100.18**

133. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 132 as if set forth fully herein.

134. With intent to induce Saybrook to undertake an obligation with respect to the Bonds, EDC and its agents made numerous representations, in various documents associated

with the sale of the Bonds, that EDC had waived its sovereign immunity. *See, e.g.*, ¶¶ 36-43 *supra*.

135. With intent to induce Saybrook to undertake an obligation with respect to the Bonds, EDC represented that no approval of the NIGC was “required for the valid and lawful execution and delivery by [EDC] of . . . the Indenture and the assumption by [EDC] of its obligations hereunder and thereunder.” (Ex. C at 7.)

136. Based on the prior rulings of the District Court and the Seventh Circuit, the statements of EDC and its agents were untrue, deceptive, or misleading.

137. EDC is also responsible for each of the statements made by its agents, Stifel and Godfrey & Kahn, during the course of negotiating the terms of the Bonds and the related agreements.

138. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by EDC and its agents that the Bonds and the Tribal Agreement are valid and enforceable also would be untrue, deceptive, or misleading.

139. The untrue, deceptive, or misleading statements of EDC and its agents caused Plaintiffs to suffer pecuniary loss in an amount to be determined at trial. Plaintiffs seek a judgment for their damages, costs, and attorney fees pursuant to Wis. Stat. § 100.18(11)(b)(2).

## **COUNT VI (AGAINST EDC)**

### **Intentional Misrepresentation**

140. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 139 as if set forth fully herein.

141. On information and belief, EDC and its agents made the above-described misrepresentations and omissions recklessly, without caring whether the statements were true or false.

142. EDC and its agents repeated their misrepresentations on multiple occasions, including in the Offering Memo and the Bond Counsel Opinion Letter incorporated and adopted therein.

143. Further, in the Bond Resolution, EDC stated that each Bond Document—including the Indenture—would, upon its execution, “become a valid and binding obligation of [EDC], enforceable in accordance with its terms for purposes of tribal law and the laws of all other applicable jurisdictions[.]” (Ex. H at 3.)

144. On information and belief, EDC and its agents knew that various provisions in the Indenture—specifically, the provisions the District Court and the Seventh Circuit subsequently identified as indicia of a management contract—rendered the legal status of the Indenture questionable. Despite their awareness of these provisions and the doubt they cast, EDC and its agents made unambiguous statements to Plaintiffs regarding the validity of the Indenture and EDC’s waiver of sovereign immunity therein.

145. On information and belief, EDC and its agents recklessly made misrepresentations in order to induce Saybrook to act on the misrepresentations to its detriment.

146. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by EDC and its agents that the Bonds and the Tribal Agreement are valid and enforceable also would be untrue, deceptive, or misleading.

147. Plaintiffs believed and relied on the misrepresentations to their detriment and are entitled to a judgment against EDC.

## **COUNT VII (AGAINST EDC)**

### **Negligent Misrepresentation**

148. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 147 as if set forth fully herein.

149. Having undertaken to make the above-referenced affirmative representations to Plaintiffs regarding the validity of the Indenture and the waiver of sovereign immunity therein, EDC owed a duty to Plaintiffs to tell the truth.

150. It was reasonably foreseeable to EDC that Plaintiffs would receive, rely upon, and act upon the misrepresentations and omissions at issue. Therefore, EDC had a duty to exercise ordinary care to ensure the truthfulness of all representations to Plaintiffs and the absence of material omissions.

151. In the exercise of ordinary care, EDC knew or should have known that its numerous representations about the validity of the Indenture, including the waiver of sovereign immunity therein, were false and that material information was omitted.

152. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by EDC and its agents that the Bonds and the Tribal Agreement are valid and enforceable also would be untrue, deceptive, or misleading.

153. Saybrook did, in fact, justifiably rely on the above-described misrepresentations and omissions. Such misrepresentations and omissions were material because, had Plaintiffs known that the Indenture or the waiver of sovereign immunity therein was invalid, Saybrook would not have purchased the Bonds from EDC. For the reasons described above, Plaintiffs' reliance was reasonable.

154. As a direct, proximate, and foreseeable result of the negligent misrepresentations of EDC and its agents, Plaintiffs have been damaged in an amount to be determined at trial and are entitled to a judgment against EDC.

### **COUNT VIII (AGAINST EDC)**

#### **Rescission Based on Misrepresentation**

155. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 154 as if set forth fully herein.

156. In the alternative to Count I, Plaintiffs seek rescission of their agreements with EDC, including Saybrook's agreement to purchase the Bonds.

157. Plaintiffs made manifestations of assent to EDC by agreeing to the terms of and purchasing the Bonds.

158. Plaintiffs' manifestations of assent were induced by the above-referenced misrepresentations made by EDC and its agents.

159. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by EDC and its agents that the Bonds and the Tribal Agreement are valid and enforceable would constitute material misrepresentations.

160. The misrepresentations by EDC and its agents were material because they would be likely to induce a reasonable person to manifest assent to purchase the Bonds, or alternatively, because EDC and its agents knew under the circumstances that its misrepresentations were likely to induce Plaintiffs to manifest their assent to purchase the Bonds.

161. Plaintiffs were justified in relying upon the misrepresentations of EDC and its agents.

162. As a result of Plaintiffs' reliance upon the misrepresentations of EDC and its agents, Plaintiffs have been damaged in an amount to be determined at trial.

163. Plaintiffs are entitled to a judgment against EDC and restitutionary damages in order to restore Plaintiffs to their position prior to the execution of their various agreements with EDC.

## **COUNT IX (AGAINST EDC)**

### **Rescission Based on Mutual Mistake**

164. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 163 as if set forth fully herein.

165. In the alternative to Count I, Plaintiffs seek rescission of their agreements with EDC, including Saybrook's agreement to purchase the Bonds.

166. Plaintiffs and EDC reached their various Bond-related agreements based upon a reciprocal and common mistake regarding the terms of the Indenture—namely, that the Indenture and EDC's waiver of sovereign immunity therein were valid and enforceable.

167. In fact, the Indenture and EDC's waiver of sovereign immunity therein were invalid and unenforceable *ab initio*.

168. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, Plaintiffs and EDC would also share the reciprocal and common mistakes of fact that the Bonds and the Tribal Agreement were valid and enforceable.

169. But for the above mutual mistakes of fact, Plaintiffs would not have purchased the Bonds or agreed to the terms of the various other Bond-related agreements.



170. Plaintiffs are entitled to a judgment against EDC and restitutionary damages in order to restore Plaintiffs to their position prior to the execution of their various agreements with EDC.

### **COUNT X (AGAINST TRIBE)**

#### **Declaratory Judgment—Guaranty**

171. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 170 as if set forth fully herein.

172. The Bonds are valid and enforceable.

173. EDC has breached the Bonds by failing to make the payments specified above, and EDC has repudiated its obligation to pay on the Bonds.

174. The Tribal Agreement contains the following guaranty: “The Tribe hereby absolutely and unconditionally guarantees to the Trustee the payment of the Obligations (the ‘Guaranty’).” (Ex. I § 3.) “Obligations” is defined as “the obligation of [EDC] for the payment of principal of and interest on the Bonds due (including past due interest) on October 1, 2012 . . . .” (*Id.* § 1.)

175. The Guaranty represents a valid and enforceable obligation of the Tribe.

176. Accordingly, Plaintiffs seek a declaration that the Tribe will be obligated, on October 1, 2012, to pay all outstanding principal, interest on the Bonds, and attorney fees and costs pursuant to Section 5 of the Tribal Agreement. (*See id.* § 5.)

### **COUNT XI (AGAINST TRIBE)**

#### **Guaranty**

177. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 176 as if set forth fully herein.

178. This count is brought in the alternative to Count X, in the event judgment is not entered in this action before October 1, 2012.

179. The Bonds are valid and enforceable.

180. EDC has breached the Bonds by failing to make the payments specified above, and EDC has repudiated its obligation to pay on the Bonds.

181. The Tribal Agreement contains the following guaranty: “The Tribe hereby absolutely and unconditionally guarantees to the Trustee the payment of the Obligations (the ‘Guaranty’).” (*Id.* § 3.) “Obligations” is defined as “the obligation of [EDC] for the payment of principal of and interest on the Bonds due (including past due interest) on October 1, 2012 . . . .” (*Id.* § 1.)

182. The Guaranty represents a valid and enforceable obligation of the Tribe.

183. The Tribe has failed to honor its guaranty of EDC’s obligation to pay the principal and interest on the Bonds.

184. Accordingly, Plaintiffs are entitled to a judgment against EDC and an award of damages in the amount of all outstanding principal and interest on the Bonds.

## **COUNT XII (AGAINST STIFEL)**

### **Breach of Implied Warranty of Validity**

185. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 184 as if set forth fully herein.

186. In the alternative to Count I, Plaintiffs assert that Stifel breached the implied warranty of validity that arose from Stifel’s sale of the Bonds to Saybrook.

187. Wisconsin common law has long recognized the implied warranty of validity in the assignment of rights generally, including the sale of security interests. *See, e.g., Giffert v. West*, 33 Wis. 617, 623 (1873).

188. The RESTATEMENT (SECOND) OF CONTRACTS similarly recognizes the implied warranty of validity:

- (1) Unless a contrary intention is manifested, one who assigns or purports to assign a right by assignment under seal or for value warrants to the assignee . . .

\* \* \*

- (b) that the right, as assigned, actually exists and is subject to no limitations or defenses good against the assignor other than those stated or apparent at the time of the assignment; [and]
- (c) that any writing evidencing the right which is delivered to the assignee or exhibited to him to induce him to accept the assignment is genuine and what it purports to be.

RESTATEMENT (SECOND) OF CONTRACTS § 333 (1981).

189. In exchange for valuable consideration and for a fair price, Stifel sold Saybrook the right to recover from EDC on the Bonds.

190. Stifel impliedly warranted that the Bonds were what they purported to be—namely, a valid and enforceable obligation of EDC to perform in accordance with the terms of the Bonds.

191. In the event that the Bonds are not fully enforceable against EDC under Count I, Stifel breached the implied warranty of validity.

192. Stifel's breach of the implied warranty of validity has caused Plaintiffs to suffer pecuniary loss in an amount to be determined at trial. Plaintiffs are entitled to a judgment against Stifel for the breach.

### **COUNT XIII (AGAINST STIFEL)**

#### **Breach of Implied Warranty of Title**

193. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 192 as if set forth fully herein.

194. In the alternative to Count I, Plaintiffs assert that Stifel breached the implied warranty of title that arose from Stifel's sale of the Bonds to Saybrook.

195. Wisconsin common law has long recognized the implied warranty of title, under which sellers impliedly warrant that they have good title to the thing sold. *See, e.g., Costigan v. Hawkins*, 22 Wis. 74, 81-83 (1867).

196. In exchange for valuable consideration and for a fair price, Stifel sold Saybrook the right to recover from EDC on the Bonds.

197. Stifel represented that it had an interest in and right to sell the Bonds.

198. Stifel impliedly warranted that it had a valid title to the Bonds and the ability to transfer the Bonds.

199. In the event that the Bonds are not fully enforceable against EDC under Count I, Stifel did not have good title to the Bonds, and Stifel breached the implied warranty of title.

200. Stifel's breach of the implied warranty of title has caused Plaintiffs to suffer pecuniary loss in an amount to be determined at trial. Plaintiffs are entitled to a judgment against Stifel for the breach.

### **COUNT XIV (AGAINST STIFEL)**

#### **Securities Fraud in Violation of Wis. Stat. § 551.41(2)**

201. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 200 as if set forth fully herein.

202. Stifel made numerous representations that the Indenture, including its waiver of sovereign immunity, was valid and enforceable against EDC.

203. Each of Stifel's misrepresentations was made in connection with the negotiation and sale of the Bonds to EDC.

204. Each of Stifel's misrepresentations was material.

205. Stifel sold its interest in the Bonds to Saybrook for value.

206. Based on the prior judgment of the District Court and the Seventh Circuit, Stifel's statements were untrue, deceptive, or misleading.

207. Stifel represented to Saybrook that it had significant prior experience in handling transactions related to financing Indian gaming facilities.

208. At the time that Stifel made the statements, it knew of facts incompatible with its statements—namely, that the Indenture contained provisions relating to management and management contracts for Indian gaming facilities require the approval of the NIGC.

209. In reasonable reliance on these statements, Saybrook believed that the Bonds and each agreement related to the Bonds were valid and enforceable. Saybrook did not know that the Indenture was a management contract or that it required NIGC approval. Further, Saybrook did not know that the Indenture, including its waiver of sovereign immunity, would not be valid and enforceable against EDC.

210. In the event that the District Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also would be untrue, including that the Bonds and Tribal Agreement are valid and enforceable.

211. Stifel's misrepresentations caused Plaintiffs to suffer pecuniary loss. Plaintiffs seek a judgment for consideration paid for the security, less the amount of any income received

on the security, plus interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees pursuant to Wis. Stat. § 551.59.

### **COUNT XV (AGAINST STIFEL)**

#### **Statutory Misrepresentation in Violation of Wis. Stat. § 100.18**

212. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 211 as if set forth fully herein.

213. With intent to induce Saybrook to undertake an obligation with respect to the Bonds, Stifel asserted in the Offering Memo it provided to Saybrook that the Indenture is valid and enforceable.

214. With intent to induce Saybrook to undertake an obligation with respect to the Bonds, Stifel asserted in the Offering Memo it provided to Saybrook that EDC's waiver of sovereign immunity in the Indenture is valid and enforceable.

215. Based on the prior judgment of the District Court and the Seventh Circuit, Stifel's statements were untrue, deceptive, or misleading.

216. At the time that Stifel made the statements, it knew of facts incompatible with its statements—namely, that management contracts for Indian gaming facilities require the approval of the NIGC and that the Indenture contained provisions relating to management.

217. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also would be untrue, including that the Bonds and the Tribal Agreement are valid and enforceable.

218. Stifel's untrue, deceptive, or misleading statements caused Plaintiffs to suffer pecuniary loss in an amount to be determined at trial. Plaintiffs seek a judgment for their damages, costs, and attorney fees pursuant to Wis. Stat. § 100.18(11)(b)(2).

## **COUNT XVI (AGAINST STIFEL)**

### **Intentional Misrepresentation**

219. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 218 as if set forth fully herein.

220. On information and belief, Stifel made the above-described misrepresentations and omissions recklessly, without caring whether the statements were true or false.

221. Stifel repeated its misrepresentations on multiple occasions, including in the Offering Memo and Bond Counsel Opinion Letter incorporated and adopted therein.

222. On information and belief, Stifel knew that various provisions in the Indenture—specifically, the provisions the District Court and the Seventh Circuit subsequently identified as indicia of a management contract—rendered the legal status of the Indenture questionable. Despite Stifel’s awareness of these provisions and the doubt they cast, the statements Stifel made to Plaintiffs were unambiguous regarding the validity of the Indenture and EDC’s waiver of sovereign immunity therein.

223. On information and belief, Stifel recklessly made misrepresentations in order to induce Saybrook to act on the misrepresentations to its detriment.

224. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also would be untrue, including that the Bonds and the Tribal Agreement are valid and enforceable.

225. Plaintiffs believed and relied on the misrepresentations to their detriment and have been damaged in an amount to be determined at trial.

## **COUNT XVII (AGAINST STIFEL)**

### **Negligent Misrepresentation**

226. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 225 as if set forth fully herein.

227. Having undertaken to make affirmative representations to Plaintiffs regarding the validity and enforceability of the Indenture and the waiver of sovereign immunity therein, Stifel owed a duty to Plaintiffs to tell the truth and to act with ordinary care.

228. In making numerous misrepresentations regarding the validity and enforceability of the Indenture and the waiver of sovereign immunity therein, Stifel failed to exercise ordinary care.

229. In the exercise of ordinary care, Stifel knew or should have known that its numerous representations about the validity and enforceability of the Indenture and the waiver of sovereign immunity therein were false and that material information was omitted.

230. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also would be untrue and negligently made, including that the Bonds and the Tribal Agreement are valid and enforceable.

231. It was reasonably foreseeable to Stifel that Plaintiffs would receive, rely upon, and act upon the misrepresentations and omissions at issue. Therefore, Stifel had a duty to exercise ordinary care to ensure the truthfulness of all representations to Plaintiffs and the absence of material omissions.

232. Saybrook did, in fact, justifiably rely on the above-described misrepresentations and omissions. Such misrepresentations and omissions were material because, had Plaintiffs known that the Indenture or the waiver of sovereign immunity therein was invalid, Saybrook



would not have purchased the Bonds. For the reasons described above, Plaintiffs' reliance was reasonable.

233. As a direct, proximate, and foreseeable result of Stifel's negligent misrepresentations, Plaintiffs have been damaged in an amount to be determined at trial and are entitled to a judgment against Stifel.

### **COUNT XVIII (AGAINST STIFEL)**

#### **Rescission Based on Misrepresentation**

234. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 233 as if set forth fully herein.

235. In the alternative to Counts I, VIII, IX, X, and XI, Plaintiffs seek rescission of their agreements with Stifel, including Saybrook's agreement to purchase the Bonds from Stifel.

236. Plaintiffs made a manifestation of assent by agreeing to purchase the Bonds from Stifel.

237. Plaintiffs' manifestation of assent was induced by misrepresentations made by Stifel—namely, that the Indenture and EDC's waiver of its sovereign immunity contained therein were valid and enforceable against EDC.

238. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also constitute material misrepresentations, including that the Bonds and the Tribal Agreement are valid and enforceable.

239. Stifel's misrepresentations were material because they would be likely to induce a reasonable person to agree to purchase the Bonds, or alternatively, because Stifel knew under the circumstances that its misrepresentations were likely to induce Plaintiffs to manifest its assent to purchase the Bonds.

240. Plaintiffs were justified in relying upon Stifel's misrepresentations.

241. As a result of Plaintiffs' reliance upon Stifel's misrepresentations, Plaintiffs have been damaged.

242. Plaintiffs are entitled to a judgment against Stifel and restitutionary damages in order to restore Plaintiffs to their position prior to their purchase of the Bonds from Stifel.

### **COUNT XIX (AGAINST STIFEL)**

#### **Rescission Based on Mutual Mistake**

243. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 242 as if set forth fully herein.

244. In the alternative to Counts I, VIII, IX, X, and XI, Plaintiffs seek rescission of their agreements with Stifel, including their agreement to purchase the Bonds from Stifel.

245. Plaintiffs and Stifel reached their various Bond-related agreements based upon a reciprocal and common mistake regarding the terms of the Indenture—namely, that the Indenture and EDC's waiver of sovereign immunity therein were valid and enforceable.

246. In fact, as described in Paragraph 51, *supra*, the Indenture and EDC's waiver of sovereign immunity therein were invalid and unenforceable *ab initio*.

247. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, Plaintiffs and Stifel also shared the reciprocal and common mistakes of fact that the Bonds and the Tribal Agreement would be valid and enforceable.

248. But for these mutual mistakes of fact, Plaintiffs would not have purchased the Bonds or agreed to the terms of the various other Bond-related agreements.

249. Plaintiffs are entitled to a judgment against Stifel and restitutionary damages in order to restore Plaintiffs to their position prior to the execution of their various agreements with Stifel.

**COUNT XX (AGAINST STIFEL FINANCIAL)**

**Securities Fraud in Violation of Wis. Stat. § 551.41(2)**

250. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 249 as if set forth fully herein.

251. Stifel made numerous representations that the Indenture, including its waiver of sovereign immunity, was valid and enforceable against EDC.

252. Each of Stifel's misrepresentations was made in connection with the negotiation and sale of the Bonds to EDC.

253. Each of Stifel's misrepresentations was material.

254. Stifel sold its interest in the Bonds to Saybrook for value.

255. Based on the prior rulings of the District Court and the Seventh Circuit, Stifel's statements were untrue, deceptive, or misleading.

256. Stifel represented to Saybrook that it had significant prior experience in handling transactions related to financing Indian gaming facilities.

257. At the time that Stifel made the statements, it knew of facts incompatible with its statements—namely, that the Indenture contained provisions relating to management and management contracts for Indian gaming facilities require the approval of the NIGC.

258. In reasonable reliance on these statements, Saybrook believed that the Bonds and each agreement related to the Bonds were valid and enforceable. Saybrook did not know that the Indenture was a management contract or that it required NIGC approval. Further, Saybrook did

not know that the Indenture, including its waiver of sovereign immunity, would not be valid and enforceable against EDC.

259. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Stifel in the Offering Memo also would be untrue, including that the Bonds and Tribal Agreement are valid and enforceable.

260. Stifel's misrepresentations caused Plaintiffs to suffer pecuniary loss.

261. At all relevant times, Stifel Financial directly or indirectly controlled Stifel.

262. Plaintiffs seek a judgment for consideration paid for the security, less the amount of any income received on the security, plus interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees pursuant to Wis. Stat. § 551.59.

#### **COUNT XXI (AGAINST GODFREY & KAHN)**

##### **Statutory Misrepresentation in Violation of Wis. Stat. § 100.18**

263. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 262 as if set forth fully herein.

264. With intent to induce Saybrook to undertake an obligation with respect to the Bonds, Godfrey & Kahn issued the Issuer Opinion Letter and Bond Counsel Opinion Letter to Saybrook.

265. The Issuer Opinion Letter addressed to Saybrook stated, *inter alia*, that the Indenture was not a management contract. The Issuer Opinion Letter and the Bond Counsel Opinion Letter, both addressed to Saybrook, stated, *inter alia*, that the Indenture was valid and enforceable against EDC and that the waiver of sovereign immunity therein was valid.

266. Based on the prior rulings of the District Court and the Seventh Circuit, Godfrey & Kahn's statements were untrue, deceptive, or misleading.

267. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, statements made by Godfrey & Kahn that the Bonds and the Tribal Agreement were valid and enforceable also would be untrue.

268. Godfrey & Kahn's untrue, deceptive, or misleading statements caused Plaintiffs to suffer pecuniary loss in an amount to be determined at trial. Plaintiffs seek a judgment for their damages, costs, and attorney fees pursuant to Wis. Stat. § 100.18(11)(b)(2).

## **COUNT XXII (AGAINST GODFREY & KAHN)**

### **Intentional Misrepresentation**

269. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 268 as if set forth fully herein.

270. On information and belief, Godfrey & Kahn made the above-described misrepresentations and omissions recklessly, without caring whether the statements were true or false.

271. Godfrey & Kahn represented that the Indenture was not a management contract on December 21, 2007, two days after significant changes were made to the Indenture, including the addition of a provision later found by the District Court and the Seventh Circuit to be an indicia of a management contract—the Replacement of Key Management Provision.

272. Godfrey & Kahn repeated its misrepresentations on multiple occasions, including in the final version of the Issuer Opinion Letter and the Bond Counsel Opinion Letter.

273. On information and belief, Godfrey & Kahn knew that various provisions in the Indenture—specifically, the provisions the District Court and the Seventh Circuit subsequently identified as indicia of a management contract—rendered the legal status of the Indenture highly questionable and made it likely to be found to be a management contract that was void without NIGC approval. Despite Godfrey & Kahn's awareness of these provisions, the high risk they

posed, and the extreme consequences that would ensue if the Indenture were found to be a management contract, the Opinion Letters it issued were unambiguous regarding the validity of the Indenture and EDC's waiver of sovereign immunity therein.

274. On information and belief, Godfrey & Kahn recklessly made misrepresentations in order to induce Saybrook to act on the misrepresentations to its detriment.

275. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, Godfrey & Kahn's numerous representations about the validity and enforceability the Bonds and the Tribal Agreement also would be untrue.

276. Plaintiffs believed and relied on the misrepresentations to their detriment and have been damaged in an amount to be determined at trial.

### **COUNT XXIII (AGAINST GODFREY & KAHN)**

#### **Negligent Misrepresentation**

277. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 276 as if set forth fully herein.

278. Having undertaken to make affirmative representations to Plaintiffs regarding the validity and enforceability of the Indenture and the waiver of sovereign immunity therein, Godfrey & Kahn owed a duty to Plaintiffs to tell the truth.

279. Furthermore, although Godfrey & Kahn was not Plaintiffs' counsel, numerous factors present here created duties to Plaintiffs owed by Godfrey & Kahn in its role as Bond Counsel. These factors include the following:

- (a) Godfrey & Kahn knew that the sale of the Bonds and the related agreements, including the Indenture, were transactions that would affect Plaintiffs.
- (b) It was foreseeable to Godfrey & Kahn that Plaintiffs could be harmed by Godfrey & Kahn (1) making misrepresentations of material fact concerning the Indenture and the various agreements entered into in connection with the sale of the Bonds,

and/or (2) failing to advise Saybrook that the flawed provisions in the Indenture were indicia of management that would cause the Indenture to be a management contract under IGRA, and therefore void unless approved by the NIGC.

- (c) It is certain that Plaintiffs have suffered injury as a result of the matters alleged in this action, because EDC has, *inter alia*, (1) obtained a judgment that the Indenture—which provided a mechanism by which EDC debt was secured and by which EDC was to repay its debt to Plaintiffs—was a management contract and thus void *ab initio*, and (2) repudiated the Bonds.
- (d) Plaintiffs' injuries result from EDC's breach of the Bonds' terms and repudiation of the Bonds and Indenture. These injuries are closely connected to Godfrey & Kahn's (1) misrepresentations of material fact concerning the Indenture and the various agreements entered into in connection with the sale of the Bonds, and (2) failure to advise Saybrook that the flawed provisions in the Indenture were indicia of management that would cause the Indenture to be a management contract under IGRA, and therefore void unless approved by the NIGC.
- (e) Godfrey & Kahn would not have compromised any of its duties to EDC or the Tribe had it (1) avoided making the misrepresentations that it made concerning the Indenture and the various agreements entered into in connection with the sale of the Bonds, and/or (2) advised Saybrook that the flawed provisions in the Indenture were indicia of management that would cause the Indenture to be a management contract under IGRA, and therefore void unless approved by the NIGC.

280. In making numerous misrepresentations regarding the validity and enforceability of the Indenture and the waiver of sovereign immunity therein, Godfrey & Kahn failed to exercise ordinary care.

281. In the exercise of ordinary care, Godfrey & Kahn knew or should have known that its numerous representations about the validity and enforceability of the Indenture and the waiver of sovereign immunity therein were false and that material information was omitted.

282. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, Godfrey & Kahn should have known that its numerous representations about the validity of the Bonds and the Tribal Agreement also would be untrue.

283. It was reasonably foreseeable to Godfrey & Kahn that Plaintiffs would receive, rely upon, and act upon the misrepresentations and omissions at issue. Therefore, Godfrey & Kahn had a duty to exercise ordinary care to ensure the truthfulness of all representations to Plaintiff and the absence of material omissions.

284. Saybrook did, in fact, justifiably rely on the above-described misrepresentations and omissions. Such misrepresentations and omissions were material because, had Plaintiffs known that the Indenture or the waiver of sovereign immunity therein was invalid, Saybrook would not have purchased the Bonds. For the reasons described above, Plaintiffs' reliance was reasonable.

285. As a direct, proximate, and foreseeable result of Godfrey & Kahn's negligent misrepresentations, Plaintiffs have been damaged in an amount to be determined at trial and are entitled to a judgment against Godfrey & Kahn.

#### **COUNT XXIV (AGAINST GODFREY & KAHN)**

##### **Legal Malpractice**

286. Plaintiffs hereby re-allege the allegations contained in Paragraphs 1 through 285 as if set forth fully herein.

287. As discussed in Paragraph 279, *supra*, although Godfrey & Kahn was not Plaintiffs' counsel, Godfrey & Kahn's role as Bond Counsel with respect to the Bonds and various related agreements generated duties from Godfrey & Kahn to Plaintiffs. These included a duty to Plaintiffs, while rendering legal services, to exercise that degree of care, skill, and judgment which is usually exercised under like or similar circumstances by lawyers licensed to practice law in the State of Wisconsin. Indeed, because Godfrey & Kahn specifically held out its attorneys as experts in Indian law and the financing of Indian gaming facilities, *see* ¶ 93 *supra*, it



was required to exercise the degree of knowledge and skill possessed by attorneys practicing in that specialty.

288. As discussed above, Godfrey & Kahn made numerous misrepresentations of material fact concerning the Indenture and the various agreements entered into in connection with the sale of the Bonds. Further, Godfrey & Kahn failed to advise Saybrook that the flawed provisions in the Indenture were indicia of management that would cause the Indenture to be a management contract under IGRA, and therefore void unless approved by the NIGC.

289. In making the above-described misrepresentations of material fact concerning the Indenture and the various agreements entered into in connection with the sale of the Bonds, and in failing to advise Saybrook that the flawed provisions in the Indenture were indicia of management that would cause the Indenture to be a management contract under IGRA, and therefore void unless approved by the NIGC, Godfrey & Kahn breached its duties to Plaintiffs.

290. Godfrey & Kahn's malpractice proximately caused injury to Plaintiffs, as they lost the rights provided for in the Indenture and the security for the Bonds. To the extent that this Court finds that the Bonds and the various agreements entered into in connection with the sale of the Bonds are not valid and enforceable against EDC and the Tribe, Plaintiffs would have entered the Bonds and various related agreements in reliance on statements generated from Godfrey & Kahn's malpractice.

291. In the event that this Court finds that the Bonds or Tribal Agreement are not valid and enforceable against EDC and the Tribe, respectively, Saybrook would have also lost its legal right to the principal and the interest on the Bonds. Indeed, Plaintiffs would have lost their ability to press numerous causes of action against EDC and the Tribe (e.g., Counts I, X, and XI *supra*) as a result of Godfrey & Kahn's malpractice.

**WHEREFORE**, Plaintiffs respectfully request that this Court:

(1) Enter:

- (a) A judgment against EDC for breach of the Bonds in an amount not less than the total principal and interest outstanding on the Bonds, for unjust enrichment, conversion, and/or misrepresentation, and damages, costs, and attorney fees on the same; or in the alternative to a judgment for breach of the Bonds, a judgment for rescission, restitutionary damages, and costs.
- (b) If judgment is entered before October 1, 2012, a declaration that the Tribe will be obligated to pay the total principal and interest outstanding on the Bonds as of that date, if EDC has not fully performed its obligations to Saybrook pursuant to the Bonds prior to that date. If judgment is entered on or after October 1, 2012, and to the extent EDC does not fully perform its obligations to Saybrook pursuant to the Bonds, a judgment against the Tribe in an amount not less than the total principal and interest outstanding on the Bonds, plus reasonable attorney fees and costs.
- (c) To the extent EDC does not fully perform its obligations to Saybrook pursuant to the Bonds, a judgment against Stifel for breach of contract and for its misrepresentations to Plaintiffs, and damages, costs, and attorney fees on the same; or in the alternative to a judgment for breach of contract, a judgment for rescission, restitutionary damages, and costs.
- (d) To the extent EDC does not fully perform its obligations to Saybrook pursuant to the Bonds, a judgment against Stifel Financial for Stifel's misrepresentations to Plaintiffs, and damages, costs, and attorney fees on the same.
- (e) To the extent EDC does not fully perform its obligations to Saybrook pursuant to the Bonds, a judgment against Godfrey & Kahn for its misrepresentations to Plaintiffs and for legal malpractice and damages, costs, and attorney fees on the same.

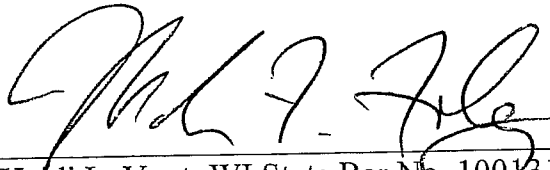
(2) Order such additional relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs reserve their rights and hereby request a trial by jury on all matters so triable.

Dated this 16th day of January, 2012.

von BRIESEN & ROPER, s.c.

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