

## Practical Tips for Equipment Leasing Transactions By Native American Tribes

### □ **Special Status:**

Native American tribal governments enjoy a special status under federal law as sovereign entities. Equipment lessors must be educated to understand and respect a Tribe's special status in connection with their business relationships with the Tribe.

### □ **Tax-Exempt Leasing:**

Native American tribal governments may lease property on a tax-exempt basis if the leased property is used for a general public purpose such as the health, education or the welfare of the Tribe. Tax-exempt leasing is often available at reduced rates.

### □ **Other Leasing Not on a Tax-Exempt Basis:**

If the Native American Tribe does not intend to use the leased equipment for a general public purpose, the equipment lessor may enter into a lease agreement with a Native American Tribe on a non-tax exempt basis at commercial rates.

### □ **Waiver of Sovereign Immunity:**

Equipment lessors will often seek that Native American tribal governments waive their sovereign immunity. If granted, care should be taken that the waiver is sufficiently limited to a Tribe's breach of that particular contract. Broad waivers should be avoided.

### □ **Dispute Resolution; Consent to Jurisdiction of State and Federal Courts:**

Equipment lessors will seek Native American Tribes to consent to the jurisdiction of particular courts such as the state and Federal courts sitting in the state where the Native American business entity is doing business. If granted, care should be taken to avoid the equipment lessor "shopping" for a favorable forum or to sue the Tribe in an inconvenient far away forum.

*-Continued on second page-*

## Practical Tips for Equipment Leasing Transactions By Native American Tribes - *Continued*

### □ **Consent to Governing Law:**

Equipment lessors will often seek to have Native American Tribes agree that all legal issues arising in relation to the equipment lease be governed by the state laws (including the Uniform Commercial Code) of the applicable state where the equipment lessor is doing business rather than tribal law. This concession should be rarely granted.

### □ **Consent to Entry by Division onto Tribal Lands for Inspection and Repossession of Collateral:**

Equipment lessors will seek that a Native American Tribe consent in the body of the equipment lease to permit the equipment lessor to enter onto the Tribe's land to inspect the collateral from time to time, and to repossess the collateral in the event of a default by the borrowing Tribe. This access can violate Tribal sovereign control over its lands and should be avoided. If granted, care should be taken to limit the equipment lessor's rights to only what is necessary for the equipment lessor to inspect and repossess the equipment.

## Contact

Sandra L. Shippey, Esq.

Partner, Procopio, Cory, Hargreaves & Savitch LLP

619.515.3226

[sandra.shippey@procopio.com](mailto:sandra.shippey@procopio.com)

*Disclaimer: Although the information contained herein is provided by professionals at Procopio, the content and information should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.*