

Tribal Casino Loans Thrown Into Disarray

By ALEXANDRA BERZON

A federal court has allowed an American Indian tribe to get out of a \$50 million bond it owed to a private investor, raising concerns among others financing tribal casinos.

The 3,500-member Lac du Flambeau Band of Lake Superior Chippewa Indians, in northern Wisconsin, said \$782,000 in monthly bond payments were bleeding it dry. Last fall, it stopped making them, arguing that the deal was invalid. A U.S. District Court in Wisconsin last month upheld an earlier ruling that the bond deal, cut in 2008, violated federal Indian casino law.

The decision marked the first time a federal court has invalidated a bond because of a violation of Indian casino law, experts

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say. If the decision stands on appeal, it is unclear how the lender, **Saybrook Capital LLC**, will be able to recoup its \$50 million. The ruling sent lenders and tribes, a few of which are struggling to make payments, rushing to determine whether it could set a precedent that could impact other deals as well.

"Every single lender that I know went through their entire portfolio," said Kristi Jackson, chief executive of the financial-advisory firm Tribal Financial Advisors and the former lead banker for tribal casino financing at Bank of America.

Still, Ms. Jackson and several attorneys and lenders said they haven't found other deals that have the same vulnerabilities.

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Luke Laggis for The Wall Street Journal
Lake of the Torches Resort Casino
in Lac du Flambeau, Wis.,

THE WALL STREET JOURNAL.

Wednesday, May 12, 2010 C

THE WALL STREET JOURNAL.

Tribal-Casino Financing In Disarray After Ruling

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The case of Lac du Flambeau, they say, may be highly unusual. That deal was structured in a manner "that I've simply never seen before," said Kent Richey, a longtime Indian finance attorney who represented the tribe in its early negotiations with Saybrook.

Lending to Indian tribes for casino deals—a market estimated to be around \$20 billion—has unique requirements. Tribes have sovereign immunity, which means they are exempt from many federal laws and generally can't be sued. And only tribes are allowed to own casinos on tribal land. That limits lenders' ability to claim assets in case of default.

Casinos owned by Indian tribes also have a separate regulatory structure, overseen by the National Indian Gaming Commission, from commercial casinos. Along with that comes a set of restrictions that apply uniquely to them, including a requirement that management contracts giving third parties oversight of the casino be vetted by the NIGC.

Banks and tribes have found ways to structure contracts to get around the hurdles. Tribes agree to waive sovereignty and secure the loans with cash generated by the casinos.

In the Lac du Flambeau bond, the fine print turned out to be faulty, a judge ruled. The judge said that deal's language gave the bondholder the equivalent of a management contract for the casino, which should have been vetted with the NIGC.

Wells Fargo & Co., which is representing Saybrook Capital as the bond trustee, disagrees and thinks the case could adversely impact other casino financing.

The bank submitted the testimony of William Newby, a managing director at UBS who formerly oversaw tribal casino investments at Bank of America, who said the ruling could have a "chilling effect" on lending to tribes. Wells Fargo has appealed the decision to the U.S. Court of Appeals for the Seventh Circuit.

Jon Schotz and Jeff Wilson, who oversee distressed and defaulted municipal bonds for Saybrook Capital, said they agreed to buy the bond after relying on a memo from the tribe's attorneys stating that the language in the bond documents didn't constitute a management contract, and therefore didn't need to be approved by federal regulators.

"They were unequivocal that it required no further regulatory sign-off," Mr. Wilson said.

The tribe had become embroiled in a series of troubled development deals outside its reservation. In January 2008, the tribal council approved the \$50 million bond to refinance some existing debt and to fund a struggling casino project in Natchez, Miss. But the Natchez project stalled, and much of the money from the casino that had funded tribal services was instead rerouted to bond payments, the tribe says.

The tribe generally budgeted around \$17 million to \$18 million to be transferred annually from the casino to the general fund. In 2009, the tribe was left with only around \$4 million, according to court documents.

The budget cuts and concern over the bond payments created unrest among tribe members. Tribal members who were opposed to the bond were voted into power in October 2009. A month later, under new legal counsel, they stopped payments on the bond.

Wells Fargo sued the tribe for reneging on the bond. The tribe argued that the bond deal was invalid because it effectively amounted to a management agreement, allowing the bondholders to approve personnel decisions and provide oversight in the event of a default. In April, U.S. District Judge Rudolph Randa upheld his January decision that sided with the tribe.

"Before the bond, we were doing OK. We were able to keep our head above water," said Jerome "Brooks" Big John, who took over as president of the tribe. "The people finally got fed up."