**DEPARTMENT OF BUSINESS OVERSIGHT**
*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

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# DBO Wins Landmark California Supreme Court Ruling in Major Tribal Payday Lending Case

*Court Bolsters Test to Decide When Private Firms Entitled to Tribal Immunity*

SACRAMENTO – The California Department of Business Oversight (DBO) today won a State Supreme Court decision in a landmark case involving the issue of private payday lenders who try to use tribes' sovereign immunity to avoid state licensing and consumer protection laws.

"This ruling is an important win for California's payday loan consumers," said DBO Commissioner Jan Lynn Owen. "It strengthens our ability to enforce laws prohibiting excessive fees and unlicensed activity by denying payday lenders' ability to inappropriately use tribes' sovereign immunity to avoid complying with state law."

The court established a detailed analysis for determining when affiliated entities are rightfully entitled to a tribe's sovereign immunity. Using that test, which accounts for both the form and function of tribes' relationships with affiliated entities, the court ruled the defendants "are not entitled to tribal immunity based on the record before us."

In the case, the Miami Tribe of Oklahoma and Santee Sioux Nation of Nebraska formed affiliated payday lending entities that did business in California. Those entities contracted with a private firm run by brothers Scott and Blaine Tucker to operate the payday lending businesses. The businesses operated under the following names: Ameriloan, United Cash Loans, U.S. Fast Cash, Preferred Cash and One Click Cash.

Evidence in the record showed the Tuckers signed all the businesses' checks and that the tribes exercised little or no control over the day-to-day operations. With respect to the tribes' share of the revenues, the only evidence in the record showed the tribes received just one percent of gross revenues.

The DBO in 2006 issued an order against the five payday lending entities to stop them from engaging in unlicensed activity. The businesses ignored the order. In 2007, the DBO filed suit in court alleging the businesses were violating several provisions of the state's payday lending statute. The alleged violations included: charging unlawfully high fees, with some APRs reaching 845 percent; making transactions that exceeded the $300 statutory cap; using threats and harassment to collect payments; and unlicensed activity.

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In fighting the DBO’s actions, the tribe-affiliated entities claimed the payday businesses were entitled to tribal immunity.

The high court said courts should consider five factors in determining whether tribal immunity extended to affiliated businesses: the method of creation; whether the tribe intended the entity to share its immunity; the purpose for which the entity was created, and whether it actually serves that purpose; the tribe’s control of the entity, looking not just at the formal governance structure, but also the tribe’s actual role in the operations; and the financial relationship, including the tribe’s share of revenues.

Importantly, the ruling also placed the burden of proof on the entities claiming immunity to show the immunity is warranted under the test.

“Applying the five factors … we hold that on the record before us neither (defendant) has shown by a preponderance of evidence that it is entitled to tribal immunity as an arm of its affiliated tribe,” the court ruled.

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