

# GAMING LEGAL NEWS



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## LAC DU FLAMBEAU: THE FALLOUT CONTINUES...

by Dennis J. Whittlesey

Readers of this publication are well-versed in the ongoing battle involving the default by the Lac du Flambeau tribe and its gaming operations on a \$50 million bond offering. At the time of default in 2010, more than \$46 million was outstanding, and the federal courts determined that the bondholders could not seek legal recourse because the transactions constituted a management agreement that is void because it was never approved by the Chairman of the National Indian Gaming Commission.

The sole bondholder is Saybrook Capital, a Santa Monica-based investment group.

Since the initial court ruling in late 2010, the federal Court of Appeals affirmed the District Court's determination that the bond agreement itself was void, while remanding the question of whether the bonds themselves were valid. While the matter on remand is still pending, Saybrook has charted an aggressive course of action against the financial advisors and legal counsel involved.

Within the last several days, Saybrook filed a Wisconsin state court lawsuit against the respected Milwaukee law firm of Godfrey & Kahn, which served as bond counsel to the deal and rendered at least one major legal opinion prior to the transaction closing. The suit against the law firm – which was paid some \$125,000 in fees – seeks money damages for alleged legal malpractice and misrepresentation. Other charges include securities fraud.

However, Saybrook did not stop with the lawyers. Also named in the litigation was Stifel Financial Corp., parent company of Stifel, Nicolaus & Co., the St. Louis securities firm that marketed the bonds and earned a fee of \$375,000. Saybrook purchased the bonds through a private placement.

And last but not least, the suit also named the tribe's corporate entity directly involved in the transaction, Lake of the Torches Economic Development Corporation. Tribal corporations generally share their tribal owner's sovereign immunity from suit.

Saybrook alleges that it purchased the bonds in reliance on assurances from all of the defendants attesting that the deal was valid and the tribe had lawfully waived sovereign immunity. Both of those conclusions were rejected by the federal court. The suit states that Saybrook would not have purchased the bonds if it had known that *either* assurance – let alone both – was invalid.

Lake of the Torches EDC is claiming that it cannot be sued due to tribal sovereign immunity, and the two other defendants have said they intend to mount vigorous defenses. Thus far, Saybrook has not fared well in court, but the new causes of action take this dispute to a new level and could lead to different results for the bondholder.

## **BANK OF AMERICA WINS DISPUTE WITH JAMESTOWN S'KLALLAM**

by Dennis J. Whittlesey

Bank of America has won a legal battle with the Jamestown S'Klallam Tribe of Washington, but Tribal Chairman Ron Allen is not going away quietly.

The two had a dispute over a \$10 million line of credit attached to a tribal business known as Jamestown Health & Medical Supply Company, with each accusing the other of breaking promises related to the line of credit. The bank revoked the credit line and sued the tribe in King County Superior Court, ultimately winning a recent \$5.2 million judgment. Among the principal issues were the adequacy of the tribe's collateral and the tribal company's "revenue-producing potential," and the bank appears to have won a substantial victory on all counts. BOA and the tribe no longer are doing business together.

While Bank of America has won a victory in court, the furor is not fading away. Chairman Allen is now speaking out, charging that the bank "made some mistakes on their end" of the deal which, in turn, led to some "bad judgment calls" by the company's management team.

Ron Allen has spoken out and seems intent on telling the world his side of the story. Ron Allen is well-known throughout Indian Country as both tenacious and tough. It is unlikely that he has uttered his final words on the matter.