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In *Montana v. United States*, 450 U.S. 544 (1981), the Supreme Court recognized that, as a general matter, the “inherent sovereign powers of an Indian Tribe do not extend to the activities of nonmembers of the tribe.” The Court also recognized an exception to that general rule, however, holding that tribes retain some authority “over non-Indians on their reservations, even on non-Indian fee lands.” Specifically, the Court held that “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members.”

In *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008), the Court granted certiorari to decide whether the “other means” by which a Tribe may regulate nonmembers include adjudicating civil tort claims against nonmembers in tribal court, but ultimately resolved the case on other grounds. Today, the Court granted certiorari in *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, No. 13-1496, to answer the question left unresolved in *Plains Commerce*: whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members.

In this case, petitioner Dolgencorp, LLC operates a Dollar General retail store on the reservation of the Mississippi Band of Choctaw Indians using space that it leases from the tribe. The store participated in a job training program run by the tribe, and accepted several tribal student interns to work there. One of those tribal interns alleges that he was sexually assaulted by the store manager, and he brought civil tort claims against Dolgencorp and Dollar General in tribal court.

Both the district court and a divided panel of the Fifth Circuit rejected the petitioners’ attempt to enjoin the tribal court litigation for lack of jurisdiction. The Fifth Circuit panel held that the petitioners had entered into a consensual relationship with the tribe and its members by agreeing to take on the interns and that the tribe’s regulatory powers under the *Montana* exception include the power to adjudicate tort claims against nonmembers that have a “logical nexus” to that consensual relationship. The dissenting judge noted that the Supreme Court has never held that a tribal court had jurisdiction over a nonmember defendant (*see Nevada v. Hicks*, 533 U.S. 353, 358 n.2 (2001)) and expressed the view that a tribe’s regulatory authority over nonmembers should be limited to what is necessary to protect tribal self-government or control internal relations. The full Fifth Circuit was also divided, denying rehearing en banc over the dissent of five judges. The Supreme Court’s decision should be of interest to those who conduct business with Indian tribes or their members on or near tribal reservations.

Absent extensions, amicus briefs in support of the petitioners will be due on August 6, 2015, and amicus briefs in support of the respondents will be due on September 7, 2015. Any questions about the case should be directed to Dan Himmelfarb (+1 202 263 3035) in our Washington office.