



UNITED STATES | ENGLAND | GERMANY | CHINA

MEMORANDUM

TO: Bill Lomax, President, Native American Finance Officers Association
FROM: Faegre & Benson LLP
DATE: February 25, 2010
SUBJECT: OGC Declination Letter for St. Croix Chippewa Indians Financing

This is a follow-up to our February 23, 2010, memo to you updating NAFOA and its members as to advisory opinion positions taken by the Office of General Counsel ("OGC") of the National Indian Gaming Commission ("NIGC") in light of the *Lake of the Torches* case referred to in that memo.

With the approval of Chairman Lewis Taylor of the St. Croix Chippewa Indians of Wisconsin, attached is a copy of the actual OGC advisory opinion dated February 22, 2010 regarding the financing discussed to in the memo.

Also, you should know that since our February 23 memo, our office received a second advisory opinion from the OGC concluding that loan documentation for another loan to a different tribe, secured by a pledge of *net* gaming revenues, also did not constitute a management contract under the Indian Gaming Regulatory Act. That opinion re-iterated a number of the points set forth in the attached advisory opinion, but included as a basis for the opinion, the OGC's consideration of matters argued in our letter of submission to the OGC. For that reason, we are enclosing the submission letter on behalf of the St. Croix Tribe, which made substantially the same points, distinguishing the bond indenture in the *Lake of the Torches* case from the submitted loan documents.

DISCLAIMER

Further details are necessary for a complete understanding of the subjects covered by this Memorandum. For that reason, the specific advice of legal counsel is recommended before acting on any matter discussed in this Memorandum. The advisory opinions referred to in herein expresses only the opinions of the OGC and not necessarily those of Faegre & Benson LLP, and the degree of deference, if any, that a court may give such advisory opinions, cannot be predicted with assurance.

Attachments:

Letter dated January 14, 2010 to Penny Coleman
Letter dated February 22, 2010 from Penny Coleman



February 22, 2010

Via Facsimile, E-mail, and U.S. Mail

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Re: Review of financing documents for St. Croix Chippewa Indians of Wisconsin

Dear Mr. Richey:

This letter responds to your request on behalf of the St. Croix Chippewa Indians of Wisconsin (the Tribe) for the National Indian Gaming Commission's (NIGC's) Office of General Counsel to review the draft financing documents specified below (collectively the "Loan Documents"). Specifically, you have asked for our opinion regarding whether the Loan Documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act (IGRA). After careful review, it is my opinion that the Loan Documents are not management contracts and do not require the approval of the Chairman.

In my review, I considered the following submissions, all undated and unexecuted drafts, which were represented to be in substantially final form:

- Construction loan agreement, a conventional bank loan from Heartland Business Bank (the Bank) to the Tribe (First Loan Agreement);
- Construction loan agreement guaranteed by the Department of the Interior from the Bank to the Tribe (Second Loan Agreement);
- Security agreement granted by the Tribe in favor of the Bank (Security Agreement);
- Depository agreement between the Tribe as borrower and the Bank as the security agent (Depository Agreement);
- Lease from Tribe to St. Croix Tribal Land Authority, an instrumentality of the Tribe;
- Sublease from the St. Croix Tribal Land Authority to the Tribe;
- Leasehold mortgage on sublease in favor of the Bank;
- Co-lending and inter-creditor agreement;

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- Construction disbursing agreement between the Tribe and the Bank (Construction Disbursing Agreement);
- Deposit control agreement between the Tribe and the Bank (Deposit Control Agreement).

Authority

The authority of the NIGC to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. *Catskill Development LLC v. Park Place Entertainment Corp.*, No. 06-5860, 2008 U.S. App. Lexis 21839 at *38 (2nd Cir. October 21, 2008) (“a collateral agreement is subject to agency approval under 25 C.F.R. § 533.7 only if it ‘provides for management of all or part of a gaming operation.’”); *Machal Inc. v. Jena Band of Choctaw Indians*, 387 F. Supp. 2d 659, 666 (W.D. La. 2005) (“collateral agreements are subject to approval by the NIGC, but only if that agreement ‘relate[s] to the gaming activity’”). *Accord, Jena Band of Choctaw Indians v. Tri-Millennium Corp.*, 387 F. Supp. 2d 671, 678 (W.D. La. 2005); *United States ex rel. St. Regis Mohawk Tribe v. President R.C.-St. Regis Management Co.*, No. 7:02-CV-845, 2005 U.S. Dist. LEXIS 12456, at *3-*4, *9-*10 (N.D.N.Y. June 13, 2005), *aff’d on other grounds*, 451 F.3d 44 (2nd Cir. 2006).

The NIGC has defined the term *management contract* as “any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.” 25 C.F.R. § 502.15. *Collateral agreement* is defined as “any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).” 25 C.F.R. § 502.5.

Though NIGC regulations do not define *management*, the term has its ordinary meaning. Management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *NIGC Bulletin No. 94-5: “Approved Management Contracts v. Consulting Agreements (Unapproved Management Contracts are Void).”* Accordingly, the definition of *primary management official* is “any person who has the authority to set up working policy for the gaming operation.” 25 C.F.R. § 502.19(b)(2). Further, management employees are “those who formulate and effectuate management policies by expressing and making operative the decision of their employer.” *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974). Whether particular employees are “managerial” is not controlled by an employee’s job title. *Waldo v. M.S.P.B.*, 19 F. 3d 1395 (Fed. Cir. 1994). Rather, the question must be answered in terms of the employee’s actual job responsibilities, authority and relationship to management.

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Id. at 1399. In essence, an employee can qualify as management if the employee actually has authority to take discretionary actions – a *de jure* manager – or recommends discretionary actions that are implemented by others possessing actual authority to control employer policy – a *de facto* manager. *Id.* at 1399 citing *N.L.R.B. v. Yeshiva*, 444 U.S. 672, 683 (1980).

If a contract requires the performance of any management activity with respect to all or part of a gaming operation, the contract is a management contract within the meaning of 25 U.S.C. § 2711 and requires the NIGC Chairman's approval. Management contracts not approved by the Chairman are void. 25 C.F.R. § 533.7; *Wells Fargo Bank, N.A. v. Lake of the Torches Economic Dev. Corp.*, No. 09-CV-768, 2010 U.S. Dist. LEXIS 1714 at *8-*9 (W.D. Wisc. January 11, 2010).

Analysis

I am aware of the recent decision in *Wells Fargo v. Lake of the Torches* and the court's holding that any agreement in which receivership is a possible remedy upon default is a management contract. *See Wells Fargo v. Lake of the Torches*, at *11-*12. The court there found a bond trust indenture to be a management contract in part because it contained a specific provision allowing for the appointment of a receiver upon default. *Id.* Moreover, the court specifically rejected Wells Fargo's argument that a receiver would not exercise managerial control because its sole function would be to ensure that the gaming operation deposited its revenues and paid its liabilities. *Id.* Specifically, the court stated: "[b]y forcing the Corporation [Lake of the Torches] to deposit its revenues and pay its liabilities, the receiver would in fact be exerting a form of managerial control since those monies could not be used for other purposes related to the operation of the Casino facility." *Id.* at *12. While I generally agree with the court's analysis, I do not think it makes the Loan Documents management contracts.

None of the Loan Documents set out the appointment of a receiver as a specific remedy upon default. However the Security Agreement provides that the Bank, as the lender, "may exercise and enforce any one or more of the following rights and remedies; (i) exercise and enforce any or all rights and remedies available upon default to a secured party under the UCC . . . (ii) exercise or enforce any or all other rights or remedies available . . . by law." Those rights and remedies include the appointment of a receiver. However, to say that a clause that merely reserves to a creditor the rights available under the law makes the Security Agreement a management contract would produce undesirable results – many, if not most financing agreements for Indian casinos would become management contracts. It would also seem to go well beyond the intent of the parties. For example, in order to avoid any indicia of management in the Loan Documents, the parties have conditioned the Tribe's limited waiver of sovereign immunity on the Bank not engaging in any management activities or obtaining management authority through the exercise of any available remedy. *See i.e.* First Loan Agreement § 8.25(c).

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More than this, though, the language of the Security Agreement itself precludes that result. Aside from the absence of any language intending a receiver as a remedy, the Security Agreement intends that its provisions be read so as to avoid such an interpretation:

NOTWITHSTANDING ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION(S) HEREIN . . . THE PARTIES ACKNOWLEDGE AND AGREE THAT: (A) THE LOAN DOCUMENTS, INDIVIDUALLY AND COLLECTIVELY, DO NOT PROVIDE FOR THE MANAGEMENT OF ALL OR ANY PART OF THE GAMING BUSINESS WITHIN THE MEANING OF IGRA . . . (C) NO LENDER PARTY WILL EXERCISE ANY REMEDY OR OTHERWISE TAKE ANY ACTION UNDER ANY LOAN DOCUMENT IN A MANNER THAT WOULD CONSTITUTE MANAGEMENT OF ALL OR ANY PART OF THE GAMING BUSINESS WITHIN THE MEANING OF IGRA.

Security Agreement § 15.

The above provision is also present in the First Loan Agreement (§ 8.31), the Second Loan Agreement (§ 8.31), the Depository Agreement (§ 23), the Deposit Control Agreement (§ 15), and the Construction Disbursing Agreement (§ 7.7). In short, taken together, the Loan Documents are fairly read to preclude the appointment of a receiver. They are, therefore, unlike the agreement at issue in *Lake of the Torches*; they lack the receivership provision that was one of the bases of the court's finding management there. *Wells Fargo v. Lake of the Torches*, at *11-*12.

I also note that the *Lake of the Torches*' court based its finding of management in part on the bondholders' discretionary control over the amount of capital expenditures that could be incurred. The court found that the requirement that the Tribe obtain bondholder consent prior to incurring capital expenditures in excess of 25% of the previous year's capital expenditures is management. *Wells Fargo v. Lake of the Torches*, at *9.

In this case, however, while the Depository Agreement requires the Tribe to budget for and fund capital expenditures, it does not require the consent or approval of the bondholders of either the budget or the amount of capital expenditures. *See* Depository Agreement § 4(d) and Annex A. Therefore, because the Depository Agreement and other Loan Documents do not provide the bondholders with any discretionary control over capital expenditures, the provisions concerning capital expenditures do not make them management contracts.

I note finally that the Security Agreement pledges the gross gaming revenue of the Tribe's gaming operations as security. Previous OGC opinions have posited that an agreement containing a security interest in a gaming facility's future gross revenues,

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without further limitation, authorizes management of the gaming facility. In January 2009, we provided guidance in the form of limiting language that would prevent a pledge of gross gaming revenues from resulting in a management contract. The Security Agreement has adopted our proposed limiting language in Section 16, which states:

Notwithstanding any provision in any Loan Document, no Lender Party shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Debtor's gaming operations (collectively, "Management Activities"), including, but not limited to:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;
- (b) any employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
- (h) budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided, however, that upon the occurrence of a default, no Lender Party will be in violation of the foregoing restriction solely because that Lender Party:

- (i) enforces compliance with any term in any Loan Document that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; or
- (ii) requires that all or any portion of the revenues securing the Secured Obligations be applied to satisfy valid terms of the Loan Documents; or
- (iii) otherwise forecloses on all or any portion of the property securing the Secured Obligations.

These limiting provisions are also present in the First Loan Agreement (§ 8.32), the Second Loan Agreement (§ 8.32), the Depository Agreement (§ 24); the Deposit Control Agreement (§15); and the Construction Disbursing Agreement (§7.8). As such, the pledge of gross revenues in the Loan Documents does not make them management contracts.

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Conclusion

The Loan Documents have no indicia of management, and the parties have specifically agreed to exclude the possibility of management. Nothing in the provisions of the Loan Documents addressing remedies, capital expenditures, or the pledge of gross revenues gives to the Bank or any third party the discretion or authority to manage any part of St. Croix's gaming operations. Therefore, it is my opinion that the Loan Documents are not management contracts requiring the approval of the NIGC Chairman. I note, however, that the Loan Documents have been submitted to us as undated and unexecuted drafts that are in substantially final form, and to the extent that the Loan Documents change in any material way prior to closing, this opinion shall not apply.

Other Related Matters

Recently, we have seen financing agreements similar to the Loan Documents where the default provisions have conflicted with net gaming revenue allocations in tribal revenue allocation plans (RAP). In some instances, tribes have, presumably inadvertently, violated their RAP by complying with the default provisions on their financing agreements. The Tribe should consider reviewing its RAP to determine if it is consistent with the provisions of the Loan Documents.

I also anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted agreements to the Department of Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: Paula Hart, Office of Indian Gaming Management, Bureau of Indian Affairs
(w/ incoming)
Lewis Taylor, Chairman, St. Croix Chippewa Indians of Wisconsin



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January 14, 2010

Penny Coleman
Acting General Counsel
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Opinion regarding Loan Documents

Dear Ms. Coleman:

Our law firm is special counsel for the St. Croix Chippewa Indians of Wisconsin (the "St. Croix Tribe") in connection with two loans (the "Loans") from a lender (the "Lender"), originally scheduled to close next week. Proceeds of the Loans will be applied to pay costs associated with a new casino, hotel and convention center under construction by the Tribe and to refinance certain debt.

In accordance with Bulletin 94-5 of the National Indian Gaming Commission (the "NIGC"), submitted herewith is an exhibit package of documents. **EXHIBIT A** included herewith contains the most recent drafts of the material documents that will evidence the terms of or secure the Loans (the "Loan Documents"). The St. Croix Tribe and the Lender respectfully request you to review the Loan Documents and provide an opinion to the effect that within the meaning of the Indian Gaming Regulatory Act ("IGRA") and regulations promulgated thereunder, none of the Loan Documents, individually or collectively, constitute a management contract or grant to any person a proprietary interest in any gaming operations of the Tribe.

This request is made in light of the January 11, 2010, Decision and Order (the "LOT Decision") of the United States Court for the Western District of Wisconsin in the matter Wells Fargo Bank, N.A. vs. Lake of the Torches Economic Development Corporation (Case No. 09-CV-768) (included herewith as **EXHIBIT B**) (the "LOT Case").

The LOT Decision explains the court's January 6, 2009, order (included herewith as **EXHIBIT C**) in which the court declared void an indenture (included herewith as **EXHIBIT D**) (the "LOT Indenture") on the grounds that the indenture was a management contract within the meaning of IGRA that had not been approved by the Chairman of the NIGC. The LOT Indenture authorized the initial issuance of \$50 million of bonds by the Lake of the Torches Economic Development Corporation ("LOT"), who operated the Lake of the Torches Resort Casino on behalf of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

The LOT Case has received widespread publicity, and both tribal and banking/investment banking parties have expressed a great deal of concern that the LOT Case could impede or adversely affect the ability of Indian tribes to access the financial markets. This concern is borne

out in the case of the St. Croix Tribe, because the Lender has requested the St. Croix Tribe to obtain the opinion requested herein as a condition to the Lender closing on the Loans.

As you review the accompanying Loan Documents, I would point out certain very material distinctions, as well as some commonality, between the terms in the LOT Indenture and terms in the Loan Documents.

First, it should be noted that the LOT Decision expressly criticized certain provisions in the LOT Indenture as granting or potentially granting management rights. As additional background for the court's criticism of these provisions, I have taken the liberty of also including as **EXHIBIT E** herewith, the affidavit of Kevin Washburn, which was quoted in the LOT Decision (the "LOT Washburn Affidavit"), as well as the Defendant's Supplemental Response in Opposition to Plaintiff's Motion for Appointment of Receiver (included herewith as **EXHIBIT F**) (the "LOT Defendant's Reply").

Specifically, the court in the LOT Case concluded that the following summarized provisions gave bondholders the "opportunity to exercise significant control over the management operations of the casino Facility"¹:

1. *Ongoing Discretionary Control over Casino Capital Expenditures.* Unlike more typical tribal financing arrangements that sometimes place pre-negotiated stated limits or sometimes require pre-negotiated stated minimums with respect to capital expenditures with no ongoing third party discretionary control, in the view of the court (and LOT² and Mr. Washburn³), bondholders effectively had discretionary control over the capital expenditures of LOT's gaming operations. Under the LOT Indenture, LOT could not incur capital expenditures that exceeded 25% of its prior year's capital expenditures without receiving bondholder written consent. Because LOT could not exceed 25% of the preceding year's capital expenditures, each year LOT would have less of an ability to fund capital expenditures for its gaming operations, and therefore it would have been virtually assured that LOT would likely need bondholder discretionary approval to continue the proper functioning of its gaming operations.
2. *Requirement to Follow Management Advice from a Manager not Approved by NIGC.* Under the LOT Indenture, a "management consultant" was required to be appointed at the bondholder direction if the debt service coverage ratio fell below a certain level, with LOT obligated to use its best efforts to implement the recommendations of the management consultant.
3. *Ongoing Discretionary Control over Who Manages and Regulates the Gaming Operations.* LOT could not replace or remove General Manager, Controller, or Chairman or Executive Director of the Gaming Commission for any reason without first obtaining prior written bondholder consent.

¹ LOT Decision, p. 7, par. 1.

² LOT Defendant's Reply, p. 14, first full paragraph.

³ Washburn Affidavit, p.

Additionally, the Court found the following additional provisions to “give the bondholders management control when LOT defaults”⁴:

- A. *Further Discretionary Control over Management Personnel Following Default.* Upon an event of default, bondholders had the right to require LOT to hire new management and had the right to consent to the management that LOT recommended as replacement management.
- B. *Appointment of Receiver to Control Payment of Casino Costs.* Although reference to the appointment of a receiver is not universal in tribal financing documents, it is also not necessarily unique; however, the bond trustee’s and court’s interpretation of the receiver’s powers is unique, because it was assumed that the receiver could control the payment of casino costs. With no prohibition against management of LOT’s gaming operations contained in the LOT Indenture, upon an event of default the trustee for the LOT bonds had a right to seek appointment of a receiver “of the [revenues, equipment and accounts of LOT’s casino] and of the revenues, issues, payments and profits thereof.”⁵ In the plaintiff’s Memorandum in Support of Wells Fargo Bank’s Motion for the Appointment of a Receiver and Request for Expedited Disposition (included herewith as **EXHIBIT G**) (the “LOT Plaintiff’s Initial Memorandum”) the trustee interpreted this language as allowing the appointment of a receiver not only to “oversee” the receipt of casino revenues (which were pledged to pay the LOT bonds), but apparently to also “oversee” (i.e. control) application of those revenues to make payments of LOT casino costs⁶. The LOT Decision, noted, for example, that appointment of a receiver to “ensure that LOT deposited its revenues *and* paid its liabilities “would be exerting a form of managerial control since those monies could not be used for other purposes related to the operation of the Casino Facility.”⁷

The enclosed Loan Documents do not contain any of the foregoing provisions expressly criticized by the court, but please note that the enclosed Loan Documents do contain some terms that are found or are similar to those that are found in the LOT Indenture, and which were referenced in the LOT Decision (but not, I believe, directly criticized by either the court (or in the LOT Washburn Affidavit). More specifically:

⁴ LOT Decision, pp. 7-8.

⁵ The LOT Washburn Affidavit, par. 9, broadly characterizes the LOT Indenture as allowing a “receiver of the gaming operations.”

⁶ “Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers” to oversee the “revenues, issues, payments and profits” of Defendant.” Plaintiff’s Initial Memorandum, p. 7.

⁷ See also LOT Washburn Affidavit, p. 4, par. 9, “Trust Indenture, in Section 8.04, purports to give the Trustee the power to appoint a receiver of the gaming operation.” (emphasis added); In the absence of limitations in the LOT Indenture on the exercise of management rights during the enforcement process, LOT argued that the language granted a receiver “complete control over the Casino’s finances.” LOT Initial Memorandum, p. 17.

1. Each of the Loans will be secured by a pledge of gross revenues of the St. Croix Tribe's gaming operations pursuant to Security Agreements.⁸
2. Under the terms of a Depository Agreement, the St. Croix Tribe will be required to periodically deposit gross gaming revenues into an account controlled by the Lender, and permitted to withdraw amounts so deposited to pay costs of gaming operations upon request.
3. The Loans are secured by a pledge of substantially all personal property, including accounts, of the Tribe's casinos.
4. The Loans are full recourse loans, permitting enforcement as against all assets of the St. Croix Tribe other than certain "Protected Assets."

You should also note, that the Loan Documents have certain terms not found in the LOT Indenture.

First, a critical difference is that all rights and remedies of the Lender (contractual or otherwise) are limited in a manner that is substantially the same limitation found acceptable in the Muscogee Creek Letter. Thus, the Loan Documents will contain the following provisions:

"Notwithstanding any provision in any Loan Document, Lender shall not engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Borrower's gaming operations (collectively, "Management Activities"), including, but not limited to:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;
- (b) any working or employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or

⁸ In arguing why appointment of a receiver was not permitted, language was quoted in the LOT Defendant's Reply at p. 18, extracted from your dated January 23, 2009, concerning the Muscogee Creek Nation (included for your ease of reference as **EXHIBIT H**) (the "Muscogee Creek Letter"). In that letter you expressed the opinion that "a security interest in a gaming facility's future gross revenues, **without further limitation**, authorizes management of the gaming facility." (Emphasis Added). As discussed below, the Loan Documents for the St. Croix Tribe, contain limiting language that, under the circumstances relevant in Muscogee Creek Letter, were determined by you to be an acceptable limitation.

(h) budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided, however, that upon the occurrence of a default, Lender will not be in violation of the foregoing restriction solely because Lender :

(i) enforces compliance with any term in any Loan Document that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; or

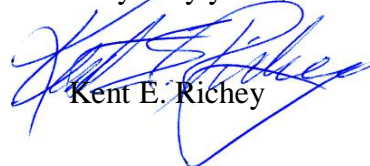
(ii) requires that all or any portion of the revenues securing the Obligations be applied to satisfy valid terms of the Loan Documents; or

(iii) otherwise forecloses on all or any portion of the Project securing the Obligations.”

A second difference you should note is that as additional security for the Loans, a default will occur if by a certain time the St. Croix Tribe does not grant to the Lender a mortgage on a sublease of the tribe's casino trust lands. Thus, to avoid that default the St. Croix Tribe will seek approval from the Bureau of Indian Affairs of a lease and sublease of that trust land. The lease, a form of which will be sent you as one of the Loan Documents, would be between the St. Croix Tribe, as lessor, and a specially created tribal entity, as lessee. The special tribal entity would then lease the trust lands back to the St. Croix Tribe pursuant to the sublease. Therefore, upon a default and foreclosure, the Lender could take possession of the casinos by becoming the tenant under the sublease. Of course, under IGRA the Lender could not operate the casinos for gaming purposes, and could not acquire any ownership interest in the gaming operations of the St. Croix Tribe. I would note this form of leasehold mortgage security, although not widely used in the more recent tribal financings, was a very much recognized form of security in the early days of tribal casino financings.

Thank you for your consideration of this matter. Because of the pending closing on the Loans, time is of the essence.

Very truly yours,



Kent E. Richey

cc: Lewis Taylor, Chairman, St. Croix Chippewa Indians of Wisconsin
Andrew Adams III, General Counsel, St. Croix Chippewa Indians of Wisconsin
Craig Aderhold, Market President NE Wisconsin, Heartland Business Bank
Donsia Strong Hill, counsel for Heartland Business Bank

Enclosures:

Exhibit A: Loan Documents
Exhibit B: LOT Decision
Exhibit C: LOT Order

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Exhibit D: LOT Indenture
Exhibit E: LOT Washburn Affidavit
Exhibit F: LOT Defendant's Supplemental Response
Exhibit G: LOT Plaintiff's Initial Memorandum
Exhibit H: Muscogee Creek Letter