

## industry chair

Steven Paul McSloy / Partner

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With over 25 years of experience, Carter Ledyard's Native American Law practice concentrates on corporate finance, including commercial lending, bond issuance, tax-exempt lending, refinancings, workouts, restructurings, joint ventures and general corporate matters for Native American Tribes and those doing business with them. Our attorneys have twice won "Deal of the Year" awards from the Native American Finance Officers Association (NAFOA) for their work on innovative tax-exempt financings.

Our practice group leader Steven Paul McSloy is one of the nation's leading experts on Native American Law and finance and has worked on some of the largest and most complex financial transactions in Indian Country, acting as lead counsel in financing, casinos, hotels, retail outlets, energy projects and government buildings and infrastructure on tribal lands. Steve served as the General Counsel of the Oneida Indian Nation of New York and its Turning Stone Casino and teaches American Indian Law at Columbia Law School and for the California Tribal College. Our practice has been consistently rated at the top of the profession and sought out by both Indian nations and those doing business with them for efficient and expert advice in getting deals done.

### **Representative Experience**

We have represented the financial institutions financing the acquisition of Miami's Magic City Casino by the Poarch Band of Creek Indians, owners of the Wind Creek casinos and resorts. Once the Florida Gaming Control Commission approved the sale, the parties consummated the financing and sale in early February.

We represented the Shingle Springs Tribal Gaming Authority in its \$190 million refinancing of its existing bank loan for its Red Hawk Casino located in Northern California. The refinancing significantly reduced the Authority's interest costs and allowed for future expansion of its very successful casino. Our attorneys had previously represented the Authority in its combined \$505 million Rule 144A bond offering and syndicated bank credit agreement, a \$58 million management contract termination and amendments to the Tribe's compact with the State of California in 2013.

We represented a syndicate of lending banks as well as a group of investment banks on issues of tribal law regarding the Mohegan Tribal Gaming Authority's \$1.9 billion refinancing, consisting of a \$500 million private placement bond offering and a \$1.4 billion senior secured credit facility. The proceeds were used in part to fund \$785

million in tender offers for and a \$100 million prepayment of certain other debt of the Authority, which owns and operates the Mohegan Sun gaming and entertainment complex in Uncasville, Connecticut and the Mohegan Sun Pocono casino and resort in Pennsylvania.

We represented a syndicate of lenders in a \$115 million Senior Secured Credit Facility for the Navajo Transitional Energy Company, operator of the Navajo coal mine on the Navajo Nation reservation. The funds were used to pay off the company's acquisition loan for the mine, which had allowed the Navajo Nation to take control of its natural resources on an unprecedented scale for an Indian tribe.

We represented KeyBanc Capital Markets in bringing the Navajo Nation's \$52.9 million investment-grade rated tax-exempt general obligation bonds to market. This private placement was rated BBB+ by Standard & Poor's and, as an unsecured full faith and credit issuance by the Nation and not tied to gaming, was unique among tribal financing transactions. The funds were used to refinance an existing bank loan that had been used to build courthouses and other public facilities on the Nation's reservation. The Native American Finance Officers Association (NAFOA) awarded its Deal of the Year Award to this groundbreaking general obligation bond issuance that will reshape how tribal entities finance public projects.

We represented KIRA Incorporated, an award-winning federal government contracting company, in its acquisition by the Tlingit Haida Tribal Business Corporation, an economic development arm of the Central Council of the Tlingit Haida Indian Tribes of Alaska. The acquisition will allow KIRA to grow by virtue of government contract set asides for native American Tribes, and will provide significant revenues to the 30,000 member Tlingit Haida tribe.

We acted as Native American Law counsel to the financial institutions involved in Mohegan Sun's 2015 \$85 million offering of Senior Notes, \$95 million amendment to its Senior Secured Credit Facility and partial redemption of \$175 million of its 11% Senior Subordinated Notes.

We have represented KeyBank, N.A. and KeyBank Government Finance in several loans to the Navajo Nation, including a \$60 million term loan refinancing, a \$2.3 million emergency loan financing for water infrastructure and a \$6.8 million term loan financing for MIS equipment, all of which were governed by Navajo Nation Law and called for dispute resolution in the Navajo Nation courts. The original transaction in 2010 won the Deal of the Year Award from NAFOA.

## Representing Tribes:

- \$160 million high-yield bond offering for casino expansion.
- \$310 million high yield, tax-exempt and secured bank loan facility to finance a major expansion of a resort.
- Refinancing of more than \$300 million in senior notes approaching maturity.
- \$20 million and \$25.5 million issuances of tax-exempt, variable rate demand bonds to finance eligible resort expansion projects.
- \$50 million increase to existing bank loan agreements.
- \$40 million secured credit facility to provide liquidity for a tribe facing challenges from the state and federal governments.
- *\$45 million hotel financing.*
- Workout of casino financing.
- Strategizing of gaming expansion across state borders.
- Tribe's first venture into gaming, including multiple planned casinos in different states.
- Pursuit of off-reservation gaming opportunities.
- Gaming technology joint venture.
- Research and analysis for the development of a hedge fund to be owned and operated by an Indian nation.
- Casino in a \$16 million purchase of video gaming terminals and related licensed intellectual property.
- Native American entrepreneur in negotiations with financial sources and Indian nations in pursuit of a leveraged buyout, wind power project and other opportunities for Indian nations.

**Representing Financial Institutions:**

- Credit Suisse and other investment banks in multiple refinancings of a Tribe's \$1.7 billion in debt.
- JP Morgan in a \$230 million offering of investment grade notes used to construct a new hotel and other resort amenities.
- Merrill Lynch in a \$160 million syndicated bank loan to build a destination resort casino complex in Alabama.
- JP Morgan Securities in connection with a \$60 million letter-of-credit-backed variable rate debt offering used for equipment and capital expenditures.
- KeyBank in a \$60 million Build America Bond transaction, the first large-scale loan to be governed solely by tribal law and tribal courts. This transaction was awarded the "Deal of the Year" award in 2010 by the Native American Finance Officers Association (NAFOA).
- An investment bank in a \$170 million follow-on issuance of investment grade bonds, including a consent solicitation of holders of previously issued tax-exempt bonds.
- Merrill Lynch in a \$58.5 million series of tax-exempt and taxable issuances of debt for expansion and infrastructure improvements.
- An investment bank in a proposed \$350 million high-yield bond offering to construct a casino and resort facility in Northern California.
- A syndicate lender in its participations in a \$230 million senior secured credit facility for the Tulalip Tribes of Washington, a \$1.2 billion revolving credit facility for the Mohegan Tribal Gaming Authority, a \$700 million senior secured term loan to the Seminole Tribe of Florida and a \$900 million senior secured revolving loan to Wynn Las Vegas LLC.
- Insurance company lenders in a \$35 million refinancing of casino construction debt.
- Lender in connection with a \$17 million bank credit facility for a Northeast Indian nation.
- Bank providing an additional credit facility to a Northwestern Tribe.
- Bond insurer in connection with a \$140 million high-yield bond offering.
- Lender in amending an existing credit facility for a Tribe's casino.
- Lender in providing emergency funding to an Indian nation facing a drinking water crisis.

**Representing and negotiating on behalf of Developers, Retailers and Entrepreneurs:**

- Real estate developer of a planned \$700 million phased gaming and entertainment destination in an environmentally sensitive area, in partnership with an Indian nation, and negotiation of development and management agreements.
- LiveNation in negotiating a long-term lease with Mohegan Sun Hotel/Casino for a House of Blues night club and a Foundation Room private club to anchor a new hotel tower.
- Developer of a planned \$500 million project to convert a San Francisco Bay naval base into an urban Indian gaming facility and resort complex.
- Mining company in the negotiation of a minerals lease of Indian lands and related federal permits.
- Insurance company in researching and developing captive insurance companies on Indian reservations.
- Utility in considering a wind power project on Indian land in the Southwest.
- Natural resources company in considering issues related to damages to Indian lands.
- Retailer in development of retail space at the Viejas Outlet Center on the Viejas Indian reservation in Southern California, including negotiations with the BIA.
- Three lessees of space in the Tulalip Tribe's Seattle Premium Outlets in Washington state.
- Las Vegas gaming company in negotiations of a proposed management contract with an Indian nation.
- Real estate investor regarding the transfer of interests in a resort lodge on Indian land.
- Developer in an innovative proposal for off-balance sheet financing to expand a tribal casino and build a hotel.
- Developer considering a tribal casino project in a heavily populated urban area.
- Investment bank in the transfer of a BIA-guaranteed loan made to an Indian Tribe.
- Developer in considering fee-to-trust land acquisition for gaming.

**Presentations**

- Practice Chair Steve McSloy gave a presentation in October 2016 entitled “Anatomy of a Deal” to the Economic Development and Entrepreneurship Committee of the United South and Eastern Tribes (USET) at its meeting on the lands of the Eastern Band of Cherokee Indians in North Carolina. Steve was joined in presenting on how Indian nations should analyze and pursue diversification transactions by former Seneca Nation President Robert Odawi Porter and Owen Herne of Herne Law PLLC. The trio had previously presented to the committee at its meeting at the Poarch Band of Creek Indians’ resort in Alabama earlier in the year.
- Partner Steven Paul McSloy spoke on October 19, 2016 at Columbia Law School’s symposium “Environmental Justice: What’s Race Got To Do With It?” McSloy spoke on the issue of tribal water rights and the many challenges Native American nations have faced over the centuries to maintain their rights to adequate and clean water. The symposium, sponsored by the Columbia Journal of Environmental Law and the Columbia Journal of Race and Law, also featured speakers from the Natural Resources Defense Council, EarthJustice and the New York Lawyers for the Public Interest.
- Steve McSloy participated in the Albany Government Law Review’s “Native American Law in the Modern Era” program on March 10, 2016 at Albany Law School. The panelists, including tribal leaders and judges, addressed the most pressing legal issues, changes and challenges in modern Native American Law.
- Steve McSloy spoke at the 17th Annual D.C. Indian Law Conference sponsored by the Federal Bar Association in 2015. Mr. McSloy made a presentation on the ethical issues involved in tribal economic development on a panel shared with the Chairman of the National Indian Gaming Commission.
- Steve McSloy has three times spent two days in 2015 and 2016 on a pro bono basis teaching Federal Indian law for the California Tribal College’s Certificate Program in Tribal Leadership and Governance. The California Tribal College is a cooperative effort of more than 50 leading California tribes and native organizations, and its sessions have been held on the lands of the Yocha Dehe Wintun Nation, the Redding Rancheria and the Morongo Band of Mission Indians.
- Steve McSloy was a panelist at Cornell Law School’s Tribal Economic Development Action Summit, February 27-28, 2015.
- Steve McSloy was a participant at the Harvard Kennedy School of Government’s Harvard Forum on Major Development Projects On and Near Indian Lands: Best Practices in Tribal-Corporate Relations, May 16-17, 2013

**Publications:**

- Steve McSloy is the author of “Lending in Indian Country,” a chapter in the multi-volume treatise Asset Based Financing.
- “Enforcement of Native American Gambling Debts,” Gaming Law Review, October 15, 2011 (Steve McSloy, co-author)
- “Tom Cruise and the Indian Subprime Crisis,” Indian Country Today, March 11, 2011
- “Theodore Custer Abramoff: The Worst Since Little Bighorn,” Indian Country Today, February 24, 2006
- “Send Lawyers, Guns and Money – Sovereignty’s Hit the Fan,” Indian Country Today, June 17, 2005
- “What to Know Before Leasing Space on Indian Land,” Commercial Tenant’s Lease Insider, March 2005 (Steve McSloy, co-author)
- “After the ‘New Buffalo’: Tribal Wealth Management,” Indian Country Today, November 5, 2004
- “‘Because the Bible Tells Me So’: Manifest Destiny and American Indians,” Indian Country Today, September 10, 2004
- “A Great Nation Breaks its Word – Indians, Unions and the NLRB,” Indian Country Today, June 25, 2004 (Steve McSloy, co-author)
- “Empowerment or Dependence? The Practical Value and Meaning of Native American Sovereignty,” New York University Journal of International Law and Politics (1994) (Steve McSloy, co-author)
- “Back to the Future: Native American Sovereignty in the 21st Century,” New York University Review of Law and Social Change (1993)