May nonmembers of Indian tribes (including state and local governments) be sued in tribal court (as opposed to state or federal court) for tort (civil wrongdoing) claims?

In *Dollar General Corporation v. Mississippi Band of Choctaw Indians* [2] John Doe, a thirteen-year-old tribe member, alleges that his supervisor sexually molested him while he was working as part of a job training program at a Dollar General located on a reservation. Doe sued Dollar General in tribal court alleging a variety of torts including negligent hiring, training, and supervision.

In *Montana v. United States* [3] (1981) the Court held that generally nonmembers may not be sued in tribal court except that “tribe[s] may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealing.” The question in this case is whether “other means” includes suing nonmembers for civil tort claims in tribal court.

In *Nevada v. Hicks* [4] (2001) the Court noted that it has “never held that a tribal court had jurisdiction over a nonmember defendant” in any context, so it remains an “open question” whether tribal courts may ever exercise civil jurisdiction over nonmembers. In *Oliphant v. Suquamish Indian Tribe* [5] (1978) the Court held that tribal courts do not have jurisdiction over criminal cases involving nonmembers.

The lower court in this case determined that the tribal court had jurisdiction looking only at whether there was a commercial relationship between Dollar General and the tribe and a nexus between Dollar General’s participation in the job training program and Doe’s tort claim. The Fifth Circuit concluded that even an unpaid internship creates a commercial relationship. As for a nexus the Court reasoned: “[i]t is surely within the tribe’s regulatory authority to insist that a child working for a local business not be sexually assaulted by the employees of the business.”

Dollar General argues when the Supreme Court in *Montana* spoke of a tribe regulating nonmembers “through taxation, licensing, or other means,” it “had in mind modes of regulation that permit nonmembers to ascertain the scope of their exposure to tribal authority and litigation. For example, a business can determine the tribe’s general tax rules and licensing requirements prior to deciding whether to do business with a tribe or its members. But tort claims are vitally different. Tort law is generally unwritten and often vague, its rules given specific content by juries in particular cases only after the fact.” Tribal tort law may not even be written down.

While this case involved a tort claim against a corporation, state and local governments may also be regularly involved in civil disputes with tribes and would prefer that those claims be adjudicated in the state or federal court system.

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