Professor Clarkson was quoted in an Associated Press article on fraud allegations against the Navajo Nation. This article was published by several online sources, including Stamford Advocate.com and KSAZ Fox 10.

Fraud allegations may hurt Navajo bonding ability
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FLAGSTAFF, Ariz. (AP) — Navajo Nation officials hit with a civil lawsuit alleging they used tribal money as personal slush funds and mismanaged outside funding are concerned that the complaint could impact their ability to access the capital market for a long list of unfinished projects.

The tribe secured its first credit rating ever earlier this year, an "A" that Standard & Poor's said reflects the strong finances on the country's largest American Indian reservation that include revenue-generating natural resources, taxes and a $1 billion trust fund.

But 85 people, including former and current lawmakers, the former tribal president, the controller and the attorney general recently were accused of defrauding the tribe in the use of discretionary funds. A special prosecutor contends they and 50 unnamed defendants benefited from $36 million or failed to regulate the funding that is meant for elderly tribal members, student scholarships or others facing significant hardship.

"Our economic development depends on our ability to attract investors, and this frivolous lawsuit threatens that," said LoRenzo Bates, chairman of the Tribal Council's Budget and Finance Committee and a defendant in the lawsuit.

The Navajo Nation has been preparing its list of projects that it intends to finance through both taxable and tax-exempt bonds when the lawsuit was filed. The new civil complaint replaced some criminal charges that prosecutor Alan Balaran had filed against Navajo lawmakers that were unresolved.

On the list are major economic development projects like casinos, shopping centers and school buildings, as well as power and water lines.

The tribe had long considered financing its needs with bonds but didn't have the right political mix in the tribal government to get it done, said tribal controller Mark Grant. Internal funds helped build the tribe's first casino, and a loan from KeyBank partially financed judicial and public safety facilities. But most projects have been left unaddressed.
The Navajo Nation received the credit rating in May, one of only two tribes that have a rating for general obligation bonds with Standard & Poor's, said company spokesman Olayinka Fadahunsi. Unlike other tribes the company deals with, the Navajo Nation doesn't rely on gaming to deliver services to tribal members. Thirty percent of its general fund — excluding federal money — comes from natural resources, 20 percent comes from taxes and another nearly 20 percent is generated from leases.

"Standard & Poor's prefers not to speculate on the outcomes of ongoing litigation," Fadahunsi said of the civil action against tribal leaders. "We're actively monitoring the lawsuit and we'll update the market as appropriate."

Grant said the tribe expects to fulfill its debt service by setting aside a percentage of general funds. In the event of a severe default, the billion-dollar Permanent Fund could be used with a two-thirds vote of the Tribal Council.

Grant was unavailable for comment about any damage from the new civil lawsuit. He previously said he was fully confident that tribal officials would quickly line up their priorities to help build the economy on the reservation, where unemployment hovers around 50 percent.

"The biggest hindrances will be our own internal process," Grant said. "If we don't come forward quickly to the market, the market is going to wonder if we really are serious about this. It may cause them to become uncomfortable, and we don't want that to happen."

KeyBank, which has loaned money to the tribe and consented to resolve disputes in tribal court, also is the tribe's choice for taking its projects to the capital market. A company spokeswoman said Thursday that it would not comment on pending litigation involving its clients.

The complaint, which addresses discretionary spending over several years, seeks to recover the money, remove the defendants from office and temporarily replace controller Grant with a financial receiver. Balaran also alleges tribal officials violated state and federal laws that resulted in the loss of hundreds of millions of dollars in grants and contract funding, but he has no authority to prosecute outside of tribal law.

"It does not describe a random theft or an incident involving individual ineptitude that visits every large organization," Balaran wrote. "Rather, this case seeks redress for a wholesale pattern and practice of corruption conceived and coordinated by the branches and agencies of the nation."

The defendants described the complaint as shoddy, and worried that it could harm their ability to issue bonds.

"We won't know until we talk to the people who are going to loan us the money," Bates said. "I think we'll get a sense as to whether or not the situation is impacting their thoughts."
Fellow lawmaker Lorenzo Curley, who also sits on the Budget and Finance Committee, said the tribe put some safeguards in place to obtain the credit rating "and now we're afraid this might have a negative effect," and possibly lead to higher interest rates.

Gavin Clarkson, an expert in tribal finance who reviewed the complaint, said while the allegations are serious, it should have no impact on the credit worthiness of the tribe.

"It is not something about tribal funds being diverted from paying debt service to paying something else," he said.

The bonds would go a long way to addressing more than $700 million in unmet needs on the Navajo Nation that stretches into New Mexico, Utah and Arizona.

A major roadblock to obtaining tax-exempt bonds is a requirement under federal law that tribal projects be essential to government functions, which isn't required for states, said Clarkson, of the University of Houston Law Center.

"If the wealthier tribes need infrastructure, they'll build it even if they have to pay taxable rates," Clarkson said. "The discrimination really hurts the poor tribes. The difference in the taxable rate and the nontaxable rate may be the difference between doing the project or not. When you don't do the project, jobs don't get created."