

# dbbr DAILY BUSINESS REVIEW

**ON APPEAL** Lack of records disclosure at issue

## Seminole Tribe appeals rejection of sovereign immunity defense

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Contract disputes between the Seminole Tribe of Florida and a major multinational contractor over unpaid bills have put a spotlight on the tribe's secretive government.

AECOM Technology Corp. sued in 2009, claiming it wasn't paid for change orders on three contracts to build water and wastewater treatment plants for the tribe. The disputed amount was under \$12 million but with interest is now closer to \$15 million.

Early on, the tribe claimed sovereign immunity barred the lawsuit by Los Angeles-based infrastructure provider AECOM. The contractor insists it was careful to obtain sover-



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Broward Circuit Judge Jeffrey Streitfeld, left, denied the Seminole Tribe's motion for sovereign immunity. Former tribal councilman Max Osceola Jr. is seen at right.

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## SEMINOLE: Dispute over unpaid bills puts tribe in spotlight

eign immunity waivers.

Despite that, the tribe moved to dismiss on grounds state court did not have jurisdiction. AECOM gained a significant victory in May when Broward Circuit Judge Jeffrey Streitfeld denied the tribe's motion.

Describing the case as one of first impression, Streitfeld found after discovery that the facts warranted "the imposition of adverse evidentiary inferences as well as adverse presumptions against the tribe."

What was especially damaging to the tribe was a near total lack of records disclosure pertinent to the case.

The tribe claimed documents were "lost or missing," included ordinances, resolutions, contracts and the email correspondence by tribal officials.

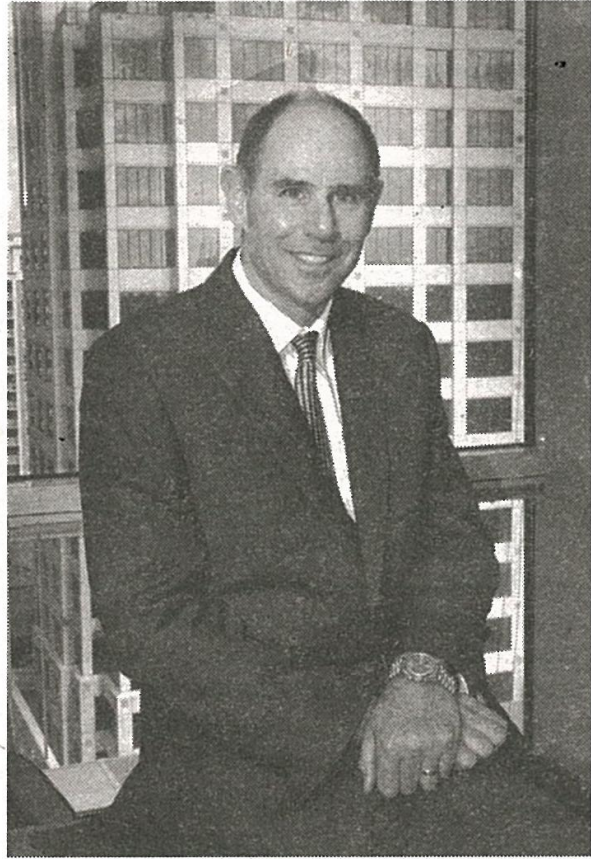
"Very little is known about how they govern themselves because generally speaking whenever there is an issue they simply raise sovereign immunity," said AECOM attorney Robert Hackleman, a shareholder in Gunster's Fort Lauderdale office.

Native American tribes have been granted limited sovereign rights by Congress. However, they're required to draft and abide by their own constitutions. The Seminole Nation of Oklahoma, for example, functions like most tribes in that its constitution and laws are published, its meetings are open and it maintains a tribal court system.

### LONG EXCLUDED

The Florida Seminoles have no court system for resolving civil disputes. Except for invited guests, tribal council meetings are closed to nonmembers, and all records are secret.

"Even if you're a member of the tribe and you want information, you have to apply to the tribal counsel," Hackleman said.



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**AECOM attorney Robert Hackleman describes the lengths to which the Seminole Tribe has withheld documents as extreme.**

When deposed about the strict secrecy of tribal records, former tribal councilman Max Osceola Jr. described a motive born of historical injustices against Native Americans.

"Until the Civil Rights Act, natives were excluded from a lot of things," Osceola said. "So we're including just our tribal members in these."

During the deposition, Gunster attorney Helaina Bardunias asked about one ordinance and said, "I'm just wondering if I can request a copy."

Osceola responded: "OK. You could request it. But it wouldn't be answered."

Andrew Jackson Bowers Jr., a tribal councilman described as a reformer,

## AECOM V. SEMINOLE TRIBE

■ **Nov. 20, 2009:** AECOM sues Seminoles for contract nonpayment

■ **May 22, 2010:** Circuit Judge Jeffrey Streitfeld denies motion to dismiss

said during his deposition that before 2011 the council preferred not to have a court system so it could do as it pleased.

In the case of AECOM's contracts, the company said it dealt exclusively with Susan Kippenberger, the tribe's public works director.

### 'WHAT YOU DON'T KNOW'

According to depositions by members of the tribe, Kippenberger had the authority to accept sovereign immunity waivers, the chairman of the tribal council signed off on her decisions, the tribal council knew about the contracts and the tribe's legal counsel reviewed them.

While Kippenberger was public works director, AECOM had good relations with the tribe. The company successfully completed two projects. It was getting paid on the projects until Kippenberger resigned in 2007.

The tribe has argued she exceeded her limited authority to waive sovereign immunity when it came to the change orders.

The contracts for the projects on the Hollywood, Big Cypress and Brighton reservations say any dispute would go to Florida state court "for final resolution." Nevertheless, the tribe is appealing Streitfeld's order to the Fourth District Court of Appeal.

Donald Orlovsky of Kamen & Orlovsky in West Palm Beach, who represents the

tribe, said has filed two petitions with the appeals court, one seeking review and the other to stop enforcement of Streitfeld's order. Orlovsky said the court has asked AECOM to show cause why the appellate relief should not be granted.

AECOM has not yet filed its response.

### HEAVY REDACTIONS

Hackleman described the lengths to which the tribe has withheld documents as extreme.

"Their constitution requires things be made public. Apparently that's never been done," he said.

To establish the tribe's record-keeping practices, AECOM attorneys requested ordinances, resolutions, contracts and ratified sovereign immunity waivers from 1995 to 2011.

No contracts or ratified waivers were produced. Two resolutions from 2004 were handed over, but less than a third of the tribe's ordinances got into the case file. Almost all of the documents surrendered were heavily redacted.

"The title and entire statute would be deleted. You just don't know what you don't know, and you don't know what they're trying to hide," Hackleman said.

Often, businesses that get in disputes with the tribe are not well-funded, and it becomes too costly to overcome the tribe's tactics, he said. But with \$8 billion in annual revenue, "AECOM is a major player. They have the resources to mount the sort of legal effort that it takes."

The tribe has financial heft of its own. The Seminoles debuted Indian gambling in 1979 with a high-stakes bingo hall and now owns the Hard Rock branch with 175 venues including 14 hotels and seven more on their way.

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