

NEWS RELEASES

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Husch Blackwell Defeats FACTA Class Action

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MARCI V. KAWSKI
MADISON:
608.234.6051
MARCI.KAWSKI@
HUSCHBLACKWELL.COM

A Husch Blackwell team prevailed before the U.S. Court of Appeals for the Seventh Circuit on behalf of the Oneida Tribe of Indians of Wisconsin in connection with a consumer class action lawsuit filed under the Fair and Accurate Credit Transactions Act (FACTA), a 2003 amendment to the Fair Credit Reporting Act. The suit alleged that certain credit card receipts from Oneida-operated stores violated FACTA because the receipts displayed consumer information disallowed by law.

In September 2015, U.S. District Judge William C. Griesbach of the Eastern District of Wisconsin dismissed the lawsuit, ruling that the Oneida Tribe was protected against FACTA allegations due to its sovereign immunity. Appealing the lower court decision, the plaintiff argued that the court reached an errant determination that Indian tribes are not governments. The appeals court, however, disagreed with the plaintiff's interpretation and stated that plaintiff had "missed the point."

The appeals court stated that the plaintiff had "lost sight of the real question in this sovereign immunity case—whether an Indian tribe can claim immunity from suit. The answer to this question must be 'yes' unless Congress has told us in no uncertain terms that it is 'no.'" The court ultimately affirmed the lower court ruling, stating that "Congress simply has not unequivocally abrogated the sovereign immunity of Indian Tribes under the FACTA provision at issue in this case," thus providing the Oneida Tribe of Indians of Wisconsin with a full victory.

The Husch Blackwell team included Tom Pyper, Ken Nowakowski, and Marci Kowski.