

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

JORGINA HERRERA,

Plaintiff,

v.

ALLIANT SPECIALTY INSURANCE SERVICES, INC. and
HUDSON INSURANCE COMPANY,

Defendants.

NOTICE OF REMOVAL

Defendants Alliant Specialty Insurance Services, Inc. and Hudson Insurance Company, through their undersigned counsel, submit this Notice of Removal of this matter to the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1441.

1. Plaintiff's Complaint and Jury Demand was served on Corporation Service Company, Defendant Alliant Specialty Insurance Services, Inc.'s registered agent, on December 8, 2010. Plaintiff's Complaint and Jury Demand was served on the Colorado Division of Insurance, as registered agent for Defendant Hudson Insurance Company, on December 8, 2010. The Complaint was filed in the LaPlata County District Court, State of Colorado, captioned *Jorgina Herrera v. Alliant Specialty Insurance Services, Inc. and Hudson Insurance Company*, Case No. 2010-CV-493.

2. Plaintiff alleges claims for breach of contract, breach of the covenant of good faith and fair dealing, and vicarious liability arising out of a workers compensation claim she submitted to her employer, the Southern Ute Indian Tribe – Growth Fund. Defendants were

involved in issuing the workers compensation insurance policy and adjusting Plaintiff's claim thereunder. Plaintiff alleges that Defendants breached their duties owed to her by intentionally posing obstacles to payment; by intentionally, maliciously, and routinely understating her wage loss benefits; by routinely failing and/or refusing to provide indemnity benefits in a timely manner; by routinely failing and/or maliciously refusing to provide compensation for disfigurement benefits; by routinely failing and/or maliciously refusing to authorize, provide, and pay for medical benefits and pay for outstanding medical expenses when due; by routinely failing and/or maliciously refusing to timely investigate claims; by routinely and maliciously refusing to provide medical records upon request; by maliciously closing Plaintiff's case and refusing to provide permanent partial disability benefits; by engaging in correspondence directly with Plaintiff even though she was represented by legal counsel; by routinely failing to provide timely notice whether claims and benefits were contested or admitted; by breaching their duty to investigate and process claims in good faith by denying and unreasonably delaying authorization for medical care recommended by treating physicians and refusing to authorize and pay for medications; by engaging in a course of conduct to intentionally and maliciously obstruct the provision of benefits by soliciting medical reports from physicians known to be predisposed to delivery opinions and reports favorable to them; and by failing to provide adequate supervision to claims adjusters, who substituted their own judgment instead of relying upon the recommendations of physicians. Plaintiff alleges that this conduct has affected her, as well as other injured workers. She asserts that the conduct engaged in by Defendants was to intentionally and maliciously deprive her and other injured workers from receiving adequate compensation for workers compensation benefits, violated insurance standards established in the State of Colorado by the Colorado Workers Compensation Act, as well as C.R.S. § 10-3-1104

regarding unfair methods of competition or unfair or deceptive acts or practices. Plaintiff seeks actual and compensatory damages, pre and post-judgment interest, attorneys' fees and costs, and punitive damages. Plaintiff has requested a jury.

3. This Notice of Removal is filed within the thirty-day requirement under 28 U.S.C. § 1446(b).

4. “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds a sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.” 28 U.S.C. § 1332(a)(1).

5. Plaintiff is an individual and a citizen of Colorado. Plaintiff's listed address is 110 Empire Street, Ignacio, Colorado 81137. Defendant Alliant Specialty Insurance Services, Inc. is a corporation incorporated in California and maintains its principal place of business in California. Defendant Hudson Insurance Company is a corporation incorporated in Delaware and maintains its principal place of business in New York. Plaintiff admits diversity jurisdiction in the Complaint and Jury Demand. Plaintiff alleges that the events giving rise to this lawsuit occurred in Colorado. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. As noted above, Plaintiff requests compensatory and punitive damages for Defendants' intentional and malicious conduct relating to her claim for workers compensation benefits, as well as the claims of other employees. The workers compensation insurance policy lists a maximum limit of liability of \$10 million per employee, per accident. In the underlying

workers compensation claim, Plaintiff alleges that she sustained injuries to both her arms during her employment. Plaintiff alleges that she has had four separate surgical procedures, two on each arm. Plaintiff had alleged that Defendants have failed to authorize ongoing medical benefits, failed to pay temporary and permanent partial disability payments, and failed to pay disfigurement benefits. Plaintiff alleges that she has endured pain and suffering, mental anguish, and physical impairment due to Defendants' conduct. She also alleges that she has incurred depression, unnecessary financial hardship, and severe emotional distress. Plaintiff further alleges that she has suffered past loss of income and will suffer financial losses over the remainder of her working life due to diminished work capability and the inability to return to substantial gainful employment, as well as the expense of continuing medical care and palliative care. Plaintiff has also filed a District Court Civil Case Cover Sheet in the state court stating that, "This party is seeking a monetary judgment for more than \$100,000 against another party, including any attorneys' fees, penalties or punitive damages, but excluding interest and costs." There is diversity jurisdiction pursuant to 28 U.S.C. § 1332.

6. Pursuant to 28 U.S.C. § 1446(d) and D.C.Colo.LCivR 81.1, notice of removal has been sent to all other parties in this action and has been filed with the state court clerk's office. Also, within fourteen days of the filing of this Notice of Removal, Defendants will file a current docket sheet (register of actions) and will separately file each pending motion, petition, and related response, reply, and brief.

7. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon these Defendants is attached hereto as Exhibit A.

DATED this the 7th day of January, 2011.

Respectfully submitted,

/s/ Franz Hardy

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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing was electronically filed with the Clerk of the United States District Court using the CM/ECF system which will send notification to all counsel referenced below, this the 7th day of January, 2011 addressed to:

Tim Guill, Esq.

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Clerk of the Civil Division
LaPlata County District Court
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Durango, Colorado 81301

[copy sent via LexisNexis File&Serve]

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