

# Review, Stamp, Approve



## the facts

A lighting consultant entered into a contract to perform work on a convention center for a Native American tribe. The consultant was in charge of lighting design documents and construction administration. The consultant had design review of the construction documents completed, but did not actually stamp them. The electrical engineer incorporated the consultant's design into the construction documents and stamped the plans.

### Risk Factor #1

When reviewing documents, the consultant should pay special attention that his original design has not been altered.

### Risk Factor #2

Tribal Law should be researched prior to signing contracts.

Due to the large number of change orders, the tribe brought suit against the consultant for \$3 million alleging design errors. The consultant evaluated the change orders that related to his scope of services. It was found that 7 of the 10 change orders had nothing to do with the consultant's design. Of the remaining three, only one had significant damages estimated at \$1.3 million. The consultant's exposure was estimated at 25% of the \$1.3 million.

## the result

The tribe had sovereign immunity, and the case had to go before a tribal court. Each Native American tribe has its own specific codes of law, with no uniformity from tribe to tribe.

Tribal Law can be a significant and unmanageable risk. Consultants faced with a professional services agreement construed under tribal law need to address whether tribal law can be researched so a reasonable expectation of the results of a dispute can be formed. Consultants should also consider whether specific legal codes or interpretations can be referenced in the contract. An alternative dispute mechanism such as mediation services or arbitration may be acceptable.

The claim settled for \$440,000 paid on behalf of the consultant.