

STATE OF WISCONSIN : CIRCUIT COURT :

WAUKESHA COUNTY

SAYBROOK TAX EXEMPT INVESTORS, LLC,  
*et al.*,

Plaintiffs,

v.

LAC DU FLAMBEAU BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS, *et al.*,

Case Nos. 12-cv-00187 and  
15-cv-00302 (consolidated)

Defendants.

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LDF ACQUISITION, LLC, *et al.*,

Plaintiffs,

v.

DENTONS US LLP,

Defendant.

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**TRIBAL PARTIES' FIRST AMENDED CONDITIONAL  
CROSS-CLAIMS AGAINST STIFEL AND GODFREY**

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Cross-Claimants Lac du Flambeau Band of Lake Superior Chippewa Indians (the “Tribe”) and Lake of the Torches Economic Development Corporation (the “Corporation”) (together, the “Tribal Parties”), by their undersigned attorneys, for their First Amended Conditional Cross-Claims<sup>1</sup> against Stifel, Nicolaus & Co., Inc. (“Stifel Nicolaus”) and Stifel

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<sup>1</sup> These First Amended Conditional Cross-Claims are conditioned on a determination that this Court has jurisdiction over this action and the Tribal Parties, which determination the Tribal Parties have contested and will continue to contest. These First Amended Conditional Cross-Claims are made without prejudice to the Tribal Parties’ defenses that this Court lacks jurisdiction over this action and the Tribal Parties’ defenses as raised in their Motion to Dismiss for Lack of Jurisdiction filed on May 23, 2013, Motion to Dismiss Stifel’s Cross-Claims, filed April 18, 2014, and in their Answers and Affirmative Defenses, including, *inter alia*, that they are sovereign and immune from this suit, which defenses they continue to

Financial Corporation (“Stifel Financial”) (together “Stifel”), and Godfrey & Kahn, S.C. (“Godfrey”), allege and state as follows:

### THE PARTIES

1. Cross-Claimant the Corporation is a corporation chartered under Article VI, Section 1(o) of the Constitution of the Lac du Flambeau Band of Lake Superior Chippewa Indians (the “Constitution”). Its principal place of business is located on the Lac du Flambeau Reservation on trust land at 510 Old Abe Road, Lac du Flambeau, Wisconsin, 54538.

2. Cross-Claimant the Tribe is a federally recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934. 25 U.S.C. §§ 461 *et seq.* Its principal place of business is located on trust land on the Lac du Flambeau Reservation at 418 Old Abe Road, Lac du Flambeau, Wisconsin, 54538.

3. Cross-Claim Defendants Stifel, Nicolaus & Company, Inc. and Stifel Financial Corporation are brokerage and investment-banking corporations. Stifel’s principal place of business is located at 510 North Broadway, St. Louis, Missouri, 53207. At all times relevant, Stifel was registered with the Securities and Exchange Commission as a broker-dealer and investment advisor and was registered with the Municipal Securities Rulemaking Board (“MSRB”) as a municipal securities broker-dealer and municipal advisor. At all times relevant,

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assert without qualification or waiver. This pleading amends the Tribal Parties’ Answer and Affirmative Defenses to Stifel’s Cross-Claims and Conditional Cross-Claims against Stifel, filed on November 20, 2014, but only to the extent set forth herein. Specifically, the November 20, 2014 Answer and Affirmative Defenses to Stifel’s Cross-Claims stands and is incorporated herein by reference, but the November 20, 2014 Conditional Cross-Claims against Stifel are amended by this pleading. The Tribal Parties also amend their January 12, 2015 Conditional Cross-Claims against Godfrey by this pleading. The Tribal Parties are filing these First Amended Conditional Cross-Claims in order to comply with an amended pleadings deadline set by order of the Court, rather than voluntarily. The Tribal Parties’ filing of this pleading to comply with the Court’s order does not waive or otherwise prejudice the Tribal Parties’ rights to answer, assert affirmative defenses, move to dismiss, or otherwise respond to the amended pleadings of all other parties filed pursuant to the Court’s order, and the Tribal Parties reserve all such rights accordingly.

Stifel was also a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”). At all times relevant, Stifel provided financial and investment advice to the Tribal Parties. The Tribal Parties considered Stifel their financial advisor, and put their trust in it and its representatives. Stifel knew that the Tribal Parties relied upon it for financial advice.

4. Cross-Claim Defendant Godfrey is a law firm established as a Wisconsin service corporation. Its principal place of business is located at 780 North Water Street, Milwaukee, Wisconsin 53202. At the time of the Bond Transaction that is the subject of the plaintiffs’ complaint, and during the negotiations culminating in the subject Bond Transaction, the Tribal Parties had an attorney-client relationship with Godfrey. Godfrey served as the Tribe’s general counsel, knew that the Tribal Parties relied upon it for legal advice, and considered the Tribe a valued and longstanding client. At all times relevant, Godfrey owed the Tribal Parties a fiduciary duty. While representing the Tribal Parties in the Bond Transaction, Godfrey also simultaneously served as bond counsel to the Bond Transaction.

5. Plaintiff Wells Fargo Bank, National Association (“Wells Fargo”) is a corporation with its principal place of business located at 625 Marquette Avenue, 11<sup>th</sup> Floor, Minneapolis, Minnesota 55479. The Trust Indenture of the Bond Transaction (the “Indenture”) designated Wells Fargo as trustee.

6. Upon information and belief, Plaintiff Saybrook Tax Exempt Investors, LLC was a limited-liability company created and managed by Saybrook Capital, LLC, an investment-fund management company that seeks high-yield returns from risky investments in distressed companies, and distressed and/or defaulted municipal bonds secured by identified revenue streams, and real-estate projects or other assets. Upon information and belief, Plaintiff LDF Acquisition, LLC is a Wisconsin citizen and limited-liability company, created as a special

purpose vehicle by Saybrook Tax-Exempt Investors, LLC (together “Saybrook”) to purchase the Bonds. The principal place of business for Saybrook is located at 401 Wilshire Boulevard, Suite 850, Santa Monica, California, 90401.

**FACTUAL ALLEGATIONS APPLICABLE TO  
ALL CONDITIONAL CROSS-CLAIMS**

**Key Individuals**

7. **David Noack** worked at Stifel as a Senior Vice President and was the co-head of its Milwaukee office until he left to join Robert W. Baird & Company Inc. in early 2007. He worked for Stifel from 2000 to 2007 and he acted as an officer, employee, and representative of Stifel during that period. Stifel exercised power or control over Noack on a day-to-day basis during the time when he was employed by Stifel. As a Stifel Vice President, Noack’s knowledge is imputed to Stifel. During his interactions with the Tribal Parties on behalf of Stifel, Noack had management and control over financial matters relating to the Tribal Parties. On information and belief, while at Stifel, Noack was Shibilski’s superior. At all times relevant to these Conditional Cross-Claims, Noack was acting within the scope of his authority as an agent, representative, and/or employee of Stifel and Stifel is therefore liable for Noack’s wrongful acts, errors, and omissions as complained of herein under theories of agency, *respondeat superior*, and control-person liability.

8. **Kevin Shibilski** is a former Wisconsin state senator from Stevens Point, Wisconsin. He began working at Stifel in 2003. Shibilski worked for Stifel, under Noack’s supervision, until his resignation was compelled by Stifel for failure to fill out an annual employee certification form, including a conflicts of interest disclosure, in early 2007. When Noack quit Stifel to move to Baird in March 2007, Stifel nevertheless immediately rehired Shibilski. Shibilski’s title at Stifel was Vice President of Wisconsin Public Finance. At all time

periods relevant to these Conditional Cross-Claims, Shibilski acted as an employee and representative of Stifel. As a Stifel Vice President, Shibilski's knowledge is imputed to Stifel. Stifel exercised power or control over Shibilski on a day-to-day basis during the time when he was employed by Stifel and he had apparent and actual authority to represent Stifel. During his interactions with the Tribal Parties on behalf of Stifel, Shibilski had management and control over financial matters relating to the Tribal Parties. At all times relevant to these Conditional Cross-Claims, Shibilski was acting within the scope of his authority as an agent, representative, and/or employee of Stifel and Stifel is therefore liable for Shibilski's wrongful acts, errors, and omissions as complained of herein under theories of agency, *respondeat superior*, and control-person liability.

9. Beginning in at least 2004, Shibilski invested in multiple business ventures with William Bayba. In 2005, Bayba formed Big River Enterprises, LLC ("Big River") to invest in a venture to build a riverboat casino, hotel and bed-and-breakfast in Natchez, Mississippi, (the "Project"). On information and belief, Shibilski joined Big River in 2005.

10. **David DeYoung** is Stifel's Senior Vice President and Managing Director of Public Finance and at all material times had responsibility and oversight over Shibilski. At all time periods relevant, DeYoung acted as an employee and representative of Stifel. As a Stifel Vice President, DeYoung's knowledge is imputed to Stifel. Stifel exercised power or control over DeYoung on a day-to-day basis during all times relevant and he had apparent and actual authority to represent Stifel. At all times relevant to these Conditional Cross-Claims, DeYoung was acting within the scope of his authority as an agent, representative, or employee of Stifel and Stifel is therefore liable for DeYoung's negligence and negligent failure to supervise

Shibilski and other acts and omissions complained of herein under theories of agency, *respondeat superior*, and control-person liability.

11. At all times relevant, the Tribal Parties considered Stifel, including Noack, Shibilski, and DeYoung, to be their financial advisors and put their trust in them and other Stifel employees to provide the Tribal Parties with unbiased objective advice and seek to further the Tribal Parties' best interests. Stifel and its representatives knew that the Tribal Parties relied upon it for financial advice. At all times relevant, Stifel's representatives were acting within the scope of their authority as agents, representatives, or employees of Stifel and Stifel is therefore liable for their wrongful acts, errors, and omissions as complained of herein under theories of agency, *respondeat superior*, and control-person liability.

12. **William Bayba** is a real-estate developer and investor from Stevens Point, Wisconsin. Prior to the Bond Transaction, Bayba had partnered with the Tribal Parties in investing in the development of two hotels in Wisconsin. As mentioned above, Bayba was also a partner with Shibilski in at least two different business ventures, including Big River. Big River was a part owner of the Project and was also the general contractor for the building of the Project.

13. **Brian Pierson** is a partner at Godfrey. Dating back to the mid 1990's, Pierson served as counsel to the Tribe and was providing legal advice to it on numerous issues, holding himself out as an expert in Indian law and the financing of Indian gaming facilities. At the time of the Bond Transaction and during the negotiations culminating in the Bond Transaction, the Tribal Parties considered Pierson to be their legal advisor and put their trust in him and his fellow Godfrey attorneys. Pierson knew that the Tribal Parties relied upon him for legal advice.

14. **Thomas Griggs** was also a Godfrey partner during the negotiation and execution of the Bond Transaction. He provided legal advice to the Tribal Parties on the Bond Transaction. At the time of the Bond Transaction, and during the negotiations culminating in the Bond Transaction, the Tribal Parties considered Griggs to be their legal advisor and put their trust in him and his fellow Godfrey attorneys. Griggs knew that the Tribal Parties relied upon him for legal advice.

15. **Charles Cato** is a Florida-based developer who was the original investor in the Project.

16. **Scott Bayliss** is a representative of Saybrook and, upon information and belief, was the person at Saybrook with primary responsibility for the Bond Transaction.

#### **Stifel Solicits Tribal Investment in the Project**

17. Upon information and belief, in 2002 or 2003 Cato made an initial investment in the Project. At that time the Project was known as the Emerald Star Casino Resort, but its name was later changed to Grand Soleil – Natchez.

18. Cato hired Stifel's Noack to seek financing for the Project. Upon information and belief, at or about this time Shibilski worked under Noack at Stifel.

19. Noack had previously worked on a bond issuance for the Lac du Flambeau School District and used his contacts from that experience to introduce himself to the Tribe as a financial advisor and investment banker.

20. By as early as 2004, Stifel's Noack and Shibilski were attending Tribal Council meetings on tribal trust land within the Lac du Flambeau Reservation and presenting themselves to the Tribal Council as financial advisors who would provide independent, objective investment banking and financial advice to the Tribe.

21. Noack offered investment banking and financial advice to the Tribe regarding another casino development in Shullsburg, Wisconsin and subsequently advised the Tribe regarding other investments.

22. Both Noack and Shibilski were aware of the Tribe's financial situation, as well as the fact that Tribal Council members were elected from the general populace of the Tribe, generally lacked the education, financial sophistication, and experience to understand complex financial products, and were relying on Stifel for independent, objective investment advice and guidance.

23. On January 3, 2005, Noack attended a Tribal Council meeting with Charles Cato and others, and recommended that the Tribe make an equity investment in the Project. Noack advised the Tribe that this investment would yield a return in the 20-30% range.

24. On March 14, 2005, Noack returned to the Tribe with Shibilski and attended another meeting to discuss the Project. This time Noack guaranteed a 10% minimum annual return if the Tribe would invest \$6 million in the Project.

25. On March 16, 2005, Noack wrote to the Tribal Parties about investing in the Project with Stifel acting as placement agent. Later that month, Noack travelled to the Lac du Flambeau reservation on behalf of Stifel and addressed the Tribal Council at a facility on tribal trust land regarding the potential investment in the Project with Cato. Shibilski attended the meeting as well.

26. Upon information and belief, around that time, Noack also introduced Cato to another potential investor, William Bayba. Upon information and belief, Shibilski had previously worked with Bayba on real-estate development projects in the Stevens Point, Wisconsin area.

**Shibilski Makes a Large Personal Investment in the Project  
While Advising the Tribe to Invest in the Project**

27. On information and belief, in June 2005, Bayba formed Big River to invest in the Project.

28. Shortly after its formation, Shibilski joined Big River to invest in the Project.

29. The members of Big River collectively invested millions of dollars in the Project through Big River.

30. Shibilski had a seven-figure stake in Big River, funding the investment with cash as well as loans he and his wife took against real property they owned. *See* Dep. Of William J. Bayba, Vol. 1 at 19-26, 75-80, 86, *Good Hope Constr., Inc. v. RJB Financing, LLC (In re: Grand Soleil-Natchez, LLC)*, No. 12-00013 (Bankr. S.D. Miss. Jun. 28, 2013) (“GSN Adversary Proceeding”), Dkt. 402-1 (attached hereto as Ex. 1); *see also* Big River Enters., LLC 2007 Tax Return at 7-8, GSN Adversary Proceeding, Dkt. 402-16 (attached hereto as Ex. 2); Big River Enters., LLC 2008 Tax Return at 12-13, GSN Adversary Proceeding, Dkt. 402-17 (attached hereto as Ex. 3); Big River Enters., LLC 2009 Tax Return at 7-8, GSN Adversary Proceeding, Dkt. 402-18 (attached hereto as Ex. 4); Big River Enters., LLC 2010 Tax Return at 13-14, GSN Adversary Proceeding, Dkt. 402-19 (attached hereto as Ex. 5).

31. Shibilski owned various percentages of Big River during its existence, from 2005 until after the Bond Transaction. (*See* Ex. 1 at 19-26; Ex. 2 at 7-8; Ex. 3 at 12-13; Ex. 4 at 7-8; Ex. 5 at 13-14).

32. Big River’s interest in the Project, and therefore Shibilski’s interest, substantially increased over time as its members invested additional funds in the Project through Big River.

33. Thus, Stifel, through its Vice Presidents, Shibilski and Noack, convinced its client, the Tribe, to invest in the Project in which Shibilski had a large personal interest.

**Shibilski's Conflict of Interest is Not Disclosed to the Tribal Parties**

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

35. Shibilski never disclosed his membership in Big River and his investment in the Project to the Tribal Parties.

36. Stifel never disclosed Shibilski's membership in Big River and investment in the Project to the Tribal Parties.

37. On occasions both before and after the Tribe's initial investment in the Project and the subsequent Bond Transaction, when asked about the ownership interests in Big River, Stifel did not disclose Shibilski's interest in Big River and provided documents to the Tribal Parties regarding the ownership of Big River that omitted Shibilski's ownership interest.

**Unaware of Shibilski's Conflict—and at his Urging—the Tribe Pours Millions of Dollars into the Project**

38. In the fall of 2005, the Tribe made its initial investment through its wholly owned corporation, the Lake of the Torches Federal Development Corporation (the "Federal Corporation"), paying \$5,000,000 for a 10% equity interest in the Project.

39. Upon information and belief, Cato paid Noack at least \$100,000 as a commission for bringing Bayba and the Tribe to the Project, which Noack shared with Shibilski. Stifel did not disclose this commission to the Tribe.

40. In 2006, on Stifel's advice, the Tribe, through the Federal Corporation, paid an additional \$3.6 million dollars to increase its ownership interest in the Project to 27.5 percent, for a total equity investment at that time of \$8.6 million.

41. Around this time, Noack advised the Tribe to invest in another investment, XIT, which ultimately yielded no return to the Tribe.

42. By 2007, the Project had run up expenses, incurred substantial debts, and was running out of cash. The Project's future was in jeopardy and the pressure mounted to find additional financing.

43. To protect his interest in Big River, Shibilski returned to the Tribe to persuade it to make additional financial contributions to the Project through the assumption of Project-related debt.

44. Upon information and belief, Shibilski advised the Tribe to take on Project-related debt, instead of making a capital contribution, so that the Tribe's ownership interest in the Project would not increase, thereby benefitting Big River and himself at the Tribe's expense.

**Stifel Advises the Tribal Parties to Increase  
Their Investment in the Project and Bundle Project-Related Debt and  
Other Existing Debt into a Bond Issuance**

45. The Tribe's additional contributions were only sufficient to fund some additional construction on the Project—it was not enough to complete it. Upon information and belief, the Project required over \$75 million to be completed.

46. Aware that the Tribe was seeking to refinance existing debt, including Project-related debt, Shibilski seized the opportunity to advise the Tribe to funnel more tribal funds into the Project in the form of a large bond issuance.

47. Shibilski thus had the opportunity to shore up his personal investment in the Project with tribal funds, earn a commission when the deal closed, *and* allow his employer to make hundreds of thousands of dollars for its role in the bond issuance.

48. Unaware of Shibilski's personal interest in the Project, the Tribe entered into an "Investment Banking Agreement" with Stifel on May 30, 2007, wherein Stifel agreed to serve

as the Tribe's "Financing Agent" to both refinance existing debt, including Project-related debt, and provide new capital for the Project. The Investment Banking Agreement is attached as Exhibit 12.

49. Godfrey, the Tribe's general counsel, was contacted and engaged to act as the attorneys for the Tribal Parties on the proposed financing. Godfrey would ultimately serve as both counsel to the Tribal Parties and as Bond Counsel to the Bond Transaction.

50. On September 25, 2007, at a facility on tribal trust land, Shibilski and other Stifel representatives presented the Tribe with their recommendation that the Tribe borrow \$75 million to consolidate debt and contribute additional funds to the Project. Relying on Stifel's advice, the Tribe agreed.

51. Upon information and belief, Shibilski lacked the proper licensure, qualifications, and experience to either work on the Bond Transaction or offer financial advice to the Tribal Parties.

52. Because a significant portion of Stifel's \$75 million proposal would be used to refinance tens of millions of dollars existing debt, including Project-related debt, Stifel knew that \$75 million would be insufficient to both complete the Project and refinance the Tribal Parties' existing debt.

53. Stifel knew the Project would require a second tranche of financing to complete, and advised the Tribe that it would be able to obtain a second tranche of financing without difficulty.

#### **Stifel Advises the Tribe to Issue \$50 Million in Bonds to Saybrook**

54. Stifel shopped the proposed \$75 million financing deal to several potentially interested parties.

55. Instead of locating a party to finance \$75 million, Stifel identified Saybrook, with whom Stifel had a pre-existing business relationship. Saybrook expressed interest in financing only \$45 million of debt, far short of what was necessary to complete the Project.

56. Stifel nevertheless advised the Tribal Parties to issue bonds to Saybrook in what would become the Bond Transaction, without undertaking efforts to secure the second tranche of financing that Stifel knew was necessary to complete the Project.

57. On November, 6, 2007, the Tribe entered into an agreement with Stifel called the “Authorization to Proceed,” which modified the May 30, 2007 Investment Banking Agreement. The Authorization to Proceed is attached as Exhibit 13.

58. In the Authorization to Proceed, Stifel contracted to negotiate with Saybrook “to produce a final proposal of terms to provide \$50,000,000 par value of financing to the Tribe on terms that will meet the Tribe’s credit and cash flow needs.”

59. Stifel and its attorneys worked with Godfrey to negotiate the Bond Transaction’s terms with Saybrook and its attorneys Dentons US LLP (“Dentons”) (then known as Sonnenschein Nath & Rosenthal).

60. Stifel, Saybrook, and Godfrey negotiated the following terms:

- a. The Corporation would pay 12% interest on the Bonds—a higher rate than any of the debt being refinanced as part of the Bond Transaction<sup>2</sup>;
- b. The Corporation would pledge as collateral for the Bond Transaction all gross revenue from the Tribe’s casino (the “Casino”), including even the revenue necessary to pay Casino operating expenses;

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<sup>2</sup> The effective interest rate was even higher than 12% because it was calculated on the gross amount of the proceeds and not the discounted amount actually paid by the purported bondholders.

- c. In any given month, the Corporation could not make *any* distributions to the Tribe until that month's Bond payments were satisfied including the amounts the Casino was obligated to disburse to the Tribe to fund the Tribal government;
- d. \$12,723,406.56 in non-Project related debt was refinanced, with those proceeds disbursed directly to the original lenders;
- e. Neither the Corporation nor the Tribe would have any discretion or control over how the Bond Transaction proceeds would be used or allocated;
- f. Saybrook would retain \$5 million of the Bond proceeds as the bond reserve and \$500,000 as a bond discount, so that only \$44.5 million in bond proceeds was actually disbursed;
- g. The Tribe would guarantee the Corporation's debt represented by the Bonds; and
- h. The entire balance of the Bond Transaction proceeds—just over \$31 million—was disbursed for Project-related use and to pay Project-related debts, with the distribution of these funds controlled by Wells Fargo, not the Corporation.

61. Stifel and Godfrey did not explain these terms to the Tribal Parties.

62. Stifel and Godfrey specifically failed to explain that the Bond Transaction would leave little or no money to fund the Tribal Government and was otherwise detrimental to the Tribal Parties' interests.

63. Despite incurring new debt of over \$31 million, the Tribal Parties had no control over the distribution of funds from the bond issuance, never possessed the funds, did not receive any consideration or security for the debt they incurred in exchange for the funds, and did not

receive *any* increased ownership interest in the Project in exchange for incurring this massive debt.

64. The Bond Transaction also did not provide enough funds to complete the Project, which required a second tranche of financing.

65. Stifel represented to the Tribal Parties that Saybrook would fund the second tranche of financing to complete the Project—crucial to the entire Bond Transaction because the cash flow from the Project was supposed to help the Tribal Parties service the Bond Transaction debt—but the second tranche never materialized.

66. Godfrey and Stifel failed to represent the Tribal Parties' best interests in negotiating the terms of the Bond Transaction although they both ensured that they would get paid out of the proceeds of the Bond Transaction.

67. Under the terms negotiated by Stifel, Saybrook, and Godfrey, Stifel would retain \$375,000 of the Bond proceeds as an initial purchaser's discount—its fee for the Bond Transaction—and Godfrey would retain \$125,000 of the Bond proceeds for serving as Bond Counsel.

68. Stifel and Godfrey knew or should have known that, as structured, the Tribal Parties would never be able to live up to their obligations under the Bond Transaction despite convincing the Tribal Parties of the opposite—that they could easily satisfy their debt burden with the revenue the Project itself would generate.

#### **Saybrook Negotiates for Illegal Management Provisions**

69. In order to protect its investment, on the advice of its attorneys at Dentons, Saybrook negotiated multiple revisions to the Bond Transaction documents that gave it

extensive management control over the Casino in the event the Corporation defaulted on the bonds.

70. For example, on December 13, 2007, Saybrook e-mailed Stifel to add provisions to the Indenture (a) requiring the Corporation to hire a management consultant if the debt-service-coverage ratio dropped below a specific threshold, and (b) giving the bondholders the right to require the Corporation to hire new management if a major event of default occurred. E-mail from Scott Bayliss, Managing Director, Saybrook Capital, LLC, to Mike Schinzer, et al. (Dec. 13, 2007, 17:45) (attached hereto as Ex. 6).

71. Similarly, on December 19, 2007, Saybrook sent the parties and their counsel a redlined version of the Indenture by e-mail. The body of the e-mail described Saybrook's addition of a term requiring the Corporation to get the bondholders' consent before replacing key management personnel, including the Casino's General Manager, the Corporation's Controller, or the Executive Director of the Tribe's Gaming Commission, in a provision entitled "Replacement of Key Management Personnel." The redline shows that Bayliss also made additional changes to the management-consultant provision. E-mail from Scott Bayliss, Managing Director, Saybrook Capital, LLC, to Tom Griggs, Partner, Godfrey & Kahn, S.C., and Richard Lindsley, Chief Financial Officer, Lac du Flambeau Band of Lake Superior Chippewa Indians (Dec. 19, 2007, 16:02 PST) (attached hereto as Ex. 7).

72. In the course of negotiations of the Bond Transaction, Saybrook demanded, and Godfrey and Stifel agreed to provide Saybrook: (a) a security interest in the Casino's equipment and property; (b) an unlimited pledge of the Casino's gross revenues; (c) a management-consultant provision; (d) new-management-in-default provisions; (e) a replacement-of-key-

management provision; and (f) the inclusion of terms such as “management,” “manager,” and “controller.”

73. Saybrook negotiated for these provisions so that it could obtain control over the Tribal Casino in the event of default and could pay its investors with the Casino’s revenues.

74. By insisting on the inclusion of these management provisions in the Bond Transaction without seeking approval of the National Indian Gaming Commission (“NIGC”), Saybrook assumed the risk of voiding the Bond Transaction.

75. Godfrey and Dentons knew or should have known that Saybrook’s management provisions were unusual for such a transaction and that the Bond Transaction violated the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (“IGRA”), Tribal Law, and the Tribe’s compact with the State of Wisconsin.

76. Nevertheless, Godfrey never objected to these provisions and opined in the Bond Counsel and Issuer Opinion Letters that the Bond Transaction documents did not contain any management provisions, did not violate any law, and were valid and enforceable, and Dentons concurred with Godfrey’s opinions.

#### **Stifel and Godfrey Press the Tribe to Approve the Bond Transaction**

77. On January 2, 2008, Shibilski (on behalf of Stifel) and Pierson (on behalf of Godfrey), traveled to the Lac du Flambeau reservation and appeared at a facility on tribal trust land at a joint meeting of the Tribal Council and the Boards of the Corporation and the Federal Corporation.

78. The Bond Transaction required the approval of the Tribal Council and the Board of Directors for the Corporation. Both bodies are comprised of the same individuals, all of whom were tribal members who generally lacked a background in complicated financial

transactions, had little or no training or experience with multi-million-dollar bond transactions, and were relying on Stifel and Godfrey for their professional judgment regarding the Bond Transaction.

79. At the January 2, 2008 meeting, Shibilski acknowledged that Stifel had a fiduciary responsibility to tell the Tribal Parties about the consequences of the Bond Transaction and that he was obliged to disclose material facts to the Tribal Parties. Excerpt from Lac du Flambeau Band of Lake Superior Chippewa Indians Special Tribal Council, et al., Transcript of Meeting Minutes of January 2, 2008 at 69:24-70:5 (unpublished transcript) (attached hereto as Ex. 8).

80. Despite assuring the Tribal Parties of his fiduciary obligation to provide them with complete and accurate information, Shibilski made a number of material representations to the Tribal Parties that were either false or made recklessly or negligently without any reasonable factual support or basis, including but not limited to the following statements in which Shibilski:

- a. Assured them that the money from the Bond Transaction would be lent with positive arbitrage to the Project (*Id.* at 13:13-14:5);
- b. Said that Stifel's very smart analysts had looked closely at the projected cash flow for the Project and they projected that, in the first full year of the Project, after all expenses were paid on the Project and that year's debt payments were made, the Tribal Parties would net approximately \$9 million (*Id.* at 26:9-27:11);
- c. Assured the Tribal Council that the substantial net cash flow from the Casino was more than twice the amount needed to service the Bond Transaction debt

and that they could pay it off faster than under the terms of the Bond Transaction if they wanted to (*Id.*);

- d. Repeated, in response to a question from a tribal member, that the Tribal Parties would have a 1.5-percent positive arbitrage on the payments they would receive from the Project compared to the payments they would have to make on the Bonds, which meant the Tribal Parties would immediately start making \$3 million a year (*Id.* at 32:10-12);
- e. Emphasized that there was a substantial positive profit margin in the Project (*Id.* at 27:12-17);
- f. Told them that the money lent to the Project would be secured debt—that the Tribal Parties were getting liens on everything substantial and obtaining personal guarantees—so if there were not sufficient funds to pay the Tribal Parties back they would have recourse (*Id.* at 28:3-13);
- g. Represented to the Tribal Parties that there was no halfway option—the bond deal was a single bond issue and they could not just take part of it (*Id.* at 33:24-34:11);
- h. Emphasized that failing to approve the Bond Transaction that night would kill the Project and endanger the money the Tribal Parties had invested previously in the Project (*Id.* at 61:2-7);
- i. Said that if the Tribal Parties did not approve the Bond Transaction, they would impair their credit and harm their ability to borrow for business (*Id.* at 61:8-15);

- j. Told the Tribal Parties that the only compromise position was to approve the Bond Transaction, pay outstanding bills, finish site work for the Project, and then sell the Project (*Id.* at 69:24-70:11);
- k. Assured the Tribal Parties that there were many people who would want to purchase their interest in the Project and he could guarantee that they had a valuable asset that they would be able to sell (*Id.* at 70:6-11, 80:21-22);
- l. Said that, in Bayba, the Tribal Parties had a 50/50 partner who would also be on the hook for any Project liabilities (*Id.* at 83:11-20);
- m. Told the Tribal Parties they had a fiduciary obligation to enter the Bond Transaction in order to protect the interests of their good partner, Bayba (*Id.* at 84:11-20);
- n. Stated that if the Tribal Parties failed to authorize the Bond Transaction, they would be ruining not just their project but their partner Bayba's project (*Id.*);
- o. In response to a question about what the monthly fees would be on the \$50 million, said that the net effect is that the Tribal Parties would have cash, the new debt payments would be at the same interest rates that were currently being charged on the existing debt, and the Tribal Parties would get \$1 million (*Id.* at 137:5-7);
- p. Told them that the payments made as a result of the Bond Transaction were the same as the payments that the Tribal Parties were already making (*Id.*);  
and

- q. Stated that the Tribal Parties had no choice but to vote that day on the Bond Transaction because if they did not, they would lose their investment in the Project. (*See id.* at 61:2-62:7).

81. At that same meeting Shibilski omitted a number of material facts from his presentation to the Tribal Parties including but not limited to the following:

- a. He did not inform them that he had a large personal financial stake in the Project;
- b. While claiming that he was obligated, because it was a fiduciary fact, to tell the Tribal Parties that their failure to act would ruin their partner Bayba's project, he failed to mention that *he* was Bayba's business partner and also their business partner;
- c. He did not mention that the Bond Transaction did not meet the Tribal Parties' credit and cash flow needs, in particular that it failed to carve out or otherwise provide any funds for distributions to fund the Tribal Government;
- d. He did not mention that Bayba, a real estate developer and broker in Stevens Point, Wisconsin, had never previously managed development of a casino;
- e. He did not disclose that if the Project did not obtain a second round of financing in 2008, then the Project—and the Tribal Parties' ability to sell their interest in it—would be severely jeopardized; and
- f. He did not inform the Tribal Parties that the 12% interest rate on the Bond Transaction was significantly higher than the various interest rates on the Tribal Parties' then-existing debt, that the Tribal Parties could have refinanced the existing debt without taking on new debt, and that there were less-risky

refinancing alternatives that did not require sinking additional funds into the Project.<sup>3</sup>

82. DeYoung, Shibilski's supervisor, and Stifel's Fed. R. Civ. P. 30(b)6 witness in a related proceeding, testified that he was supposed to attend the January 2, 2008 meeting with Shibilski, but was unable to make it because he was sick. Deposition of David DeYoung at 59:19-60:1, *Stifel Nicolaus & Co., Inc. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, Case No. 13-cv-372 (W.D. Wis. Mar. 3, 2014) (attached hereto as Ex. 9).

83. DeYoung conceded that Shibilski's representations to the Tribe regarding the terms of the Bond Transaction were materially inaccurate, specifically:

- a. Contrary to Shibilski's assertions, Stifel never analyzed the cash flow for the Grand Soleil-Natchez Project, conducted no due diligence on that Project, and was not in a position to advise the Tribe regarding the financial prospects of the Project (*Id.* at 58:17-23, 103:6-104: 2, 105:19-106:1);
- b. Shibilski's statement regarding the cash flow on the Project was a "factual misstatement" and was "not an accurate description . . . of the bond transaction" (*Id.* at 99:15-100:22);
- c. Contrary to Shibilski's assertions that the rate for the Bond Transaction was not the same the Tribe was paying on existing debt, "the new transaction increased the interest rate" (*Id.* at 120:15-23);
- d. DeYoung was not aware of any basis for Shibilski's representation to the Tribe that "[t]he net effect is that you will have cash . . . plus you get \$1 million" (*Id.* at 119:7-120:4) and he did not know what Shibilski was referring

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<sup>3</sup> The effective interest rate was even higher than 12% because it was calculated on the gross amount of the proceeds and not the discounted amount actually paid by the purported bondholders.

to when he told the Tribal Council “You have a 1.5 percent positive arbitrage, so you may get something like \$3 million a year” (*Id.* at 104:23-105:18); and

e. Shibilski’s statements to the Tribal Council that “You have a very good partner, Mr. Bayba” and “You are going to ruin your partner’s project” were outside the scope of the role of bond placement agent in the Bond Transaction (*Id.* at 109:4-10) and would not have been DeYoung’s “choice of words.” (*Id.* at 110:13-22).

84. DeYoung acknowledged that Shibilski “required some additional training” and that Stifel failed to adequately follow-up with the Tribe after the January 2, 2008 meeting. (*Id.* at 113:22-114:9).

85. DeYoung further acknowledged that Shibilski was speaking “without a lot of experience in bond transactions” and “without perhaps a base of knowledge in the documents and the way this transaction was[.]” (*Id.* at 114:22-115:5).

86. In addition, DeYoung stated that he was unaware of Shibilski’s personal interest in Big River. (*Id.* at 87:3-6). When asked whether Stifel is fine with Shibilski’s conduct and statements at the January 2, 2008 Tribal Council meeting, DeYoung responded: “I wouldn’t say we’re fine with it.” (*Id.* at 113:17-20).

87. Nevertheless, Stifel believed it was appropriate for Shibilski to encourage the Tribe to close the deal because Stifel had a reputation to maintain with Saybrook. (*Id.* at 94:9-25). DeYoung testified that Stifel had a financial interest in the Bond Transaction closing because “[w]e only get paid if a deal closes.” (*Id.* at 55:22-25).

88. During that same January 2, 2008 Tribal Council meeting, Pierson knew that the Tribal Parties were relying on him to provide legal advice regarding the Bond Transaction and

he made numerous statements to convince them that they should rely on him and not attempt to understand the documents they were being asked to approve.

89. For example, Pierson assured the Tribal Parties that clients normally rely on bond counsel to draft and understand the complicated Bond Transaction documents. (Ex. 8 at 9:8-23). He conceded that he himself did not understand the Bond Transaction documents and was relying on his partner, Griggs, to interpret and understand them. (*Id.* at 64:15-21).

90. Pierson also made a number of material representations at that meeting, in his role as attorney to the Tribal Parties, that were either false or made recklessly without any reasonable factual support or basis, including the following:

- a. In responding to a question about what would happen if there was a default on the bond payments, he stated that a certain percentage of casino revenue would have to be paid to service the debt and the tribe would have to *consult* with (as opposed to get approval from) the bondholders regarding new management (Ex. 8 at 19:3-25);
- b. He claimed that his partner, Griggs, was the bond expert and had pushed back and negotiated on behalf of his clients, the Tribal Parties (*Id.* at 47:1-16);
- c. He echoed Shibilski's false warnings of dire consequences the Tribal Parties would suffer if they did not approve the Bond Transaction, including harm to their reputation in the marketplace (*Id.* at 62:9-14); and
- d. Following all of the dire consequences, he said that it came down to the consequences of what would happen if they did not act that night. (*Id.* at 64:22-65:4).

91. Meanwhile, Pierson also omitted material information and failed to correct material misrepresentations made by Shibilski, despite the fact that he knew or should have known that Shibilski's statements were false or recklessly made without a reasonable basis, and he had a duty to inform the Tribal Parties of such misrepresentations:

- a. When Shibilski materially misrepresented the types of security interest the Tribal Parties had in the Project, Pierson failed to explain the limited nature of the Tribal Parties' protection if there were financial problems with the Project (*Id.* at 28:17-29:11);
- b. He did not correctly inform the Tribal Parties of the differences between the interest rates they were paying on existing debt at that time as compared to the interest rate they would be paying on the Bonds; and
- c. Pierson also failed to correct or even raise any question regarding any of the wildly incorrect financial projections Shibilski made at the meeting.

92. Pierson did not advise the Tribal Parties regarding the risk of entering into the Bond Transaction without securing the second tranche of financing necessary to complete the Project and without advising the Tribal Parties of the risk of committing additional funds to the Project when there were potential issues with obtaining a Mississippi gaming license, both of which were required for the Project to be completed so it could generate cash flow to allow the Tribal Parties to service the Bond Transaction debt.

93. The January 2, 2008 Tribal Council meeting was contentious and members of the Council were confused and complained they had inadequate or no time to review or contemplate the Bond Transaction, yet Pierson joined Shibilski in pushing the Council to approve the Bond Transaction that night.

94. The confusion and dismay of their clients, the Tribal Parties, should have been obvious to Stifel and Godfrey as they participated in the January 2, 2008 meeting, but they continued to provide false assurance and pressured the Tribal Parties to approve the deal that day.

95. On information and belief, Pierson and Shibilski ushered the then-Chairperson of the Tribal Council outside of the public meeting to sign documents related to the Bond Transaction in a private room.

**The Tribal Parties Approve the Bond Transaction  
Based on Stifel's Misrepresentations and Godfrey's Negligence**

96. The Tribal Parties relied on Shibilski's representation that he owed fiduciary duties to them and his other misrepresentations and material omissions when voting on January 2, 2008, to approve the Bond Transaction. Shibilski was acting on behalf of Stifel when he made each of the misrepresentations and material omissions in order to induce the Tribal Parties' approval of the Bond Transaction. All of the misrepresentations and material omissions were either made intentionally, recklessly, or negligently by Shibilski.

97. Stifel knew that the Tribal Parties were relying on the advice provided by its representative related to the Bond Transaction and Stifel made material omissions and false and misleading statements to the Tribal Parties during the January 2, 2008 meeting that induced them to proceed with the illegal Bond Transaction.

98. The Tribal Parties also relied on Godfrey as their legal counsel to provide them with accurate information regarding the Bond Transaction and warn them of the risks of entering the Bond Transaction. By failing to correct Stifel's misrepresentations, while applying pressure on the Tribal Parties to approve the Bond Transaction immediately, Godfrey aided Stifel in inducing the Tribal Parties to approve the Bond Transaction.

99. Stifel materially misrepresented the true financial ramifications of the Tribal Parties' involvement in the Bond Transaction. Godfrey failed to bring the Tribal Parties' attention to these misrepresentations despite a duty to do so.

100. Stifel and Godfrey knew that the Tribal Parties lacked the ability to independently assess the cash flow analyses repeatedly referred to by Shibilski as providing the Tribal Parties "positive arbitrage" on the deal. Stifel and Godfrey knew that the Tribal Parties were relying on Stifel's statements regarding the terms of the Bond Transaction.

101. Stifel misled the Tribal Parties regarding the profits they would receive from the Project as a result of the Bond Transaction. Stifel's employee assured the Tribal Parties multiple times that they would see positive arbitrage as a result of the Bond Transaction and would net millions of dollars each year.

102. Stifel misrepresented the terms of the Bond Transaction to give the Tribal Parties a false sense of security about the deal. At the time Stifel made the misrepresentations, it knew or should have known its representations were false.

103. Despite negotiating the terms of the Bond Transaction for the Tribal Parties, Godfrey failed to alert the Tribal Parties to Stifel's misrepresentations despite Godfrey's duty to do so.

104. Despite its massive investment in the Project by way of the Bond Transaction, the Tribal Parties did not receive any increased equity or ownership stake in the Project.

105. The Tribal Parties also did not receive any liens on the Project. In addition, the guaranty the Corporation received was essentially worthless because it was from Big River—as opposed to Big River's partners or members themselves. Yet Stifel promised exactly the

opposite during Shibilski's presentation to the Tribal Parties and Godfrey did not correct that misrepresentation.

106. Stifel repeatedly made the false promise that the Tribal Parties would easily be able to sell their interest in the Project, which Godfrey did not correct or raise doubts about.

107. Stifel also misled the Tribal Parties regarding Shibilski's interest as a principal and member/owner of Big River, a very large personal stake in the Project that would be lost if Shibilski could not convince the Tribal Parties to commit to the proposed Bond Transaction. Stifel hid this conflict of interest from the Tribal Parties.

108. Stifel knew, or in the exercise of due diligence should have known, that Shibilski had an ownership interest in Big River and that he therefore had a conflict of interest in the Project and the Bond Transaction.

109. Had the Tribal Parties known about, *inter alia*, the multiple conflicts of interests, the lack of support for Stifel's financial projections, the Project's risks, the lack of secured interest in the Project's assets, and the lack of outside interest in the Project, they would not have entered into the Bond Transaction and would have instead sought alternative financing options, or explored refinancing only for the debt that actually needed refinancing. Under either scenario, the Tribal Parties would have been much better off.

110. By misrepresenting and failing to disclose the true risks of the Bond Transaction, Stifel succeeded in convincing the Tribal Parties to approve the inappropriately risky, unsuitable, unconscionable, and illegal Bond Transaction.

111. At all relevant times, Stifel had an obligation and duty to the Tribal Parties, in connection with the Bond Transaction, to comply with applicable law, as well as those of the self-regulatory agencies FINRA and MSRB, of which Stifel is a member.

112. Stifel and their agents offered their services as professional financial advisors to the Tribe but did not provide such services as represented and did not disclose to the Tribal Parties, or obtain consent for, the conflict of interest presented by Stifel’s dual role as financial advisor to the Tribe and bond placement agent/underwriter for the Corporation.

113. Stifel engaged in the misrepresentations and omissions described above. They did not exercise good faith and fair dealing with the Tribal Parties. Stifel’s misrepresentations were false, fraudulent, intentional, reckless, or negligent, were done willfully and maliciously with reckless or intentional disregard for the rights of the Tribal Parties, and were a proximate cause of damages suffered by the Tribal Parties.

114. By a divided vote, the Tribal Parties voted to approve the Bond Transaction—an approval that the Tribal Parties never would have given if the truth regarding the Bond Transaction had been disclosed to them.

115. The Bond Transaction closed on January 18, 2008.

116. On information and belief, at closing, the bond proceeds were disbursed as follows:

Amount	Payee	Purpose
\$375,000	Stifel Nicolaus	Underwriting fee
\$22,000	Balch & Bingham LLP	Counsel to Grand Soleil
\$55,000	Balch & Bingham LLP	Counsel to Stifel Nicolaus
\$125,000	Godfrey & Kahn	Bond counsel/Issuer counsel fee
\$5,000,000	Saybrook/Wells Fargo	Bond reserve account
\$500,000	Saybrook	Bond discount
\$6,500	Wells Fargo	Trustee Fee
\$5,000	Best & Flanagan LLP	Counsel to Wells Fargo
\$22,696.49	Quarles & Brady LLP	Counsel to Chippewa Valley Bank
\$115,760.37	Sonnenschein, Nath & Rosenthal (now Dentons US LLP)	Counsel to Saybrook

\$31,049,636.58	Banks and Vendors	Grand Soleil investment
\$12,723,406.56	Multiple Banks	Pay off other Tribal debt
\$50,000,000.00	<b>Total</b>	

**Godfrey and Stifel Meet with the Tribal Parties  
To Address the Tribal Parties' Cash Flow Crisis**

117. Almost immediately, the Tribal Casino's revenue was insufficient to meet both the minimum monthly debt service on the Bonds of more than \$750,000.00 while sustaining the Tribal Government, not to mention leaving no money to reinvest in the Casino at levels necessary to ensure the business's profitability.

118. The Bond Transaction's terms did not meet the Tribe's credit and cash flow needs.

119. There was no provision in the Bond Transaction to ensure the funding of the Tribal Government.

120. Pierson and Griggs telephonically attended meetings with the Tribal Council in February 2008 to discuss what went wrong with the Bond Transaction and offer assistance with the Tribal Parties' resulting cash flow crisis.

121. At one of those meetings, Pierson told the Tribal Council that he would not have permitted the Bond Transaction to go forward if he knew how bad the terms were. Yet he and Griggs were charged with negotiating the Bond Transaction terms for the Tribal Parties and drafting the Bond Transaction documents.

122. The Tribal Parties also asked Stifel to participate in a conference call in February 2008 regarding the cash flow crisis.

123. The meeting was telephonically attended by Shibilski, DeYoung, and other members of the Stifel team.

124. Stifel informed the Tribal Council that Stifel believed, erroneously, that the Tribe had obtained a \$10 million line of credit that would defray the cost of the distributions to the Tribal Government until the second tranche of financing for the Project could be completed.

125. No such term was included in the Bond Transaction and Stifel made no effort to ensure that such a line of credit was obtained.

126. Moreover, a \$10 million line of credit would have been insufficient to offset the amount of the required distributions to the Tribal Government and would only have been helpful if Stifel could actually deliver a second tranche of financing to complete the Project.

127. Stifel did not deliver a second tranche of financing despite assuring the Tribal Parties it would be able to do so.

128. Prior to the February 2008 conference call with the Tribal Council, DeYoung informed his superior Steve Bell that he knew about Shibilski's interest in the Project.

129. Bell expressed concern about whether the Tribe was informed of Shibilski's interest in the Project.

130. Nevertheless, during the conference call with the Tribal Council, Shibilski did not mention his personal investment—even after being asked to identify the investors in Big River. Notably, DeYoung remained silent even as Shibilski omitted his own name from the list of other Big River investors.

131. Thus, Stifel did not disclose Shibilski's conflict of interest even after it had actual notice of the conflict and DeYoung's superior expressed concern regarding its potential impact on the Tribal Parties, concealing the conflict despite a duty to correct, or otherwise make all parties to the Bond Transaction, including the Tribal Parties, aware of the conflict.

132. Despite promises to help, Stifel and Godfrey failed to take any measures that alleviated the Tribal Parties' cash flow crisis.

**The Tribal Parties are Unable to Service the Bond Transaction Debt  
And Maintain Essential Tribal Government Services**

133. The Casino is the primary source of funding for the Tribe's Government.

134. Historically, the Tribe depended on transfers from the Casino totaling between \$17 million and \$18 million each year. But under the "waterfall" set by the Bond Transaction, virtually all of the Casino revenues were diverted to Saybrook. As a result, there were insufficient funds remaining to fund the Tribe's governmental operations.

135. For example, in the fiscal year ending September 30, 2008, the Casino distributed only \$8.2 million to the Tribe—\$9.5 million less than the Tribe's fiscal-year 2007-08 budget expectation.

136. The stress of the Bond payments forced the Tribe to substantially reduce important tribal governmental and social programs. In addition to other cuts:

- a. The Tribe cut law enforcement budgeted funding by 23%;
- b. The Tribe cut Tribal Court budgeted funding by 33%;
- c. The Tribe cut funds for Tribal-member-scholarship programs and financial assistance to complete secondary and post-secondary education by 23% (approximately \$140,000);
- d. The Tribe cut Youth Sport and Fitness Program funds that had provided sports-team equipment and tournament-entrance fees for more than 400 youth annually, and had funded healthy-living and lifetime-sports activities and socialization programs, trips, and cultural exchanges by 76% (\$330,000);

- e. The Tribe cut Elderly Care Chore Worker funds that provided need-based assistance to tribal elders to enhance their quality of life and extend life expectancy by 87.5% (\$245,000);
- f. The Tribe cut funding for a museum housing numerous irreplaceable artifacts by \$73,000, forcing termination of the museum's curator;
- g. The Tribe cut funding to repair and upgrade reservation roads by 100% (\$250,000) for several years running; and
- h. The Tribe cut health-care funding for tribal members, their descendants, and other Native Americans without health insurance by over \$1,400,000.

137. In addition to the complete elimination of any per-capita distributions to Tribal members, the Tribe was also forced to suspend and terminate important governmental and social programs after the Corporation issued the Bonds. For example:

- a. Between 2008 and 2009, the Tribe was forced to make a 15% cut in wages of tribal employees;
- b. In 2009, the Tribe was forced to cut those tribal-employee wages an additional 19.5%;
- c. Tribal members, who until 2007 had received annual per-capita income ranging from \$1,200 to \$1,500 during the Thanksgiving/Christmas holiday season, received nothing in 2008 and 2009;
- d. The Tribe's Land Purchase Program, which had been aimed at restoring former lands owned by the Tribe or its members to Tribal ownership, was terminated;

- e. The Census and Demographics program, which is key to planning and developing tribal programs by identifying tribal and membership needs, was suspended;
- f. General-fund support for WIA Comprehensive Services, a workforce-development program, was eliminated;
- g. The Cultural/Prevention Program, which used traditional ceremonies and events to reduce alcohol and drug abuse, was suspended;
- h. The Transportation Program, which provided much-needed transportation to higher-education students, was eliminated;
- i. The Building Inspection Program, which provided assistance to low- and moderate-income members for housing maintenance and repair to meet building and safety requirements, was eliminated;
- j. The Tribal Youth Work Program, which provided summer-employment opportunities to tribal youth, was eliminated;
- k. The GIS Mapping & Inventory Project, which catalogued reservation lands, was suspended;
- l. The Tribe eliminated funding for the Fish and Game Program, which monitored, managed, and protected fish and game within the reservation boundaries; and
- m. The Tribe could not fulfill its intention to hire a licensed social worker.

138. As the pressure of trying to make the Bond payments mounted, the Tribe worked to prioritize critical governmental services. But in 2009 it faced the grim prospect of having to

shutter the Tribal Governmental Center and send home *all* governmental staff because it could not afford to keep the Center open or to keep the staff on the payroll.

139. The Corporation's inability to maintain normal levels of reinvestment also had a direct negative impact on Casino operations.

140. Meanwhile, Stifel failed to procure the second tranche of financing, the Project was never completed, and the Tribal Parties lost the \$31-million-plus of Bond proceeds that went to the Project.

141. Far from generating \$3 million a year for the Tribe, as Stifel promised, the Tribal Parties never earned a cent on the Project, and lost all of the money that they contributed to the Project.

142. In short, the Bond Transaction was a financial disaster for the Tribal Parties.

#### **Saybrook Declines to Renegotiate the Bond Transaction's Terms on the Advice of Dentons**

143. In 2009, the Tribal Parties hired new counsel and attempted to renegotiate the Bond Transaction.

144. In face-to-face negotiations with Saybrook in 2009, representatives of the Tribal Parties outlined the Bond payments' crippling effect on Tribal governmental services and sought to restructure the Bond payments with Saybrook to make the payments more reasonable.

145. The new counsel for the Tribal Parties realized that the Bond Transaction was an unenforceable management contract within the meaning IGRA and alerted Saybrook and Dentons, Saybrook's attorneys, to this issue.

146. Saybrook engaged in some discussions with the Tribal Parties regarding revising the Bond Transaction terms, but Dentons advised Saybrook that the Bond Transaction documents, including the Indenture, were not management contracts requiring NIGC approval under IGRA.

147. Saybrook ultimately declined to renegotiate the Bond Transaction terms.

148. The Corporation was unable to service the Bond Transaction debt and, on November 30, 2009, the Corporation requested that Wells Fargo (as trustee under the voided Indenture) transfer certain money to it from an operating reserve account created under the Bond Transaction.

149. A dispute arose over the allocation of funds requested by Wells Fargo and Saybrook directed Wells Fargo to declare the Corporation in default.

150. The Corporation received a Notice of Default under the Indenture on December 18, 2009.

#### **Litigation over the Bond Transaction**

151. Days later, Wells Fargo brought the first suit against the Corporation in the United States District Court for the Western District of Wisconsin and immediately sought the expedited appointment of a receiver to manage the Tribe's Casino and assume control over its gross revenues. Saybrook directed Wells Fargo to undertake these actions and offered to indemnify Wells Fargo for any resulting liabilities.

152. Judge Rudolph T. Randa, sitting by designation in the Western District, ordered the case dismissed because, “[u]pon consideration of the briefs, affidavits, declaration and exhibits submitted in this matter, the Court finds that the Indenture is a management contract that was executed without prior approval from the [NIGC and] . . . without prior approval, the entire contract is void *ab initio*.” Order at 1, *Wells Fargo Bank, N.A. v. Lake of the Torches Econ. Dev. Corp.*, Case No. 09-CV-768 (W.D. Wis. Jan. 6, 2010), Dkt. 43.

153. The Seventh Circuit Court of Appeals upheld Judge Randa's decision that the Indenture was a void unapproved management contract:

Specifically, the Indenture grants a security interest in the Casino's gross revenues; prohibits Lake of the Torches from making capital expenditures beyond a certain limit without bondholder approval; provides for the appointment of a management consultant if Lake of the Torches fails to meet a specified debt-service ratio and requires Lake of the Torches to use its best efforts to implement the consultant's recommendations; limits Lake of the Torches' ability to replace or remove certain key management personnel without bondholder consent; gives bondholders the right upon default to require that Lake of the Torches replace management personnel; and permits Wells Fargo to seek the appointment of a receiver of the trust estate upon default.

...

We conclude that the Indenture constitutes a management contract under IGRA and that, as a condition of its validity, it should have been submitted to the Chairman of the NIGC for approval prior to its implementation. The parties' failure to secure such approval renders the Indenture void in its entirety and thus invalidates the Corporation's waiver of sovereign immunity.

*Wells Fargo Bank, Nat'l Assn. v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684, 699, 702 (7th Cir. 2011).

154. The Seventh Circuit remanded the case for additional proceedings concerning whether the other Bond Transaction documents were also void. Wells Fargo eventually dismissed that action.

155. Saybrook and Wells Fargo sued the Tribal Parties in Waukesha County Circuit Court, Case No. 12-cv-00187, and filed another suit against the Tribal Parties in the Western District, which was dismissed for lack of jurisdiction at Saybrook's urging.

156. On April 25, 2013, the Tribal Parties filed suit against Saybrook, Stifel, and Godfrey in the Lac du Flambeau Tribal Court (the "Tribal Court"), Case No. 13CV115, seeking a declaration, *inter alia*, that the Bond Transaction documents are void under IGRA and Tribal laws.

157. Saybrook, Stifel, and Godfrey moved to dismiss the Tribal Court case, which motions were denied, and filed another action in the Western District of Wisconsin, Case No. 13-cv-372, against the Tribal Parties, seeking a declaration that the Tribal Court lacks jurisdiction over them and an order enjoining the Tribal Parties from pursuing their suit in Tribal Court.

158. On May 16, 2014, the Western District granted Saybrook, Wells Fargo, and Stifel's motions for preliminary injunction, and denied Godfrey's motion. In response, the Tribal Court stayed its case.

159. On May 22, 2014, the Tribal Parties appealed the Western District's decision to the Seventh Circuit Court of Appeals, Case No. 14-2150, which appeal has been fully briefed and argued and awaits the Court's decision.

160. On February 2, 2015, Saybrook sued Dentons for legal malpractice, Case No. 15-cv-00302. On May 13, 2015, Saybrook's malpractice action was consolidated with this case.

**COUNT I: INTENTIONAL MISREPRESENTATION – FRAUD**  
**AND FRAUD IN THE INDUCEMENT**  
**(Against Stifel)**

161. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

162. Stifel (through Shibilski and other employees), as described above with particularity in ¶¶ 22-37, 48, 65, 77-87, 96-113, 124-132, made material misrepresentations to the Tribal Parties in order to induce them to invest in the Project and enter into the Bond Transaction.

163. Stifel made these representations either knowing they were untrue or recklessly without caring whether they were true or false.

164. Stifel further failed to speak to the Tribal Parties, despite a duty to do so, regarding Shibilski's conflict of interest in the Project and the undisclosed risks of the Bond Transaction described above.

165. In failing to speak to the Tribal Parties despite a duty to do so, Stifel made untrue factual representations or material omissions.

166. Stifel (through Shibilski and other employees) made these representations and material omissions with the intent to deceive the Tribal Parties into investing in the Project and to induce them to enter into the Bond Transaction.

167. The Tribal Parties reasonably believed Stifel's misrepresentations (by commission and omission) and relied upon them in investing in the Project and entering into the Bond Transaction.

168. Shibilski was an officer of Stifel with management or control over Stifel's underwriting of the Bond Transaction. As such, all of Shibilski's knowledge related to the Bond Transaction is imputed to Stifel.

169. As a proximate result of Stifel's intentional misrepresentations, the Tribal Parties sustained damages in an amount to be determined at trial.

170. Stifel is liable in *respondeat superior* for the intentional misrepresentations of Shibilski and its other employees as they were made in the scope of their employment with Stifel.

171. In performing the above-described acts and omissions, Stifel intentionally disregarded the rights of the Tribal Parties.

**COUNT II: STRICT-RESPONSIBILITY MISREPRESENTATION**  
**(Against Stifel)**

172. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

173. Stifel (through Shibilski and other employees), as described above with particularity in ¶¶ 22-37, 53, 65, 77-87, 96-113, made material misrepresentations to the Tribal Parties in order to induce them to invest in the Project and enter into the Bond Transaction. Stifel and its representatives made these misrepresentations on the basis of their own personal knowledge or in circumstances in which they necessarily ought to have known the untruth of the statements made.

174. Stifel further failed to speak to the Tribal Parties, despite a duty to do so, regarding Shibilski's conflict of interest in the Project and the undisclosed risks of the Bond Transaction described above.

175. In failing to speak to the Tribal Parties despite a duty to do so, Stifel made untrue factual representations or material omissions.

176. Stifel (through Shibilski and other employees) had economic interests in inducing the Tribal Parties' investment in the Project and to enter the Bond Transaction and financially gained as a result of the misrepresentations it made.

177. The Tribal Parties believed the misrepresentations were true and relied on them.

178. As a proximate result of Stifel's misrepresentations, the Tribal Parties sustained damages in an amount to be determined at trial.

179. Stifel is liable in *respondeat superior* for the misrepresentations of Shibilski and its other employees as they were made in the scope of their employment with Stifel.

**COUNT III: NEGLIGENT MISREPRESENTATION**  
**(Against Stifel)**

180. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

181. Stifel (through Shibilski and other employees), had a duty to speak and to exercise ordinary care in making statements to the Tribal Parties regarding the Project and the Bond Transaction.

182. Stifel, as described with particularity above in ¶¶ 22-37, 53, 61-62, 65, 68, 77-87, 93-113, 124-132, made untrue representations of fact and/or failed to speak despite a duty to do so and was negligent in failing to exercise ordinary care when making such representations and/or remaining silent despite having a duty to speak.

183. The Tribal Parties believed Stifel's misrepresentations to be true and justifiably relied upon them when investing in the Project and entering into the Bond Transaction.

184. As a proximate result of Stifel's negligent misrepresentations, the Tribal Parties sustained damages in an amount to be determined at trial.

185. Stifel is liable in *respondeat superior* for the negligent misrepresentations of Shibilski and its other employees as they were made in the scope of their employment with Stifel.

**COUNT IV: NEGLIGENCE**  
**(Against Stifel)**

184. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

185. Stifel owed a duty to exercise ordinary care in advising the Tribal Parties on financial matters, including its investment in the Project and participation in the Bond

Transaction, including, *inter alia*, to abide by its own internal rules and governance with regard to disclosing conflicts of interest and acting in the best interests of its client.

186. As the Tribe's financing agent, Stifel also owed a higher duty of care to the Tribe to, *inter alia*, exercise good faith, reasonable diligence, and standard skill in discharging its duties on behalf of the Tribe, act with absolute fidelity and loyalty in the best interests of the Tribe, disclose material facts to the Tribe affecting the subject matter of its agency, and ensure that the Bond Transaction met the Tribe's credit and cash flow needs.

187. As described above in ¶¶ 22-24, 27-87, 96-113, 124-132, Stifel failed to exercise ordinary care, good faith, reasonable diligence and standard skill in discharging its duties on behalf of the Tribe, failed to act with absolute fidelity and loyalty in the best interests of the Tribe, failed to disclose material facts to the Tribe regarding the Project and Bond Transaction, and failed to ensure that the Bond Transaction met the Tribe's credit and cash flow needs.

188. Stifel's failures were a breach of its duty of care to the Tribal Parties and constituted negligence.

189. As a proximate result of Shibilski's and other Stifel employees' negligence, the Tribal Parties sustained damages in an amount to be determined at trial.

190. In addition, Stifel owed the Tribe a duty as its financial adviser to present feasible and suitable investment options for the Tribe.

191. Among other things, Stifel, as described with particularity above in ¶¶ 34-37, 44-87, 96-113, 124-132, failed to disclose Shibilski's personal financial interest in Big River and failed to correct the Tribal Parties' misperception that he was an impartial financial advisor even after Stifel knew of Shibilski's conflict; failed to advise the Tribal Parties about the potential consequences of the Bond Transaction, failed to advise the Tribal Parties of

alternatives to the Bond Transaction, failed to advise the Tribal Parties that the Bond Transaction did not have to be approved during the January 2, 2008 Tribal Council meeting, incorrectly advised the Tribal Parties that Saybrook would fund the second tranche of financing to complete the Project, and incorrectly advised the Tribal Parties that they could sell the Project.

192. Such failures and advice were a breach of Stifel's duty of care to the Tribal Parties regarding the Project and the Bond Transaction and therefore constituted negligence.

193. Stifel was also negligent because the Bond Transaction was not feasible, not suitable for the Tribe, and did not meet the Tribe's credit and cash flow needs. Among other things, the Tribal Parties were unable to service the Bond Transaction debt and make obligatory distributions to the Tribal Government.

194. Further, Stifel knew, or should have known, that the Tribal Parties could not service the Bond Transaction debt without cash flow from the Project, yet proceeded to recommend that the Tribal Parties enter into the Bond Transaction despite not having any commitment to finance the Project to completion and without having advised the Tribal Parties of the risk of committing additional funds to the Project when there were potential issues with obtaining a Mississippi gaming license.

195. As a proximate result of Stifel's above-described negligence, the Tribal Parties sustained damages in an amount to be determined at trial.

196. As an SEC-registered broker-dealer and a member of FINRA, Stifel also had a duty of care to abide by FINRA rules with respect to its conduct relating to the Bond Transaction.

197. Among other things, Stifel, as described with particularity above in ¶¶ 22-68, 77-87, 96-113, 124-132, breached its duty of care to the Tribal Parties by failing to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010, effecting a transaction in or inducing the sale of the bonds by means of a manipulative, deceptive or other fraudulent device or contrivance in violation of FINRA Rule 2020, recommending the Bond Transaction to the Tribal Parties despite lacking a reasonable basis to believe that it was suitable for the Tribal Parties in violation of FINRA Rule 2111, and for failing to abide by conflicts of interest and disclosure requirements in violation of FINRA Rules 3030 and 3040.

198. Stifel's failure to abide by the applicable FINRA Rules constituted negligence.

199. As a proximate result of Stifel's negligence, the Tribal Parties sustained damages in an amount to be determined at trial.

200. As a registered municipal securities broker-dealer, Stifel also had a duty of care to abide by MSRB rules with respect to its dealings with the Tribal Parties.

201. Among other things, Stifel, as described with particularity above in ¶¶ 22-68, 77-87, 96-113, 124-132, breached its duty of care to the Tribal Parties by not dealing fairly with the Tribal Parties and engaging in deceptive, dishonest and unfair practices in violation of MSRB Rule G-17, recommending that the Tribal Parties participate in the Bond Transaction despite lacking reasonable grounds to believe the Bond Transaction was suitable for the Tribal Parties in violation of MSRB Rule G-19, and simultaneously serving as financial advisor to the Tribal Parties and placement agent/underwriter for the Bond Transaction in violation of MSRB Rule G-23.

202. Stifel's failure to abide by MSRB Rules with respect to its dealings with the Tribal Parties constituted negligence.

203. As a proximate result of Stifel's negligence, the Tribal Parties sustained damages in an amount to be determined at trial.

204. On information and belief, Stifel also failed to abide by other rules and laws governing Stifel's conduct, including Section 10 of the Securities Exchange Act and applicable industry standards, which failure also constituted negligence on the part of Stifel that proximately caused the Tribal Parties to sustain damages in an amount to be determined at trial.

205. Shibilski and other Stifel employees also individually owed the Tribal Parties a duty to exercise ordinary care in advising the Tribal Parties regarding the Bond Transaction. Shibilski and other Stifel employees failed to exercise ordinary care in the advice provided, while also failing to disclose Shibilski's known conflict of interest, as described above, and were therefore negligent.

206. As a proximate result of Shibilski's and other Stifel employees' negligence, the Tribal Parties sustained damages in an amount to be determined at trial.

207. Stifel is liable in *respondeat superior* for the negligent acts and omissions of Shibilski and other employees as they were performed in the scope of their employment with Stifel.

**COUNT V: NEGLIGENT SUPERVISION AND TRAINING**  
**(Against Stifel)**

208. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

209. Stifel had a duty to exercise ordinary care in advising the Tribal Parties, including but not limited to the Project and the Bond Transaction.

210. Stifel breached its duty of care by failing to adequately train and supervise Shibilski and other employees by, among other things, failing to train them to identify and disclose potential conflicts of interest, failing to inquire about and/or disclose Shibilski's conflict of interest, and allowing him and other employees to make false and misleading statements and omissions, described above with particularity in ¶¶ 22-53, 77-87, 96-113, 124-132, regarding the Bond Transaction, despite lacking the necessary qualifications and experience to have done so. (Ex. 9 at 113:22-24; 114:25-115:2.)

211. As a proximate result of Stifel's negligent supervision and training of Shibilski and other employees the above-described wrongful acts and omissions occurred, causing the Tribal Parties to sustain damages in an amount to be determined at trial.

212. Stifel also owed the Tribal Parties a duty of care to abide by FINRA Rules with respect to its conduct in the Bond Transaction, including FINRA rules applicable to its supervisory and oversight obligations regarding the Bond Transaction.

213. As alleged above, by failing to adequately supervise the above-described acts and omissions of its employees, including Shibilski, and failing to ensure compliance with the FINRA Rules Stifel violated FINRA Rule 3110.

214. Stifel's failure to abide by FINRA Rules governing its supervisory and oversight obligations regarding the Bond Transaction constituted negligence.

215. Stifel also owed the Tribal Parties a duty of care to abide by MSRB Rules with respect to its dealings with the Tribal Parties, including MSRB rules applicable to its supervisory and oversight obligations regarding the Bond Transaction.

216. By failing to adequately supervise the above-described acts and omissions of its employees, including Shibilski, and failing to ensure compliance with the MSRB Rules, as described above, Stifel violated MSRB Rules G-27, G-2, and G-3.

217. Stifel's failure to abide by MSRB Rules governing its supervisory and oversight obligations in its dealings with the Tribal Parties constituted negligence.

218. As a proximate result of Stifel's negligent supervision and training of its employees, the Tribal Parties have been injured in an amount to be determined at trial.

219. On information and belief, Stifel also failed to abide by other rules and laws governing Stifel's conduct and applicable industry standards, which failure also constituted negligence on the part of Stifel that proximately caused the Tribal Parties to sustain damages in an amount to be determined at trial.

220. As a proximate result of Stifel's negligence, the Tribal Parties have been injured in an amount to be determined at trial.

**COUNT VI: BREACH OF CONTRACT and BREACH OF  
DUTY OF GOOD FAITH AND FAIR DEALING**  
(Against Stifel)

221. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

222. Separate and apart from any Bond Transaction document, Stifel, additionally or alternatively, had a contractual relationship or contractual relationship implied-in-fact with the Tribal Parties to provide independent and objective financial advice to the Tribal Parties regarding the Project and the Bond Transaction.

223. Stifel breached the contract, or contract-implied-in-fact, with the Tribal Parties by failing to provide independent and objective advice to them, materially misrepresenting the

terms of the Bond Transaction to the Tribal Parties, failing to disclose Shibilski's personal investment in the Project, and engaging in the other misconduct described above.

224. As a result of Stifel's breach of contract, the Tribal Parties have been damaged in an amount to be determined at trial.

225. On May 30, 2007 Stifel entered into the Investment Banking Agreement with the Tribe, (Ex. 12), wherein Stifel agreed, among other things, to serve as "Senior Underwriter and/or Placement Agent" ("Financing Agent") with regard to what would become the Bond Transaction.

226. On November 6, 2007, Stifel entered into the Authorization to Proceed contract with the Tribe, (Ex. 13), modifying the Investment Banking Agreement. Stifel agreed in the Authorization to Proceed, among other things, to negotiate with Saybrook "to provide \$50,000,000 par value of financing to the Tribe on terms that will meet the Tribe's credit and cash flow needs."

227. Stifel breached the Authorization to Proceed contract by failing to provide \$50,000,000 par value financing to the Tribe on terms that met the Tribe's credit and cash flow needs.

228. The Bond Transaction did not meet the Tribe's credit and cash flow needs because, among other things, there were insufficient funds after servicing the Tribal Parties' debts to fund the Tribal government and meet other obligations of the Tribe. In addition, the Bond Transaction was not conditioned on obtaining the second tranche of financing necessary to complete the Project so that it could provide the cash flow required to meet the Tribal Parties' debt service obligations.

229. As a result of Stifel's breach of contract, the Tribal Parties have been damaged in an amount to be determined at trial.

230. As a contracting party, Stifel owed the Tribal Parties a duty of good faith and fair dealing.

231. Stifel also breached its duty of good faith and fair dealing to the Tribal Parties by engaging in the acts and omissions described above.

232. As a result of Stifel's breach of contract and breach of its duty of good faith and fair dealing, the Tribal Parties have been damaged in an amount to be determined at trial.

**COUNT VII: PROMISSORY ESTOPPEL**  
**(Against Stifel)**

233. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

234. Stifel made numerous promises to the Tribal Parties described with particularity in ¶¶ 22-24, 53, 65, 68, 80, 99-102, 105-106, 112, above.

235. Stifel's promises induced the Tribal Parties to invest in the Project and enter the Bond Transaction, and forego more appropriate financing options to consolidate existing debt.

236. Injustice can be avoided only by enforcement of Stifel's broken promises and/or an award of damages, in an amount to be determined at trial, making the Tribal Parties whole for their resultant damages.

**COUNT VIII: CONTRIBUTION AND INDEMNIFICATION**  
**(Against Stifel)**

237. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

238. The parties' pleadings in this action allege various claims against the Tribal Parties for alleged damages arising from the Bond Transaction.

239. To the extent the negligent and/or intentional acts and omissions of Stifel, as alleged above, were causal of the alleged damages, if any, of other parties to this action, and if either of the Tribal Parties is found to be responsible for all or any portion of said alleged damages, each of the Tribal Parties found responsible is entitled to contribution (legal and/or equitable) and indemnification (legal and/or equitable) from Stifel according to Wisconsin law.

**COUNT IX: LEGAL MALPRACTICE**  
**(Against Godfrey)**

240. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

241. Godfrey held its attorneys out as experts in Indian law and in the financing of Indian gaming facilities.

242. Godfrey represented the Tribal Parties with respect to the Bond Transaction and advised the Tribal Parties regarding federal, state, and tribal law issues presented by the Bond Transaction.

243. Godfrey also served as the Tribe's general counsel, counsel to the Tribe, and bond counsel to the Bond Transaction.

244. Godfrey participated in negotiating, drafting, and preparing the Bond Transaction documents, including, *inter alia*, the Indenture.

245. In its capacity as Bond Counsel, Godfrey authored the Bond Counsel Opinion Letter.

246. Completion of the Bond Transaction was expressly conditioned on Godfrey's issuance of the Bond Counsel Opinion Letter.

247. In its capacity as Issuer’s Counsel, Godfrey authored the Issuer Opinion Letter.

248. Completion of the Bond Transaction was also expressly conditioned on issuance of the Issuer Opinion Letter.

249. Both the Bond Counsel Opinion Letter and Issuer Opinion Letter expressed opinions regarding federal and state law, as well as tribal law issues presented by the Bond Transaction.

250. In the Bond Counsel Opinion Letter, Godfrey incorrectly opined, *inter alia*, that “[t]he Bonds, the Indenture and the Bond Purchase Agreement have been duly and validly authorized, executed, and delivered by the Issuer and are the valid and binding obligations of the Issuer enforceable in accordance with their terms.” (Bond Counsel Opinion Letter from Bond Counsel Godfrey & Kahn, S.C. to Lake of the Torches Econ. Dev. Corp., et al. January 18, 2008) (attached hereto as Ex. 10).

251. In the Issuer Opinion Letter, Godfrey incorrectly opined, *inter alia*, that:

- a. “Neither the adoption of the Bond Resolution, the execution, delivery or performance of the Bonds, any of the Bond Documents by the Corporation, nor the authorization and execution of the Bonds and the payment of principal of and interest thereon, will violate, contravene, conflict with, or cause a default or the imposition of any lien not contemplated thereby, under any law, regulation, ordinance, decree or resolution of the Tribe, the State, the United States or any agency or instrumentality of the foregoing . . .” Issuer Opinion Letter from Issuer Counsel Godfrey & Kahn, S.C. to Stifel, Nicolaus & Co., Inc., et al. ¶ 15 (January 18, 2008) (attached hereto as Ex. 11).

- b. “Neither the adoption of the Tribal Resolution, nor the execution, delivery or performance of the Tribal Agreement by the Tribe, will violate, contravene, conflict with, or cause a default or the imposition of any lien not contemplated thereby, under any law, regulation, ordinance, decree or resolution of the Tribe, the State, the United States or any agency or instrumentality of the foregoing . . .” (*Id.* at ¶ 16).
- c. “All approvals required to be obtained from any tribal, state or federal agency, body or instrumentality for the execution, delivery or performance of the Bond Documents by the Corporation, the Tribal Agreement by the Tribe and the FDC Note by the FDC have been obtained, including all necessary approvals of the Secretary of the Interior, the Bureau of Indian Affairs and the National Indian Gaming Commission.” (*Id.* at ¶ 21).
- d. “The Corporation was not required to obtain any consent, approval, authorization, or order of any governmental agency for the issuance, delivery, and sale of the Bonds, including approvals of the Secretary of Interior, the Bureau of Indian Affairs, and the National Indian Gaming Commission, except such as may be required under the securities or Blue Sky laws of the various states (and the rules and regulations thereunder).” (*Id.* at ¶ 34).

252. As explained *supra*, the Seventh Circuit Court of Appeals has held the Indenture is a management contract and that the parties’ failure to secure approval of that management contract rendered it void *ab initio* under IGRA.

253. The other Bond Transaction documents are also void *ab initio* under IGRA because they are individually unapproved management contracts or collectively are part of a unitary unapproved management contract.

254. The Tribal Parties relied on Godfrey's incorrect opinions and did not submit the Bond Transaction documents to the NIGC for approval.

255. Without NIGC review, the Tribal Parties lost the opportunity to learn at the outset of the transaction that the Bond Transaction documents were unenforceable and to reform the Indenture and Bond Transaction documents to remove oppressive and onerous management terms.

256. Moreover, Godfrey's incorrect opinions were a precondition to the Bond Transaction and the parties would not have entered into the Bond Transaction at all if Godfrey had correctly opined as to these matters.

257. In addition, the Bond Transaction documents are also invalid and unenforceable under Tribal Law and the Tribe's Gaming Compact with the State of Wisconsin, which facts were ignored by Godfrey.

258. Godfrey also failed to properly advise the Tribal Parties with respect to applicable Tribal laws and the risks of entering into the Bond Transaction.

259. For example, Godfrey failed to advise the Tribe that it could not pledge tribal assets under the Tribal Agreement unless the pledge first passed a referendum vote of the membership and was approved by the Secretary of Interior, even though the plain text of the Constitution imposed these requirements.

260. Because the Tribal Parties relied on Godfrey's incorrect advice concerning the Constitutional requirements, the Tribal Parties lost the opportunity for the Tribal Membership

and the Secretary of the Interior to review and question the onerous terms of the Bond Transaction; if Godfrey had correctly opined as to these matters, the Tribal Parties are not likely to have entered into the Bond Transaction at all.

261. Godfrey also failed to advise the Tribal Parties of the risks of pledging revenue from the Casino to make Bond payments without ensuring that the Project could be completed and provide cash flow necessary to service the Bond Transaction debt.

262. Godfrey did not ensure that the second tranche of financing required to complete the Project was a condition of the Tribe entering Bond Transaction. Thus, when Stifel failed to deliver the second tranche of financing, there was no way to complete the Project, and any anticipated cash flow from the Project could not offset the Corporation's obligations under the Bonds as Godfrey and Stifel promised it would.

263. Godfrey also did not advise the Tribal Parties of the risk of entering the Bond Transaction when there were potential issues with obtaining a Mississippi gaming license, another requirement for the Project to provide cash flow to service the Bond Transaction debt.

264. By ratifying and otherwise concurring with and failing to correct false statements that Stifel and its representatives and agents made to pressure the Tribal Council and Board of the Corporation to enter into the Bond Transaction, Godfrey also failed to advise the Tribal Parties of facts material to their decision to enter into the Bond Transaction.

265. Godfrey further failed to advise the Tribal Parties with regard to the feasibility of making the Bond Transaction payments or that the Tribal Parties should obtain independent financial advice, apart from Stifel's advice, regarding the feasibility of making the Bond Transaction payments.

266. In particular, Godfrey failed to advise the Tribal Parties of the risk that they would be unable to both service the Bond Transaction debt and distribute funds to the Tribe, including amounts necessary to fund the Tribal Government. Godfrey then failed to structure the terms of the Bond Transaction to accommodate this need and other obligations the Tribal Parties were required to fulfill.

267. Godfrey was also responsible for negotiating the terms of the Bond Transaction documents for the Tribal Parties, but, on information and belief, lacked the necessary experience to understand and negotiate the terms of the Bond Transaction and failed to adequately or properly negotiate terms to protect the interests of the Tribal Parties in the Bond Transaction, allowing Saybrook, through its attorneys, Dentons, to dictate the Bond Transaction terms to the Tribal Parties' detriment.

268. Godfrey further failed to obtain any security interest for the Tribal Parties in the assets of the Project and allowed the Tribal Parties to leverage their Casino for unsecured loans to the Project which Godfrey knew or should have known were unlikely to ever be repaid.

269. Furthermore, Godfrey now contends that the Bond Transaction documents, including the Resolutions, broadly waive the sovereign immunity of the Tribal Parties for all parties and claims, but Godfrey owed a duty to the Tribal Parties to draft any sovereign immunity waiver narrowly.

270. As their general counsel and counsel for the Bond Transaction, Godfrey owed the Tribal Parties a duty to exercise the degree of care, skill, and judgment that a reasonably prudent lawyer practicing in Wisconsin, with special experience, knowledge, or skill in Indian law, Indian-gaming financing, and bond transactions, under the circumstances would exercise.

271. Godfrey breached its duty to the Tribal Parties and negligently failed to adhere to the applicable standard of care with respect to its representation of the Tribal Parties in the ways described above, and in other respects.

272. As a direct and proximate result of the negligence of Godfrey, the Tribal Parties have been damaged by entering into the disastrous Bond Transaction, performing under contracts that were void *ab initio* and violated Tribal law, incurring enormous legal expenses in connection with extensive litigation in multiple courts over the Bond Transaction, experiencing damage to their creditworthiness, and suffering other economic consequences arising from the Bond Transaction, all of which would have been averted had Godfrey adhered to the applicable standard of care.

273. The Tribal Parties seek their compensatory damages arising from Godfrey's legal malpractice in an amount to be determined at trial.

**COUNT X: BREACH OF CONTRACT and BREACH OF  
DUTY OF GOOD FAITH AND FAIR DEALING**  
**(Against Godfrey)**

274. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

275. Godfrey contracted with the Tribal Parties to provide legal advice to the Tribal Parties and to perform the other services described above with regard to the Bond Transaction.

276. As described above, Godfrey breached the contract with the Tribal Parties by failing to provide legal advice and perform the services as it contracted.

277. As a contracting party, Godfrey owed a duty of good faith and fair dealing to the Tribal Parties.

278. Godfrey also breached its duty of good faith and fair dealing to the Tribal Parties by engaging in the above-described conduct.

279. As a result of Godfrey's breach of the contract and breach of its duty of good faith and fair dealing, the Tribal Parties have been damaged in an amount to be determined at trial.

**COUNT XI: STRICT RESPONSIBILITY MISREPRESENTATION**  
**(Against Godfrey)**

280. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

281. As described with particularity above, including ¶¶ 88-92, Godfrey (through its representative, Pierson) misrepresented material facts to the Tribal Parties in order to induce them to enter into the Bond Transaction.

282. Godfrey and its representative made misrepresentations on the basis of their own personal knowledge or in circumstances in which they necessarily ought to have known the truth or untruth of the statement.

283. Godfrey had an economic interest in inducing the Tribal Parties into the Bond Transaction and financially gained as a result of the misrepresentations it made.

284. The Tribal Parties believed the misrepresentations to be true and justifiably relied on them in approving the Bond Transaction.

285. The Tribal Parties suffered pecuniary loss as a result of Godfrey's misrepresentations in an amount to be determined at trial.

286. Godfrey is liable in *respondeat superior* for the misrepresentations of Pierson and its other employees as they were made in the scope of their employment with Godfrey.

**COUNT XII: NEGLIGENT MISREPRESENTATION**  
**(Against Godfrey)**

287. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

288. Godfrey (through Pierson and other employees) had a duty to speak and to exercise ordinary care in making statements to the Tribal Parties regarding the Bond Transaction.

289. As described with particularity above, including ¶¶ 61-62, 66, 68, 75-76, 88-113, 121, Godfrey made untrue representations of fact or failed to speak despite a duty to do so and was negligent in that its representatives failed to exercise ordinary care when making such representations and/or remaining silent despite having a duty to speak.

290. The Tribal Parties believed Godfrey's misrepresentations to be true and justifiably relied upon them when entering the Bond Transaction.

291. As a proximate result of Godfrey's negligent misrepresentations, the Tribal Parties sustained damages in an amount to be determined at trial.

292. Godfrey is liable in *respondeat superior* for the negligent misrepresentations of Pierson and its other employees because they were made in the scope of their employment with Godfrey.

**COUNT XIII: CONTRIBUTION AND INDEMNIFICATION**  
**(Against Godfrey)**

294. The Tribal Parties reallege the foregoing paragraphs as if fully set forth in this paragraph.

295. The parties' pleadings in this action allege various claims against the Tribal Parties for alleged damages arising from the Bond Transaction.

296. To the extent the negligent acts and omissions of Godfrey, as alleged above, were causal of the alleged damages, if any, of other parties to this action, and if either of the Tribal Parties is found to be responsible for all or any portion of said alleged damages, each of the Tribal Parties found responsible is entitled to contribution (legal and/or equitable) and indemnification (legal and/or equitable) from Godfrey according to Wisconsin law.

**WHEREFORE**, the Tribal Parties seek the following relief against Stifel and Godfrey:

- A. Judgment awarding the Tribal Parties their compensatory damages, including consequential damages and damages for lost opportunities; plus, additionally or alternatively;
- B. Judgment awarding the Tribal Parties exemplary and punitive damages against Stifel; plus, additionally or alternatively;
- C. Judgment awarding the Tribal Parties their attorneys' fees, costs, and disbursements according to law; and
- D. Such other relief in law or equity as the Court deems just and proper.

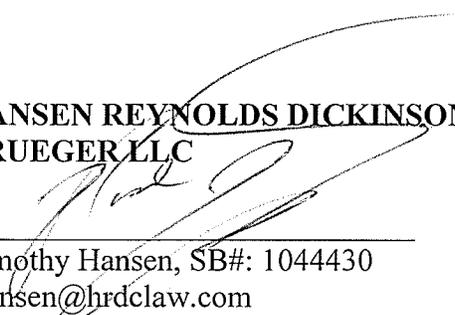
**THE TRIBAL PARTIES DEMAND TRIAL BY A JURY OF 12 PERSONS  
ON ALL CLAIMS TRIABLE IN THIS COURT.<sup>4</sup>**

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<sup>4</sup> The Tribal Parties maintain that this Court lacks jurisdiction over them and this action and seek a jury trial only in the event this Court erroneously determines that it possesses jurisdiction.

Dated this 30th day of October, 2015.

**HANSEN REYNOLDS DICKINSON  
CRUEGER LLC**

By: 

Timothy Hansen, SB#: 1044430  
thansen@hrdclaw.com  
Paul Jacquart, SB#: 1035971  
pjacquart@hrdclaw.com  
316 N. Milwaukee St., Suite 200  
Milwaukee, WI 53202  
Office: 414-455-7676  
Fax: 414-273-8476

**HOGEN ADAMS PLLC**

Vanya Hogen Moline  
vhogenmoline@hogenadams.com  
*admitted pro hac vice*  
Jessica Intermill  
jintermill@hogenadams.com  
*admitted pro hac vice*  
1935 W. County Road B-2, Suite 460  
St. Paul, Minnesota 55113  
Tele: (651) 842-9100  
Fax: (651) 842-9109

**Attorneys for Defendants Lake of the Torches  
Economic Development Corporation and Lac du  
Flambeau Band of Lake Superior Chippewa  
Indians.**