

LDF ACQUISITION LLC
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,

15CV00302

Case No. _____

and

Money Judgment 30301
Declaratory Judgment 30701

SAYBROOK TAX EXEMPT INVESTORS, LLC
401 Wilshire Boulevard, Suite 850
Santa Monica, CA 90401,

KIEFFER

Plaintiffs,

v.

DENTONS US LLP, as successor-in-interest to
SONNENSCHNEN, NATH & ROSENTHAL LLP
233 South Wacker Drive, Suite 700
Chicago, IL 60606-6404,

CLERK OF COURTS

FEB 12 2015

Defendant.

THIS IS AN AUTHENTICATED COPY OF AN ORIGINAL DOCUMENT FILED IN THE CLERK OF COURTS OFFICE WAUKESHA COUNTY.

COMPLAINT

Plaintiffs Saybrook Fund Investors, LLC and LDF Acquisition, LLC (together "Saybrook") complain against Defendant Dentons U.S. LLP, as successor-in-interest to Sonnenschein Nath & Rosenthal LLP (together "Dentons"), as follows:

NATURE OF THE CASE

This action arises from Dentons' failure to advise Saybrook of the substantial risk that certain provisions of a contract (the "Trust Indenture") governing Saybrook's purchase of \$50 million in Taxable Gaming Revenue Bonds (the "Bonds," their purchase the "Bond Transaction") could cause the Trust Indenture to be held void and unenforceable, and that Saybrook had the ability to avoid that risk. The risk materialized, however, jeopardizing

Saybrook's ability to recover its investment, and forcing Saybrook to incur extensive legal fees to protect the rights of its investors.

Saybrook purchased Bonds issued by the Lake of the Torches Economic Development Corporation ("EDC"), a company wholly owned by the Lac du Flambeau Band of Lake Superior Chippewa Indians (the "Tribe," together with EDC the "Tribal Parties"). The Trust Indenture was intended to be a contract between EDC and Wells Fargo Bank, N.A., which was acting as trustee ("Wells Fargo"). As described more fully below, the Trust Indenture created certain obligations of EDC with regard to the Bonds, as well as remedies in case of a default by EDC.

After nearly two years of litigation, the United States Court of Appeals for the Seventh Circuit (the "Seventh Circuit") held the Trust Indenture void and unenforceable as a "management contract" that had not been approved by the National Indian Gaming Commission ("NIGC") as required by the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.* *Wells Fargo Bank, Nat. Ass'n v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684 (7th Cir. 2011). The Seventh Circuit's decision turned on certain provisions of the Trust Indenture about which Dentons had failed to advise Saybrook (the "Indenture Provisions").

Dentons' failure to advise Saybrook led not only to the Trust Indenture being held void, but also to the Tribal Parties challenging the entire Bond Transaction as void, including their obligation to repay Saybrook. As a result, Saybrook has spent the last four years defending its right to repayment in multiple forums, and continues doing so to this day. Accordingly, Saybrook now brings this action against Dentons for legal malpractice, breach of fiduciary duty, and breach of contract. Saybrook's damages are already in the millions of dollars, and may exceed \$50 million.

THE PARTIES

1. Plaintiff Saybrook Fund Investors, LLC (as successor-in-interest to Saybrook Tax Exempt Investors, LLC) is a Delaware limited liability company. Saybrook Fund Investors is the manager and a member of Plaintiff LDF Acquisition, LLC.

2. Plaintiff LDF Acquisition, LLC, is a Delaware limited liability company created as a special-purpose vehicle by Saybrook Tax Exempt Investors, LLC. It has numerous members, including Wisconsin residents. It was created by Saybrook Tax Exempt Investors, LLC, in order to hold the Bonds issued as part of the Bond Transaction, and is the current holder of the Bonds.

3. Defendant Dentons US LLP (as successor-in-interest to Sonnenschein, Nath & Rosenthal LLP) is a law firm and Delaware limited liability partnership. Upon information and belief, Dentons maintains offices across the United States and regularly conducts business in the state of Wisconsin.

JURISDICTION AND VENUE

4. This Court, as a court of general jurisdiction, has subject matter jurisdiction over this action pursuant to WIS. CONST. art. VII, § 8, and Wis. Stat. § 753.03.

5. Defendant Dentons is subject to personal jurisdiction in this Court because it engaged in substantial and not isolated activities within Wisconsin giving rise to this action. Wis. Stat. § 801.05(1)(d).

6. Venue is appropriate in this Court because (i) the sale of the Bonds to Saybrook took place here, (ii) this Court is located in a county in which the Defendant Dentons does substantial business, and also (iii) because it is the county designated by Saybrook. Wis. Stat. Ann. §§ 801.50(2)(a), (c), and (d).

FACTUAL BACKGROUND

Saybrook Retained Dentons As Legal Counsel

7. In October 2007, representatives of the Tribal Parties approached Saybrook to solicit Saybrook's interest in purchasing \$50 million of Bonds secured by the revenues and related assets of the Lake of the Torches Resort Casino (the "Casino"), which the Tribal Parties owned and operated.

8. Saybrook required legal advice in order to properly assess, negotiate, and structure the Bond Transaction. In particular, because Saybrook was to purchase Bonds from EDC—a corporation wholly owned by an Indian tribe—Saybrook required legal counsel with expertise in Indian law.

9. Dentons (then known as Sonnenschein, Nath & Rosenthal LLP)¹ held itself out as having the necessary expertise in Indian law to provide Saybrook with sound, competent legal advice. Saybrook hired Dentons on the basis of Dentons' representations.

10. Dentons has a "Native American Law and Policy" practice group, which Dentons describes as dedicated to "helping clients construct strategies that take into account the frequent interplay of the courts, the regulatory role of federal agencies, the influence of Congress and the realities of the current political climate."

11. Dentons also advertises a "track record [that] is virtually unmatched" in advising clients on Indian law issues, and invites potential clients to "[c]ount on the expertise of [its] lawyers and public policy professionals[.]"

12. In or around July 2007, Dentons claimed to "routinely advise [its] clients about the jurisdictional effect of judicial developments, in particular how new court opinions are affecting

¹ On information and belief, Sonnenschein, Nath & Rosenthal LLP merged with Denton Wilde Sapte to form "SNR Denton" in 2010, and SNR Denton then merged with two other firms to become simply "Dentons" in 2013.

[Tribal] sovereignty.” Dentons also represented that its “transactional attorneys provide a full range of legal services to Tribal and Tribal-affiliated clients in connection with their investment activities.”

13. Around the same time, Dentons advertised that “[w]hen dealing with a new or unfamiliar topic, [its] approach to client relationships is to take the time necessary to educate the client so the client can make the best decision.”

14. In or around August 2007, Dentons claimed that “because [it] regularly advises Tribes and Tribal enterprises on a broad array of issues, [it had] the ability to bring together lawyers who are both experienced in their area of law and in applying their expertise in the unique arena of Tribal representation.”

15. Around the same time, Dentons represented that it “adds value by assembling the right team for the job, which means not only the appropriate legal skills and expertise but also judgment, experience and temperament.”

16. Saybrook was advised by, among others, Alan R. Fedman of Dentons’ Washington, D.C. office. During his representation of Saybrook, Mr. Fedman was a member of Dentons’ Native American Law and Policy practice group. Like Dentons, Mr. Fedman held himself out as having expertise on Indian law issues.

17. In or around August 2007, Mr. Fedman promoted his position as the former Director of Enforcement of the NIGC, in which role he claims to have “directed a national field staff regulating 400 Indian gaming operations, [and] supervised federal oversight of the 23 billion dollar Indian gaming industry[.]”

18. Around the same time, Mr. Fedman claimed that the “combin[ation] [of his] experience with the broad range of legal services offered by [Dentons] results in a type of legal representation that is not currently available[.]”

19. Saybrook is not a law firm, nor is Saybrook an expert on Indian law. Saybrook instead trusted and relied upon Dentons, Mr. Fedman, and the other Dentons attorneys who represented Saybrook, to provide competent legal advice on Indian law issues.

Structure Of The Bond Transaction

20. The Bond Transaction occurred in two steps. First, on or about January 18, 2008, EDC issued Bonds with a principal amount of \$50,000,000 and sold them to Stifel, Nicolaus & Co (“Stifel”) for \$49,125,000. Stifel is a brokerage and investment banking corporation that EDC retained to market the Bonds. Second, immediately thereafter on January 18, 2008, Stifel resold the Bonds to Saybrook, with Wells Fargo as trustee.

21. Upon consummation of the Bond Transaction, Wells Fargo certified that it had received \$49,125,000 of proceeds of the Bond issue. Wells Fargo then distributed certain funds to satisfy EDC’s bank debt and financial obligations and to cover the costs of the sale of the Bonds, and distributed the remaining funds to EDC.

22. The Bond Transaction entailed agreements set forth in many documents (the “Bond Documents”), including the documents described in the following paragraphs.

23. The **Bonds** contain EDC’s promise to repay Saybrook, and created EDC’s debt to Saybrook. The Bonds require EDC to repay all principal and interest at 12% per annum.

24. The **Trust Indenture** (a) described in detail the means by which EDC was required to repay its debt; (b) provided a schedule according to which EDC was required to make payments towards reducing the outstanding principal on the Bonds; and (c) set forth a procedure to govern in the event of a default. In the Trust Indenture EDC waived its sovereign immunity

from suit, waived any requirement for exhaustion of tribal remedies, and consented to jurisdiction in a non-tribal forum.

25. EDC executed a contract with Stifel (the “*Bond Purchase Agreement*”) concerning, among other things, Stifel’s obligation to purchase the Bonds and resell them to Saybrook.

26. The Tribe issued an independent guaranty (the “*Tribal Guaranty*”) to further secure EDC’s debt.

27. Godfrey & Kahn, S.C. (“Godfrey & Kahn”), as bond counsel in the Bond Transaction, issued an opinion letter to EDC, Wells Fargo, Saybrook, and Stifel (the “Bond Counsel Opinion Letter”). Godfrey & Kahn also issued a second opinion letter addressed only to Wells Fargo, Saybrook, and Stifel (the “Issuer Opinion Letter”). Godfrey & Kahn incorporated the Issuer Opinion Letter into the Bond Counsel Opinion Letter.

Dentons Actively Advised Saybrook and Negotiated on Saybrook’s Behalf

28. Dentons advised Saybrook on the Bond Transaction from October 2007 through the Bond Transaction’s consummation in January 2008. Dentons also negotiated the structure of the Bond Transaction and the terms of the Bond Documents on Saybrook’s behalf.

29. Saybrook relied upon Dentons’ claimed legal expertise and followed Dentons’ advice in structuring and negotiating all aspects of the Bond Transaction, including the Trust Indenture. In particular, Saybrook reasonably relied upon Dentons to explain the risks of the Bond Transaction, as Dentons was required to do under Wisconsin Supreme Court Rule 20:1.4.

30. Dentons never stated that there were legal aspects of the Bond Transaction that it was not reviewing. Saybrook would not have agreed to Dentons’ carving out aspects of the Bond Transaction from the scope of Dentons’ representation.

31. Dentons also never stated that it was deferring to the legal opinions of others rather than forming its own, independent legal opinions. Saybrook would not have agreed to Dentons' relying on the opinions of others rather than forming independent legal opinions.

32. Saybrook understood that contracts considered to be management contracts could be deemed void and unenforceable. With that knowledge, Saybrook instructed Dentons to avoid any language that might create a risk that any of the Bond Documents could be deemed void as an unapproved management contract.

33. Dentons never advised Saybrook that including the Indenture Provisions in the Trust Indenture created any risk of the Trust Indenture being held void as an unapproved management contract. Dentons also never advised Saybrook that those risks could be avoided.

34. Relying on Dentons, and in the absence of any advice and comment from Dentons on the subject, Saybrook believed there was no risk of the Indenture Provisions transforming the Trust Indenture into a management contract requiring NIGC approval.

35. Had Dentons advised Saybrook of the risk that any provision of any of the Bond Documents might cause one of the Bond Documents, including the Trust Indenture, to be held void as a management contract, then Saybrook would have avoided that risk by, among other possibilities, either (a) eliminating the Indenture Provisions from the Bond Documents and proceeding to consummate the Bond Transaction in a safe manner, (b) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (c) declining to purchase the Bonds.

36. Saybrook would have reacted in the same way had Dentons advised Saybrook of the risk that any provision in any of the Bond Documents might cause any one of EDC's promises in the Trust Indenture—including its (a) waiver of sovereign immunity, (b) waiver of

exhaustion of tribal remedies, or (c) submission to the jurisdiction of the District Court—to be held void and unenforceable.

The Tribal Parties Attempted to Renegotiate

37. In a letter dated August 14, 2009, lawyers for EDC wrote Saybrook asking to renegotiate the terms of the Bond Transaction. EDC's lawyers also wrote that the Trust Indenture was a "management contract" that "violat[ed] . . . the Indian Gaming Regulatory Act," and, as part of the renegotiation, proposed "eliminat[ing] provisions . . . that are indicia of a gaming management contract[.]"

38. Saybrook immediately forwarded EDC's letter to Dentons for legal advice. On August 24, 2009, Dentons recommended that Saybrook respond by stating "our position that [EDC's] letter of August 14th misstates the facts and the law: in short, that there is no illegal management contract[.]"

39. At the time, Saybrook was preparing to meet with the Tribal Parties and their representatives to discuss the possible renegotiation. After recommending that Saybrook attend the meeting, Mr. Fedman advised that doing so "should not affect [Saybrook's] decision to issue a notice of default as soon as possible. To the contrary, I think the notice will make the tribe much more realistic about its position."

40. In an email to Saybrook dated August 25, 2009, Mr. Fedman repeated Dentons' position that "[t]he agreement is not a management contract." Mr. Fedman told Saybrook, "The basic characteristics of management agreements are that 1) the outside party has a right to share in the net gaming revenues and 2) has the ability to direct the management of the facility. Neither of those provisions are in the LDF agreement."

41. In the same email, Mr. Fedman told Saybrook that EDC's position was not only baseless, but also possibly illegal: "After reviewing the documents, I think what the tribe is threatening to do may involve serious securities violations."

42. Had Dentons explained to Saybrook that there was a risk of the Trust Indenture being held void as a management contract, Saybrook would have more seriously considered accepting EDC's proposal to modify the Trust Indenture to eliminate potentially troublesome Indenture Provisions.

43. Although Saybrook did offer to renegotiate the Bonds, in forming its proposal Saybrook trusted and relied upon Dentons' legal opinion that EDC's interpretation was wholly incorrect, and that any attempt by EDC to act on its interpretation might be unlawful.

44. Saybrook's renegotiation proposal was rejected by EDC.

EDC Defaulted On The Bonds; The Trust Indenture Was Held Void

45. In or around November 2009, EDC breached the Trust Indenture by, among other things, ceasing to make deposits of Casino revenues into the pertinent account controlled by Wells Fargo. EDC's breaches constituted an "Event of Default" under the Trust Indenture.

46. In December 2009, Wells Fargo filed a complaint in the United States District Court for the Western District of Wisconsin (the "District Court") (Case No. 3:09-cv-00768) alleging that EDC breached the Trust Indenture and seeking relief on that basis. Wells Fargo also "declare[d] the principal of all Bonds . . . then outstanding and the interest accrued thereon immediately due and payable," per Wells Fargo's authority under section 8.02 of the Trust Indenture.

47. Upon filing suit, section 8.04 of the Trust Indenture entitled Wells Fargo "as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, issues, payments and profits thereof, pending such proceedings, with such powers as

the court making such appointment shall confer.” Wells Fargo’s complaint thus asked the District Court to, among other things, appoint a receiver pursuant to the terms of the Trust Indenture. Wells Fargo also filed an emergency motion seeking “immediate appointment of a temporary receiver to exercise oversight over revenues, issues, payments, and profits of” EDC, citing Federal Rule of Civil Procedure 66 and the Trust Indenture.

48. The District Court did not grant Wells Fargo’s requests for relief, but instead held that the Trust Indenture was void under IGRA as an unapproved “management contract.” *Wells Fargo Bank, Nat’l Ass’n v. Lake of the Torches Economic Dev. Corp.*, 677 F. Supp. 2d 1056 (W.D. Wis. 2010).

49. IGRA states that all “management contracts” must be approved by the NIGC. 25 U.S.C. §§ 2710, 2711. Because the Trust Indenture had not been approved by the NIGC, the District Court ruled that it was void from its inception and thus unenforceable. *Wells Fargo*, 677 F. Supp. 2d at 1060–61 (*citing* 25 C.F.R. §§ 533.7). The District Court also ruled that, because the Trust Indenture was void, so too were the provisions therein waiving sovereign immunity and tribal exhaustion, and agreeing to litigate disputes in a non-tribal forum. *Id.* at 1061. The District Court accordingly dismissed Wells Fargo’s complaint for lack of jurisdiction after concluding that there no longer existed any document granting Wells Fargo standing or powers as trustee. *Id.* at 1062.

50. The District Court thereafter denied Wells Fargo’s motion to file an amended complaint seeking recovery based not only on the Trust Indenture, but also the other Bond Documents. *Wells Fargo Bank, Nat’l Ass’n v. Lake of Torches Econ. Dev. Corp.*, No. 09-CV-768, 2010 WL 1687877, *8 (W.D. Wis. Apr. 23, 2010) *rev’d sub nom. Wells Fargo Bank, Nat. Ass’n v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684 (7th Cir. 2011). The District Court

ruled that Wells Fargo's proposed amendment would have been futile because all of the other Bond Documents were likewise void. *Id.* at *6-7.

51. The Seventh Circuit affirmed the District Court in part and also reversed it in part. *Wells Fargo Bank, Nat'l Ass'n v. Lake of the Torches Economic Dev. Corp.*, 658 F.3d 684 (7th Cir. 2011), *aff'g in part and rev'g in part* 677 F. Supp. 2d 1056 (W.D. Wis. 2010). The Seventh Circuit affirmed that the Trust Indenture was an unapproved "management contract" and accordingly void from its inception. The Seventh Circuit reached that conclusion because the Indenture Provisions required EDC to "transfer significant management responsibility [over the Casino] to Wells Fargo and [Saybrook]." *Id.* at 699.

52. But the Seventh Circuit reversed the District Court's denial of Wells Fargo's motion for leave to file an amended complaint. *Id.* at 701. As its basis for reversal, the Seventh Circuit ruled that the other Bond Documents had not been transformed into management contracts merely by virtue of making reference to the Trust Indenture. *Id.* The Seventh Circuit remanded for the District Court to consider whether the other Bond Documents constituted management contracts. *Id.* at 702.

Subsequent Litigation Over The Bond Transaction

53. From 2010 through the present, Saybrook has been engaged in litigation over whether the Bond Documents other than the Trust Indenture are valid, or whether, as EDC contends, they are void management contracts.

54. With the Trust Indenture held void, Saybrook has been required to pursue claims based, *inter alia*, on the language in the Bonds and the Tribal Guaranty. Accordingly, Saybrook in 2012 filed lawsuits in the District Court (the "Federal Action") and Wisconsin state court (the "Wisconsin Action"). Saybrook immediately stayed the Wisconsin Action to preserve the statute

of limitations in case it turned out that federal subject-matter jurisdiction was not available in the Federal Action.

55. Saybrook brought claims against EDC to enforce EDC's obligation to repay Saybrook as set forth in the Bonds, and against the Tribe to enforce the Tribal Guaranty, in which the Tribe guaranteed that EDC would repay Saybrook. Saybrook also brought claims against Stifel and Godfrey & Kahn, in each case derived from the Tribal Parties' assertion that the Bond Documents are unapproved management contracts, and thus void and unenforceable.

56. In March 2013, the District Court held that it lacked federal-question jurisdiction over Saybrook's complaint in the Federal Action. The District Court later ruled that it also lacked diversity jurisdiction, and dismissed the Federal Action for lack of subject-matter jurisdiction.

57. In the Wisconsin Action, the Tribal Parties immediately asserted that the suit was barred by sovereign immunity, arguing that any document containing a waiver was void as a result of the Indenture Provisions. In October 2014, following extensive briefing and multiple oral arguments, the Circuit Court ruled that the Tribal Parties had waived sovereign immunity in the Bond Documents. The Tribal Parties sought (and were denied) interlocutory review of that decision, again relying on their theory that the Bond Documents are void management contracts.

58. The Tribal Parties have further asserted in their filings that, even if subject to jurisdiction of the Court, the Bond Documents are not enforceable debt instruments because they are void management contracts.

59. The Tribal Parties have also filed conditional counterclaims against Saybrook and Wells Fargo as Saybrook's trustee, accusing Saybrook of committing theft and conversion by retaining funds that were located in a Wells Fargo trust account. The Tribal Parties allege as a

basis for those claims that the Bond Documents were void management contracts, and thus Saybrook lacked authority to retain the money. Saybrook and Wells Fargo deny the Tribal Parties' conditional counterclaims, but this defense will at a minimum consume time, focus, and resources.

60. In addition, because of the uncertainty created by the voiding of the Trust Indenture, the Tribal Parties in April 2013 filed an action in their tribal court against Saybrook and others (the "Tribal Action") seeking a declaration that all of the Bond-related documents are void under IGRA and tribal law. Saybrook had no choice but to join as a plaintiff in a federal court injunction action (the "Injunction Action") to challenge the Tribal Action and seek an injunction to prevent the Tribal Parties from pursuing it.

61. The Injunction Action relied on the Tribal Parties' statements in the Bond Documents (a) waiving exhaustion of tribal remedies, (b) agreeing to litigate in Wisconsin, and (c) waiving its sovereign immunity. In response, the Tribal Parties once again asserted that the Bond Documents are void management contracts. The District Court preliminarily enjoined the Tribal Action, and held that the Tribal Parties had waived sovereign immunity in certain Bond Documents. But the District Court did not address whether the Bonds were void management contracts. That preliminary injunction is presently on review before the Seventh Circuit.

Saybrook's Damages

62. Saybrook has incurred millions of dollars in legal expenses that it would not have incurred had Dentons properly advised Saybrook of (a) the risks created by inclusion of the Indenture Provisions, and (b) the ways that Saybrook could have avoided those risks.

63. Had Dentons done so, Saybrook would have avoided the risk presented by the Indenture Provisions by, among other possibilities, either (a) eliminating the Indenture Provisions from the Bond Documents and proceeding to consummate the Bond Transaction in a

safe manner, (b) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (c) declining to purchase the Bonds.

64. Saybrook's damages will continue to accrue. The litigation is ongoing, with legal expenses rising every day. Worse, if the Tribal Parties succeed in voiding the entire underlying obligation, Saybrook will face the potential loss of more than \$50 million.

COUNT I – Legal Malpractice/Professional Negligence

65. Saybrook incorporates by reference the allegations complained in the above paragraphs of this complaint.

66. Saybrook and Dentons had an attorney-client relationship.

67. Dentons had duties arising from that relationship, including the duty to exercise the degree of care, skill, and judgment that lawyers usually exercise under like or similar circumstances. Because Dentons held itself out as an expert in Indian law, Dentons also had a heightened duty to exercise the degree of knowledge and skill possessed by attorneys practicing in that particular field.

68. Dentons breached its duties to Saybrook by, among other things, (a) failing to advise Saybrook of any risk that any of the terms in the Bond Documents could cause any of the Bond Documents, including the Trust Indenture, to be held void and unenforceable as an unapproved management contract; (b) failing to advise Saybrook that the Indenture Provisions in particular created a risk of the Trust Indenture being held void and unenforceable as an unapproved management contract; and (c) failing to advise Saybrook that the above-mentioned risks could be avoided by, among other possibilities, (i) removing the Indenture Provisions, (ii) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (iii) not entering into the Bond Transaction.

69. Saybrook has been damaged by Dentons' breach, having incurred millions of dollars in legal expenses that it would not have incurred had Dentons provided competent legal counsel. As litigation over the Bond Transaction continues, Saybrook's damages continue to accrue.

70. Dentons' failure to advise Saybrook was the proximate cause of Saybrook's damages. If Dentons had advised Saybrook of the above-mentioned risks and how Saybrook could have avoided them, Saybrook would have avoided the risk presented by the Indenture Provisions by, among other possibilities, either (a) eliminating the Indenture Provisions from the Bond Documents and proceeding to consummate the Bond Transaction in a safe manner, (b) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (c) declining to purchase the Bonds.

71. Saybrook instructed Dentons to avoid any language that might create a risk that any Bond Document could be deemed void as an unapproved management contract.

72. Dentons' failure to follow Saybrook's instructions was a substantial factor in Saybrook's damages.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) award Saybrook as damages the amount of legal fees Saybrook has spent litigating the Bond Transaction;
- b) issue an order compelling Dentons to pay Saybrook's legal expenses in litigating the Bond Transaction going forward; and
- c) award Saybrook as damages the difference between Saybrook's recovery in all pending litigation concerning the Bond Transaction and the amount that Saybrook would have been entitled to as the benefit of its bargain with the Tribal Parties.

COUNT II – Breach of Contract

73. Saybrook incorporates by reference the allegations complained in the above paragraphs of this complaint.

74. The words, conduct, actions, and entire course of dealing of the parties demonstrates an agreement between Saybrook and Dentons for Dentons to provide Saybrook with sound and competent legal advice in exchange for payment by Saybrook.

75. The words, conduct, actions, and entire course of dealing of the parties demonstrates that Dentons accepted the contract, and that there was a meeting of the minds as to its material terms.

76. Saybrook's agreement with Dentons is an enforceable contract supported by valid consideration.

77. Saybrook fully performed under the contract.

78. Saybrook demanded performance in accordance with the contract by seeking sound and competent legal advice from Dentons in relation to the Bond Transaction.

79. Saybrook also demanded performance in accordance with the contract by instructing Dentons, in the course of Dentons' provision of legal services to Saybrook, to avoid any language in the Bond Documents that might cause any of the Bond Documents to be deemed void as an unapproved management contract.

80. Dentons materially breached the contract by, among other things, (a) failing to advise Saybrook of any risk that any of the terms in the Bond Documents could cause any of the Bond Documents, including the Trust Indenture, to be held void and unenforceable as an unapproved management contract; (b) failing to advise Saybrook that the Indenture Provisions in particular created a risk of the Trust Indenture being held void and unenforceable as an unapproved management contract; and (c) failing to advise Saybrook that the above-mentioned

risks could be avoided by, among other possibilities, (i) removing the Indenture Provisions, (ii) submitting the Trust Indenture, and possibly other Bond Documents for declination and/or approval by the NIGC, or (iii) not entering into the Bond Transaction.

81. Saybrook has been damaged by Dentons' breach, having incurred millions of dollars in legal expenses that it would not have incurred had Dentons performed under the contract. As litigation over the Bond Transaction continues, Saybrook's damages continue to accrue.

82. Dentons' failure to advise Saybrook was the cause of Saybrook's damages. If Dentons had advised Saybrook of the above-mentioned risks and how Saybrook could have avoided them, Saybrook would have avoided the risk presented by the Indenture Provisions by, among other possibilities, either (a) eliminating the Indenture Provisions from the Bond Documents and proceeding to consummate the Bond Transaction in a safe manner, (b) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (c) declining to purchase the Bonds.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) award Saybrook as damages the amount of legal fees Saybrook has spent litigating the Bond Transaction;
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- c) award Saybrook as damages the difference between Saybrook's recovery in all pending litigation concerning the Bond Transaction and the amount that Saybrook would have been entitled to as the benefit of its bargain with the Tribal Parties.

COUNT III – Breach of Fiduciary Duty

82. Saybrook incorporates by reference the allegations complained in the above paragraphs of this complaint.

83. Dentons, as Saybrook's lawyers, owed Saybrook fiduciary duties, including duties of loyalty, care, and good faith.

84. Dentons breached its fiduciary duties to Saybrook by, among other things, (a) failing to advise Saybrook of any risk that any of the terms in the Bond Documents could cause any of the Bond Documents, including the Trust Indenture, to be held void and unenforceable as an unapproved management contract; (b) failing to advise Saybrook that the Indenture Provisions in particular created a risk of the Trust Indenture being held void and unenforceable as an unapproved management contract; and (c) failing to advise Saybrook that the above-mentioned risks could be avoided by, among other possibilities, (i) removing the Indenture Provisions, (ii) submitting the Trust Indenture, and possibly other Bond Documents for declination and/or approval by the NIGC, or (iii) not entering into the Bond Transaction.

85. Saybrook has been damaged by Dentons' breach, having incurred millions of dollars in legal expenses that it would not have incurred had Dentons performed its fiduciary duties. As litigation over the Bond Transaction continues, Saybrook's damages continue to accrue.

86. Dentons' failure to advise Saybrook was the cause of Saybrook's damages. If Dentons had advised Saybrook of the above-mentioned risks and how Saybrook could have avoided them, Saybrook would have avoided the risk presented by the Indenture Provisions by, among other possibilities, either (a) eliminating the Indenture Provisions from the Bond Documents and proceeding to consummate the Bond Transaction in a safe manner, or (b) submitting the Trust Indenture, and possibly other Bond Documents, for declination and/or approval by the NIGC, or (c) declining to purchase the Bonds.

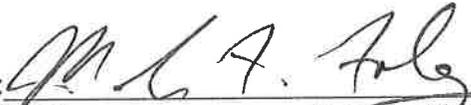
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JURY DEMAND

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

von BRIESEN & ROPER, s.c.

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