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FREDERICKS PEEBLES & MORGAN WINS VICTORY IN NEW YORK TOBACCO CASE

Omaha, Nebraska—Fredericks Peebles & Morgan announced today a victory for the firm on behalf of its client HCI Distribution in a lawsuit filed in New York regarding the state's seizure of legally purchased tobacco products from the client. The court's decision is the culmination of a six-month long effort to prevent the state of New York from continuing to hold the client's property following a seizure earlier this year. Firm attorneys Joseph Messineo and Benjamin Fenner successfully litigated a court case in New York Supreme Court, the State's trial court, on behalf of HCI Distribution. HCI Distribution is the wholesale distribution company marketing tribal tobacco to Indian Reservations located throughout the United States. The company is operated by Ho-Chunk, Inc., the economic development corporation of the Winnebago Tribe of Nebraska.

In January of this year, an HCI Distribution truck was stopped by the Border Patrol and then handed over to the New York State Police. On board the truck were more than \$400,000.00 in cigarettes and tobacco that HCI Distribution had purchased legally from Ohserase Manufacturing located on St. Regis Mohawk tribal land in New York. The cigarettes were bound for the Winnebago Tribe Reservation in Nebraska.

State Police confiscated the truck and cigarettes and detained the driver for several hours without a warrant. The driver was eventually released, but the cigarettes were taken to State Police offices and have remained there ever since. No forthcoming criminal or civil proceedings by the State have followed. The New York officials simply confiscated the cigarettes and would not release them.

The incident generated a lawsuit in New York Supreme Court in St. Lawrence County by HCI Distribution. The suit filed named the New York State Police, St. Lawrence County District Attorney and other state officials as defendants. The suit contended that the state had no legal right to confiscate the cigarettes because under the plain language of New York law, cigarettes being transported out of the state are not subject to state taxes and regulations. Additionally, there is a specific exemption for the common or contract carriers to legally transport the unstamped cigarettes out of the state.

Attorneys for the Firm argued that as there are no taxes due on the tobacco that was seized there was no basis for the seizure. Additionally, the confiscation of more than \$400,000.00 of merchandise for six months creates a major hardship for HCI Distribution because there is no guarantee that the tobacco in storage will retain enough quality for re-sale.



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In a June 18th ruling in New York Supreme Court, Judge David Demarest ordered the immediate return of all property seized by the State Police. “While we are gratified by our ability to offer the winning argument in this lawsuit, we are concerned about the condition of the merchandise seized and the timetable for return of our client’s merchandise by New York State authorities. Until the product is actually returned, we won’t know the full extent of the financial damage facing our client,” Joe Messineo stated.

Over the last few years, there has been increased focus by a variety of state officials throughout the country on Native American tobacco manufacturing, wholesale and retail distribution. States are under enormous pressure from the big tobacco companies. The largest participating manufacturers (Altria-Philip Morris, R.J. Reynolds and Lorillard) have threatened to withhold large payments to the states stemming from a 1998 Master Settlement Agreement (MSA) between big tobacco companies and 46 state attorneys general. This MSA fee has become a significant portion of many states’, general funds. New York’s payment alone reaches into the hundreds of millions of dollars annually. However, for many Native American tribes, tobacco products are a significant and sometimes the only source of economic development available to improve the lives of their tribal membership and create a working economy on the reservation. It is an ongoing issue of tribal sovereignty versus states’ taxation laws and policies.

Fredericks Peebles & Morgan is a national law firm dedicated to representation of American Indian tribes and organizations throughout the United States. In addition to basic legal services, the Firm focuses on legislative and governmental issues, corporate and financial affairs, energy and tax issues, as well as litigation. Firm attorneys have extensive knowledge of federal tobacco laws such as the Prevent All Cigarette Trafficking Act, the Family Smoking Prevention and Tobacco Control Act, the Contraband Cigarette Trafficking Act, and the Federal Cigarette Labeling & Advertisement Act. The Firm has offices in 7 states and Washington, D.C. For more information, please visit the Firm website www.ndnlaw.com.