

SEP 4 2014

No. 13-1496

**In the Supreme Court of the United States**

DOLLAR GENERAL CORPORATION, *ET AL.*,  
*Petitioners,*

v.

MISSISSIPPI BAND OF CHOCTAW INDIANS, *ET AL.*,  
*Respondents.*

*On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Fifth Circuit*

**SUPPLEMENTAL BRIEF**

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**RULE**

Sup. Ct. R. 15.8 . . . . . 1

## INTRODUCTION

Pursuant to Sup. Ct. Rule 15.8, Respondents submit this supplemental brief to address new authority which did not exist at the time Respondents' Brief in Opposition was filed. The new authority is *Jackson v. Payday Financial, LLC*, \_\_\_ F.3d \_\_\_, 2014 WL 4116804 (7th Cir. 2014). The ruling of that case further documents the absence of any split in the Circuits on the question whether *Plains Commerce Bank v. Long Family Land and Cattle Company, Inc.*, 554 U.S. 316 (2008) adopted a narrower, more stringent version of the "consensual relationship" exception respecting tribal jurisdiction established in *Montana v. United States*, 450 U.S. 544 (1981). This additional case law confirms there is no split in the Circuits regarding the core issue on which *certiorari* has been requested.

### **THERE IS NO SPLIT IN THE CIRCUITS ON THE CORE ISSUE ON WHICH *CERTIORARI* HAS BEEN REQUESTED.**

Respondents' Brief in Opposition was filed on August 21, 2014. Respondents argued *inter alia* (Br.in Opp., pp.11-12, 17), that all of the Circuits which had addressed the issue had ruled that "*Plains Commerce* did not change anything about the consensual relationship exception or the nexus text." *Id.* at 11. Respondents cited cases from the Eighth, Ninth and Tenth Circuits, together with the Fifth Circuit's ruling in the instant case to support that point. *Id.* at 11-12.

On August 22, 2014, the Seventh Circuit issued its ruling in *Jackson v. Payday Financial, LLC*, \_\_\_ F.3d \_\_\_, 2014, WL 4116804 (C.A.7 (Ill.)). There the Court applied the same consensual relationship test as had

been established before *Plains Commerce. Id.* at 14. The Court held that the Cheyenne River Sioux Tribal Court did not have jurisdiction to adjudicate various non-Indian loan customer claims against a tribally-affiliated lender arising from payday loan transactions because the non-Indian parties had never engaged in any activity on the Tribe's reservation lands, and all their loan transactions with the tribally-affiliated lender had occurred off-reservation in Illinois, another state:

Here, the Plaintiffs have not engaged in *any* activities inside the reservation. They did not enter the reservation to apply for the loans, negotiate the loans, or execute loan documents. They applied for loans in Illinois by accessing a website. They made payments on the loans and paid the financing charges from Illinois. Because the Plaintiffs' activities do not implicate the sovereignty of the tribe over its land and its concomitant authority to regulate the activity of nonmembers on that land, the tribal courts do not have jurisdiction over the Plaintiffs' claims.

\* \* \* \*

The [tribal lender], however, made no showing that present dispute implicates *any* aspect of "the tribe's inherent sovereign authority."<sup>43</sup> *Id.* at 14-15.

In footnote 43, the Court discussed *Dolgenercorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167 (5<sup>th</sup> Cir. 2014), observing that the case "is not to the contrary" respecting the Seventh Circuit's conclusion in text that the events in *Jackson* did not implicate "*any* aspect of 'the tribe's inherent sovereignty.'" *Id.* at 22.

The Court in *Jackson* in footnote 43 distinguished *Dolgencorp* on its facts, noting *inter alia* that the “*Dolgencorp* case arose from claims that a tribal member had been ‘sexually molested by the store manager’” at “a Dollar General Store located on reservation lands,” concluding that “[i]n the present situation, there is no equivalent tribal concern that satisfies the requirements of *Plains Commerce*.” *Id.* at 23. (Emphasis added).

The Seventh Circuit then quoted without disapproval the very portions of the *Dolgencorp* opinion in which the Fifth Circuit rejected petitioner’s argument that *Plains Commerce* had altered the consensual relationship test:

... the Fifth Circuit rejected *Dolgencorp*’s argument “that *Plains Commerce* narrowed the *Montana* consensual relationship exception, allowing tribes to regulate consensual relationships with nonmembers only upon a showing that the *specific* relationships “implicate tribal governance and internal relations.” “*Id.* at 174 (emphasis added) (quoting *Plains Commerce Bank*, 554 U.S. at 334-35). It stated:

It is hard to imagine how a single employment relationship between a tribe member and a business could ever have such an impact. On the other hand, at a higher level of generality, the ability to regulate the working conditions (particularly as pertains to health and safety) of tribe members employed on reservation land is plainly central to the

tribe's power of self-government. Nothing in *Plains Commerce* requires a focus on the highly specific rather than the general. *Id.* at 23.

The *Jackson* case further documents the absence of any split in the Circuits on the proposition that *Plains Commerce* did not make any change to the consensual relationship test, adding the Seventh Circuit to the Fifth, Eighth, Ninth and Tenth Circuits which have so ruled as shown in Respondents' Brief in Opposition.

The *Jackson* case further supports Respondents' request that Petitioners' request for a *writ of certiorari* be denied.

### CONCLUSION

Petitioners' request for a *writ of certiorari* be denied.

Respectfully submitted,

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