Click for Roxann Gallagher Outline

Click for Robert Tabor Outline

Tribal Gaming Opportunities and How to Avoid Pitfalls

HOSPITALITY LAW CONFERENCE
Houston, Texas
February 2-3, 2006

ROBERT S. TABOR
Maloney & Tabor, Inc.
2386 Fair Oaks Boulevard
Sacramento, CA 95825
Telephone: 916.485.5690 / Facsimile 916.485.5693
Las Vegas, Nevada office: 702.990.3527
Firm Website: www.maloneytabor.com

ROBERT S. TABOR

Maloney & Tabor, Inc.
2386 Fair Oaks Boulevard
Sacramento, CA 95825
Telephone: 916.485.5690 / Facsimile 916.485.5693
Las Vegas, Nevada office: 702.990.3527
Firm Website: www.maloneytabor.com

Education

Juris Doctor 1993
University of the Pacific McGeorge School of Law
Bachelor of Arts, Political Science 1990
California State University, San Francisco

Affiliations / Admitted to Practice

California State Bar 1993
Nevada State Bar 2000
United States Court of Appeals, Seventh Circuit
United States District Court, Eastern District of California
United States District Court, District of Nevada
International Masters of Gaming Law, Member
Elected to 2005 and 2006 Editions of Best Lawyers in America®, Gaming Law category.

Employment

January 1994 – Present Maloney & Tabor, Inc., Founding Partner

Substantial experience in Native American gaming in California and Class II and Class III commercial and tribal gaming throughout the United States. Practice emphasizes gaming law, regulatory law, business and corporate law.

Recent assignments have included: Representing casino developer/manager in arbitration against a California Tribe; advising a client relative to a real property transaction with a California Tribe; assisting a financial institution to complete a loan to a California Tribe and its casino (navigating such issues as tribal sovereignty and state licensing requirements); representing clients before the California Division of Gambling Control and California Gambling Control Commission (both Tribal and Card Room Sections); negotiating Tribal Casino Development and Management Agreements; representing vendors before Tribal and State Gaming Regulators; and negotiating and drafting a product distribution agreement in Italy.

1983-1986 United States Navy

I. Brief Overview of U.S. Gaming

A. National
B. Tribal with focus on economic opportunity

II. Risk Factors – How can you and/or your clients get a piece of the Tribal Gaming pie?

A. Sovereignty
B. IGRA/NIGC/Federal Indian Law
C. Tribal-State Gaming Compacts

III. Key Contractual Issues

A. Waiver of Sovereign Immunity
    1. No right to litigate, even tribal court without
    2. Tribal Commercial businesses are frequently tribal entities
    3. Waive exhaustion of tribal remedies
    4. Jurisdiction

B. Choice of Law
C. Choice of Forum
D. Right of Access
E. Authority to Execute Agreement
    1. See Tribal documents
    2. Tribal Resolution
    3. Tribal attorney opinion letter

IV. Example of Torres-Martinez

A. Real world considerations
    1. Benefits v. Risk
    2. Tribe may not permit waiver
    3. Tribe may require tribal court (some are OK, esp in Midwest)
B. Arbitration Clause
C. Enforcement of Award/Judgment
D. Likelihood of Recovery

V. Gaming License Issues

A. TGA use of authority
B. How to protect your license

VI. Conclusion

A. Profitable Industry
B. Take Precautions
C. Certain Vendors may avoid all risks.

TRIBAL NATIONS: CONTRACTING WITH SOVEREIGN NATIONS

Fourth Annual Hospitality Law Conference
February 2-3, 2006
Houston, Texas

By Roxann Gallagher
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004-2202
(602) 382-6384
rgallagher@swlaw.com

Roxann Gallagher is an attorney at Snell & Wilmer L.L.P. in Phoenix, Arizona. Her practice is concentrated in the area of business and finance with an emphasis on Native American economic development. Ms. Gallagher's tribal finance experience includes participation in the issuance, sale and remarketing of tax-exempt and taxable tribal bonds for a variety of governmental and economic development projects and the execution and delivery of lease agreements, loan agreements and other sophisticated financing mechanisms.

She is a member of the State Bar of Arizona, the State Bar of Arizona Committee on Minorities and Women in the Law, the Federal Bar Association, Indian Law Section, the American Bar Association and the National Association of Bond Lawyers. Ms. Gallagher is a past member of the National American Indian Housing Coalition Tax Subcommittee.

Ms. Gallagher earned a B.A. in Political Science from the University of Colorado Boulder, her J.D. from the Arizona State University College of Law and a Certificate in Indian Law from the Arizona State University Indian Legal Program. Prior to joining Snell & Wilmer, Ms. Gallagher was an associate at Kutak Rock LLP in Scottsdale, Arizona and a law clerk with the Fort McDowell Yavapai Nation's Legal Department. Ms. Gallagher is a frequent lecturer on issues relating to transacting business in Indian Country.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

I. SCOPE OF ARTICLE

In 2004, the more than 400 tribal casinos nationwide generated $19 billion in revenues, an approximate 12% increase over 2003.[1] Based on the tremendous and rapid growth of Indian gaming over the past decade, as evidenced by the above statistics, federally recognized Indian tribes have become major players in local, state and national economies. Tribes are aggressively expanding into the areas of real estate development, hospitality, retail development, franchising, banking and finance, trade, tourism, gaming, telecommunications, media and resource development. Due to the complexities of doing business on Native American lands, these new opportunities are either landmines or goldmines for non-tribal investors and businesses.

Because tribal governments are separate and independent sovereigns (*i.e.*, similar to a state or municipality), unique Federal Indian Law issues come into play and must be considered when negotiating written agreements with tribes and tribal entities. This article will discuss the development of legal issues and doctrine unique to Indian Country[2] transactions and how to navigate the various complexities, including: understanding basic tribal governmental structures, identifying tribal business entities, contracting with tribes and tribal entities, negotiating waivers of sovereign immunity, choice of law and forum selection provisions and jurisdictional issues.

II. INDIAN TRIBES AS SOVEREIGN NATIONS

Each tribe is a separate sovereign nation with the right to organize and self-govern. That principle was first distinctly enunciated in the 1800s in *Worcester v. Georgia*[3] where United States Supreme Court Chief Justice Marshall declared that "Indian tribes or nations had always been considered as distinct and independent political communities, retaining their original natural rights in matters of local self-government."[4] However, while Native American tribes are "'domestic dependent nations' that exercise inherent sovereign authority over their members and territories,"[5] they are subject to the greater sovereign powers of the federal government.

The United States Constitution expressly grants this power over Native Americans to the federal government, pursuant to Article I, Section 8, Clause 3, to regulate commerce with the Indian tribes. The extent of Congress' power over Indian tribes is also well described in *U.S. v. Kagama.*[6] In Kagama, the court observed that "Indians are within the geographical

---

[1] Analysis of the Economic Impact of Indian Gaming in 2004, National Indian Gaming Association.
[2] 18 U.S.C. § 1151. "Indian Country" means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
[3] *Worcester v. Georgia*, 31 U.S. 515, 559 (1832).
[4] *Id.*
[5] *Oklahoma Tax Comm'n v. Citizen Bank Potawatomi Indian Tribe of Okla*, 498 U.S. 505,509 (1991).
[6] *U.S. v. Kagama*, 118 U.S. 375, 381-82 (1886).

limits of the United States soil and the people within these limits are under the political control of the Government of the United States or the States of the Union . . .."[7]

Because of their sovereign status, federally-recognized Tribes are accorded sovereign rights and immunities similar to state governments and local municipalities.[8] As a result, no state, county or city may generally assert regulatory or jurisdictional power over a tribal government unless the federal government has expressly granted such rights by statute or the tribe has expressly consented.[9] As discussed in Section V below, one of the practical effects of this restriction is that a tribe is subject to suit only where Congress has "unequivocally" authorized the suit or the tribe has "clearly" waived its immunity.[10]

III. ORGANIZATION OF TRIBES

The first practical consideration for doing business in Indian Country is determining with whom you are dealing. Because each tribe is a distinct sovereign nation, as discussed above, with the right to organize and self-govern, each tribe is organized differently, affecting how powers are distributed, who is authorized to act for the tribe, and what approvals may be necessary to carry out a business transaction. Popular methods of organization for federally-recognized tribes include organization pursuant to Section 16 of the Reorganization Act of 1934[11] (the **"IRA"**), incorporation pursuant to Section 17 of the IRA, or organization pursuant to tribal law. Regardless of the method of organization, appropriate resolutions from the tribe and/or tribal enterprise should be obtained to confirm the authority of the entity to execute any contract.

A. **Section 16 Tribes** If a tribe is organized pursuant to Section 16 of the IRA, it will be governed by a constitution normally describing the governing body and the powers and authority granted to it. The constitution may grant the governing body all power and authority to adopt legislation and conduct tribal business or it may reserve some or all powers to the adult members of the tribe. Tribes organized under Section 16 of the IRA may also, but are not required to, be incorporated under Section 17 of the IRA and may adopt ordinances, resolutions or other legislation to govern tribal affairs and business transactions.

B. **Section 17 Tribes** Tribes incorporated under Section 17 of the IRA will have a corporate charter issued by the Secretary of the Interior. Incorporation creates a separate, somewhat parallel legal entity with respect to the powers to contract, to pledge assets and to be sued. These powers may differ from the powers of the governmental unit itself and actions of Section 17 corporations may require approvals from the governing body of the tribe. Because many of the Section 17 charters were written decades ago, unless they have been amended, the provisions are often archaic and may not be effective vehicles to conduct modern business transactions.

A tribe that has established a Section 17 corporation has likely transferred to that entity

[7] *Id.* at 379.
[8] *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).
[9] *Id*.
[10] *Kiowa Tribe of Okla. v. Mfg. Technologies*, 523 U.S. 751, 754 (1998).
[11] 25 U.S.C. § 461, *et seq.*

some or all of the responsibilities of carrying out tribal business activities. Section 17 charters will designate the authorized purposes of the corporation, its ability to borrow money, to encumber its assets, to waive its sovereign immunity and its level of autonomy from the tribal government.

C. Non-IRA Tribes Non-IRA tribes are usually organized pursuant to the tribe's own ordinances, resolutions and tribal history, either written or passed down as oral tradition. In these instances, the tribes' governing instruments must be reviewed carefully to determine the identity and the powers of the governing body and procedures for conducting business affairs.

D. Business Organizations

Tribes can conduct business transactions through the governmental entity itself; by creating an instrumentality of the tribe; a Section 17 corporation (discussed above), or a corporation, partnership or other entity created pursuant to tribal or state law. Tribal governments and their governmental instrumentalities (e.g., housing authorities, utility and land commissions) can contract directly for goods and services. In these cases, the issues of the governmental organization and who may act to bind the governmental entity are a paramount concern due to the implications on sovereign immunity, court jurisdiction, and the availability of remedies as discussed below.

Tribes may also form corporations under state or tribal law to conduct business operations. In these instances, it is necessary to examine the charter, bylaws or other organizational documents of the entity in question as well as the state or tribal laws, ordinances or resolutions under which it is organized. If the corporation is created under tribal law, the tribe will have likely enacted a corporation code or some similar tribal statute or ordinance governing the ability of tribal corporations to be formed, the procedures to be followed and the powers and immunities of tribal corporations. Wholly-owned tribal corporations may share in the sovereign immunity and other privileges of the tribe itself.[12] Consequently, the powers to sue and be sue may be restricted, and the tribal government may exercise some oversight and control.

If the corporation is created under state law, state corporation laws will apply and state courts will have jurisdiction to hear suits arising from the corporation's activities, regardless of whether those activities occurred on tribal land. A state-chartered tribal corporation is generally not immune from suit.[13] Consequently, tribes largely avoid organization under state laws, if possible.

IV. DUE DILIGENCE

Before entering into an agreement with a tribe or tribal entity, certain due diligence should be undertaken. Specifically, it must be immediately determined whether the contract is

---

[12] *Weeks Construction Inc. v. Oglala Sioux Housing Authority*, 797 F. 2d 668 (8th Cir. 1986). *See also World Touch Gaming v. Massena Management*, 117 F. Supp. 2d 271 (D.N.Y. 2000).

[13] *See Bldg. Inspector & Zoning Officer of Aquinnah v. Wampanoag Aquinnah Shellfish Hatchery*, 818 N.E.2d 1040, 1049-50 (Mass. 2004); *Airvator v. Turtle Mountain Mfg. Co.*, 329 N.W.2d 596, 602 (N.D. 1983).

with the tribe itself, a wholly-owned tribal business or corporation and the law that applies to such entity. Additionally, the need for further governmental approvals must be assessed. Because approval processes can take longer in Indian Country than in non-Indian Country transactions, thorough due diligence should be started as soon as possible to avoid undue delays and expensive interruptions in the transaction timeline.

A. Review of Organizational Documents

Once the identity of the contracting party has been determined, any applicable constitution, charter, bylaws, ordinances and resolutions should be consulted to confirm the authority of the tribal agents participating and to determine any limits on the entity's powers to act, who can act for and on behalf of the entity, the extent to which corporate action, if any, must be approved either by the tribal government or by the Secretary of the Interior (as discussed below), the extent to which assets of the tribe or contracting entity can be used as collateral to secure the obligations, whether the entity enjoys sovereign immunity, the ability of the entity to waive sovereign immunity and the need for further approvals.

In addition to inspecting the tribe's and entity's organizational documents, parties doing business with tribes should also conduct lien searches and investigate contract disputes brought by or against the tribe. Parties contracting with tribes or tribal entities should also determine whether the tribal court, if any, is an appropriate forum to adjudicate disputes related to the transaction, which should include an inquiry into how that court has traditionally handled the issue of sovereign immunity.

B. Determination of Necessary Approvals

Any contract or agreement that "encumbers Indian lands for a period of 7 or more years," must be approved by the Secretary of the Interior unless the Secretary determines that approval is not required.[14] Federal regulations issued by the Secretary state that "encumber" means to attach a claim, charge, right of entry, or liability to real property (referred to generally as encumbrances). Section 81 defines the term "Indian lands" as "lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.[15] Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land."[16]

Failure to secure Secretarial approval can render the agreement null and void and the Secretary will not approve any contract or agreement that does not (1) set forth the parties' remedies in the event of a breach, (2) disclose that the tribe can assert sovereign immunity as a defense in any action brought against it or (3) include an express waiver of tribal

[14] 25 U.S.C. § 81. For a list of contracts that are exempt from Secretarial approval, *see* 25 CFR 84.004.
[15] *Id.*
[16] 25 CFR 84.002.

immunity.[17]

Leaseholds for Indian lands, which typically run 25 years in duration, also require Secretarial approval.[18] Leases under 25 U.S.C. § 415 are similarly void and have no legal effect without the Secretary's approval.[19] Additionally, depending on the type of transaction, additional approvals, like approvals by the National Indian Gaming Commission, may be necessary. Again, thorough due diligence should reveal what approvals will be necessary to effectuate the transaction.

V. SOVEREIGN IMMUNITY

As discussed in Section I above, because of their sovereign status, federally-recognized Tribes are accorded sovereign rights and immunities similar to state governments and local municipalities.[20] Tribal sovereign immunity generally shields tribes from suit for damages and requests for injunctive relief.[21] It has also been held that tribes are immune from subpoena enforcement to compel production of corporate witnesses or tribal documents.[22] Therefore, absent an adequate waiver of sovereign immunity, a contract may not be enforceable against the tribe or tribal entity.[23]

A. Application to Officials, Employees and Tribal Entities

Tribal officials and employees acting in their official capacity are normally accorded the protection of sovereign immunity. Accordingly, the doctrine of sovereign immunity usually cannot be circumvented by naming a tribal employee instead of the tribe itself.[24] However, tribal officials can be subject to suit in the instance where an official has acted outside of the government's authority.[25] Therefore, the ability to invoke sovereign immunity is not limited to the tribe itself but may be available to those individuals acting on behalf of a tribe in their official capacity and within the scope of their authority. [26]

As discussed in Section III above, tribal sovereign immunity also generally extends to

---

[17] 25 U.S.C. § 81.
[18] 25 U.S.C. § 415.
[19] *See Sangre de Cristo Dev. Co. v United States*, 932 F.2d 891, 894 (10th Cir. 1991); *Lawrence v. United States*, 381 F.2d 989, 990 (9th Cir. 1967).
[20] *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).
[21] *Id.* at 58.
[22] *See United States v. James*, 980 F.2d 1314 (9th Cir. 1992) (standing for the proposition that a tribe has immunity at the time subpoena is served unless immunity has been waived); *Bishop Paiute Tribe v. County of Inyo*, 275 F.3d 893 (9th Cir. 2002); *Catskill Dev., LLC v. Park Place Entm't Corp.*, 206 F.R.D. 78 (S.D.N.Y. 2002) (enforced subpoena where waiver of tribal immunity was found, and upheld quashing of subpoena that fell outside of waiver of tribal immunity).
[23] *Three Affiliated Tribes v. Wold Eng'g*, 476 U.S. 877, 890-91 (1986).
[24] *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1322 (9th Cir. 1983).
[25] *See Ex Parte Young*, 209 U.S. 123 (1908).
[26] *See United States v. Oregon*, 657 F.2d 1009, 1013 (9th Cir. 1982). *See also, Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *Davis v. Littel*, 398 F.2d 83, 85 (9th Cir. 1968); and *Bruette v. Knope*, 554 F. Supp. 301, 304 (E.D. Wis. 1983).

tribal casinos,[27] other tribal businesses,[28] and to Section 17 and tribally-chartered corporations.[29] The rationale is that such entities are viewed as "economic arms" of the tribe itself and therefore are entitled to the same cloak of immunity.[30] With regard to contracts, "[t]ribes retain immunity from suits…whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation."[31] To date, the courts have provided little guidance in distinguishing between governmental and commercial activities.[32]

B. Limited Waiver of Sovereign Immunity

It is crucial to seek an appropriate waiver of sovereign immunity in any transaction documents to assure later recourse and remedies. Any waiver of tribal sovereign immunity, whether consented to by the Tribe or authorized by Congress, "cannot be implied but must be unequivocally expressed."[33] In *Sanchez v. Santa Ana Golf Club*, the plaintiff argued that a "sue or be sued clause" within the Section 17 corporation charter served as a waiver of immunity.[34] The court disagreed and held that a "sue or be sued clause" only acts as a waiver when the clause "clearly expresses an intent to waive immunity."[35] However, in *C & L Enterprises*, the Supreme Court held that the inclusion of an arbitration clause in a standard form contract constituted a clear manifestation of intent to waive sovereign immunity.[36] Notwithstanding that there was no specific provision in the agreement expressly waiving the tribe's sovereign immunity, the Court found that the arbitration clause was sufficient evidence of the tribe's intent to waive its immunity for purposes of dispute resolution. Although the *C&L Enterprises* case and other recent decisions indicate a possible trend by the courts to erode the long-standing sovereign immunity principles,[37] the doctrine remains alive and well and carefully drafted waivers should be sought in nearly all business transactions.

---

[27] *Gayle v. Little Six*, 555 N.W.2d 284 (Minn. 1996); *Doe v. Oneida Indian Nation of N.Y.*, 278 A.D.2d 564 (N.Y. App. Div. 2000).

[28] *Puyallup Tribe, Inc. v. Dep't of Game of Wash.*, 433 U.S. 165 (1977) (recognizing tribal immunity for fishing); *Sanchez v. Santa Ana Golf Club, Inc.*, 104 P.3d 548 (N. M. Ct. App. 2004) (applying tribal immunity to tribal owned golf course); *DeFeo v. Ski Apache Resort*, 904 P.2d 1065 (N. M. Ct. App. 1995) (extending tribal immunity to ski resort owned by tribe).

[29] Corporations organized under Section 17 of the Indian Reorganization Act retain tribal immunity. Alternatively, some tribes have purposefully waived their sovereign immunity by incorporating business entities under state law. For a general discussion, see Dao Lee Bernardi-Boyle, *State Corporations for Indian Reservations*, 26 AM. INDIAN L. REV. 41 (2001).

[30] 797 F.2d 668 (8th Cir. 1986).

[31] *Kiowa*, 523 U.S. at 760.

[32] *Basset v. Mashantucket Pequot Tribe*, 204 F.3d 343, 357 (2nd Cir. 2000) (noting precedent cases sustained tribal immunity without distinguishing between governmental or commercial activities).

[33] *Santa Clara Pueblo*, 436 U.S. 49, 58 (1978) (internal quotation marks and citations omitted).

[34] *Santa Ana Golf Club, Inc.*, 104 P.3d 548, 552 (N.M. Ct. App. 2004).

[35] *Id.*

[36] *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411 (2001).

[37] *Kiowa Tribe v. Manufacturing Techs*, 523 U.S. 751 (1998) (while upholding the sovereign immunity waiver of tribe, the U.S. Supreme Court expressed distaste for principle of sovereign immunity and indicated that Congress should take action to do away with the concept). *See also Atkinson Trading Company v. Shirley*, 532 U.S. 645 (2001) (Navajo Nation was prohibited from imposing hotel tax upon non-members on non-Indian fee land within the reservation).

C. Requesting a Waiver

Most tribes will not generally agree to a complete waiver of sovereign immunity where all tribal assets and other rights may be impacted. Instead, tribes tend to grant limited waivers of sovereign immunity whereby the tribe permits recourse to only certain assets or otherwise narrows the circumstances pursuant to which remedies can be sought. For example, a tribal business may limit its waiver solely to the revenue stream of the business involved and no other assets of the tribe, thereby retaining complete unfettered sovereign immunity over all "personal assets" of the tribe itself.

Generally, all limited waivers of sovereign immunity should specify who can sue, what remedies can be sought, what assets can be attached, where suit can be brought and what law will apply. Waivers should also be irrevocable in nature, waive any exhaustion requirement (described in Section VII(E) below) and should provide guaranteed access to the assets if the assets are located within the tribe's territory.

VI. JURISDICTION: STATE VS. TRIBAL

A. Overview

For the most part, Indian tribes maintain their sovereign power over tribal members. However, a tribe's authority over non-Indians, even on the tribe's own lands, is limited, absent a delegation of authority from Congress.[38] In the seminal case of *Montana v. U.S.*, the Supreme Court held that tribes cannot generally regulate the activities of non-members on tribal land.[39] The court listed two exceptions to this general rule: First, "a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements."[40] Second, "a tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[41] Based on *Montana*, tribes possess jurisdictional authority on their lands only to the extent necessary to protect tribal self-government or control internal relations. The purported exercise of tribal power beyond this general rule would be inconsistent with the "dependent status of the tribes, and so cannot survive without express congressional delegation."[42]

B. Tribal Authority over Non-Indians

When determining whether tribal jurisdiction applies, there are several factors to

[38] *See United States v. Mazurie*, 419 U.S. 544, 556-58 (1975), (holding federal government validly delegated regulation of alcohol sales to tribe). *See also* Atkinson Trading Co. v. Shirley, 532 U.S. 645, 659 (2001) (tribe could not impose hotel sales tax on non-Indian land within the reservation absent a congressional delegation).
[39] *Id.*
[40] *Id.*
[41] *Id.* at 566.
[42] *Montana v. United States*, 450 U.S. 544, 564 (1981).

consider. The first important factor is whether the activity in question is taking place on tribal land. The applicability of tribal jurisdiction over non-Indians generally turns on whether the tribe controls the land on which the dispute arose.[43] Specifically, the court will review whether the events at issue occurred in Indian Country,[44] particularly tribal lands or non-Indian lands within the boundaries of a tribal community.[45]

The second important factor is whether a tribal member or a non-member is involved. Again, tribes largely retain jurisdiction over tribal members. However, if a non-member is involved, then the tribe only has authority if one of three conditions enumerated above is met. First, has Congress delegated authority over the subject matter to the tribe? Second, is the party in a consensual commercial relationship with the tribe? Third, does the activity have a "direct effect on the political integrity, the economic security, or the health or welfare of the tribe?"[46]

The result of the above analysis is that tribal courts generally retain jurisdiction over a civil suit by any party, Indian or non-Indian, against an Indian defendant for a claim arising on the reservation.[47] Also, a tribal court can generally only assert jurisdiction over a claim against a non-Indian defendant, when such jurisdiction is "necessary to protect tribal self-government or to control internal relations."[48] Essentially, a tribal court only has jurisdiction over non-Indian parties "who enter consensual relationships with the tribe. . . through commercial dealing, contracts, leases, or other arrangements."[49] Pursuant to *Montana*, a private contract qualifies as a consensual relationship, thus preserving tribal court jurisdiction

---

[43] *Allstate Indemnity Company v. Stump*, 191 F. 3d 1071, 1075 (9th Cir. 1999).
[44] 28 U.S.C. § 1151 (2000).
[45] "The ownership status of land …may *sometimes* be a dispositive factor." *Nevada v. Hicks*, 533 U.S. 353, 360 (2001) (emphasis added).
[46] *Montana*, 450 U.S. 544, 566 (1981).
[47] *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987) ("We have repeatedly recognized the Federal Government's longstanding policy of encouraging tribal self-government … This policy reflects the fact that Indian tribes retain 'attributes of sovereignty over both their members and their territory….'") (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975)).
[48] *Montana v. United States*, 450 U.S. 544, 564 (1981). The two-pronged *Montana* test has its roots in the notion that, over time, "the Indian tribes have lost many of the attributes of sovereignty." *United States v. Wheeler*, 435 U.S. 313, 326 (1978). As a result, tribes are less likely to have jurisdiction over nonmembers. Of course, federal statutes or treaties could also expressly authorize tribal jurisdiction over civil matters – but that has yet to occur. *See Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997). For a detailed analysis of the *Strate* decision, see Jamelle King, *Tribal Court General Civil Jurisdiction over Actions between Non-Indian Plaintiffs and Defendants*: *Strate v. A-1 Contractors*, 22 AM. INDIAN L. REV. 191 (1997).

The *Montana* Court clarified the two exceptions to its rule that tribal courts do not have jurisdiction over non-Indians by noting that "[a] tribe may also retain … civil authority over the conduct of non-Indians within its reservation when that conduct threatens of has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. According to the *Strate* Court, the key to analyzing that exception is to determine whether tribal jurisdiction is needed to preserve "the right of reservation Indians to make their own laws and be ruled by them." 520 U.S. at 459 (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)).
[49] *Montana*, 450 U.S. at 565. *See Strate*, 520 U.S. at 457 (citing the same passage from *Montana*).

over non-Indian parties to tribal contracts.[50]

C. State Authority on Tribal Lands

States may have authority in Indian Country if authorized by the federal government or if certain state interests are implicated. For instance, federal law (**"Public Law 280"**) grants the state civil authority to adjudicate disputes, either between Indians or to which Indians are parties, arising in Indian Country.[51] Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin all operate as "Public Law 280 States."[52]

Additionally, in recent years, the courts have expanded the circumstances of state jurisdiction on tribal lands. The following cases illustrate this trend:

In *Nevada v. Hicks*, the Supreme Court held that a state game warden had a right, under federal law, to enter upon a reservation for the purpose of searching a tribal member's home pursuant to a warrant issued by a Nevada State Court.[53] Following the search, Hicks, a member of the Fallon Paiute-Shoshone Tribes of Western Nevada, sued the warden in the tribal court claiming that the warden had overstepped the authority in the warrant.[54] The tribal court confirmed its jurisdiction over the matter.[55] On appeal, the Ninth Circuit determined that the game warden had overstepped his authority and ruled in Hicks' favor.[56] However, upon review, the United States Supreme Court held that tribes lack adjudicatory jurisdiction to hear claims under 42 U.S.C. § 1983 arising from the activities of state officials on reservation land.[57] The Court went on to observe that it has "never held that a tribal court

---

[50] *See Strate*, 520 U.S. at 457 (describing how A-1's subcontract work, although a "consensual relationship" with the tribes in question, did not give rise to tribal court jurisdiction because the tribe was a non-party to the accident). The *Montana* Court described specific examples of relationships that it thought would meet the test in its opinion. 450 U.S. at 565-66. *See also Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001) (requiring that the law or regulation over which the tribal court seeks to exercise jurisdiction have a nexus to the consensual relationship itself) (cited in *Ford Motor Co. v. Todecheene*, 394 F.3d 1170, 1179 (9th Cir. 2005)).

[51] *See* 28 U.S.C. § 1360(a) (2000) (granting certain states jurisdiction over civil causes of action arising in Indian Country "to the same extent that such State has jurisdiction over other causes of action"). However, if tribal ordinances or customs exist that do not conflict with applicable state law, such tribal laws can give rise to independent causes of action in state court. 28 U.S.C. § 1360(c) (2000). Also, some courts have decided that any ambiguities pertaining to § 1360 should be construed in favor of Indians. *See, e.g., In re Humboldt Fir, Inc.*, 426 F. Supp. 292 (N.D. Cal. 1977), *aff'd* 625 F.2d 330 (9th Cir. 1980).

[52] In Alaska, California, Nebraska, and Wisconsin, the state has civil jurisdiction in all areas of Indian Country. The Red Lake Reservation in Minnesota and the Warm Springs Reservation in Oregon are exceptions in those respective states, in which the state does not have civil jurisdiction. *Id*.

[53] 533 U.S. 353 (2001).

[54] *Id.* at 374.

[55] *Id.* at 374.

[56] *Id.* at 374.

[57] *Id*. at 364. The Court noted that "tribal authority to regulate state officers in executing process related to [off-reservation violations of state law] is not essential to tribal self-government or internal relations." *Id*. It went on to assert that "a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction," noting that § 1983 does not provide for tribal court jurisdiction. *Id*. at 367-68

had jurisdiction over a nonmember defendant."[58] The Court reasoned that the state has jurisdiction over a tribal member on Indian lands when "state interests outside the reservation are implicated."[59]

Additionally, in *Strate v. A-1 Contractors*, the tribal court was found to have no jurisdiction over civil claims against non-members where the accident occurred on a public highway running through reservation land.[60] The Supreme Court held that when an accident occurs on a public highway maintained by the State pursuant to a federally granted right-of-way over Indian reservation land, a civil action against nonmembers falls within state or federal regulatory and adjudicatory jurisdiction.[61] While opining that *Montana* governed the case, the Court concluded that neither exception under *Montana* applied to the circumstances of the case.[62]

Finally, the *Narragansett Indian Tribe v. Rhode Island*[63] case further reflects the current judicial trend to permit the reach of state laws to tribes and tribal officials. There, the State of Rhode Island was permitted to seek taxes from the sale of cigarettes to non-Indians at the tribe's smoke shop on the reservation.[64] Because the legal incidence of Rhode Island's cigarette tax falls on the consumer rather than the distributor, the Court reasoned that the tribe was obligated to comply with the state's cigarette tax laws as they pertain to cigarettes sold to non-Indian consumers[65]

VII. DISPUTE RESOLUTION

Assuming an effective waiver of sovereign immunity has been negotiated, contractual disputes involving tribes and tribal entities may be resolved in a variety of forums. Choice of forum and choice of law provisions should be negotiated in the contract and should also be recited in any resolution of the tribe and/or tribal entity approving the transaction.

A. Federal Jurisdiction

Because federal courts are courts of limited jurisdiction, there must be subject matter jurisdiction for any claim filed in federal court; the parties cannot simply agree upon federal court jurisdiction in their agreement. To obtain federal court jurisdiction, there (1) must be complete diversity of citizenship among the parties,[66] or (2) the dispute must arise under

---

[58] *Id*. at 358.
[59] *Id.* at 380.
[60] 520 U.S. 438 (1997).
[61] *Id* at 442.
[62] *Id.*at 457.
[63] 407 F.3d 450 (1st Cir. 2005).
[64] *Id.*
[65] *Id.*
[66] 28 U.S.C. § 1332 ("Diversity of Citizenship: The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of value of $75,000, exclusive of interest and costs, and is between - (1) citizens of different states…").

federal law and pose a federal question.[67] The courts have held that a tribe is not a citizen of any state for diversity purposes, and therefore, cannot sue or be sued in federal court based on diversity jurisdiction.[68] Thus, it is unlikely that diversity is an available basis for obtaining federal court jurisdiction against a tribe. As a result, the dispute will require a "federal question" to obtain federal court jurisdiction. Because most commercial contract disputes with tribes do not involve any issues of a "federal" nature, state or tribal courts are the more likely forums for resolution of such issues.

B. State Court Jurisdiction

State courts do not generally have jurisdiction over matters arising on a reservation or tribal lands where a tribe is involved. In *Williams v. Lee* the Supreme Court enunciated the long standing principle of Indian tribal rights of self-government and exclusive tribal jurisdiction over civil matters on reservations.[69] There, the court held that permitting the state court to exercise jurisdiction over the debt collection proceedings would "undermine the authority of the tribal courts over reservation affairs and hence would infringe on the right of the Indians to govern themselves."[70]

When defining the limits of state power over tribal affairs, the Supreme Court has moved away from an inherent sovereignty analysis and toward a federal preemption analysis.[71] The preemption doctrine asks whether the state's attempted regulation has been preempted by the plenary power of the federal government, as evidenced by federal treaties or laws.[72] Since Congress is rarely explicit in preempting state law, the court typically must weigh the state's interest in controlling the conduct against the combined federal and tribal interests to determine whether state law is preempted.[73]

In *New Mexico v. Mescalero Apache Tribe*, the United States Supreme Court stated, "state jurisdiction is pre-empted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests

---

[67] 28 U.S.C. § 1331 ("Federal Question: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.")

[68] *Oneida Indian Nation v. County of Oneida*, 464 F.2d 916 (2d Cir. 1972) (tribes' claims based on federal jurisdiction dismissed; lack of citizenship defeated diversity jurisdiction); *Standing Rock Sioux Tribe v. Dorgan*, 505 F.2d 1135 (8th Cir. 1974) (tribe cannot sue or be sued in federal court under diversity jurisdiction); *Gaines v. Ski Apache* 8 F.3d 726 (10th Cir. 1993) (tribes are not citizens of any state for diversity jurisdiction purposes); *Romanella v. Hayward*, 114 F.3d 15 (2d Cir. 1997) (tribes are not citizens of any state and cannot be sued in federal court under diversity jurisdiction); *Barker-Hatch v. Viegas Group Baron Long Capitan Grande Band*, 83 F. Supp. 2d 1155 (S.D. Cal. 2000) (tribes are not citizens of any state for jurisdiction purposes); *American Advantage v. Table Mountain Rancheria*, 2002 U.S. App. LEXIS 11692 (9th Cir. 2002) (lack of diversity affirmed by Ninth Circuit; tribal entities not comparable to state corporations); *Stock West Corp. v. Confederated Tribes*, 873 F.2d 1221, 1228 (9th Cir. 1989) (parties can waive personal jurisdiction but cannot waive court's lack of subject matter jurisdiction).

[69] *Id.*

[70] *Id.* at 223.

[71] *See McClanahan v. Ariz. St. Tax Comm'n*, 411 U.S. 164 (1973).

[72] *Id.*

[73] *Id.*

at stake are sufficient to justify the assertion of state authority."[74] The Court then held that New Mexico could not impose its own fishing and hunting regulations on non-Indians on the reservation because of strong federal interests in "tribal self-sufficiency and economic development" and a lack of state interests.[75]

Tribes may also agree to state court jurisdiction by contract if the agreement relating to the dispute includes an express waiver and specific dispute resolution provisions permitting adjudication in a state forum.[76]

C. Tribal Court Jurisdiction

Tribes with tribal courts may insist on the resolution of disputes in their own court system. Many tribes have created their own court system with extensive court rules and procedures (*e.g.*, the Mashantucket Pequot tribal courts and Navajo Nation tribal courts). These courts are generally equipped to handle almost all matters that are unique to tribal cultural practices and including, without limitation, matters arising on or related to tribal lands and matters involving tribal entities. In this regard, there are many tribal courts with well-developed case law and experienced judges. However, there are also less sophisticated tribal court systems that may not be equipped to adjudicate business disputes or the contracting tribe may not have a tribal court system at all.

Most tribal law and order codes contain procedural rules specific to the tribal court,[77] as well as tribal statutes and regulations. Tribal procedural laws outline the tribal court's adjudicatory authority and may set forth limitations on tribal jurisdiction.[78] Tribal laws also include traditional practices, including commercial customs, which are based on oral history but may not be codified. Increasingly, tribes are adopting commercial laws modeled after the Uniform Commercial Code.[79]

Tribal court judges usually will adhere to the precedent created by their own courts. In some instances, tribal judges place great weight on the decisions from other tribal courts. Unfortunately, conducting research on prior tribal court decisions may be difficult. There is no official tribal court reporter that compiles all published decisions from the various courts. However, the Tribal Court Clearinghouse website does publish online many tribal court decisions and can be an excellent resource.[80] Further, not all tribal courts maintain prior

---

[74] 462 U.S. 324, 334 (1983).
[75] *Id.* at 344.
[76] *See Puyallup Tribe v. Dept. of Game*, 433 U.S. 165, 172 (1977) (suggesting that a state court could exercise jurisdiction in situations where tribal courts would normally be empowered if the tribe had given an effective waiver of such jurisdiction). For more guidance about conducting business with Indian tribes, see William V. Vetter, *Doing Business with Indians and the Three 'S'es: Secretarial Approval, Sovereign Immunity, and Subject Matter Jurisdiction*, 36 ARIZ. L. REV. 169 (1994).
[77] *See, e.g.*, II Ak-Chin Indian Cmty. Law and Order Code.
[78] *See, e.g.*, I Ak-Chin Indian Cmty. Law and Order Code ch.1.
[79] *See, e.g.*, IX M.P.T.L. (Mashantucket Pequot Tribal Law) ch.1.
[80] *See* http: www.tribal-institute.org/lists/decision.htm

opinions in an easily researchable format, if at all.[81] Federal and state court opinions can often serve as persuasive authority to a tribal court, particularly in commercial litigation matters.[82] Many state courts extend full faith and credit to tribal court orders. Similarly, federal courts generally grant comity to tribal judges' rulings.[83]

D. Arbitration

When the parties are unable to agree on state or tribal court as the forum for resolving disputes, the parties may compromise by agreeing to arbitration or another alternative dispute resolution mechanism (*e.g.*, mediation). However, questions relating to where the arbitration award would be enforced must still be negotiated and included in the contract and any applicable resolutions.

E. Exhaustion of Tribal Remedies

When sued in tribal court, non-Indian parties can ultimately challenge tribal jurisdiction in federal court because the question of tribal court has jurisdiction over a non-Indian party gives rise to federal question subject matter jurisdiction.[84] However, the party is usually required to exhaust all options in the tribal court prior to challenging tribal jurisdiction in federal district court.[85] Pursuant to this doctrine, a federal court will not hear a matter arising on tribal lands until the tribal court has determined the scope of its own jurisdiction and entered a final ruling.[86] Ordinarily, a federal court should abstain from hearing the matter

---

[81] In contrast, however, the decisions of the Mashantucket Pequot Tribe can be found online easily through the Tribal Court Clearinghouse website.

[82] *See, e.g.*, *Mamiye v. Mashantucket Pequot Gaming Enterprise*, 1 Wash. 245 (1996), in which the tribal court cites to Federal as well as Connecticut cases as persuasive authority.

[83] *See, e.g.*, *Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 555 (9th Cir. 1991).

[84] *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. at 19 ("If the Tribal Appeals Court upholds the lower court's determination that the tribal courts have jurisdiction, petitioner may challenge that ruling in the District Court.").

[85] *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857 (1985) ("Until petitioners have exhausted the remedies available to them in the Tribal Court system … it would be premature for a federal court to consider any relief."). The *National Farmers Union* Court stated that tribal courts should be allowed to examine the scope of their own jurisdiction in the first instance. *Id*. at 856. It also outlined three general exceptions to the exhaustion requirement. *Id*. at 857; *see infra* note 25 and accompanying text. The Supreme Court refined its "exhaustion doctrine" in 1987 when *Iowa Mutual* clarified that "[t]he alleged incompetence of tribal courts is not among the exceptions to the exhaustion requirement established in *National Farmers Union*…." *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

Many scholarly articles survey and analyze the cases in which exhaustion doctrine evolved. *See, e.g.*, John Arai Mitchell, *A World Without Tribes? Tribal Rights of Self-Government and the Enforcement of State Court Orders in Indian Country*, 61 U. CHI. L. REV. 707 (1994); Phillip Allen White, *The Tribal Exhaustion Doctrine: 'Just Stay on the Good Roads, and You've Got Nothing to Worry About,'* 22 AM. INDIAN L. REV. 65 (1997).

[86] *See Duncan Energy Co., Inc. v. Three Affiliated Tribes of the Fort Berthold Reservation*, 27 F.3d 1249, 1300 (9th Cir. 1993).

"until after the tribal court has had a full opportunity to determine its own jurisdiction."[87]

If the tribal court concludes it has jurisdiction, it will proceed to rule upon the merits of the case.[88] After exhausting any available appellate options,[89] the non-Indian party can then file suit in federal court, whereby the question of tribal jurisdiction is reviewed on a de novo standard.[90] The federal court may look to the tribal court's jurisdictional determination for guidance; however, such determination is not binding nor controlling.[91] If the federal court affirms the tribal court determination, the non-Indian party may not re-litigate issues already determined on the merits by the tribal court.[92]

There are several exceptions to the exhaustion doctrine. Federal courts are not required to defer to tribal courts when an assertion of tribal jurisdiction is "motivated by a desire to harass or is conducted in bad faith . . . or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction."[93] Further, when "it is plain that no federal grant provides for tribal governance of nonmembers' conduct on land covered by *Montana*'s main rule," exhaustion "would serve no purpose other than delay."[94]

Moreover, where the primary issue involves a federal question, exhaustion of tribal remedies may not be mandated. In *Altheimer & Gray v. Sioux Manufacturing Corp.*, the federal court refused to mandate exhaustion of tribal remedies because the main issue in the case involved a federal question, *i.e.*, the Secretary of Interior's requirement to approve

---

[87] *Nat'l Farmers Union*, 471 U.S. at 857. The *Iowa Mutual* Court noted that exhaustion doctrine has its roots in "considerations of comity." 480 U.S. at 15. Also, "[e]xhaustion of tribal court remedies … will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Nat'l Farmers Union*, 471 U.S. at 857. But the *Strate* Court reiterated a Supreme Court statement from *Iowa Mutual* that the exhaustion requirement was "prudential" and not jurisdictional. 520 U.S. 438, 453 (1997).

[88] *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987).

[89] *See Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. at 17 ("At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts.").

[90] *See Nat'l Farmers Union*, 471 U.S. at 853 ("a federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction"). *See also Ford Motor Co. v. Todecheene*, 394 F.3d 1170, 1173 (9th Cir. 2005) ("Whether a tribal court properly exercised its jurisdiction is a question of law reviewed de novo.") (citation omitted).

[91] *Iowa Mutual*, 480 U.S. at 19.

[92] *Id*. at 19 ("Unless a federal court determines that the Tribal Court lacked jurisdiction … proper deference to the tribal court system precludes relitigation of issues raised … and resolved in the Tribal Courts.").

[93] *Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857 n.21 (1985).

[94] *Strate v. A-1 Contractors*, 480 U.S. 438, 459 n.14 (1997). *See also Nevada v. Hicks*, 533 U.S. 353, 369 (2001) (citing the *Strate* exception in finding that the exhaustion requirement did not apply to a case in which a tribal court tried to exercise jurisdiction over a state official performing his official duties on a reservation). For a more thorough critique of *Nevada v. Hicks*, see Ronald Eagleye Johnny, *Nevada v. Hicks: No Threat to Most Nevada Tribes*, 25 AM. INDIAN L. REV. 381 (2000).

certain contracts.[95] There, the court refused to apply *National Farmers* and *Iowa Mutual* to require exhaustion of tribal court remedies as a judicial condition precedent to federal courts taking cases arising on Indian reservations. The court distinguished *National Farmers* and *Iowa Mutual* on the grounds that there was no challenge to tribal court jurisdiction, there was no pending case in tribal court, and the dispute did not touch or concern a tribal ordinance or law.[96]

F. Negotiating Dispute Resolution Provisions

Agreements with tribes and tribal entities should address and contain provisions identifying the forum in which any disputes arising from the transaction contemplated may be resolved without leaving room for any ambiguity. The contract should contain an express unequivocal agreement by the parties that disputes arising from the contract shall be brought in the federal court (if appropriate), state court, tribal court or be resolved by alternate dispute resolution mechanisms such as mediation or arbitration. Agreements may also provide for more than one forum or mechanism for resolving disputes. For example, an agreements may contain provisions whereby disputes not exceeding a certain monetary limit will be resolved in tribal courts and all other matters shall be resolved by arbitration. In that instance, it is crucial that the limited waiver of sovereign immunity to contemplate all dispute resolution forums and procedures.

The contract should contain specific language regarding what law and other procedures are applicable to the transaction. For example, (a) whether federal law, state law or tribal law applies, and (b) whether filing and recording of relevant security documents will be in the state recorder's office, at the BIA office or with the tribe, or whether the recording should be in all such recorders' offices. Finally, it is important to remember that if the forum selection and dispute resolution procedures are poorly crafted, parties to a contract may be left without a forum to adjudicate disputes.

VIII. CONCLUSION

The increasing rate of economic development in Indian Country through the success of gaming has prompted many businesses to explore and undertake more transactions with tribes and tribal entities. Because of the unique sovereign and jurisdictional characteristics attendant to business transactions with tribes and tribal enterprises, detailed due diligence should be conducted with respect to the pertinent tribal organizational documents and governing laws, which may collectively dictate and control the business relationship. The most critical contract provision is an express and unequivocal waiver of sovereign immunity. Absent a waiver of sovereign immunity, the non-Indian contracting party may not be able to enforce the contract against the tribe or tribal enterprise in any forum, including tribal courts or arbitration.

The key to successful partnerships with tribes and tribal entities is to ensure that the transactional documents contain clear and unambiguous contractual provisions which fully

[95] 983 F.2d 803 (7th Cir. 1993).
[96] *Id.* at 814.

address all rights, obligations and remedies of the parties. Assuring that both sides of the transaction fully understand and respect the deal will hopefully lead to a long-lasting and beneficial business relationship for all parties.