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*Menominee Tribe of Wisconsin v. United States*, No. 14-510

A statute of limitations is subject to equitable tolling if a litigant demonstrates that, despite pursuing his rights

diligently, some extraordinary obstacle prevented timely filing of a complaint.

In a unanimous opinion written by Justice Alito, the Supreme Court today clarified how courts are to determine

whether the standard for equitable tolling is satisfied.

This case arises in the context of Indian law. The Indian Self-Determination and Education Assistance Act (ISDA)

permits Indian tribes to enter into self-determination contracts with federal agencies to assume control over

programs that would otherwise be provided by federal agencies. The tribe is entitled to reimbursement for certain

costs of carrying out the covered programs. When a tribe has a dispute with the federal government about

reimbursement, it must follow the provisions of the Contract Disputes Act of 1978, which generally requires

contractors to present claims to a federal contracting officer within six years.

The Menominee Tribe made a claim that its reimbursements under the ISDA were inadequate. The claim was filed

more than six years after the reimbursements, and the contracting officer deemed the claim time-barred.

In the ensuing litigation, the Tribe contended that the limitations period was subject to *American Pipe* tolling

because of a putative class action concerning ISDA reimbursements, for which class certification was ultimately

denied. In earlier appellate proceedings, the U.S. Court of Appeals for the D.C. Circuit held that *American Pipe*

tolling did not apply because the Tribe would not have been the member of a class had it been certified, because of

its failure to make a claim to a contracting officer. But the D.C. Circuit remanded to the district court to determine if

equitable tolling was available, in view of another ISDA case in which a nationwide class of all reimbursement

recipients had been certified, including even those who had not filed administrative claims.

The Supreme Court held that the Tribe was not entitled to equitable tolling. The Court first clarified that the

requirements for equitable tolling are *elements*, not *factors*. So a plaintiff invoking equitable tolling must establish

*both* that (1) he was diligent; and (2) there was an extraordinary obstacle precluding a timely filing. The Court next

held that the second element is satisfied “only where the circumstances that caused a litigant’s delay are both



extraordinary and beyond its control.” Applying these requirements, the Court held that the reasons for the Tribe’s

delinquent filing were neither extraordinary nor beyond its control.

Limitations periods are relevant in a wide range of federal cases. Equitable tolling is often invoked by parties whose

claims are untimely. This case does not alter the tolling landscape in significant ways, but the Court's approach to

tolling will influence cases on the margin.

Any questions regarding this case should be directed to [Brian D. Netter](#) (+1 202 263 3339) in our Washington DC

office.