

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STIFEL, NICOLAUS & COMPANY,
INCORPORATED,

Plaintiff,

v.

LAC COURTE OREILLES BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS
OF WISCONSIN; LAC COURTE
OREILLES TRIBAL COURT,

Defendants.

Case No. 13-cv-121

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Stifel Nicolaus & Company, Incorporated (Stifel), by their attorneys, Brian G. Cahill, David J. Turek, and Daniel J. Kennedy of Gass Weber Mullins LLC, as and for its Complaint against Defendants, alleges as follows:

INTRODUCTION

1. This Complaint seeks a declaratory judgment as well as injunctive and other relief pursuant to 28 U.S.C. §§ 2201-2202 in connection with a lawsuit filed by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (the Tribe) against Stifel in the Lac Courte Oreilles Tribal Court (the Tribal Court) on December 13, 2012 (the Tribal Court Action). In the Tribal Court Action, the Tribe asserts claims against Stifel for fraudulent concealment, breach of fiduciary duty, and unjust enrichment arising out of the issuance and sale of two series of bonds by the Tribe in 2006 (the 2006 Bond Transaction).

2. Tribal court jurisdiction over non-Indians such as Stifel is presumptively invalid, and the claims asserted against Stifel in the Tribal Court Action do not fall within either of the

two narrowly crafted exceptions to the presumption of non-jurisdiction. Furthermore, the Tribe repeatedly consented, in various agreements and other documents connected to the 2006 Bond Transaction, to jurisdiction in this Court or an appropriate Wisconsin state court over any disputes arising out of the 2006 Bond Transaction, to the exclusion of the jurisdiction of the Tribal Court. Accordingly, Stifel seeks (1) a declaration that the Tribal Court lacks jurisdiction over Stifel and the Tribal Court Action; (2) an injunction against further proceedings in the Tribal Court; and (3) further relief as set forth below.

PARTIES, JURISDICTION AND VENUE

3. Stifel is a corporation formed under the laws of the State of Missouri with its principal place of business in St. Louis, Missouri. Stifel is registered to conduct business in Wisconsin and provides a variety of financial products and services to its clients.

4. The Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin is a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.* The Lac Courte Oreilles Reservation is located within this District and its government headquarters is located at 13394 West Trepania Road in Hayward, Wisconsin.

5. The Lac Courte Oreilles Tribal Court is the judicial entity established by the Tribe's Governing Board pursuant to Section 1, Article V of the Constitution and Bylaws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, as amended, and Section 1.3 of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin Tribal Court Code.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the question whether an Indian tribe retains the power to compel a non-Indian

such as Stifel to submit to the civil jurisdiction of its tribal court is one that “arises under” federal law. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1343 and 25 U.S.C. § 1302(a)(8).

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this lawsuit occurred in this District.

FACTUAL BACKGROUND

The Issuance and Sale of the 2006 Bonds

8. In December 2006, the Tribe issued and sold two series of bonds (the 2006A Bonds and the 2006B Bonds) (together, the 2006 Bonds) as a means of raising revenue to fund various projects, including the refinancing of two series of bonds the Tribe issued in 2003.

9. The 2006 Bonds were issued and sold pursuant to SEC Rule 144A, exempting them from registration requirements under federal securities law. Under Rule 144A, Stifel acted as the Initial Purchaser of the 2006 Bonds, with the ability to resell them to qualified institutional buyers as defined in SEC Rule 144A.

10. As part of the issuance and sale of the 2006 Bonds, the Tribe entered into, issued or caused to be issued the following documents:

a. A Bond Purchase Agreement, dated December 15, 2006, between the Tribe and Stifel, which sets the terms, warranties and conditions under which Stifel agreed to purchase the 2006A Bonds and the 2006B Bonds. (Attached hereto as Exhibit A)

b. A Trust Indenture (Indenture), dated December 1, 2006, between the Tribe and Wells Fargo Bank, N.A., which establishes the means by which the Bank would repay principal and interest on the 2006A Bonds and the 2006B Bonds. (Attached hereto as Exhibit B)

c. A Preliminary Limited Offering Memorandum (Preliminary LOM), dated December 7, 2006. (Attached hereto as Exhibit C)

d. A Limited Offering Memorandum (LOM), dated December 15, 2006, which is signed by the Tribe's Tribal Chairman. (Attached hereto as Exhibit D)

e. Resolution No. 06-110, adopted by the Lac Courte Oreilles Tribal Governing Board on December 15, 2006, which approved the issuance of the 2006A Bonds and the 2006B Bonds. (Attached hereto as Exhibit E)

f. The 2006A Bonds and the 2006B Bonds, issued on December 22, 2006, which contain the Tribe's promise to pay principal and interest. (Three specimen bonds are attached hereto as Exhibits F, G, and H)

g. An Opinion Letter dated December 22, 2006 issued by Godfrey & Kahn as Bond Counsel and addressed the Tribe, Wells Fargo and Stifel (the Bond Counsel Opinion Letter). (Attached hereto as Exhibit I)

h. An Opinion Letter dated December 22, 2006 issued by Godfrey & Kahn as counsel for the Tribe and addressed to Stifel and Wells Fargo (the Issuer Opinion Letter). (Attached hereto as Exhibit J)

The Tribe Consented to Jurisdiction in Wisconsin Federal and State Courts for the Adjudication of Disputes Arising out of the 2006 Bond Transaction

11. In numerous documents associated with the 2006 Bond Transaction, the Tribe agreed to litigate disputes arising out of the 2006 Bond Transaction in the United States District Court for the Western District of Wisconsin, and if this Court fails to exercise jurisdiction, then in Wisconsin state court. In several of these documents, the Tribe agreed to jurisdiction in this Court or a Wisconsin state court *to the exclusion of the jurisdiction of the Tribal Court*.

12. For example, in Section 13.02 of the Trust Indenture, the Tribe consented to jurisdiction in Wisconsin federal and state courts and specifically excluded jurisdiction in the Tribal Court over any dispute or controversy arising out of any transaction connected to the Indenture or the Bonds:

The Tribe expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the Federal District Court for the Western District of Wisconsin may be appealed), and, in the event (but only in the event) the said federal court fails to exercise jurisdiction, the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, for the adjudication of any dispute or controversy arising out of this Indenture, the Bonds or the Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith, **to the exclusion of the jurisdiction of any court of the Tribe.**

(Ex. B, p. 65, § 13.02 (emphasis added))

13. This statement is immediately followed by an explanation by the Tribe of its intent to submit to the jurisdiction of these non-tribal courts:

Section 13.03 Situs of Transaction. To demonstrate the willingness of the Tribe to submit to the jurisdiction of both the federal courts and the courts of the State of Wisconsin, the Tribe affirms that the transaction represented by this Indenture has not taken place on Indian Lands. As evidence thereof, the Tribe represents that the negotiations regarding this Indenture have occurred on lands within the jurisdiction of the courts of the State of Wisconsin, and the execution and delivery of this Indenture have not occurred on Indian Lands, but rather on lands within the jurisdiction of the courts of the State of Wisconsin, and the Tribe has appointed an agent for service of process in a location not on Indian Lands.

(Ex. B, pp. 65-66, § 13.03)

14. Similarly, on page 23 of the Bond Purchase Agreement, the Tribe expressly “submits and consents” to jurisdiction in this Court and an appropriate Wisconsin state court with respect to “any dispute or controversy arising out of” that agreement:

The Tribe expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the United States District Court for the Western District of Wisconsin may be appealed), and the Lac Courte Oreilles Tribal Court, and in the event that the United States District Court for the Western District of Wisconsin lacks jurisdiction, then the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, with respect to any dispute or controversy arising out of this Agreement and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith.

(Ex. A, p. 23, § 14(b))

15. Like the Trust Indenture, the Bond Purchase Agreement also contains a “Situs of Transaction” provision in which the Tribe stipulated that no portion of the transaction took place on the Tribe’s land:

(c) Situs of Transaction. To demonstrate the willingness of the Tribe to submit to the jurisdiction of both the federal courts and the courts of the State of Wisconsin, the Tribe affirms that the transaction represented by this Agreement has taken place in the State of Wisconsin. As evidence thereof, the Tribe represents that the negotiations regarding this Agreement have occurred in the State of Wisconsin, and the execution and delivery of this Agreement has occurred in the State of Wisconsin, and the Tribe has appointed an agent for service of process in the State of Wisconsin.

(Ex. A, p. 24, § 14(c))

16. Similarly, the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum issued by the Tribe contain multiple statements of its consent to jurisdiction in Wisconsin federal and state courts, including language excluding jurisdiction in the Tribal Court with respect to any disputes arising under the Bond Purchase Agreement and other transaction documents:

Agreement. In no event will tribal trust resources be subject to attachment, execution, or other similar process. The Tribe expressly submits and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (and to the jurisdiction of all courts to which decisions may be appealed) and in the event (but only in the event) the federal district court fails to exercise jurisdiction, the courts of the State of Wisconsin where jurisdiction and venue are proper, for the adjudication of any dispute arising under the Bond Documents or the Bond Purchase Agreement, **to the exclusion of the jurisdiction of any court of the Tribe.** With its waiver of sovereign

(Ex. D, p. 25; *see also id.*, Ex. C, pp. 24-25) (emphasis added)

The Tribe is a sovereign nation and generally immune from legal proceedings commenced in federal court, tribal court, and state courts. In the Indenture and the Bond Resolution (the “Bond Documents”) and in the Bond Purchase Agreement, the Tribe has waived its sovereign immunity and consented to suits against it only in connection with the Bonds (together with any Additional Bonds that may be issued under the Indenture - see “Additional Bonds” below) and the Bond Documents and the Bond Purchase Agreement. In addition, the Tribe has consented in the Bond Documents and the Bond Purchase Agreement to the jurisdiction of the Federal District Court of Wisconsin, Western District (and to the jurisdiction of all courts to which decisions may be appealed) and, in the event (but only in the event) the federal district court fails to exercise jurisdiction, the courts of the State of Wisconsin where jurisdiction and venue are proper, for any disputes arising out of the Bond Documents or the Bond Purchase Agreement. With this waiver of sovereign immunity, the Tribe expressly consents to the levy of judgment or attachment of any Pledged Casino Revenues wherever located or maintained, including within the boundaries of the Lac Courte Oreilles Reservation, by the appropriate federal or State court, notwithstanding the jurisdiction of the Tribal Court. Nevertheless, enforcement of a final judgment could be affected by disputes over the waiver of sovereign immunity and will be subject to limitations imposed by federal law.

(Ex. D, p. 5; *see also id.*, Ex. C, p. 5) (emphasis added)

17. Language excluding jurisdiction in the Tribal Court also appears in the both of the General Obligation Tribal Purpose and Refunding Bonds, Series 2006A:

**UNITED STATES OF AMERICA
LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF
WISCONSIN**

**General Obligation Tribal Purpose and Refunding Bond
Series 2006A**

The Tribe expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the Federal District Court for the Western District of Wisconsin may be appealed), and, in the event (but only in the event) the said federal court fails to exercise jurisdiction, the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, for the adjudication of any dispute or controversy arising out of this Bond, the Indenture, or the Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith, to the exclusion of the jurisdiction of any court of the Tribe.

(Ex. F, pp. 1, 5-6; *see also id.*, Ex. G, pp. 1, 5-6) (emphasis added)

18. The Tribe also consented to jurisdiction in Wisconsin federal and state courts in the General Obligation Taxable Economic Development and Refunding Bond, Series 2006B:

**UNITED STATES OF AMERICA
LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF
WISCONSIN**

**General Obligation Taxable Economic Development and Refunding Bond
Series 2006B**

The Tribe expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the Federal District Court for the Western District of Wisconsin may be appealed), and, in the event (but only in the event) the said federal court fails to exercise judgment, the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, for the adjudication of any dispute or controversy arising out of this Bond, the Indenture, or the Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith.

(Ex. H, pp. 1, 5)

19. Finally, Resolution No. 06-110, passed by the Lac Courte Oreilles Tribal Governing Board on December 15, 2006 to approve the issuance of the 2006A Bonds and the 2006B Bonds, acknowledged twice that Wisconsin federal and state courts would have jurisdiction over disputes arising out of the 2006 Bond Transaction:

RESOLUTION NO. 06-110

APPROVING ISSUANCE OF SERIES 2006 BONDS, A FULL FAITH AND CREDIT PLEDGE OF THE TRIBE, A PLEDGE OF CASINO REVENUES, AND A LIMITED WAIVER OF SOVEREIGN IMMUNITY, ALL IN CONNECTION WITH REFINANCING OUTSTANDING OBLIGATIONS OF THE TRIBE AND THE TRIBAL PURPOSE AND ECONOMIC DEVELOPMENT PROJECTS AS DESCRIBED IN SECTION 1.5, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS, AND THE TAKING OF RELATED ACTIONS

BE IT RESOLVED, by the Tribal Governing Board of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin as follows:

1.11 The Tribal Governing Board has been advised that as a condition to the issuance of the Series 2006 Bonds, the Tribe will be required to agree to various legal provisions (the "Legal Provisions") that will provide for (a) a limited waiver of its sovereign immunity with respect to suits or other legal actions or proceedings arising because of disputes related to the Series 2006 Bonds or the foregoing named documents or other agreements related thereto, (b) consent by the Tribe to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the United States District Court for the Western District of Wisconsin may be appealed), and the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, with respect to such disputes and the enforcement of remedies related thereto, and (c) consent by the Tribe to apply the laws of a given state in the interpretation of the foregoing documents. The specific state law that applies to each one of the foregoing documents is the law of the State of Wisconsin.

Section 4. Enforcement.

4.1 The Tribe expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the United States District Court for the Western District of Wisconsin may be appealed), and the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, with respect to any dispute or controversy arising out of the Indenture, the Bonds, this Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith.

(Ex. E, pp. 1, 3, 5) (emphasis added)

20. To the extent the Tribe's consent to jurisdiction in the Tribal Court in the Bond Purchase Agreement conflicts with the Tribe's repeated exclusions of the Tribal Court's jurisdiction in the Trust Indenture, the Preliminary Limited Offering Memorandum, the Limited Offering Memorandum, and the Series 2006A Bond, section 16(g) of the Bond Purchase Agreement resolves any conflict by directing that any conflict between the terms of the Bond Purchase Agreement and the Trust Indenture "shall be resolved in favor of the Indenture." (Ex. A, p. 25, § 16(g))

21. Both the Bond Counsel Opinion Letter and the Issuer Opinion Letter, which were prepared by the Tribe's legal counsel and addressed to Stifel, attest to the validity and enforceability of the Tribe's consents to jurisdiction in the transaction documents. The Bond Counsel Opinion Letter states, in relevant part, as follows:

3. The Series 2006 Bonds have been duly and validly authorized, executed and delivered by the Issuer, and, assuming their due authentication by the Trustee in accordance with the Indenture and the Bond Resolution, are valid and binding general obligations of the Issuer enforceable in accordance with their terms and the terms of the Indenture.

4. The Bonds, the Indenture, the Bond Purchase Agreement, the Tax Exemption Agreement and the Escrow Agreement have been duly and validly authorized, executed, and delivered by the Tribe and are the valid and binding obligations of the Tribe enforceable in accordance with their terms.

(Ex. I, p. 2)

22. The Issuer Opinion Letter states, in relevant part, as follows:

4. The Bond Resolution has been duly adopted by the Tribal Governing Board in accordance with all applicable requirements, including the pertinent provisions of the Tribe's Constitution and Bylaws, and the Bond Resolution constitutes a valid action of the Tribal Governing Board, binding and enforceable upon the Tribe in accordance with its terms. The Bond Resolution is in full force and effect.

7. The Series 2006 Bonds and each of the Bond Documents have been duly authorized, executed and delivered by the Tribe and constitute valid and binding obligations of the Tribe enforceable in accordance with their terms except to the extent enforceability is limited by bankruptcy, insolvency or other laws of general application affecting creditors' rights and principles of equity.

(Ex. J, pp. 2, 3)

**Contrary to its Promises, the Tribe Commences an Action Against Stifel
Arising out of the 2006 Bond Transaction in the Tribal Court**

23. On December 13, 2012, the Tribe commenced the Tribal Court Action against Stifel, alleging that Stifel undertook to advise the Tribe regarding its financing options in 2006 but failed to disclose certain information to the Tribe before the 2006 Bond Transaction. A copy of the Summons and Complaint filed by the Tribe is attached hereto as Exhibit K.

24. In the Tribal Court Action, the Tribe alleges three causes of action against Stifel: (1) fraudulent concealment or non-disclosure; (2) breach of fiduciary duty; and (3) unjust enrichment.

25. The fraudulent concealment and breach of fiduciary duty claims are based on Stifel's alleged failure to material facts. (Ex. K, ¶¶ 15, 26)

26. The claim for unjust enrichment is premised on Stifel's allegedly inequitable retention of commissions and fees paid by the Tribe. (*Id.* ¶¶ 28-33)

27. The Tribe seeks rescission of the Bond Purchase Agreement or, in the alternative, a judgment for money damages in connection with its claim for fraudulent concealment.

28. The Tribal Court's exercise of jurisdiction over Stifel and the Tribal Court Action is an unlawful exercise of the Tribal Court's judicial power because it is contrary to the Tribe's disavowals of the Tribal Court's jurisdiction in the 2006 Bond Transaction documents and it

exceeds the narrow limitations imposed on tribal court jurisdiction over non-members by federal law.

29. Stifel's due process rights will be violated if the Tribal Court exercises jurisdiction over it and the Tribal Court Action.

30. Contemporaneously with the filing of this Complaint, Stifel is filing a motion to dismiss the Tribal Court Action for lack of jurisdiction, or in the alternative, to say proceedings in the Tribal Court Action pending this Court's determination whether the Tribal Court has jurisdiction over the Tribal Court Action.

The Tribe Has Expressly Waived its Sovereign Immunity from Suit

31. The Tribe has unequivocally and expressly waived its sovereign immunity, both in the Bond Purchase Agreement and in several other documents related to the 2006 Bond Transaction.

32. In the Bond Purchase Agreement, the Tribe granted a waiver its sovereign immunity to Stifel (as Initial Purchaser of the 2006 Bonds) as follows:

(b) Limited Waiver of Sovereign Immunity; Jurisdiction. The Tribe hereby expressly waives its sovereign immunity from suit and any requirement for exhaustion of tribal remedies should an action be commenced under this Agreement or regarding the subject matter hereof. This waiver: (i) shall terminate upon payment in full of the Bonds and all other amounts payable by the Tribe under this Agreement; (ii) is granted solely to the Initial Purchaser or its assignee; (iii) shall extend only to a suit to enforce the obligations of the Tribe under this Agreement; (iv) shall be enforceable only in a court of competent jurisdiction and only to the extent the Tribe has consented to the jurisdiction of such court as set forth in this Subsection (b); (v) shall not be deemed as a waiver of or consent to any lien on lands or moneys held in trust for the benefit of the Tribe by the United States; and (vi) shall remain in full force and effect notwithstanding that the governing law shall be as set forth in Subsection (a).

(Ex. A, p. 23, § 14(b))

33. In the Preliminary LOM and LOM, the Tribe confirmed its waiver of sovereign immunity as follows:

The Tribe is a sovereign nation and generally immune from legal proceedings commenced in federal court, tribal court, and state courts. In the Indenture and the Bond Resolution (the "Bond Documents") and in the Bond Purchase Agreement, the Tribe has waived its sovereign immunity and consented to suits against it only in connection with the Bonds (together with any Additional Bonds that may be issued under the Indenture - see "Additional Bonds" below) and the Bond Documents and the Bond Purchase Agreement. In addition, the Tribe has

Congress expressly waives that immunity. In connection with the issuance of the Bonds, the Tribe will waive its sovereign immunity to a limited extent for the purpose of any suit by the Trustee to enforce the obligations of the Tribe under the Bond Documents or a suit to enforce the obligations of the Tribe under the Bond Purchase Agreement. In no event will tribal trust resources be subject to attachment, execution, or other similar process. The

(Ex. C, pp. 5, 24; Ex. D, pp. 5, 24-25)

34. Resolution No. 06-110, passed by the Lac Courte Oreilles Tribal Governing Board on December 15, 2006, also confirms the Tribe's waiver of its sovereign immunity:

1.11 The Tribal Governing Board has been advised that as a condition to the issuance of the Series 2006 Bonds, the Tribe will be required to agree to various legal provisions (the "Legal Provisions") that will provide for (a) a limited waiver of its sovereign immunity with respect to suits or other legal actions or proceedings arising because of disputes related to the Series 2006 Bonds or the foregoing named documents or other agreements related thereto, (b) consent by the Tribe to the jurisdiction of the United States District Court for the Western District of Wisconsin (including all federal courts to which decisions of the United States District Court for the Western District of Wisconsin may be appealed), and the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, with respect to such disputes and the enforcement of remedies related thereto, and (c) consent by the Tribe to apply the laws of a given state in the interpretation of the foregoing documents. The specific state law that applies to each one of the foregoing documents is the law of the State of Wisconsin.

Section 3. Limited Waiver of Sovereign Immunity; Jurisdiction.

All Legal Provisions in the Bond Documents are hereby approved; more specifically and expressly:

3.1 The limited waivers of sovereign immunity contained in any or all of the Bond Documents are hereby approved.

(Ex. E, pp. 3, 4-5)

35. Both the Bond Counsel Opinion Letter and the Issuer Opinion Letter attest to the validity and enforceability of the Tribe's waiver of sovereign immunity in the Bond Purchase Agreement. The Bond Counsel Opinion Letter opines as follows:

2. The consents to suit given by the Issuer in the Indenture, the Series 2006 Bonds and the Bond Purchase Agreement constitute a valid and enforceable waiver of the Issuer's sovereign immunity from suit, and in a suit for the enforcement of the Indenture or the Series 2006 Bonds the sovereign immunity of the Issuer shall not constitute a valid defense to the enforcement thereof.

4. The Bonds, the Indenture, the Bond Purchase Agreement, the Tax Exemption Agreement and the Escrow Agreement have been duly and validly authorized, executed, and delivered by the Tribe and are the valid and binding obligations of the Tribe enforceable in accordance with their terms.

(Ex. I, p. 2)

36. Similarly, the Issuer Opinion Letter provides the following opinions related to the Tribe's waiver of sovereign immunity:

3. The Tribal Governing Board is the lawful governing body of the Tribe, with full power and authority to promulgate laws, ordinances and resolutions binding upon the Tribe and those subject to the sovereign control of the Tribe.
4. The Bond Resolution has been duly adopted by the Tribal Governing Board in accordance with all applicable requirements, including the pertinent provisions of the Tribe's Constitution and Bylaws, and the Bond Resolution constitutes a valid action of the Tribal Governing Board, binding and enforceable upon the Tribe in accordance with its terms. The Bond Resolution is in full force and effect.

6. The Tribe has full power and authority to execute, deliver and perform the Bond Documents.
7. The Series 2006 Bonds and each of the Bond Documents have been duly authorized, executed and delivered by the Tribe and constitute valid and binding obligations of the Tribe enforceable in accordance with their terms except to the extent enforceability is limited by bankruptcy, insolvency or other laws of general application affecting creditors' rights and principles of equity.

16. The Tribe has duly waived its sovereign immunity in accordance with the terms of each of the Bond Documents, and such waiver is valid and enforceable against the Tribe in accordance with its terms.

(Ex. J, pp. 2, 3, 4)

Stifel is Not Required to Exhaust Tribal Court Remedies

37. This Court can and should grant Stifel the declaratory and other relief requested in this Complaint without first requiring Stifel to exhaust its remedies in the Tribe's court system with respect to the issue of the Tribal Court's jurisdiction.

38. The Tribe expressly waived any requirement of exhaustion of tribal court remedies in the Bond Purchase Agreement:

(b) Limited Waiver of Sovereign Immunity; Jurisdiction. The Tribe hereby expressly waives its sovereign immunity from suit and any requirement for exhaustion of tribal remedies should an action be commenced under this Agreement or regarding the subject matter hereof. This waiver: (i) shall terminate upon payment in full of the Bonds and all other amounts payable by the Tribe under this Agreement; (ii) is granted solely to the Initial Purchaser or its assignee; (iii) shall extend only to a suit to enforce the obligations of the Tribe under this Agreement; (iv) shall be enforceable only in a court of competent jurisdiction and only to the extent the Tribe has consented to the jurisdiction of such court as set forth in this Subsection (b); (v) shall not be deemed as a waiver of or consent to any lien on lands or moneys held in trust for the benefit of the Tribe by the United States; and (vi) shall remain in full force and effect notwithstanding that the governing law shall be as set forth in Subsection (a).

(Ex. A, p. 23, § 14(b))

39. In addition, exhaustion is not required because the Tribal Court Action patently violates express prohibitions on the Tribal Court's jurisdiction, because the Tribal Court Action does not arise out of activity or conduct by Stifel that occurred on the Tribe's land, and because adherence to the exhaustion requirement would serve no purpose other than delay.

Stifel is Entitled to an Injunction Against Further Proceedings in the Tribal Court

40. The Tribal Court's exercise of jurisdiction over the Tribal Court Action and Stifel plainly is contrary to federal law and the Tribe's binding and enforceable promises to litigate disputes arising out of the 2006 Bond Transaction in this Court or an appropriate Wisconsin state court.

41. The Tribal Court's exercise of jurisdiction poses an immediate threat of irreparable harm to Stifel for which no adequate legal remedy exists. Stifel faces the risk of a judgment by a court that does not have jurisdiction over Stifel. At the very least, Stifel faces the prospects of inconsistent judgments from the Tribal Court and this Court if an injunction is not issued. In addition, Stifel will be forced to expend unnecessary time and effort that it will be unable to recoup litigating this case in the Tribal Court, which does not have jurisdiction over it.

42. The irreparable harm to Stifel in the absence of injunctive relief outweighs any hardship to the Tribe if injunctive relief is granted.

43. The issuance of an injunction against further proceedings in the Tribal Court will serve the public interest in (a) enforcing negotiated contractual covenants and (b) not having a court that lacks jurisdiction determine the parties' legal rights.

**CAUSE OF ACTION
(Declaratory Judgment)**

44. All prior paragraphs are incorporated by reference.

45. An actual and justiciable controversy currently exists between Stifel and the Tribe concerning the Tribal Court's jurisdiction over Stifel and the Tribal Court Action. A declaration by this Court as to the Tribal Court's jurisdiction would terminate the controversy giving rise to this cause of action.

46. Based on the allegations above, Stifel is entitled to a declaration that the Tribal Court lacks jurisdiction over Stifel and the Tribal Court Action.

WHEREFORE, Stifel respectfully seeks the following relief:

A. A declaration, pursuant to 28 U.S.C. § 2201, that the Tribal Court lacks subject matter jurisdiction over Stifel and the Tribal Court Action;

B. Preliminary and final injunctive relief against the Tribe enjoining it from proceeding against Stifel in the Tribal Court.

C. Preliminary and final injunctive relief against any further proceedings in the Tribal Court Action;

D. An award of costs, fees and other disbursements allowed by law; and

E. Such further relief as the Court deems just and appropriate.

**PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 57, STIFEL
REQUESTS A SPEEDY HEARING ON ITS REQUEST FOR DECLARATORY RELIEF.**

Dated this 19th day of February, 2013.

Respectfully submitted,

GASS WEBER MULLINS LLC

s/Brian G. Cahill

Brian G. Cahill, SBN: 1008879

cahill@gasswebermullins.com

David J. Turek, SBN: 1035356

turek@gasswebermullins.com

Daniel J. Kennedy, SBN: 1068680

kennedy@gasswebermullins.com

*Attorneys for Stifel, Nicolaus & Company,
Incorporated*

Address:

309 N. Water Street, Suite 700

Milwaukee, WI 53202

Telephone: (414) 223-3300

Facsimile: (414) 224-6116