STATE OF WISCONSIN CIRCUIT COURT CIVIL DIVISION WAUKESHA COUNTY

SAYBROOK TAX EXEMPT INVESTORS, LLC, *ET AL.*,

PLAINTIFFS,

V.

LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, *ET AL.*,

Case No. 12 CV 00187

LDF ACQUISITION LLC AND SAYBROOK TAX EXEMPT INVESTORS, LLC,

PLAINTIFFS,

V.

DENTONS US LLP, AS SUCCESSOR-IN-INTEREST TO SONNENSCHEIN, NATH & ROSENTHAL LLP,

DEFENDANT.

Case No. 15 CV 00302

FIRST AMENDED COMPLAINT

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TABLE OF DEFINED TERMS

"Big River" means Big River Enterprises LLC.

"Bond" or "Bonds" means the $50 million Taxable Gaming Revenue Bond that Stifel purchased from issuer EDC and sold to Saybrook. (Stifel purchased and sold to Saybrook only one $50 million Bond. The Bond contemplated being broken up into additional Bonds as necessary should a bondholder want to sell it in pieces, and therefore the Bond Documents refer to "Bonds." We do likewise for convenience.)

"Bond Counsel" means counsel, in this case Godfrey, whose role in a bond issuance is to render a bond opinion consisting of an objective judgment rather than the partisan position of an advocate.

"Bond Counsel Opinion Letter" means the letter authored by Godfrey, incorporated and adopted in the Offering Memo, and opining, among other things, that the Bonds and Indenture are enforceable.

"Bond Documents" means the documents related to the Bond Transaction, including, without limitation, the documents attached as Exhibits B–D, H–M. The Bond Documents of primary interest in this lawsuit are the Indenture, Bonds, Security Agreement, and Tribal Agreement, and numerous other Bond Documents containing representations and warranties.

"Bond Transaction" means Stifel's sale of the Bonds to Saybrook on January 18, 2008, after having initially purchased them from EDC the same day; the Tribal Parties' and Wells Fargo's execution of the Indenture, Security Agreement, and Tribal Agreement on or about January 1, 2008; and the execution of related agreements.

"Capital Expenditure Provision" means the Management Provision requiring EDC to obtain the consent of a majority of bondholders to incur capital expenditures that exceed by 25 percent the prior year's capital expenditures. Ex. C § 6.18.

"Casino Facility" means EDC's Lake of the Torches Resort Casino in Lac du Flambeau, Wisconsin.

"Dentons" means third-party defendant Dentons US LLP.

"EDC" means Lake of the Torches Economic Development Corporation and all agents acting on its behalf.

"FINRA" means Financial Industry Regulatory Authority.

"Godfrey" means Godfrey & Kahn, S.C.

"Grand Soleil Project" means the development of a gaming complex in Natchez, Mississippi consisting of a riverboat casino, a hotel, and a bed-and-breakfast inn.

"IGRA" means the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*).

"Indenture" means a trust indenture pursuant to which Wells Fargo was to act as trustee of revenues from EDC's Casino Facility to facilitate repayment of the Bonds.

"Issuer Opinion Letter" means the letter authored by Godfrey, incorporated and adopted in the Offering Memo and Bond Counsel Opinion Letter, and opining, among other things, that the Bond Documents are enforceable and not void under IGRA.

"Management Consultant Provision" means the Management Provision providing that if the "Debt Service Coverage Ratio" (as defined in the Indenture) falls below 2 to 1, the bondholders can require EDC to retain an independent management consultant, approved by a majority of the bondholders, to make recommendations to improve the operations and cash flow of the Casino Facility; EDC must use its "best efforts" to implement those recommendations. Ex. C § 6.19.

"Management Contract" is defined as in 25 U.S.C. § 2711 and 25 C.F.R. § 502.15.

"Management Provisions" means the provisions that the Seventh Circuit held, collectively, rendered the Indenture void. *See Wells Fargo v. EDC*, 658 F.3d 684 (7th Cir.

2011). In the order they appear in the Indenture and were addressed by the Seventh Circuit, and as defined more fully herein, these are the Revenue Deposit Provision, Revenue Allocation Provisions, Revenue Control Provision, Capital Expenditure Provision, Management Consultant Provision, Replacement of Key Management Provision, and New Management in Default Provision.

"Material Facts About the Bond Documents" is defined at ¶ 112(c).

"Material Facts About Stifel" is defined at ¶ 100.

"MSRB" means Municipal Securities Rulemaking Board.

"NABL" means National Association of Bond Lawyers.

"NASD" means National Association of Securities Dealers.

"New Management in Default Provision" means the Management Provision providing that 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. Ex. C § 8.02.

"NIGC" means the National Indian Gaming Commission.

"Noack" means David Noack, officer and agent of Stifel.

"Offering Memo" means the offering memorandum authored by Stifel, bearing Stifel's mark, and signed by EDC, which sets forth the terms under which the Bonds were sold by EDC to Stifel and, in turn, by Stifel to Saybrook, pursuant to SEC Rule 144A.

"Plaintiffs" means Saybrook and Wells Fargo.

"Replacement of Key Management Provision" means the Management Provision providing that EDC may not remove key personnel of the Casino Facility without the consent of a majority of the bondholders. Ex. C § 6.20.

"Restatement § 333" means Restatement (Second) of Contracts § 333 (1981).

"Revenue Allocation Provisions" means the Management Provisions subjecting the Casino Facility's revenues to numerous conditions. Ex. C § 5.01.

"Revenue Control Provision" means the Management Provision providing the trustee of the Casino Facility's deposited revenues ultimate control over their withdrawal. Ex. C § 5.01 ¶¶ 2–3.

"Revenue Deposit Provision" means the Management Provision requiring EDC to deposit revenues from the Casino Facility daily into a trust account. Ex. C § 5.0 ¶ 1.

"Saybrook" means Saybrook Fund Investors, LLC, Saybrook Tax Exempt Investors, LLC, and LDF Acquisition, LLC.

"SEC" means the U.S. Securities and Exchange Commission.

"SEC Rule 144A" means 17 C.F.R. § 230.144A.

"Security Agreement" means the agreement in which EDC granted an interest in various revenues, accounts, equipment, and other items as security for its obligations under the Bonds and Indenture.

"Shibilski" means Kevin Shibilski, officer and agent of Stifel, and undisclosed investor in the Grand Soleil Project at the time of the Bond Transaction.

"Stifel" means Stifel, Nicolaus & Company, Inc., Stifel Financial Corporation, and their attorneys and agents.

"Stifel's Misstatements to the Tribal Parties" is defined at ¶ 99.

"Tribal Agreement" means the agreement in which the Tribe guaranteed EDC's obligations to pay principal and interest due under the Bonds.

"Tribal Court" means the Court of the Tribe, Lac du Flambeau Reservation, Wisconsin, subject to the Tribe's law and presided over by a judge appointed by the Tribal Council.

"Tribal Parties" means EDC and the Tribe.

"Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians and all agents acting on its behalf.

"Wells Fargo" means Wells Fargo Bank, N.A.

INTRODUCTION

1. Stifel sold Saybrook $50 million in Bonds issued by EDC and guaranteed by the Tribe. As part of the sale, Stifel warranted, among other things, that the Bonds were secured pursuant to the Indenture and that the Indenture described the bondholder's rights. Stifel's warranties proved untrue. Plaintiffs bring this suit primarily to require Stifel to make good on its warranties.

2. Stifel orchestrated every transaction underlying this case. Stifel structured the Bond Transaction, represented and advised the Tribal Parties, and solicited Saybrook to loan the Tribal Parties $50 million. Stifel also played a central role in the Grand Soleil Project that eventually led to the Bond Transaction, advising the Tribal Parties to invest in that Project, and representing other investors in that Project.

3. By 2004, Charles Cato, the initial investor in the Grand Soleil Project, had hired Stifel to find investors. One investor was Stifel's officer Kevin Shibilski, who invested at least $1.5 million in or about 2006. Shibilski invested through Big River, thereby concealing his ownership. Stifel also represented Big River. While acting for the original investor, Stifel solicited and advised the Tribal Parties to invest $5 million in 2005 and make additional investments thereafter of many millions more.

4. By 2007, the Grand Soleil Project seemed doomed to fail absent additional funding. Stifel, the Tribal Parties' financial advisor, acting through its agent Shibilski, advised and pressured the Tribal Parties into entering into the Bond Transaction to provide this funding. To do so, Stifel misrepresented, among other things, that the Tribal Parties were guaranteed a sizeable return on their investment in the Grand Soleil project, that Saybrook thought the Grand Soleil Project was a good investment, and that Saybrook would invest further, all the while

concealing that the real reason for the pressure was to aid Shibilski, using money Saybrook would lend to EDC to bail out the Grand Soleil Project.

5. At Saybrook's insistence, its loan was structured so that Stifel purchased the Bonds from EDC and immediately resold them to Saybrook under SEC Rule 144A. Saybrook insisted on this structure so that its counterparty in the transaction would be Stifel, a large, stable, solvent entity against whom Saybrook could readily enforce violations of representations and warranties in the Bond Documents.

6. In selling Saybrook the Bonds, Stifel made the warranties described in Restatement (Second) of Contracts § 333 (quoted at pp. 15–16 ¶ 64, below), which apply to any such transaction unless disclaimed. Here there was no disclaimer and so Stifel warranted, among other things, that the Bonds were secured pursuant to the Indenture and that the Indenture described the bondholders' rights. In addition, Stifel made numerous explicit representations and warranties set out in Count I, below. Relying on and induced by Stifel's warranties, Plaintiffs entered into the Bond Transaction, unaware that the Indenture was void *ab initio* and also unaware of Stifel's fraudulent and negligent material misstatements and omissions, Stifel's conflicts, and Stifel's numerous violations of securities laws, rules, regulations, and standards of conduct in connection with the Bond Transaction.

7. For almost two years, EDC paid Saybrook on schedule. In December 2009, EDC refused to make further payments and defaulted. Wells Fargo, as trustee, sued to enforce the Indenture to facilitate EDC's repayment. The Seventh Circuit held the Indenture void *ab initio* under IGRA and remanded for a ruling on the enforceability of the Bonds and other Bond Documents.

8. In this lawsuit, Plaintiffs' primary claim—for breach of warranty, requesting the most economical and equitable remedy—is that Stifel should (a) pay Plaintiffs the principal,

interest, and expenses Plaintiffs would have collected if the Indenture were as Stifel warranted, and (b) thereafter, as subrogee, assume and enforce Saybrook's rights asserted herein. Proceeding in this fashion reduces the number of parties, claims, and issues in this case and limits costs for all parties and this Court.

9. Alternatively, Plaintiffs seek under Counts 2–20 herein and in the consolidated case damages and other remedies from Stifel and from:

(a) EDC, which issued the Bonds and granted a security interest in them;

(b) the Tribe, which guaranteed the Bonds;

(c) Godfrey, Bond Counsel, which misled Plaintiffs to believe the Indenture was enforceable; and

(d) Dentons, Saybrook's attorney, for reasons stated in the case consolidated with this one.

THE PARTIES

10. Saybrook. LDF Acquisition, LLC is a limited liability company created as a special purpose vehicle by Saybrook Tax Exempt Investors, LLC to purchase the Bonds. LDF Acquisition, LLC is owned by entities of which at least one member is a resident of the State of Wisconsin. Saybrook Tax Exempt Investors, LLC was the manager of LDF Acquisition, LLC and the Managing General Partner of the entities that own LDF Acquisition, LLC, from inception until February 27, 2013, at which time Saybrook Fund Investors, LLC succeeded to Saybrook Tax Exempt Investors, LLC's rights, became the manager of LDF Acquisition and the Managing General Partner of the entities that own LDF Acquisition, and so remains as of this filing. Saybrook Tax Exempt Investors, LLC remains as a General Partner of the entities that own LDF Acquisition with respect to its economic interests only.

11. Wells Fargo, trustee on behalf of the bondholders, is a national banking association 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.

12. Stifel. Stifel, Nicolaus & Company, Inc. is a brokerage and investment banking company organized under the laws of Missouri; its principal place of business is in St. Louis, Missouri; its place of business at 18000 Sarah Lane, Suite 180, Brookfield, Wisconsin, was a primary location of its activity in this matter. Stifel Financial Corporation, sole shareholder of Stifel, Nicolaus & Company, Inc., is a brokerage and investment banking firm, organized under the laws of Delaware; its principal place of business is in St. Louis, Missouri. According to an "About Stifel Nicolaus" page on Stifel's website (visited January 12, 2012), "Stifel Financial Corp. . . . provides securities brokerage, investment banking, trading, investment advisory, and related financial services through its wholly owned subsidiaries, primarily Stifel, Nicolaus & Company, Incorporated." Ex. A at 1.

13. EDC is a corporation established by the Tribe under Article VI, Section 1(o) of the Tribe's constitution to own and operate the Casino Facility.

14. The 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.

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

16. Dentons, sued here by Godfrey and the Tribal Parties as a third-party defendant, has over 6,500 lawyers in offices all over the world. It advised Saybrook in the Bond Transaction. Saybrook has sued Dentons in a separate case consolidated with this one.

JURISDICTION AND VENUE

17. 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 at issue in this proceeding.

18. Defendants Stifel, EDC, the Tribe, and Godfrey are each subject to personal jurisdiction in this Court because they each engaged in substantial and not isolated activities within Wisconsin and Plaintiffs' injuries arose out of each of their acts or omissions within this state. Wis. Stat. §§ 801.05(1)(d), 801.05(3).

19. Venue is appropriate in this Court because at least one defendant does substantial business in Waukesha County and Plaintiffs' claims arose here, Wis. Stat. §§ 801.50(2)(a), (c), and because it is the county designated by Plaintiffs. Wis. Stat. § 801.50(2)(d).

FACTUAL BACKGROUND

Three Months of Due Diligence and Negotiation

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

21. Saybrook expressed interest and undertook due diligence. In response to Saybrook's due diligence requests, Stifel gathered and provided information and documents.

22. Due diligence requests are standard in bond issuances. Saybrook was under no obligation to purchase the Bonds until January 18, 2008, the date of the closing.

23. Stifel told Saybrook that time was of the essence because (a) certain EDC debt, which was to be consolidated and satisfied by the proceeds of the Bonds, was due in early 2008, and (b) the Grand Soleil Project for which EDC had designated a portion of the Bond proceeds, required quick financing to prevent contractors from quitting.

24. In the three months between late October 2007 and the day Saybrook bought the bonds, January 18, 2008, the parties moved quickly to draft, negotiate, enter into, issue, and cause to be issued the Bond Documents.

Financial Terms of the Bond Transaction

25. Stifel sold Saybrook the Bonds containing EDC's promise to pay pursuant to the Bonds and Indenture.

26. The Bonds provide for (a) repayment by EDC of $50 million in principal over five years and (b) twice a year, on April 1 and October 1, payment of 12 percent interest. Ex. B at 2. The Indenture provides for 15 percent interest for amounts not paid by October 1, 2012. Ex. C § 8.02.

27. The Bonds state, among other things: "The Bonds . . . are . . . secured . . . pursuant to the Indenture. Reference is hereby made to the Indenture . . . for a description . . . of . . . the rights of the owners of the Bonds, the rights, duties and immunities of the Trustee." Ex. B at 3.

28. The Indenture required EDC to make payments every October toward reducing the outstanding principal on the Bonds according to the following schedule:

2009: $3,385,000

2010: $3,790,000

2011: $4,245,000

2012: $38,580,000

29. The Indenture provided a mechanism by which EDC's debt to Saybrook was secured and by which EDC was to repay Saybrook via pledged revenues from the Casino Facility and, as necessary, a reserve fund. Under the Indenture, revenues from the Casino Facility were to be regularly deposited into an account controlled by trustee Wells Fargo, which was to allocate the funds as set forth in the Indenture to facilitate repayment of the Bonds.

30. The Indenture provides that, in the event of default and Wells Fargo's efforts to collect principal and interest due Saybrook under the Bonds, "the reasonable expenses and charges of the Trustee, its agent and attorneys, and all other indebtedness secured hereby . . . shall be paid." Ex. C § 8.02.

31. The Bonds were sold under SEC Rule 144A, exempting them from registration requirements under federal securities laws and subjecting the sale to Wisconsin state law. Under Rule 144A, Stifel acted as the initial purchaser of the Bonds from EDC with the intent to immediately resell them to Saybrook.

32. 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, with Wells Fargo as trustee under the Indenture. Stifel the same day resold the Bonds to Saybrook for $49,500,000. The trade ticket for the Stifel's sale of the Bonds to Saybrook is attached as Exhibit D.

33. Stifel received $375,000 from the proceeds of the sale. On information and belief, Stifel's salesmen believed at the time of the sale that they would retain their portions of these proceeds as a commission regardless of the ultimate performance under the Indenture or Bonds. On information and belief, Stifel profited in other ways as well from related dealings with the Tribal Parties.

34. Upon closing, Wells Fargo certified that it received $49,125,000 of proceeds of the Bond issue. Wells Fargo distributed these funds on EDC's behalf, less $5 million held in reserve on EDC's behalf, to: (a) EDC's creditors, to satisfy $28 million of EDC's debt (including over $7 million in debt related to the Grand Soleil Project); (b) provide an additional $16 million in financing toward the Grand Soleil Project; and (c) cover the costs of the sale of the Bonds, including fees of $125,000 to Godfrey.

EDC Breaches the Indenture and Bonds

35. Plaintiffs have fully and wholly performed all their obligations under the Bond Documents.

36. EDC substantially performed on the Bonds and the Indenture in 2008 and in 2009 through October.

37. From the issuance of the Bonds in January 2008 until October 2009, EDC substantially complied with the requirement that it make deposits of revenues from the Casino Facility into a trust account held by Wells Fargo.

38. The following payments were made by EDC or on EDC's behalf on or around the following dates:

Date	Payment
October 1, 2008	$4,216,666.67
April 1, 2009	$3,000,000.00
October 1, 2009	$6,385,000.00
January 14, 2010	$6,861,135.00

39. All payments above were toward principal and interest under the Bonds, except for the January 14, 2010 payment, which was toward principal and interest in an amount of $6,299,999.51, with the remainder being held by Wells Fargo in a reserve account to pay expenses. Saybrook directed Wells Fargo to make the January 14, 2010 payment toward principal and interest on EDC's behalf. That payment was the last made under the Bonds toward principal and interest.

40. Beginning in or around November 2009, EDC stopped depositing Casino Facility revenues into the trust account and in other ways breached the Bonds and Indenture.

The Indenture Is Declared Void

41. On December 21, 2009, Wells Fargo sued EDC in the United States District Court for the Western District of Wisconsin (No. 3:09-cv-00768) to enforce the Indenture. In January

2010, the District Court ruled that the Indenture was void *ab initio* under IGRA because it was an unapproved Management Contract. The District Court held EDC's waiver of sovereign immunity in the Indenture likewise void and, for that reason, that the District Court lacked jurisdiction over Wells Fargo's claims. *See generally Wells Fargo v. EDC*, 677 F. Supp. 2d 1056 (W.D. Wis. 2010). Wells Fargo appealed.

42. The Seventh Circuit (a) affirmed the District Court's holding that the Indenture is void *ab initio*, including the provision waiving EDC's sovereign immunity; but (b) remanded for further proceedings related to the Bonds and other Bond Documents. *See generally Wells Fargo v. EDC*, 658 F.3d 684 (7th Cir. 2011).

43. Legal proceedings to date have invalidated the Indenture and created costly litigation and delay due to uncertainty about (a) the validity and enforceability of the Bonds and other Bond Documents and (b) assuming they are valid and enforceable, Plaintiffs' ability to collect under them from the Tribal Parties.

Further Legal Proceedings

44. In April 2013, the District Court determined that it lacked jurisdiction over claims asserted in this lawsuit. *Saybrook Tax Exempt Investors, LLC v. EDC*, No. 12-cv-255-wmc, 2013 WL 2300991 (W.D. Wis. Apr. 1, 2013).

45. Two weeks later, the Tribal Parties filed suit in Tribal Court against Plaintiffs, Stifel, and Godrey.

46. On May 24, 2013, the defendants in the Tribal Court filed *Stifel v. Tribal Parties*, No. 13-cv-372 (W.D. Wis.), to enjoin the Tribal Court action. On May 16, 2014, the District Court preliminarily enjoined the Tribal Parties from continuing their case in Tribal Court against Stifel and Plaintiffs. (Godfrey's motion for preliminary injunction was denied for reasons not pertinent to Plaintiffs' claims.) That case is now before the Seventh Circuit. Among the many

rulings in that case, the one of most pertinence to Plaintiffs' claims is the court's preliminary ruling that the Bonds are likely enforceable even though the Indenture is void, *id.*, ECF No. 175 at 47, although uncertainty remains regarding (a) the degree to which the Bonds and other Bond Documents will finally be held enforceable and (b) assuming they are so held, Plaintiffs' ability to collect from the Tribal Parties.

PRIMARY COUNT

Count 1 (Against Stifel):
Breach of Warranty re Indenture – Equitable Relief

47. Plaintiffs hereby re-allege all allegations in this First Amended Complaint as if set forth fully herein.

48. Saybrook agreed to purchase the Bonds from Stifel for valuable consideration.

49. Saybrook's agreement to purchase the Bonds was induced, at the time of the sale and leading up to it, by Stifel making, incorporating, and adopting numerous express and implied warranties related to the Bonds.

Express Warranties re Indenture

50. Early in negotiations, on or about October 22, 2007, Stifel sent Saybrook by email an Executive Summary of the proposed terms for the sale of the Bonds, listing the waiver of sovereign immunity on all Bond Documents as security for the Bonds. Ex. E at 2.

51. On or about November 2, 2007, Saybrook sent Stifel a Preliminary Term Sheet outlining revised terms under which Saybrook may have been willing to provide financing of the Bonds. Ex. F. The Preliminary Term Sheet included a section entitled "Waiver of Sovereign Immunity," requiring that the Tribe waive its sovereign immunity to enable Saybrook to enforce the terms of the Bond Documents in Wisconsin state and federal courts. *Id.* at 2.

52. On or about November 21, 2007, Stifel sent Saybrook another draft Executive Summary for the sale of the Bonds. This draft 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 Bond Documents in federal court and Wisconsin state court. Ex. G at 5.

53. On or about January 17, 2008, Stifel signed a Form of Investment Letter in which it stated:

(a) "The Bonds are issued, or to be issued, under and pursuant to the terms and provisions of [the Indenture]" (Ex. H at 1); and

(b) "The Purchaser [Stifel] represents, warrants, and agrees as follows . . . It acknowledges that . . . others will rely on the truth and accuracy of the foregoing acknowledgements, representations." *Id.* at 1, 3.

54. Stifel drafted the Offering Memo, setting forth the terms under which EDC issued the Bonds and Stifel offered them for sale to Saybrook. The Offering Memo:

(a) was authored by Stifel;

(b) bears Stifel's mark (Ex. I at cover page);

(c) states that the Bonds are "secured . . . as described in the Indenture" (*id.* at 4);

(d) recognizes "various remedies specified in the Indenture" (*id.*);

(e) states that "[EDC] and the Tribe have waived their sovereign immunity and consented to suits against them . . . in connection with the Bonds and the Bond Documents" (*id.*);

(f) incorporates and adopts the Bond Counsel Opinion Letter, written and signed by Godfrey, as counsel to the Tribal Parties (*id.* at App. G; also attached separately as Exhibit J for ease of reference); and

(g) incorporates and adopts the Security Agreement and Tribal Agreement. *Id.* at App. E; also attached separately as Exhibits K and L for ease of reference.

55. By incorporating and adopting the Bond Counsel Opinion Letter in the Offering Memo, Stifel made, incorporated, and adopted all representations and warranties made, incorporated, and adopted by Godfrey therein, including those made in the Issuer Opinion Letter.

56. In the Bond Counsel Opinion Letter, Godfrey:

(a) stated that "[t]he 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. J at 2 ¶ 4);

(b) stated that revenues from EDC's Casino Facility "have been pledged and assigned under the Indenture as security for payment of the principal of, and interest on, the Bonds" (*id.* ¶ 5);

(c) stated that EDC's "consents to suit . . . 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" (*id.* ¶ 2);

(d) incorporated the opinions expressed in the Issuer Opinion Letter, which Godfrey also authored, signed, and addressed to Plaintiffs. *Id.* at 2, last sentence ("except as otherwise stated therein or in our separate letter of even date addressed to . . . the Trustee and Saybrook Tax-Exempt Investors, LLC, we express no opinion relating thereto").

57. Godfrey made representations in the Issuer Opinion Letter, addressed to Plaintiffs (and others). It states: "This opinion letter is solely for the addressees hereof [two of which are Plaintiffs] and no one other than addressees is entitled to rely on the opinion without our prior consent." Ex. M at 11. The Opinion Letter includes the following representations:

(a) Godfrey reviewed the Indenture and other Bond Documents (*id.* at 1–2);

(b) Godfrey examined IGRA and the NIGC's regulations promulgated thereunder (*id.* at 2);

(c) Godfrey "examined such other laws, . . . made such legal and factual examinations and . . . made such inquiries and examined such other documents and proceedings as we . . . deemed necessary or appropriate for the purposes of this opinion" (*id.* at 3);

(d) the Bonds and other Bond Documents "have been duly authorized, executed and delivered . . . and constitute valid and binding obligations of [EDC] enforceable in accordance with their terms" (*id.* at 5 ¶¶ 12–13);

(e) "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], [and] the Tribal Agreement by the Tribe . . . have been obtained, including all necessary approvals of . . . the National Indian Gaming Commission" (*id.* at 6 ¶ 21);

(f) "[EDC] has duly waived its sovereign immunity in accordance with the terms of 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" (*id.* at 7 ¶ 28);

(g) "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" (*id.* at 8–9 ¶ 31);

(h) "[EDC] was not required to obtain any consent, approval, authorization, or order of . . . the National Indian Gaming Commission" (*id.* at 9 ¶ 34); and

(i) "The possibility that certain rights, remedies, waivers, and other provisions of the Bond Documents [and] the Tribal Agreement . . . may not be enforceable . . . will not render any of the Bond Documents or the Tribal Agreement . . . invalid as a whole." *Id.* at 10 ¶ iii.

58. By incorporating and adopting the Security Agreement in the Offering Memo, Stifel made, incorporated, and adopted all representations and warranties made by EDC therein.

59. In the Security Agreement, EDC recognized its "obligations under the Indenture," Ex. K at 1 ¶ 1, and waived its sovereign immunity. *Id.* at 6 ¶ 21.

60. By incorporating and adopting the Tribal Agreement in the Offering Memo, Stifel made, incorporated, and adopted all representations and warranties made by the Tribe therein.

61. In the Tribal Agreement, the Tribe recognized "the obligation of [EDC] for the payment of principal of and interest on the Bonds . . . in accordance with the Trust Indenture," Ex. L at 1 § 1, and waived its sovereign immunity. *Id.* at 4 § 9(b).

62. In sum, Stifel expressly made, incorporated, and adopted the following warranties:

(a) All Bond Documents (including the Indenture) were secured by the Tribal Parties' waiver of sovereign immunity. Exs. E, G, I–M.

(b) The Bonds were issued pursuant to the Indenture. Ex. H.

(c) The Bonds were secured as described in the Indenture. Exs. I, J.

(d) The various remedies specified in the Indenture exist. Ex. I.

(e) EDC's obligations under the Indenture exist. Exs. K, L.

(f) The Bond Documents (including the Indenture) are valid, binding, and enforceable. Exs. J, M.

(g) None of the Bond Documents (including the Indenture) is void under IGRA, and any invalidity under IGRA of certain provisions would not render other provisions void. Ex. M.

63. Stifel also explicitly warranted to Saybrook that:

(a) Stifel had substantial relevant experience in Indian gaming transactions;

(b) Stifel had sufficient skill and expertise to facilitate a successful Bond Transaction; and

(c) Godfrey had sufficient skill and expertise to ensure that the Bond Documents would comply with all applicable laws and regulations.

Implied Warranties re Indenture

64. A seller of a bond warrants its validity as follows:

> (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) ("Restatement § 333") (emphasis added). Here, no party to the Bond Transaction manifested an intent contrary to this implied warranty.

65. Cases rarely arise under the implied warranty of validity but, when they do, Wisconsin courts consistently apply it. *See, e.g.*, *Giffert v. West*, 33 Wis. 617, 623 (1873) (implied warranty of validity in the assignment of rights generally, including the sale of security interests); *see also State v. Machon*, 112 Wis. 2d 47, 51, 331 N.W.2d 665, 667 (Ct. App. 1983) (adopting Restatement § 333 and stating: "The assignee also acquires rights against the assignor, based on warranties imposed by law and arising out of the assignment").

66. On that basis, Stifel impliedly warranted the validity of these statements contained on the face of the Bonds (emphasis added):

> Principal and the redemption price is payable . . . at the office of Wells Fargo . . . as Trustee under the Indenture . . . Interest shall be paid . . . defaulted interest established pursuant to the Indenture.
>
> * * *
>
> The Bonds . . . are . . . secured . . . pursuant to the Indenture. Reference is hereby made to the Indenture . . . for a description . . . of . . . the rights of the owners of the Bonds, the rights, duties and immunities of the Trustee . . . .
>
> * * *
>
> 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. B at 2–5 (emphasis added).

67. Under Restatement § 333, Stifel also impliedly warranted that it had a valid title to the Bonds and the ability to transfer the Bonds. *See also Costigan v. Hawkins*, 22 Wis. 74, 81–83 (1867) (sellers impliedly warrant good title to what is sold).

68. In sum, Stifel impliedly warranted that it had a valid title to the Bonds and the ability to transfer the Bonds, and that the following rights expressed on the face of the Bonds exist:

(a) Interest is established pursuant to the Indenture. Ex. B.

(b) The Bonds are secured pursuant to the Indenture. *Id.*

(c) The Indenture describes the rights of the bondholders and the rights, duties, and immunities of the trustee. *Id.*

(d) EDC consents to jurisdiction and waives immunity to a suit to enforce the Bond Documents. *Id.*

69. In selling Saybrook the Bonds, Stifel did not disclaim any express or implied warranties.

70. Stifel's warranties were material, and Plaintiffs relied on and were induced by Stifel's warranties.

71. Stifel breached its warranties because the Indenture was void *ab initio*.

72. Stifel's breach of express and implied warranties has caused Plaintiffs to suffer pecuniary loss in an amount equal to whatever principal, interest, and expenses Plaintiffs would otherwise be owed by the Tribal Parties but have not collected because the Indenture is void *ab initio* and legal proceedings on that issue have delayed payment.

73. The total amount of damages Plaintiffs have suffered due to the Bonds not being as warranted by Stifel is substantial because, with an enforceable Indenture, unlike the present situation: (a) Plaintiffs could enforce the Indenture; (b) no uncertainty would surround Plaintiffs' ability to enforce the other Bond Documents; and (c) EDC's debt would have been paid in full.

74. EDC's earnings and cash flows from October 2009 to June 2012 were sufficient to pay what was owed under the Bonds pursuant to the Indenture. In 2008, Plaintiffs determined that in 2012 EDC could easily have refinanced the Bonds. In fact, in October 2012, EDC could have refinanced or paid Plaintiffs over time with 15 percent interest. In short, EDC could and would have fully performed under the Bond Documents if the Indenture had been as Stifel warranted.

75. The standard remedy for breach of warranty is a requirement that the warranting party put the warrantee in the same position it would have been in had the situation been as warranted.

76. If a remedy at law is inadequate, a party is entitled to an equitable remedy when that would satisfy the interests of justice. That is the case here, where an equitable remedy would make Plaintiffs precisely whole with no risk of shortfall or windfall. The equitable remedy would be an injunction requiring specific performance by Stifel of the obligations of

EDC under the Bonds to the date of payment as if all Bond Documents were valid. Upon such payment, Stifel would again become owner of the Bonds and subrogated to all claims of Plaintiffs asserted herein.

77. Here legal relief for damages is inadequate. The total damages Plaintiffs suffered due to the Bonds not being as warranted by Stifel cannot be determined for years because (a) it will take years to secure a final judgment (after appeals are concluded) resolving whether the Bond Documents other than the Indenture are enforceable; (b) in the interim, no one can be sure that the Casino Facility will continue to be profitable; and (c) expenses to collect from the Tribal Parties will continue to accumulate to an amount that cannot be finally determined until proceedings are ended. Damages against Stifel also depend on Plaintiffs' ability to collect from the Tribal Parties. The ability to collect from the Tribal Parties in the future what would already have been collected had the Bonds been as warranted is uncertain because:

(a) The Tribal Parties have stated that they intend to fight any collection effort on jurisdiction and sovereignty grounds even if the Bond Documents other than the Indenture are held enforceable.

(b) Since November 2009 when EDC and the Tribe repudiated their obligations, they have been obtaining millions of dollars a year, by now more than enough to have fully paid Plaintiffs all amounts due under the Bond Documents, but have been disbursing those sums (i) to Tribe members who likely cannot be sued to compel repayment, and (ii) for tribal projects and programs including those that would have otherwise been suspended, eliminated, or reduced. *See* Tribal Parties' Conditional Counterclaims ¶¶ 122–30 (Nov. 6, 2014).

(c) To secure repayment from future operations of the Casino Facility, it is necessary to persuade the Tribal Parties to cooperate in continuing those operations because a non-tribal entity cannot foreclose and continue gaming operations under the license issued to the Tribal Parties. It is not clear what inducements would at this point be necessary to cause the Tribal Parties to cooperate or how they would differ from the situation that existed six years earlier.

(d) Now that the Indenture has been declared void, Plaintiffs no longer have the benefit of Indenture provisions that would aid in collection. It cannot be determined how much difference the unavailability of these provisions will make until all litigation and collection efforts end (years from now).

(e) The results of the litigation in federal court cannot be predicted with certainty.

78. Faced with this uncertain situation, the parties would have difficulty proving what would happen in the future and thus Plaintiffs' damages against Stifel.

79. However these issues are resolved, it is clear that a jury trial runs risks both of undercompensation (a shortfall) and overcompensation (a windfall) since the jury must base its verdict on what surely will be competing estimates of complex uncertain future developments.

80. Under such circumstances, a court should grant equitable relief if it provides a better remedy that avoids the problems of uncertainty and potential unfairness described above. Here such a remedy is available: Subrogate Stifel to all Plaintiffs' claims and other rights related to the Bond Transaction in return for requiring Stifel to pay Plaintiffs the principal, interest, and expenses Plaintiffs would have collected if the Indenture were as Stifel warranted. This resolution is equitable for many reasons, including:

(a) Stifel is an experienced financial company with offices in Wisconsin used to handling financial and litigation matters in Wisconsin. It can more easily than Plaintiffs take over the process of collection from EDC, the Tribe, and others.

(b) The Count 1 remedy will reduce the number of parties, claims, and issues, and increase settlement prospects. As a result, it will simplify this action and limit costs for all parties and this Court.

(c) Stifel could end up with little net loss if it successfully completes collection proceedings against the EDC and the Tribe. If Stifel ends up with a net loss, that will exactly equal the damages it should have paid Plaintiffs were this action to go to trial on damages.

(d) The Count 1 remedy will eliminate the risk of a shortfall or windfall, and eliminate the need for any expert discovery and trial regarding many complex claims and much uncertain evidence.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) order a separate trial of Count 1 pursuant to Wis. Stat. § 805.05(2);

(2) declare that Stifel breached its warranties regarding the Indenture;

(3) enter an injunction requiring Stifel to perform the Bond Documents as if all their terms were valid and enforceable and subrogate Stifel to Plaintiffs' claims and other rights related to the Bond Transaction; and

(4) grant such additional relief, not requiring a jury trial, as the evidence and law warrant or the Court deems just and proper.

ALTERNATIVE COUNTS

81. All subsequent Counts are pleaded in the alternative to Count 1. Plaintiffs seek relief on these alternative Counts only if the Court finds that relief on Count 1 is not warranted. Some of these alternative Counts are also pleaded in the alternative to each other, as indicated

below. To avoid repetition, we hereby state that, for all remaining counts, Plaintiffs re-allege all allegations in this First Amended Complaint as if set forth fully therein.

Count 2 (Against Stifel):
Breach of Warranty re Indenture – Damages and Other Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages equal to the total principal, interest, and expenses owed assuming the Indenture were valid and enforceable, less whatever such moneys are collectable from the Tribal Parties; or

(2) in the alternative and only if the above relief is denied, enter an order for rescission, restitutionary damages, and costs; and

(3) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 3 (Against Stifel):
Breach of Warranty re Other Bond Documents

82. Stifel made, incorporated, and adopted the express and implied warranties enumerated in Count 1 regarding the Indenture, which also apply to Bond Documents other than the Indenture.

83. In addition, the Offering Memo:

(a) states that the Bonds are EDC's "obligation" (Ex. I at cover page, 4, 13); and

(b) states that EDC adopted the Bond Resolution and authorized the Bonds (*id.* at 1 (fifth page after cover page), B-2);

(c) states: "[EDC] has granted to the Trustee, for the benefit of the holders of the Bonds, an assignment of and security interest in . . . collateral referenced in . . . the Security Agreement and Tribal Agreement." *Id.* at 1.

84. In the Security Agreement (incorporated and adopted by the Offering Memo), EDC stated:

> The person executing . . . this Security Agreement on behalf of [EDC] has full power, authority and authorization to execute, enter into, and perform thereunder on behalf of [EDC]. The execution, delivery and performance of this Security Agreement has been duly authorized by all necessary corporate and tribal action and will not . . . require any consent or approval of any entity which has not been obtained . . . .

Ex. K at 2 ¶ 2(b).

85. In the Tribal Agreement (incorporated and adopted by the Offering Memo), the Tribe stated:

> This Agreement constitutes the Tribe's legal, valid and binding obligation enforceable in accordance with its terms . . . The Tribe hereby absolutely and unconditionally guarantees to the Trustee the payment of the Obligations . . . No invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security therefor or other recourse with respect thereto shall affect, impair or be a defense to this Guaranty.

Ex. L at 1, 2.

86. In sum (and in addition to the express warranties enumerated in Count 1), Stifel explicitly warranted to Saybrook that Stifel had an interest in and right to sell the Bonds, and expressly made, incorporated, and adopted the following warranties expressed in numerous Bond Documents:

(a) The Bonds are EDC's obligation. Ex. I.

(b) EDC adopted the Bond Resolution and authorized the Bonds. *Id.*

(c) The Security Agreement is EDC's obligation. Ex. K.

(d) The Tribal Agreement is the Tribe's obligation. Ex. L.

87. Stifel also impliedly warranted the validity of the statements contained on the face of the Bonds, including those mentioned in Count 1 and this statement: "It is hereby certified and recited . . . that this Bond and the series of which it is a part constitutes a special obligation of the Corporation." Ex. B at 2.

88. Stifel breached its express and implied warranties to the extent the Tribal Parties are allowed to repudiate the enforceability of any terms of any Bond Document besides the Indenture.

89. If the Court finds all Bond Documents besides the Indenture to be fully enforceable in accordance with their terms, then this Count is inapplicable.

WHEREFORE, Plaintiffs respectfully request, in the alternative, that the Court:

(1) declare that Stifel breached its warranties regarding all Bond Documents besides the Indenture not fully enforceable with their terms;

(2) enter an injunction requiring Stifel to perform the Bond Documents as if all their terms were valid and enforceable and subrogate Stifel to Plaintiffs' claims and other rights related to the Bond Transaction; or

(3) in the alternative, enter a judgment against Stifel for damages equal to the total principal, interest, and expenses owed assuming all Bond Documents other than the Indenture were fully valid and enforceable, less whatever such moneys are collectable from the Tribal Parties; or

(4) in the alternative and only if the above relief is denied, enter an order for rescission, restitutionary damages, and costs; and

(5) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 4 (Against Stifel):
Strict-Responsibility Misrepresentation

90. No later than 2004, Charles Cato, an investor in the Grand Soleil project, hired Stifel to find additional investors.

91. In 2004, Stifel's Noack and Shibilski approached the Tribe about becoming an investor.

92. Noack and Shibilski knew that the Tribal Parties' elected leaders lacked the knowledge and experience to understand complex financial products, and were relying on Stifel for independent, objective financial advice.

93. By the fall of 2005, relying on Stifel's financial advice, the Tribe had invested $5 million for a share of equity in the Grand Soleil Project. By 2006, the Tribe increased its equity investment to $8.6 million. In or about 2007, the Tribe loaned the project an additional $7,187,000.

94. On information and belief, for convincing the Tribe and another investor, Big River, to invest in the Grand Soleil Project, Cato paid Stifel $100,000, and Noack and Shibilski shared in the proceeds.

95. Shibilski was not sufficiently qualified to provide the Tribal Parties financial advice regarding the Bond Transaction.

96. Shibilski invested at least $1,500,000 in Big River in or about 2006. Through Big River, Shibilski and other of Big River's members invested millions of dollars in the Grand Soleil Project before EDC issued the Bonds.

97. Stifel is imputed with knowledge of Shibilski's membership in Big River and his investment in the Grand Soleil Project, and was otherwise actually or constructively aware of Shibilski's membership in Big River and personal investment in the Grand Soleil Project.

98. Stifel knew it had a fiduciary responsibility to the Tribal Parties to disclose to the Tribal Parties and speak truthfully to the Tribal Parties about all material facts related to the Bond Transaction.

99. Unbeknownst to Plaintiffs, Stifel pressured the Tribal Parties into entering into the Bond Transaction by, among other things, affirmatively misstating to the Tribal Parties that:

(a) Stifel was advising the Tribal Parties according to their best interests as opposed to those of Shibilski;

(b) Stifel had scrutinized the projected cash flow for the Grand Soleil Project, conducted due diligence on the Grand Soleil Project, and was able to

advise the Tribal Parties regarding the financial prospects of the Grand Soleil Project;

(c) the Tribal Parties were guaranteed a 10 percent annual return on their investment in the Grand Soleil Project;

(d) the Tribal Parties would net $9 million on their investment in the Grand Soleil Project in the first year;

(e) the Tribal Parties' interest in the Grand Soleil Project was valuable and saleable;

(f) Saybrook thought the Grand Soleil Project was a good investment;

(g) Saybrook would purchase additional bonds or otherwise provide additional funding for the Grand Soleil Project after the Bond Transaction closed;

(h) Stifel would be able to obtain a second tranche of financing without difficulty; and

(i) failure to issue the Bonds would violate duties EDC owed to its Grand Soleil Project co-investor Big River ("Stifel's Misstatements to the Tribal Parties").

100. Unbeknownst to Plaintiffs, Stifel pressured the Tribal Parties into entering into the Bond Transaction by, among other things, fraudulently and negligently concealing from the Tribal Parties:

(a) Shibilski was a member of Big River and had invested in the Grand Soleil Project;

(b) Stifel had a conflict of interest regarding the Bond Transaction;

(c) Stifel pressured the Tribal Parties into entering into the Bond Transaction by fraudulently and negligently making material misstatements (including Stifel's Misstatements to the Tribal Parties) and omissions; and

(d) Stifel violated securities laws, rules, regulations, and standards of conduct in connection with the Bond Transaction ("Material Facts About Stifel").

101. Stifel made Stifel's Misstatements to the Tribal Parties and failed to disclose the Material Facts About Stifel to the Tribal Parties including via Shibilski's address to the Tribal Council on January 2, 2008, on the Tribe's reservation. At that time, Shibilski was an officer of Stifel with management or control over Stifel's activities related to the Bond Transaction. Further, such representations were made within the scope of Shibilski's employment with Stifel.

102. Stifel did not disclose the Material Facts About Stifel to Saybrook before Stifel sold Saybrook the Bonds; to Wells Fargo before Wells Fargo entered into the Indenture, Security Agreement, and Tribal Agreement; or to EDC before EDC issued the Bonds.

103. Stifel made the omissions in the prior paragraph knowing the Material Facts About Stifel were concealed from Plaintiffs or in circumstances in which Stifel necessarily ought to have known the Material Facts About Stifel were concealed from Plaintiffs.

104. Stifel failed to disclose the Material Facts About Stifel to Plaintiffs despite numerous opportunities. Saybrook's Scott Bayliss met with Shibilski and members of the Tribe in November 2007 to discuss matters related to the Bond Transaction. Bayliss also met with Shibilski during a visit to the Grand Soleil Project. Conversations with Shibilski during these visits concerned Saybrook's investigation of the Tribe, the Casino Facility, and the Grand Soleil Project. In addition, during negotiations concerning the Bond Transaction, Shibilski participated in conference calls in which Bayliss also participated and called Bayliss several times to urge Saybrook to finalize the Transaction quickly.

105. Stifel owed a duty to Plaintiffs to disclose the Material Facts About Stifel because:

(a) The Material Facts About Stifel were material to the Bond Transaction.

(b) As Stifel knew, Plaintiffs did not know the Material Facts About Stifel.

(c) Stifel had unique access to knowing the Material Facts About Stifel. Saybrook could not have reasonably been expected to discover this information.

(d) Stifel's conflict of interest and pressuring of the Tribal Parties via misrepresentations were violations of securities laws, rules, regulations, and standards of conduct, which violations Plaintiffs reasonably assumed Stifel was not committing.

(e) Having affirmatively represented that it had sufficient skill and expertise in Indian gaming transactions to facilitate a successful Bond Transaction, Stifel had a duty to warn of known circumstances tending to lead to an unsuccessful Bond Transaction or post-closing default, including the Material Facts About Stifel.

(f) Stifel had a duty (in accordance with its own internal policy) to disclose to Saybrook that it was acting as the Tribal Parties' financial advisor and, therefore, also a duty to correct such a misleading affirmative statement by disclosing the Material Facts About Stifel.

(g) It was foreseeable to Stifel that: (i) Plaintiffs could be harmed by Stifel failing to disclose the Material Facts About Stifel; (ii) Plaintiffs would rely and act upon such nondisclosure; and (iii) the services for which Stifel was

hired by the Tribal Parties were necessary for the protection of Plaintiffs and their interests under the Bond Documents.

(h) Plaintiffs reposed trust and confidence in Stifel given the relationship they had formed with Stifel in Stifel's position as investment banker, initial purchaser, and seller. Stifel knew or should have known that, accordingly, Plaintiffs were relying on Stifel.

(i) Stifel actively concealed the Material Facts About Stifel from Plaintiffs.

(j) Stifel knew, because of the relationship between Plaintiffs and Stifel, the customs of the trade, and other objective circumstances, Plaintiffs would reasonably expect a disclosure of the Material Facts About Stifel.

106. Plaintiffs reasonably relied on Stifel's representations that there were no Material Facts About Stifel. Plaintiffs would not have entered into the Bond Transaction had they known the Material Facts About Stifel.

107. Stifel's misrepresentations described in this Count caused Plaintiffs to suffer pecuniary loss. Among other things, EDC breached the Bonds, obtained a judgment that the Indenture was an unapproved Management Contract and thus void *ab initio*; and otherwise caused Plaintiffs to incur legal fees and suffer other damages.

108. Stifel had multiple economic interests in the Bond Transaction and financially gained as a result of the misrepresentations it made.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 5 (Against Stifel):
Intentional Misrepresentation

109. When Stifel concealed the Material Facts About Stifel from Plaintiffs, it:

(a) knew the Material Facts About Stifel and that they were concealed from Plaintiffs or concealed them recklessly without caring whether they were concealed; and

(b) intended to defraud Saybrook and to induce Saybrook to enter into the Bond Transaction.

WHEREFORE, Plaintiffs respectfully request that the Court:

(2) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages; or

(3) in the alternative and only if the above relief is denied, enter an order for rescission, restitutionary damages, and costs; and

(4) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 6 (Against Stifel):
Negligent Misrepresentation

110. Stifel's website claims that "Native American Gaming" is one of its "[a]reas of expertise." http://www.stifel.com/institutional/investment-banking/industry-coverage/gaming-lodging-and-leisure (visited September 25, 2015).

111. Stifel had duties to exercise standards of care in dealing with Plaintiffs regarding the Bond Transaction consistent with its claims to having substantial relevant experience in Indian gaming transactions, having sufficient skill and expertise to facilitate a successful Bond Transaction, and having expertise in "Native American Gaming." Stifel also had a duty to exercise ordinary care in dealing with Plaintiffs regarding the Bond Transaction.

112. Numerous factors present here created Stifel's duties in dealing with Plaintiffs to not make misstatements and omissions to Plaintiffs relating to the Bond Documents. These factors include the following:

(a) As Stifel knew or should have known, Plaintiffs (i) believed, (ii) were induced by, and (iii) justifiably relied upon Stifel's misstatements relating to the Bond Documents. *See, e.g.,* the misstatements summarized in ¶¶ 62–63, 68 above and, to the extent they are misstatements, those summarized in ¶¶ 86–87 above.

(b) Stifel's misstatements relating to the Bond Documents were material.

(c) Having made misstatements relating to the Bond Documents, Stifel had a duty to correct them, including to disclose to Plaintiffs:

(i) the Indenture contained provisions rendering it a Management Contract;

(ii) the Indenture contained provisions relating to management;

(iii) the Management Provisions rendered the legal status of the Indenture questionable;

(iv) the Management Provisions could be considered indicia of management sufficient to cause the Indenture to be considered a Management Contract and therefore void unless approved by the NIGC;

(v) the Management Provisions (three of which, contain the word "management") created a risk that the Indenture might be considered a Management Contract under IGRA;

(vi) some or all of the proposed Management Provisions were uncommon in financing transactions related to Indian casinos regulated under IGRA;

(vii) there is a risk that the other Bond Documents are or might be considered Management Contracts, to the extent they are found to be Management Contracts;

(viii) the above-mentioned risks could have been avoided by, among other possibilities, (a) removing the Management Provisions, (b) submitting the Indenture, and possibly other Bond Documents, for declination or approval by the NIGC, or (c) not entering into the Bond Documents;

(ix) any facts as would lead this Court to find not fully enforceable in accordance with their terms any of the Bond Documents other than the Indenture;

(x) Stifel lacked sufficient skill and expertise to facilitate a successful Bond Transaction; and

(xi) Godfrey lacked sufficient skill and expertise to ensure that the Bond Documents would comply with all applicable laws and regulations ("Material Facts About the Bond Documents").

(d) The Material Facts About the Bond Documents were material to the Bond Transaction.

(e) As Stifel knew or should have known, Plaintiffs did not know the Material Facts About the Bond Documents.

(f) Having affirmatively represented that it had sufficient skill and expertise in Indian gaming transactions to facilitate a successful Bond Transaction, Stifel had a duty to warn of known circumstances tending to lead to an unsuccessful Bond Transaction or post-closing default, including the Material Facts About the Bond Documents.

(g) It was foreseeable to Stifel that: (i) Plaintiffs could be harmed by the untruth of Stifel's misstatements relating to the Bond Documents, (ii) Plaintiffs would receive, rely upon, and act upon these misstatements (iii) Plaintiffs could be harmed by their untruth, (iv) Plaintiffs could be harmed by Stifel failing to disclose the Material Facts About the Bond Documents; (v) Plaintiffs would rely and act upon such nondisclosure; and (vi) the services for which Stifel was hired by the Tribal Parties were necessary for the protection of Plaintiffs and their interests under the Bond Documents.

(h) Plaintiffs reposed trust and confidence in Stifel given the relationship they had formed with Stifel in Stifel's position as investment banker, initial purchaser, and seller. Stifel knew or should have known that, accordingly, Plaintiffs were relying on Stifel.

(i) Stifel knew, because of the relationship between Plaintiffs and Stifel, the customs of the trade, and other objective circumstances, Plaintiffs would reasonably expect a disclosure of the Material Facts About the Bond Documents.

113. When Stifel concealed the Material Facts About Stifel from Plaintiffs, it knew or should have known in the exercise of ordinary care and standards of care consistent with its claims of expertise such facts and that they were concealed from Plaintiffs.

114. In addition to negligently concealing the Material Facts About Stifel from Plaintiffs, Stifel also made numerous misstatements and omissions concerning material facts relating to the Bond Documents and their enforceability under IGRA.

115. Stifel and the other Defendants were aware that the Management Provisions were in the Indenture. Each Management Provision was highlighted, discussed, and eventually approved by all parties in the negotiations for the sale of the Bonds.

116. Management Contracts with Indian tribes must be approved by the NIGC to be fully enforceable, as Stifel and the other Defendants knew. Stifel and the other Defendants never sought such approval. The Tribal Parties later argued and the Seventh Circuit later found that the seven Management Provisions of the Indenture rendered it a Management Contract requiring NIGC approval.

117. On November 2, 2007, Saybrook emailed Stifel a Preliminary Term Sheet including provisions similar to three of the seven Management Provisions: the Revenue Deposit Provision, Revenue Allocation Provisions, and Revenue Control Provision. Ex. F.

118. On December 13, 2007, Saybrook emailed Stifel regarding the addition of three more of the seven Management Provisions: the Capital Expenditure Provision, the Management Consultant Provision, and the New Management in Default Provisions. Ex. N.

119. On December 17, 2007, Godfrey emailed Plaintiffs, Stifel, and the Tribal Parties a redlined version of the Indenture. The redlined version highlighted the addition of the Capital Expenditure Provision, Management Consultant Provision, and New Management in Default Provision. Ex. O.

120. On December 19, 2007, Saybrook sent Stifel and the other Defendants a redlined version of the Indenture. The body of the email describes the addition of the Replacement of Key Management Provision, the last of the seven Management Provisions. Ex. P. The changes

in the redlined version of the Indenture used the words "management," "manager," and "controller." *Id.* at 38 § 6.20. The redline highlighted further changes to the Management Consultant Provision, including language cited as indicia of a management contract by the Seventh Circuit. *See id.* at 38 § 6.19.

121. It was never Plaintiffs' intent or desire—and, on information and belief, it was never any other party's intent or desire—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 or ever planned or wanted to do so.

122. Stifel affirmatively misstated to Plaintiffs in connection with selling the Bonds all that it expressly and impliedly warranted relating to the Bond Documents and their enforceability under IGRA. As Stifel knew or should have known in the exercise of ordinary care and standards of care consistent with its claims of expertise, its misstatements about the Indenture (*see* Count 1) were untrue, and its misstatements about the other Bond Documents (*see* Count 3) were untrue to the extent the Court finds the other Bond Documents not fully enforceable in accordance with their terms.

123. Stifel failed to disclose and knew or should have known, in the exercise of ordinary care and standards of care consistent with its claims of expertise, the Material Facts About the Bond Documents (and that Stifel had failed to disclose them).

124. In reasonable reliance on Stifel's misstatements and omissions, Plaintiffs entered into the Bond Transaction. Plaintiffs believed all of Stifel's misstatements, did not know that any of them were untrue, and did not know the Material Facts About the Bond Documents or the Material Facts About Stifel. Plaintiffs would not have entered into the Bond Transaction if they

had known that any of Stifel's misstatements were untrue or if they had known the Material Facts About the Bond Documents or the Material Facts About Stifel.

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

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages;

(2) in the alternative and only if the above relief is denied, enter an order for rescission, restitutionary damages, and costs; and

(3) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 7 (Against Stifel):
Statutory Misrepresentation – Wis. Stat. § 100.18

126. To the extent Stifel's statements and representations in connection with the Bond Transaction were untrue, deceptive, or misleading, Stifel violated Wis. Stat. § 100.18.

127. Stifel made its misstatements and misrepresentations in connection with the Bond Transaction with the intent to sell the Bonds and cause Plaintiffs to approve and enter into the other Bond Documents.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 8 (Against Stifel):
Statutory Misrepresentation – Wis. Stat § 551.509

128. Alternatively, in connection with the offer, sale, or purchase of a security, Stifel directly or indirectly made untrue statements of material facts and omitted to state materials fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

129. Stifel cannot sustain the burden of proof that it did not know and, in the exercise of reasonable care, could not have known of the untruths and omissions.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for consideration paid for the security (less the amount of any income received on the security), interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 9 (Against Stifel):
Negligence

130. Stifel has contracted with FINRA and, previously, including at the time of the Bond Transaction, the NASD, to follow the rules and standards set forth by FINRA and the NASD to protect the investing public, including Plaintiffs. Stifel owed Plaintiffs a duty to abide by standards of care consistent with these rules and standards.

131. Numerous factors present here created Stifel's duties in dealing with Plaintiffs not to violate securities laws, rules, regulations, and standards of conduct in connection with the Bond Transaction, including those violations discussed in Counts 4 and 6 above and incorporated in other Counts.

132. Stifel was negligent and breached its duties at the time of the Bond Transaction by:

(a) using manipulative, deceptive, or fraudulent devices in violation of NASD Rule 2120 ("No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance") (now FINRA Rule 2020);

(b) failing to provide suitable recommendations to its customers in violation of NASD Rules 2310, IM-2310-2, and IM-2310-3 ("In recommending to a

customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs") (now FINRA Rule 2111);

(c) violating the standard of care provided in NASD Rule 2110 ("A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade") (now FINRA Rule 2010); and

(d) failing to establish and maintain the supervisory system required by NASD Rules 3110, IM-1000-4, and IM-3110-1 ("Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. . . .") (now FINRA Rule 3110).

133. Stifel was also subject to, owed Plaintiffs a duty to abide by standards of care consistent with, and violated other securities rules and standards, including the following MSRB Rules:

(a) G-17 ("In the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice");

(b) G-19 ("A broker, dealer or municipal securities dealer must have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the broker, dealer or municipal securities dealer to ascertain the customer's investment profile"); and

(c) Rule G-27 ("Each broker, dealer and municipal securities dealer ('dealer') shall supervise the conduct of the municipal securities activities of the dealer and its associated persons to ensure compliance with Board rules and the applicable provisions of the Act and rules thereunder").

134. Before January 18, 2008, Stifel knew about the foregoing rules and standards, Stifel's prior history of violating them, and Stifel's need to make improvements to avoid future violations.

135. As a result of Stifel's breaches, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 10 (Against Stifel):
Negligent Supervision

136. Numerous factors present here created Stifel's duties in dealing with Plaintiffs not to be negligent in supervising employees, including those discussed in Counts 4, 6, and 9 above.

137. Stifel was negligent and breached its duties by failing to supervise Shibilski and other employees by, among other things, allowing and failing to inquire about, prevent, and

disclose the Material Facts About Stifel. The Material Facts About Stifel occurred because of Stifel's negligent supervision.

138. Shibilski communicated with the Tribal Parties unsupervised at a January 2, 2008 meeting but lacked adequate training, experience, knowledge, and skill to do so. At the meeting, Shibilski made some of Stifel's Misstatements to the Tribal Parties and failed to disclose any Material Facts About Stifel.

139. Shibilski's supervisor David DeYoung testified that he was supposed to join Shibilski at the January 2, 2008 meeting but was unable to attend.

140. Stifel's attorneys Balch & Bingham appeared by telephone at the meeting described in the prior paragraph. On information and belief, Balch & Bingham knew Shibilski had an ownership interest in the Grand Soleil Project during the January 2, 2008 meeting but failed before the Bond Transaction closed to disclose Stifel's ownership interest in the Grand Soleil Project (or any Material Facts About Stifel) and to correct Stifel's Misstatements to the Tribal Parties.

141. Because of Stifel's negligent supervision, Plaintiffs have been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Stifel for damages, interest, costs, attorney fees, and punitive damages;

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 11 (Against Stifel):
Rescission Based on Nonperformance

142. Alternatively, Stifel breached its various Bond-related agreements with Plaintiffs in a substantial manner so serious as to destroy the essential objects or purpose of such agreements, including by failing to sell Saybrook Bonds as Stifel warranted and represented.

143. Stifel unjustifiably and persistently refuses to perform a material contract obligation and is so neglectful in the performance of Plaintiffs' and Stifel's various Bond-related agreements as to indicate an intention not to comply with them.

WHEREFORE, Plaintiffs respectfully request, alternatively, that the Court:

(1) enter a judgment against Stifel based on nonperformance for rescission, restitutionary damages, and costs; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 12 (Against Stifel):
Rescission Based on Mistake

144. Alternatively, Plaintiffs and Stifel reached their various Bond-related agreements based upon a reciprocal and common mistake, or upon Plaintiff's unilateral mistaken belief known by Stifel, regarding (a) the terms of the Indenture —namely, that the Indenture and EDC's waiver of sovereign immunity therein were valid and enforceable; and (b) any unenforceability of the other Bond Documents.

145. But for the above mistakes of fact, Plaintiffs would not have entered into the Bond Transaction.

146. The above mistakes were of so grave a consequence that to enforce Plaintiffs' and Stifel's various Bond-related agreements as actually made would be unconscionable.

147. The matters as to which the mistakes were made relates to a material feature of Plaintiffs' and Stifel's various Bond-related agreements.

148. The mistakes occurred notwithstanding the exercise of ordinary diligence by Plaintiffs.

149. It is possible to give relief by way of rescission without serious prejudice to Stifel except the loss of its bargain.

WHEREFORE, Plaintiffs respectfully request, alternatively, that the Court:

(1) enter a judgment against Stifel based on mistake for rescission, restitutionary damages, and costs; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 13 (Against EDC):
Breach of the Bonds

150. EDC issued and sold the Bonds to Stifel, who in turn sold the Bonds to Saybrook, as intended by EDC and its counsel.

151. Saybrook is a purchaser for value of the Bonds without notice of any defect. EDC received substantial consideration for the Bonds. The stated purpose of the Bond issue was within EDC's power to borrow money and issue the Bonds.

152. The Bonds represent a valid and enforceable obligation of EDC.

153. EDC is bound by the terms of the Bonds to pay all amounts due as set forth in the Bonds.

154. EDC breached the Bonds, causing Plaintiffs damages.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against EDC for damages not less than the total principal and interest outstanding on the Bonds, interest, costs, and attorney fees; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 14 (Against EDC):
Breach of the Security Agreement

155. EDC entered into the Security Agreement with Wells Fargo for valuable consideration.

156. In the Security Agreement, EDC agreed: "[EDC] shall not, unless [EDC] obtains Trustee's written consent to the contrary, or as otherwise permitted by the Indenture: (i) sell, transfer or assign, or offer to sell, transfer or assign all or any part of the Collateral or permit all

or any part of the Collateral to be sold, transferred or assigned, (ii) consent to the removal of any of the Equipment from the Casino Facility." Ex. K at 2 ¶ 2(c).

157. The Security Agreement represents a valid and enforceable obligation of EDC.

158. EDC breached the Security Agreement by, among other things, transferring or assigning revenues from EDC's Casino Facility to make multi-million dollar (a) distributions to the Tribe, and (b) investments in a dental clinic, information technology company, and other investments. As a result, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against EDC for damages incurred as a result of EDC's breach of the Security Agreement, interests, costs, and attorney fees; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 15 (Against the Tribe):
Breach of Guaranty

159. The Tribe entered into the Tribal Agreement with Wells Fargo for valuable consideration.

160. 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. L at 1 § 3. "Obligations" is defined as "the obligation of [EDC] for the payment of principal of and interest on the Bonds . . . ." *Id.* at 1 § 1.

161. The guaranty under the Tribal Agreement represents a valid and enforceable obligation of the Tribe.

162. The Tribe has failed to honor the guaranty regarding EDC's obligation to pay the principal and interest on the Bonds. As a result, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against the Tribe for damages not less than the total principal and interest outstanding on the Bonds, costs, and attorney fees; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 16 (Against the Tribal Parties):
Unjust Enrichment

163. A benefit has been conferred upon the Tribal Parties by Plaintiffs in the form of $49,500,000 transferred in connection with Saybrook's purchase of the Bonds.

164. The Tribal Parties acknowledged the benefit of these monies.

165. Alternatively, the Tribal Parties' 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.

WHEREFORE, Plaintiffs respectfully request, alternatively, that the Court:

(1) enter a judgment against the Tribal Parties for full restitution, interest, and costs;

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 17 (Against the Tribal Parties and Stifel):
Rescission Based on Nonperformance

166. Alternatively, the Tribal Parties breached their various Bond-related agreements with Plaintiffs and Stifel in a substantial manner so serious as to destroy the essential objects or purpose of such agreements, including breaching the Bonds, Security Agreement, and Tribal Agreement.

167. The Tribal Parties unjustifiably and persistently refuse to perform material contract obligations and are so neglectful in the performance of Plaintiffs', Stifels', and the Tribal Parties' various Bond-related agreements as to indicate an intention not to comply with them.

WHEREFORE, Plaintiffs respectfully request, alternatively, that the Court:

(1) enter a judgment against the Tribal Parties and Stifel based on nonperformance for rescission, restitutionary damages, and costs; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 18 (Against the Tribal Parties and Stifel):
Rescission Based on Mistake

168. Alternatively, Plaintiffs, the Tribal Parties, and Stifel reached their various Bond-related agreements based upon a reciprocal and common mistake, or upon Plaintiff's unilateral mistaken belief known by the Tribal Parties, regarding (a) the terms of the Indenture —namely, that the Indenture and EDC's waiver of sovereign immunity therein were valid and enforceable; and (b) any unenforceability of the other Bond Documents.

169. But for the above mistakes of fact, Plaintiffs would not have entered into the Bond Transaction.

170. The above mistakes were of so grave a consequence that to enforce Plaintiffs', the Tribal Parties', and Stifel's various Bond-related agreements as actually made would be unconscionable.

171. The matters as to which the mistakes were made relates to a material feature of Plaintiffs', the Tribal Parties', and Stifel's various Bond-related agreements.

172. The mistakes occurred notwithstanding the exercise of ordinary diligence by Plaintiffs.

173. It is possible to give relief by way of rescission without serious prejudice to the Tribal Parties' and Stifel except the loss of their bargain.

WHEREFORE, Plaintiffs respectfully request, alternatively, that the Court:

(1) enter a judgment against the Tribal Parties and Stifel based on mistake for rescission, restitutionary damages, and costs; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 19 (Against Godfrey):
Malpractice

174. Godfrey held out its attorneys as experts in Indian law and the financing of Indian gaming facilities. Godfrey did so, for example, by having Godfrey attorneys deliver lectures to the Wisconsin State Bar Association concerning "Recent Developments in Indian Law" and authoring one or more articles on legislative developments related to IGRA.

175. Godfrey's website claims that Godfrey has "experience in Indian and tribal law" and lists "Indian Nations" as one of its "practice areas," including related to "IGRA compliance" and "assistance in connection with . . . bonds issued . . . for . . . gaming facilities." http://www.gklaw.com/practice.cfm?action=&practice_id=49 (visited August 10, 2015). Godfrey's website also states that although "[m]embers of the Indian Nations Law team are selected based on the relevance of their practice . . . and their willingness to master the Indian and tribal law dimensions of their practice area(s)," "the firm does draw on the experience of attorneys outside the team when necessary." *Id.*

176. Brian Pierson served as Godfrey's lead attorney on the Bond Transaction. Pierson's web bio says that Pierson is the "leader of the firm's Indian Nations team" and that he is a "frequent conference speaker and author on Indian law issues." http://www.gklaw.com/attorney.cfm?attorney_id=256 (visited August 10, 2015). Godfrey's website also represents that Pierson is the "principal contact" of Godfrey's Indian Nations practice area. http://www.gklaw.com/practice.cfm?action=search&practice_id=49&sort_on=bar (visited August 10, 2015).

177. Godfrey had a duty to exercise standards of care in dealing with Plaintiffs regarding the Bond Transaction consistent with its claims to having expertise in Indian law, the

financing of Indian gaming facilities, and IGRA compliance. Godfrey also had a duty to exercise ordinary care in dealing with Plaintiffs regarding the Bond Transaction.

178. Bond Counsel, such as Godfrey, play a specialized role in debt issuance. A publication by the National Association of Bond Lawyers ("NABL") accurately 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.

NABL, *The Function and Professional Responsibilities of Bond Counsel* 6 (3d ed. 2011).

179. The NABL publication accurately states 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.

180. Godfrey's role as Bond Counsel with respect to the Bond Documents created duties owed by Godfrey to Plaintiffs. These included duties consistent with the standards of care noted above to avoid making misrepresentations, discover or recognize the importance of relevant facts or legal principles, and exercise skill and judgment.

181. Godfrey made misstatements relating to the Bond Documents as set forth in this First Amended Complaint, including that the Indenture was not a Management Contract.

182. The Bond Counsel Opinion Letter and the Issuer Opinion Letter were addressed to Plaintiffs who, as addressees, were entitled to rely on the opinions. *See, e.g.*, Ex. C § 9.01(a)(2) (Trustee may "conclusively rely" upon the Opinion Letters); Ex. J at 2; Ex. M at 11.

183. Godfrey circulated drafts of both the Issuer Opinion Letter and the Bond Counsel Opinion Letter on December 21, 2007, two days after significant changes were made to the Indenture. *See* Count 6 above.

184. Godfrey failed to advise and disclose, though it had the opportunity to do so, the Material Facts About the Bond Documents.

185. Godfrey knew that Management Contracts for Indian gaming facilities are subject to approval by the NIGC. Godfrey knew or should have known, in the exercise of ordinary care and standards of care consistent with its representations of expertise, the Material Facts About the Bond Documents.

186. Godfrey thereby breached duties to Plaintiffs, proximately causing injury to Plaintiffs, which lost the rights provided for in the Indenture and suffered other damages. To the extent that the Bond Documents other than the Indenture are not valid and enforceable against the Tribal Parties, and that damages are uncollectible from the Tribal Parties, Plaintiffs suffered additional damages due to Godfrey's malpractice.

187. Had Godfrey expressed doubt as to the need for approval by the NIGC or otherwise disclosed the Material Facts About the Bond Documents, Plaintiffs would not have entered into the Bond Transaction or would have deferred entering into the Bond Transaction until such approval was granted and final.

188. If Plaintiffs have lost the legal rights due to invalidity of the Indenture to attorneys' fees or to 15 percent interest (rather than 12 percent) after October 2012, that was due to Godfrey not advising that approval of the Indenture was needed.

WHEREFORE, Plaintiffs respectfully request that the Court enter:

(1) enter a judgment against Godfrey for damages, interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

Count 20 (Against Godfrey):
Negligent Misrepresentation

189. Numerous factors present here created Godfrey's duties in dealing with Plaintiffs not make misstatements and omissions relating to the Bond Documents. These factors include the following:

(a) Godfrey was Bond Counsel.

(b) As Godfrey knew or should have known, Plaintiffs believed, were induced by, and justifiably relied upon Godfrey's misstatements relating to the Bond Documents.

(c) Godfrey's misstatements relating to the Bond Documents were material.

(d) Having made misstatements relating to the Bond Documents, Godfrey had a duty to correct them, including to disclose to Plaintiffs the Material Facts About the Bond Documents.

(e) It was foreseeable to Godfrey that: (i) Plaintiffs could be harmed by the untruth of Godfrey's misstatements relating to the Bond Documents, (ii) Plaintiffs would receive, rely upon, and act upon these misstatements, (iii) Plaintiffs could be harmed by their untruth, (iv) Plaintiffs could be harmed by Godfrey failing to disclose the Material Facts About the Bond Documents, and (v) Plaintiffs would rely and act upon such nondisclosure.

(f) Plaintiffs reposed trust and confidence in Godfrey given the relationship they had formed with Godfrey in Godfrey's position as Bond Counsel. Godfrey knew or should have known that, accordingly, Plaintiffs were relying on Godfrey.

(g) Godfrey knew that Plaintiffs, because of the relationship between Plaintiffs and Godfrey, the customs of the trade, and other objective circumstances, would reasonably expect a disclosure of the pertinent facts.

190. Godfrey made misstatements relating to the Bond Documents and failed to disclose the Material Facts About the Bond Documents, as noted above.

191. In reasonable reliance on Godfrey's misstatements and omissions, Plaintiffs entered into the Bond Transaction. Plaintiffs believed all of Godfrey's misstatements in connection with the Bond Transaction, did not know that any of them were untrue, and did not know of the Material Facts About the Bond Documents. Plaintiffs would not have entered into the Bond Transaction if they had known that any of Godfrey's misstatements in connection with the Bond Documents were untrue or if they had known the Material Facts About the Bond Documents.

192. At and after the time Godfrey made the representations described in this Count, Godfrey failed to disclose and knew or should have known in the exercise of ordinary care the Material Facts About the Bond Documents (and that Stifel failed to disclose them).

193. Godfrey's representations caused Plaintiffs to suffer pecuniary loss, including incurring legal fees.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) enter a judgment against Godfrey for damages, interest, costs, attorney fees, and punitive damages; and

(2) grant such additional relief as the evidence and law warrant or the Court deems just and proper.

JURY DEMAND

Plaintiffs reserve their rights and hereby request a trial by jury on all matters in Counts 2–20 so triable.

Dated: October 30, 2015

Respectfully submitted,

/s/ Gary M. Miller

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CERTIFICATE OF SERVICE

I, Gary M. Miller, an attorney, hereby certify that on October 30, 2015, I electronically filed the **FIRST AMENDED COMPLAINT** using the ECF system and served a true and correct copy by e-mail to the parties listed on the attached Service List.

/s/ Gary M. Miller

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