

No. 24A-_____

IN THE
Supreme Court of the United States

LEXINGTON INSURANCE COMPANY, ET AL.,
Applicants,

v.

SUQUAMISH TRIBE, ET AL.,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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**PARTIES TO THE PROCEEDING
AND RULE 29.6 DISCLOSURE STATEMENT**

Applicants are Lexington Insurance Company, Homeland Insurance Company of New York, Hallmark Specialty Insurance Company, Aspen Specialty Insurance Company, Aspen Insurance UK Ltd., and Certain Underwriters at Lloyd's, London and London Market Companies Subscribing to Policy Nos. PJ193647, PJ1900131, PJ1933021, PD-10364-05, PD-11091-00, and PJ1900134-A, which were plaintiffs in the district court and appellants in the court of appeals.

Applicant Lexington Insurance Company is a wholly owned subsidiary of AIG Property Casualty U.S., Inc., which is a wholly owned subsidiary of AIG Property Casualty Inc., which in turn is a wholly owned subsidiary of American International Group, Inc., a publicly traded company (NYSE: AIG). No public company has an interest of 10% or more in American International Group, Inc.

Applicant Homeland Insurance Company of New York is an indirect wholly owned subsidiary of Intact Insurance Group USA Holdings, Inc. Intact Insurance Group USA Holdings, Inc. is a wholly owned subsidiary of Intact Financial Corporation, a publicly held company whose stock is traded on the Toronto Stock Exchange. No parent corporation or other entity owns 10% or more of the stock of Intact Financial Corporation.

Applicant Hallmark Specialty Insurance Company is a wholly owned subsidiary of American Hallmark Insurance Company of Texas, which is in turn a wholly owned subsidiary of Hallmark Financial Services, Inc., which is a publicly traded company

(NYSE: HALL). No parent corporation or other entity owns 10% or more of the stock of Hallmark Financial Services, Inc.

Applicant Aspen Specialty Insurance Company is a wholly owned subsidiary of Aspen American Insurance Company. Aspen American Insurance Company is a wholly owned subsidiary of Aspen U.S. Holdings, Inc., a Delaware corporation. Aspen U.S. Holdings, Inc. is a wholly owned subsidiary of Aspen (UK) Holdings Limited, a U.K. corporation. Aspen (UK) Holdings Limited is a wholly owned subsidiary of Aspen Insurance Holdings Limited (AHL), a Bermuda exempted company. AHL is a wholly owned subsidiary of Highlands Holdings, Ltd., a Bermuda exempted company. All of the ordinary shares of Highlands Holdings, Ltd. are, directly or indirectly, owned by certain investment funds managed by subsidiaries of Apollo Global Management, LLC (AGM), a Delaware limited liability company. Class A units and certain preferred shares of AGM are publicly traded (NYSE: APO).

Applicant Aspen Insurance UK Ltd. is a wholly owned subsidiary of Aspen European Holdings Limited (AEHL), a UK domiciled holding company. AEHL is a wholly owned subsidiary of Aspen Insurance Holdings Limited (AHL), a Bermuda exempted company. AHL is a wholly owned subsidiary of Highlands Holdings, Ltd., a Bermuda exempted company. All of the ordinary shares of Highlands Holdings, Ltd. are, directly or indirectly, owned by certain investment funds managed by subsidiaries of Apollo Global Management, LLC (AGM), a Delaware limited liability company. Class A units and certain preferred shares of AGM are publicly traded (NYSE: APO).

Applicant Syndicate 1414 is the lead underwriter at Lloyd's, London subscribing to Policy Nos. PJ193647 and PJ1933021. It is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. Ascot Underwriting Group Limited is the parent corporation of Syndicate 1414, and Canada Pension Plan Investment Board is the parent corporation of Ascot Underwriting Group Limited. They are not publicly traded, and no publicly traded corporation or company possesses 10% or more interest in Syndicate 1414.

Applicant Syndicate 510 is the second underwriter at Lloyd's, London subscribing to Policy Nos. PJ193647 and PJ1933021. It is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. Syndicate 510 is managed by Tokio Marine Kiln Syndicates Ltd., of which Tokio Marine Underwriting Limited (TMUL) is an underwriting member and has a share greater than 50%. TMUL is wholly owned by Tokio Marine & Nichido Fire Insurance Co. Ltd., which is wholly owned by Tokio Marine Holdings, Inc., a company incorporated in Japan and listed on the Tokyo Stock Exchange.

Applicant XL Catlin Insurance Company UK Limited (now known as AXA XL Insurance Company UK Limited) is a London market company subscribing to Policy Nos. PJ193647 and PJ1933021. It is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. XL Catlin Insurance Company UK Limited is a direct subsidiary of Catlin Insurance Company (UK) Holdings Limited and an indirect subsidiary of XL Bermuda Limited, EXEL Holdings Limited, XLIT Limited, XL Group Limited and AXA S.A., which is a company

domiciled in France and listed on the Paris Stock Exchange. No publicly held company owns 10% or more of AXA S.A.'s stock.

Applicant Syndicate 4444 is the lead underwriter at Lloyd's, London subscribing to Policy No. PJ1900131. It is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. It is not publicly traded, and no publicly traded corporation or company possesses 10% or more interest in Syndicate 4444.

Applicant Syndicate 2987 is the lead underwriter at Lloyd's, London subscribing to Policy Nos. PD-10364-05 and PD-11091-00. Syndicate 2987 is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. Syndicate 2987 is an unincorporated association, the managing agent of which is Brit Syndicates, Ltd. Brit Syndicates, Ltd. is a limited liability company registered in England & Wales. Brit UW Ltd. is the corporate member of Syndicate 2987. Brit Ltd. is the direct parent and whole-owner of Brit Syndicates, Ltd., and Brit UW Ltd. Fairfax Financial Holdings, Ltd. owns more than 10% of Brit Ltd. Ontario Municipal Employees Retirement System (OMERS) is the owner of more than 10% of Brit Ltd. No publicly held company owns more than 10% of Fairfax Financial Holdings, Ltd., or OMERS.

Applicant Endurance Worldwide Insurance Limited (EWIL) is the lead London market company subscribing to Policy No. PJ1900134-A. EWIL is organized and registered under the laws of the United Kingdom with its principal place of business in the United Kingdom. EWIL is 100% owned by Endurance Worldwide Holdings Ltd.

(EWHL), which is incorporated in England & Wales. EWHL is 100% owned by Endurance Specialty Insurance Ltd. (ESIL), which is incorporated in Bermuda. ESIL is 100% owned by Sompo International Holdings Ltd. (SIHL), which is incorporated in Bermuda. SIHL is 100% owned by Sompo Japan Insurance Inc. (SJII), which is incorporated in Japan. SJII is 100% owned by Sompo Holdings, Inc., which is incorporated in Japan and publicly listed on the Tokyo Stock Exchange. No publicly held company owns more than 10% of Sompo Holding, Inc.

Respondent Suquamish Tribe intervened as a defendant in the district court and was an appellee in the court of appeals. Respondents Cindy Smith, in her official capacity as Chief Judge for the Suquamish Tribal Court; Eric Nielsen, in his official capacity as Chief Judge of the Suquamish Tribal Court of Appeals; Bruce Didesch, in his official capacity as Judge of the Suquamish Tribal Court of Appeals; and Steven D. Aycock, in his official capacity as Judge of the Suquamish Tribal Court of Appeals, were named as defendants in the district court and were appellees in the court of appeals. The respondent tribal judges informed the district court that “the matter will be defended by the Tribe as intervenor.” D. Ct. Doc. 40, at 4. They have not participated further in the district court or the court of appeals.

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Under this Court's Rule 13.5, applicants respectfully request a 60-day extension of time, to and including February 14, 2025, within which to file a petition for a writ of certiorari to review the Ninth Circuit's judgment. The court of appeals entered its judgment on February 29, 2024, App., *infra*, 2a, and denied applicants' timely petition for panel rehearing and rehearing en banc on September 16, 2024, *id.* at 30a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on December 16, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Counsel for respondent Suquamish Tribe does not oppose this request.

1. This case presents an important, recurring question concerning the scope of tribal-court jurisdiction over off-reservation, nonmember businesses. Tribes have inherent sovereignty only over "their members and their territory" and generally lack civil jurisdiction over nonmembers even when "on their reservations." *Montana v. United States*, 450 U.S. 544, 563, 565 (1981) (citation omitted). In *Montana*, this Court recognized two narrow exceptions that can apply (1) to nonmembers who have commercial relationships with tribes or tribal members and (2) to nonmembers whose conduct on the reservation threatens a tribe's political, economic, or social integrity. *Id.* at 565-566. Both exceptions "permit tribal regulation of *nonmember conduct inside the reservation* that implicates the tribe's sovereign interests." *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 332 (2008) (some emphasis added). The court of appeals in this case rejected that principle limiting tribal sovereignty to conduct within the reservation's borders, creating a conflict with other circuits.

a. The Tribe and its corporate arm operate businesses on tribal land within the Port Madison Reservation in Washington. App., *infra*, 6a. Looking outside the reservation to buy insurance policies for the tribal casino and other properties, the Tribe instructed its nonmember broker to negotiate for coverage with the nonmember administrator of a property insurance program available to tribes. *Id.* at 6a-7a. That administrator prepared policies issued by applicants (off-reservation insurance providers and underwriting services) for the Tribe and its arm. *Id.* at 7a-8a. After the Tribe ordered tribal businesses to shut down in March 2020 to slow the spread of COVID-19, the Tribe and its arm sought insurance coverage for the loss of income from their tribal businesses. *Id.* at 8a-9a.

b. The “vast majority of courts nationwide” have rejected COVID-19 property-insurance claims. *Another Planet Entertainment, LLC v. Vigilant Insurance Co.*, 548 P.3d 303, 307 (Cal. 2024). But before applicants made a final decision on the insurance claims, the Tribe and its arm sued applicants in the Suquamish Tribal Court for breach of contract. App., *infra*, 9a, 53a. Applicants moved to dismiss the case for lack of tribal-court jurisdiction. *Id.* at 9a. The Tribe’s trial court and court of appeals both held that the Tribe could exercise jurisdiction over applicants. *Ibid.*

c. After exhausting their remedies in tribal court, applicants brought this action seeking declaratory relief against the respondent tribal judges. App., *infra*, 9a; see *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 852-853 (1985). The Tribe intervened as a defendant. App., *infra*, 9a. The district court granted summary judgment to respondents, holding that the tribal court could exercise jurisdiction over applicants under the first *Montana* exception. *Id.* at 10a.

b. The court of appeals affirmed. App., *infra*, 1a-28a. The court accepted that “tribal jurisdiction is ‘cabined by geography,’” *id.* at 11a (citation omitted), that “all relevant conduct occurred off the Reservation,” and that applicants were never “physically present there,” *id.* at 15a. Nonetheless, the court held that the tribal court could exercise jurisdiction because applicants’ coverage decision “*relates* to tribal land,” *id.* at 14a (emphasis added), deeming a loose conception of on-reservation conduct to be justified by “our contemporary world in which nonmembers, through the phone or internet, regularly conduct business on a reservation and significantly affect a tribe and its members without ever physically stepping foot on tribal land,” *id.* at 16a-17a. The court also expressly broke with the Seventh Circuit in holding that this Court’s decision in *Plains Commerce Bank* does not require a showing that the exercise of tribal jurisdiction stems from the Tribe’s inherent sovereignty. *Id.* at 25a-26a & n.4 (citing *Jackson v. Payday Financial, LLC*, 764 F.3d 765, 783 (7th Cir. 2014)).

c. The court of appeals denied rehearing en banc. App., *infra*, 33a.

i. The panel judges, joined by 13 other judges, filed a statement respecting the denial. App., *infra*, 33a-43a. They defended their “broad understanding” of the first *Montana* exception and deemed the lack of historical support for tribal-court jurisdiction over off-reservation conduct to be “not informative.” *Id.* at 38a.

ii. Judge Bumatay, joined by five other judges, dissented from the denial of rehearing en banc. App., *infra*, 44a-80a. He argued that the panel’s endorsement of tribal-court jurisdiction over off-reservation conduct created a split with the Seventh, Eighth, and Tenth Circuits, *id.* at 70a-71a, departed from this Court’s focus on “physical, on-reservation conduct by the nonmember,” *id.* at 61a-68a, and lacked

historical support, *id.* at 54a-61a. He also criticized the panel’s “evisceration of *Plains Commerce*” as having put the Ninth Circuit “on the wrong side of a circuit split” as to the need for a “separate judicial inquiry into whether the relevant regulation is necessary to the tribe’s inherent sovereign authority.” *Id.* at 49a, 78a-79a.

2. The Ninth Circuit’s decision warrants this Court’s review.

a. The Ninth Circuit broke with at least three courts of appeals that have decided the *Montana* exceptions do not apply at all to off-reservation conduct. App., *infra*, 70a-71a (opinion of Bumatay, J.). Because “*Montana* and its progeny permit tribal jurisdiction of nonmember *conduct inside* the reservation,” the Seventh Circuit holds that “actions of nonmembers outside of the reservation do not implicate the Tribe’s sovereignty.” *Stifel, Nicolaus & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184, 207 (7th Cir. 2015) (quoting *Jackson*, 764 F.3d at 782). The Eighth Circuit also has held that off-reservation advertising that is available on the reservation via the internet “cannot be said to constitute non-Indian use of Indian land” under *Montana*. *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087, 1093 (8th Cir. 1998); accord *Attorney’s Process & Investigation Servs., Inc. v. Sac & Fox Tribe*, 609 F.3d 927, 940 (8th Cir. 2010). The Tenth Circuit agrees that tribal jurisdiction can reach only nonmembers who engage in conduct “within the physical confines of the reservation.” *MacArthur v. San Juan County*, 497 F.3d 1057, 1071-1072 (10th Cir. 2007).

The Ninth Circuit also openly cemented a split as to the interpretation of this Court’s decision in *Plains Commerce Bank*. App., *infra*, 26a n.4. Like the Ninth Circuit, the Fifth Circuit has disregarded as “dicta” this Court’s statement that all tribal

regulation of nonmembers must serve an inherent sovereign interest. *Dolgencorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167, 175 (5th Cir. 2014), aff'd by equally divided Court, 579 U.S. 545 (2016) (per curiam). But the Seventh Circuit has held that “a nonmember’s consent to tribal authority” under the first *Montana* exception cannot establish tribal jurisdiction unless the nonmember’s conduct implicates “the tribe’s inherent sovereign authority.” *Jackson*, 764 F.3d at 783.

b. The decision below conflicts with this Court’s decisions. The Court has never applied *Montana* to allow tribes to exercise authority over off-reservation conduct. App., *infra*, 61a-68a (opinion of Bumatay, J.). The absence of historical practice also “casts substantial doubt” on such an extension of tribal-court jurisdiction. *Oliphant v. Suquamish Tribe*, 435 U.S. 191, 206 (1978). And the lack of on-reservation conduct separately demonstrates that nonmember applicants never consented “by [their] actions” to tribal jurisdiction and that regulating off-reservation insurance does not “stem from the tribe’s inherent sovereign authority,” as *Plains Commerce Bank* requires. 554 U.S. at 337.

3. Additional time is necessary to permit counsel for applicants to prepare a petition that would be helpful to the Court. Counsel have had—and will continue to have—significant professional responsibilities in other time-sensitive matters, and preexisting professional and personal travel and holiday plans, in the period before and after the current December 16 deadline.

4. Counsel for respondent Tribe does not oppose the requested extension.

Accordingly, applicants respectfully request that their time to file a petition for a writ of certiorari be extended by 60 days, to and including February 14, 2025.

Respectfully submitted.

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November 25, 2024