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The Winners Curse (and how Tribes might avoid it)

By William Newby

In his December 2025 *Tottenham Report* newsletter, UK based consultant and TFA friend, Andrew Tottenham discusses "why the last person on the bandwagon pays the most". Andrew specifically looks at the recent downstate New York casino license process through the lens of two books, *The Rules of Contagion* (Kucharski) and *The Winner's Curse* (Thaler), to arrive at a theory about how things spread and why people overpay for things of interest. Although not expressly stated, his inference might be taken that those who "won" the available NY licenses might actually "lose" by overpaying for the gaming licenses available and those who backed away or "lost" might actually have "won" by avoiding a painful financial mistake.

After reading Andrew's insightful comments, we began to think about how his observations might apply to Indian Country, specifically why many Tribes looking to diversify economically via acquisition seem to be last to the party and, if successful, many times overpay for those assets.

Sadly, many bankers representing sellers consider Tribes to be the "last phone call" in a sale process. We've asked a number of the most active sell side advisors why that is and the common responses **(which do not reflect TFA's views)** tend to include:

- **Tribes tend to lack general sophistication regarding the Mergers & Acquisition ("M&A") process**. This is somewhat unfair as "sophistication" in any area tends to come with experience. As Tribes don't routinely engage in M&A, they should not be expected to be finely tuned M&A machines. Nevertheless, when competing with commercial interests that might be, the discrepancy is obvious.
- **Tribes tend to have a lengthy decision process**. This is undoubtedly part of Tribal DNA: Tribes make decisions by consensus far more than commercial entities. Timelines that are common in the Tribal universe are uncompetitive when juxtaposed against a commercial competitor's response.
- **Tribes tend to solicit advice from "friends and family"**. Which is another way of saying that Tribes tend not to seek advice from those firms that are active in the business of M&A, and therefore, get advice that is not finely tuned to the marketplace.

(continued on Page 2)

IN THE NEWS

Another Day, Another Bill to Undo the 90% Loss Deduction Cap
1/13/2026 – ingame.com

Native Americans Are Caught Up in ICE Crackdown in Minneapolis
1/15/2026 – wsj.com

The prediction market boom is posing an existential threat to American Indian Gaming
1/20/2026 – brookings.edu

Native American tribes say prediction markets siphon tribal casino money
1/22/2026 – completeigaming.com

Harvy Prett, a Pioneering Forensic Artist, Dies at 84
1/29/2026 – wsj.com

Statement from CNIGA Chairman James Siva on CFTC Chairman Michael Selig's Public Remarks
1/29/2026 – cniga.com

Polly Cooper, an Oneida woman who helped save Washington's army, is honored on $1 coin
2/1/2026 – ictnews.org

(continued from Page 1)

The list above does not absolve the sellers and their representatives from doing their own homework. A number of Tribes that TFA does work with are in fact attuned to the nuances of the competitive commercial world and have structured themselves to compete in the diversification-by-acquisition game.

Having said that, the bias of those running the game can be great and often even inexplicable.

As an example, a close Tribal client of ours learned about a sale process for an asset in its home state some 4-5 months *after* the process was initiated. What's perplexing is that our client:

- is a professionally managed Tribal development authority ("DA")
- is domiciled in the same state as the asset
- has been previously licensed in a commercial gaming jurisdiction
- has relevant business experience in the exact same business as the asset, and
- has sufficient liquidity with which to bid and affect an eventual purchase

Sounds like a very well qualified counter party to a transaction, right? In fact, you wouldn't be wrong to suggest that they sound *more* qualified than most commercial company bidders. So, when asked why they had not initially included our client, the seller's representatives suggested that the seller was concerned about the DA's ability to consummate a transaction for the reasons noted above. In fact, our client was finally *allowed* to submit letters of interest and stayed in a difficult process until the final round (when another bidder was declared "winner").

This gets us to Andrew's point: by the time many Tribes learn of a deal, they are the very likely thought of as the last option for the seller. Tribes are asked to "bid high" in order to "compensate" for their lack of experience and if successful, often times overpay for the acquisition. We've seen this numerous times wherein Tribes overpaid for properties in PA, MS and LV. Because Tribes tend to take a long-term view of ownership, overpaying might not completely compromise the return on invested capital ("ROIC") in so far as the Tribe has a large window to realize a full'ish ROIC. But wouldn't the better option be to avoid being last at the party at which the price to play is overbidding?

We think the way to avoid the "Winners Curse" is to preemptively create a mechanism whereby Tribes who are serious about diversification through acquisition can go toe to toe with competitor bidders in "real time".

To do so, Tribes might consider the following steps for creation of that mechanism:

- Tribal leadership should agree to a diversification strategy
- Leadership should then create or empower the development authority to pursue the specifically stated strategy. The DA should be staffed with competent, experienced executives.
- The DA should be empowered to make decisions and execute strategic decisions with:
  - ◊ Previously agreed upon parameters in place which obviate the need to revert to the Tribe for most "in the fairway" decisions. This ensures efficiency comparable to commercial competition for the targeted assets.
  - ◊ A minimal amount of "political" interference. Political second guessing ensures inefficiency and consequential delay in decision making.
- Because many if not most targeted assets are in diverse (relative to the Tribal nexus) industries/markets/market segments, consider hiring advisors. These can be generalized as investment bankers and/or subject matter experts in the area of interest under consideration, including capital raising and deal structure.
- Make sure that the DA is well capitalized with at least enough available liquidity to represent financial capacity to potential sellers/seller's advisors (most all sellers will have a "sell side" M&A advisor). We note that most transactions will require additional capital and, further, the seller's advisors will want to see a clear path to the capital markets for that capital—that's where a financial advisor will be critical.

As always, TFA is available to answer questions and suggest strategies that can be used to build an empowered Development Authority and avoid the Winner's Curse.

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