

APPENDIX TO

**BRIEF OF *AMICUS CURIAE* CHEYENNE RIVER SIOUX TRIBE
SUPPORTING AFFIRMANCE OF MEMORANDUM OPINION AND
ORDER DATED JULY 17, 2006**

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1 I think the theory of the discrimination claim was not
2 that it created a Federal cause of action, which under
3 Nevada v. Hicks would raise some problems, but that it
4 was a recognized Tribal Court cause of action.

5 MR. VON WALD: Well, I don't think the Plaintiff
6 has ever alleged that, your Honor. The Tribe has
7 alleged that, but the Plaintiff has never alleged the
8 authority for what the discrimination cause of action
9 is. As I understand it, there is no tribal statute
10 specifically on point, that would allege that,
11 whatsoever. So either, because of the fact that there
12 is no tribal statute that alleges that the Tribe can
13 have a cause of action against a tribal member, I don't
14 see that tribal law can be used at all. So if it isn't
15 tribal law, it has to either be State law or Federal
16 law.

17 So in the Federal case, it came out specifically
18 -- and not to say that the Plaintiff has brought forth
19 specifically, 42 U.S.C.S. 1981. They haven't. But the
20 allegations they have made would be taken care of under
21 that Federal statute, or possibly under a State statute.
22 But in either case, Tribal Court doesn't have
23 jurisdiction, unless there is a specific statute that
24 allows Tribal Court to have jurisdiction over
25 discrimination cases, and/or a treaty, and there isn't

1 anything in this case. That's why I'm saying, to me,
2 this is about as black and white as what it can get.

3 And when you think about it, your Honor, I
4 think the problem that -- this is basically using the
5 race card, is what it's using. /And you are using the
6 race card against a non-tribal member in Tribal Court,
7 which is consistent of 100 percent tribal members. I
8 mean, it's just a place where it's very, very difficult
9 to get a fair trial, once that race card is used, and
10 that's what was done here. Basically I think that's
11 what tainted the whole case. I'm not even opposed to
12 walking into Tribal Court and trying something. I think
13 the tribal members are just as honest as any other
14 members are, but when it comes to arguing race, boy, you
15 are in trouble if you are in Tribal Court, when race can
16 be brought in./ And that's what I am thinking has
17 happened here.

18 For issue two, did the Trial Court err in not
19 granting the bank's Motion For a Directed Verdict or NOV
20 on a breach of contract action? Now, the document which
21 I showed, to begin with, I don't think, which is what
22 was alleged to have been breached, was the loan
23 agreement. Now, I don't think that was an agreement to
24 begin with, whatsoever -- it was a binding contract I
25 should say. Because if you look at that lease

1 being statutory statutes that were passed, that allowed
2 those things. There wasn't any common law
3 discrimination case in either Federal or State Court. I
4 don't see how there would be --

5 THE COURT: But I think the origin of statutory
6 claims, based on discrimination, actually tract back to
7 torts. I mean, because I think a common law tort, a
8 certain kind of common law tort does involve today what
9 we call today discrimination. So, I think actually
10 statutory claims of discrimination are actually grounded
11 in sort of the tort understanding of differential
12 treatment being a tort. Because I think that's --

13 MR. VON WALD: Basically, I think that's about all
14 I have. But one of the things that Mr. Van Norman was
15 concerned about, and so are we, and that is that -- by
16 the way, the bank admits that they were dealing with
17 tribal members to make money. It wasn't just to help
18 tribal members. The bank was doing it with the intent
19 of making money. That's what any business does. And
20 how much money they made from tribal members, is really
21 nothing for us to even worry about. But assuming that
22 they did money, that's what they are in business for.
23 And they will continue to do business with tribal
24 members on the reservation, as long as they have a
25 feeling that they're being treated fairly. We don't

1 have any problem with that.

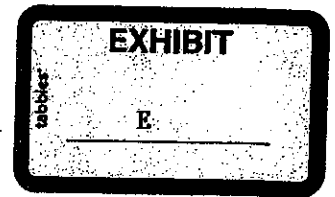
2 That's why I'm concerned, not just for the bank,
3 the bank has got the money to pay the judgment, your
4 Honors. What I'm concerned with, is that this bank is
5 not acting on its own. There are a number of banks
6 around that are looking at this case, not just this
7 Tribe; there are a number of banks around. And let me
8 tell you, if they want to discriminate against tribal
9 members, they can do it and get by with it. They can.
10 They don't have to make everybody loans. They can find
11 a reason for rejecting the loans.

12 We are here in Tribal Court hoping that we are
13 treated fairly, and that's all we are asking for,
14 according to what the law is. That's it. Period. But
15 what I am saying is, that this case is not only being
16 looked at by this Cheyenne River Sioux Tribe, it's also
17 being looked at by banks. And it's necessary for the
18 Tribe to be able to borrow money off of, the tribal
19 members to be able to borrow money. And as long as
20 tribal courts treat banks fairly, I think that that will
21 come to pass.

22 THE COURT: Thank you, counsel.

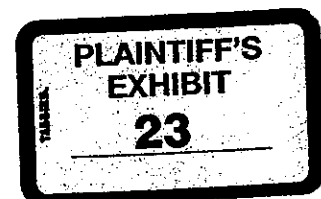
23 MR. VAN NORMAN: I have one point of authority.
24 Counsel, I also note that in the Cheyenne River Sioux
25 Tribal Rules of Procedure, Rule 1-C states about the

PLAINTIFFS' DAMAGES



1997

| | |
|--|---------------------|
| 230 bred cows died January & February 1997 @ \$620 = | \$142,600.00 |
| 260 mixed steer & heifer yearlings died | |
| January & February 1997 @ \$700 = | 182,000.00 |
| 10 yearling culls @ \$700 = | 7,000.00 |
| CRP Annual Payment = | <u>44,198.00</u> |
| | \$375,798.00 |
| -FEMA Payment | <u>-48,000.00</u> |
| | \$327,798.00 |
| Operating Expense (34%) | <u>-112,744.00</u> |
| | <u>\$215,054.00</u> |



1998

230 bred cows died January & February 1997

@ 90% calf crop = 207 calves which would
have been born in 1998

207 yearlings would have been born in 1997 @ \$600 = \$124,200.00

Operating Expenses (34%) -42,228.00

\$ 81,972.00

CRP Annual Payment = 44,000.00

1998 \$125,972.00

2002

| | |
|---|---------------------|
| 330 cows @ 90% calf crop = 297 calves that would have been born in 2002 @ \$420 330 x \$420 = | \$138,600.00 |
| 297 yearlings would have been born in 2001 @ \$700 = | 207,900.00 |
| Operating Expenses (34%) | <u>-117,800.00</u> |
| | \$228,700.00 |
| FSA Payment = | 23,000.00 |
| Use of Land = | 50,000.00 |
| Replace Fences = | <u>9,000.00</u> |
| | <u>\$310,700.00</u> |

Summary

| | |
|------|----------------|
| 1997 | \$ 215,054 |
| 1998 | 125,972 |
| 1999 | 183,634 |
| 2000 | 244,814 |
| 2001 | 234,816 |
| 2002 | <u>310,700</u> |
| | \$1,314,990 |

In addition, BIA claims that Longs owe BIA \$438,120
for the notes assigned to BIA by Bank of Hoven
under the guarantees.

438,120

\$1,753,110

Plus accrued interest.

If the jury awards you damages in this amount plus accrued interest, what will you do with the money?

Pay Bank of Hoven to get the land back (including accrued interest).

Pay BIA (including interest).

Buy cows and yearlings to replace the ones I lost.

1999

| | |
|--|---------------------|
| 330 bred cows @ 90% calf crop = 297 calves born 1999 | |
| 207 yearlings would have been born in 1998 @ \$700 = | \$144,900.00 |
| Operating Expenses (34%) | <u>-49,266.00</u> |
| | \$ 95,634.00 |
| FSA Payment = | 23,000.00 |
| Use of Land = | <u>65,000.00</u> |
| | <u>\$183,634.00</u> |

2000

330 cows @ 90% calf crop = 297 calves that
would have been born in 2000

| | |
|--|---------------------|
| 297 yearlings would have been born in 1999 @ \$800 = | \$237,600.00 |
| Operating Expenses (34%) | <u>-80,786.00</u> |
| | \$156,814.00 |
| FSA Farm Program Payment = | 23,000.00 |
| Use of Land = | <u>65,000.00</u> |
| | <u>\$244,814.00</u> |

| | | |
|------|--------------|------|
| 2000 | \$244,814.00 | Loss |
|------|--------------|------|

2001

330 cows @ 90% calf crop = 297 calves that
would have been born in 2001

| | |
|--|---------------------|
| 297 yearlings would have been born in 2000 @ \$800 = | \$237,600.00 |
| Operating Expenses (34%) | <u>-80,784.00</u> |
| | \$156,816.00 |
| FSA Payment = | 23,000.00 |
| Use of Land = | <u>55,000.00</u> |
| | <u>\$234,816.00</u> |

| | | |
|------|--------------|------|
| 2001 | \$234,816.00 | Loss |
|------|--------------|------|

2002

| | |
|--|---------------------|
| 330 cows @ 90% calf crop = 297 calves that would have been born in 2002 @ \$420 | |
| 330 x \$420 = | \$138,600.00 |
| 297 yearlings would have been born in 2001 @ \$700 = | 207,900.00 |
| Operating Expenses (34%) | <u>-117,800.00</u> |
| | \$228,700.00 |
| FSA Payment = | 23,000.00 |
| Use of Land = | 50,000.00 |
| Replace Fences = | <u>9,000.00</u> |
| | <u>\$310,700.00</u> |

Summary

| | |
|------|--------------------|
| 1997 | \$ 174,856 |
| 1998 | 87,972 |
| 1999 | 183,634 |
| 2000 | 244,814 |
| 2001 | 234,816 |
| 2002 | <u>310,700</u> |
| | <u>\$1,236,792</u> |

INSTRUCTION NO. 10

The measure of damages for a breach of contract is the amount which will compensate the aggrieved party for all detriment (legally)(proximately) caused by the breach, or which, in the ordinary course of things, would be likely to result from the breach.

No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and their origin.

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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

PLAINS COMMERCE BANK,

CIV 05-3002

Plaintiff,

v.

LONG FAMILY LAND AND CATTLE
COMPANY, INC., and RONNIE and
LILA LONG,

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF
PLAINS COMMERCE BANK'S
MOTION FOR SUMMARY
JUDGMENT**

Defendants.

Plaintiff Plains Commerce Bank ("Plains Bank") submits this Memorandum in Support of its Motion for Summary Judgment in this declaratory judgment action. We demonstrate below that there is no genuine issue of material fact with respect to the lack of Tribal Court jurisdiction and the due process violations of the Cheyenne River Sioux Tribe ("CRST") Tribal Court in asserting jurisdiction over Plains Bank in the case of Plains Bank v. Long Family and Cattle Company, et al. We also demonstrate that this Court has the power pursuant to 28 U.S.C. § 2201-02 to determine the rights of the parties and grant further relief to resolve this matter.

The questions submitted for decision, all of which arise under the federal law of comity, are (a) whether a Tribal Court may assert jurisdiction over a non-member for claims arising from a lease of non-tribal fee land owned by Plains Bank, an off reservation South Dakota corporation, and a related loan agreement between the Bank and another South Dakota corporation, itself not a tribal entity; (b) whether the Tribal Court had jurisdiction to decide a claim for discrimination against the Bank premised

Subsequently, while discussing jury instructions, the Court again made clear that the discrimination claim was being considered under federal law. The Court stated that offering "a contract for deed to non-Indians but not to Indians. That violates federal law." Id. at p. 551, l. 15-17.

Finally, after the trial the Bank moved for Judgment NOV or a new trial. In its motion, the Bank again argued that under Nevada, the Tribal Court had no jurisdiction to hear a discrimination claim brought under federal law. See (CS Aff. Exh. 26 p. 6-7). The Long Company responded that the Tribal Court had jurisdiction over a federal claim of discrimination. See (CS Aff. Exh. 27, p. 10-14). The Tribal Court denied the motion, holding that it had jurisdiction over the discrimination claim (which the court characterized as a federal anti-discrimination claim). See (CS Aff. Exh. 22, p. 8). In doing so, the Tribal Court stated that because the Tribe did not "have specific code provisions prohibiting private discrimination" the Court was required "to look to relevant federal law." Id. at p. 9.

It was not until the Bank appealed the judgment to the Tribal Court of Appeals that tribal law was cited as the basis for the discrimination claim. But it was not the Long Company that made this argument. Instead, the argument was made by the CRST, in its Amicus Curiae brief.

Responding to Plains Bank's argument that the Tribal Court did not have jurisdiction to enforce federal discrimination laws, the Tribe argued that the discrimination claim was based on tribal, not federal law. The Tribe then spent ten pages of its brief explaining and developing the argument that tribal tradition and