The Supreme Court granted certiorari today in *Menominee Indian Tribe of Wisconsin v. United States*, No. 14-510, which concerns the proper standard for federal courts to apply when deciding whether to "equitably toll" a statute of limitations. The Court's decision in this case will be important because it will affect claims brought under countless federal statutes, against both the government and private parties, including claims brought by federal contractors.

Like many other Indian tribes, petitioner Menominee Tribe of Wisconsin ("Menominee Tribe" or "Tribe") has an agreement with the Department of Health and Human Services ("HHS") whereby HHS reimburses the Tribe for expenditures it makes in providing healthcare services to its members. This agreement is governed by a federal statute—the Indian Self-Determination and Education Assistance Act ("ISDA")—that specifies many of the rules for reimbursement.

The ISDA specifies that another federal statute—the Contract Disputes Act of 1978 ("CDA")—applies to "self-determination contracts" of the type at issue here. If a claim for payment under the CDA is denied, a party can appeal that decision through one of two avenues. One avenue leads to the U.S. Court of Appeals for the Federal Circuit; the other leads, potentially, to any of the other circuits, depending on the choice of forum. Regardless of which avenue of appeal a party chooses, it must submit its initial claim within six years of the date that the claim accrues.

For over 20 years, Indian tribes and HHS have disputed the meaning of some key language in the ISDA. This disagreement spawned litigation in the 1990s and 2000s. The Menominee Tribe, however, largely remained on the sidelines and did not submit a claim for any of its disputed payments until 2005. When the Tribe did finally submit claims, HHS denied the claims for payments owed before 1998 as untimely. The Tribe sought judicial review of that decision in the U.S. District Court for the District of Columbia, which, following an initial remand from the D.C. Circuit, ultimately granted summary judgment to the government. The Tribe then appealed again to the D.C. Circuit.

The issue before the D.C. Circuit was whether the Tribe was entitled to have the statute of limitations for its claims "equitably tolled." Under *Holland v. Florida*, 560 U.S. 631 (2010), a federal court may equitably toll a statute of limitations when a party shows "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Id.* at 649. The Tribe made two main arguments in the D.C. Circuit. First, it argued that it had reasonably assumed that a pending class action filed by another tribe would toll the statute. Second, the Tribe argued that until the Supreme Court finally clarified the meaning of the ISDA—in a 2005 decision called *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005)—it would have been futile to submit a claim for payment because HHS would simply have denied it.

The D.C. Circuit rejected these arguments and affirmed. As to the class-action argument, the court held that the Tribe had never fulfilled the requirements to become a member of the class. It should have been clear to the Tribe, the court reasoned, that it would not be a part of the class and that tolling would therefore be unavailable. As to the argument about the futility of filing a claim before the Supreme Court decided *Cherokee Nation*, the D.C. Circuit held that the circumstances at issue fell far short of futility. The court explained that the law was plainly unsettled, that the plaintiffs had the statutory option of choosing a judicial forum, and that HHS's stance on the legal issue was irrelevant, because the ultimate question was for the courts to decide. The court of appeals thus concluded that the Tribe had failed to present any "extraordinary circumstances" and that this failure was sufficient to preclude equitable tolling, without any independent consideration of due diligence.

In so ruling, the D.C. Circuit acknowledged that it was creating a conflict with the Federal Circuit. Applying a much looser equitable-tolling analysis, the latter court had found tolling appropriate in a materially identical case. In light of the circuit split on an important question of federal law and the fact that the Solicitor General agreed with the petitioner that review was warranted, it is not surprising that the Supreme Court granted certiorari.

Absent extensions, amicus briefs in support of the petitioner will be due on August 21, 2015, and amicus briefs in support of the respondents will be due on September 21, 2015. Any questions should be directed to Dan Himmelfarb (+1 202 263 3035) in our Washington office.