

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **BONDS - WISCONSIN**

### **Stifel, Nicolaus & Co., Inc. v. Lac du Flambeau Band of Lake Superior Chippewa Indians**

**United States District Court, W.D. Wisconsin - October 29, 2013 - Slip Copy - 2013 WL 5803778**

Lake of the Torches Economic Development Corporation is a corporation established under tribal law and wholly owned by the Lac du Flambeau Band of Lake Superior Chippewa Indians, a federally-recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. §§ 461 et seq.). In January 2008, Lake of the Torches issued \$50 million in bonds and sold them to a brokerage firm, Stifel, Nicolaus & Company, Inc. In turn, Stifel Nicolaus sold the bonds to plaintiff LDF Acquisition, LLC, a special purpose vehicle created by Saybrook Tax Exempt Investors, LLC, predecessor in interest to Saybrook Fund Investors, LLC. Godfrey & Kahn, S.C., a law firm, advised the parties on this complex transaction.

The Transaction involved multiple written contracts. Among other contracts, these included the terms of the bonds themselves, a bond purchase agreement and a Trust Indenture Agreement, the latter of which provided a description of the means by which Lake of the Torches would repay its debt. The Trust Indenture Agreement designated plaintiff Wells Fargo Bank as the trustee. The Tribe and Wells Fargo also executed a Tribal Agreement, in which the Tribe guaranteed payment of the obligations of Lake of the Torches for payment of both principal and interest on the bonds.

Unfortunately, the various contracts included slightly differing versions of the Tribe's waiver of sovereign immunity, as well as consent to the jurisdiction of the District Court for the Western District of Wisconsin and, should the district court fail to exercise jurisdiction, of Wisconsin state courts.

When Lake of the Torches allegedly repudiated the bonds in 2009, Wells Fargo brought suit against it in the Western District of Wisconsin for breach of the Indenture. In answering, Lake of the Torches alleged sovereign immunity as an affirmative defense, arguing that the Trust Indenture Agreement in which it had allegedly waived its sovereign immunity was void as an unapproved "management contract" that violated the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA), and the corresponding regulations. The District Court agreed, finding the Indenture void, although the opinion does not discuss what constitutes an unapproved "management contract."

Although Wells Fargo voluntarily dismissed its suit, Saybrook and LDF took up the fight in Wells Fargo's stead, filing a 24-count complaint in Waukesha County Circuit Court that asserted a breach of bond claim against Lake of the Torches and various alternative claims for misrepresentation, securities fraud, malpractice and equitable rescission.

What followed was an incredibly complex jurisdictional puzzle involving the state, federal, and tribal courts.

In this particular action, brought in District Court, plaintiffs sought (1) a declaration that a Tribal

Court for the Lac du Flambeau Band of Lake Superior Chippewa Indians lacked subject-matter jurisdiction over them and (2) an injunction preventing any further action by the Tribe and the Lake of the Torches Economic Development Corporation in a recently-filed matter against plaintiffs in that forum.

Defendants moved to dismiss for lack of subject-matter jurisdiction under Fed.R.Civ.P. 12(b)(1).

Following a lengthy analysis, the court denied defendants' motion because (1) the arguments defendants advanced went directly to the merits of the underlying disputes; and (2) neither logic nor law supported resolving the merits under the guise of a jurisdictional challenge.

The District Court concluded that it had jurisdiction, at least for the purpose of determining jurisdiction, and scheduled a preliminary injunction hearing for November 26, 2013, during which the parties could offer additional argument and stand on their paper submissions or offer additional evidence as they deem fit regarding the issue of the Tribal Court's jurisdiction.