

# **EXHIBIT A**

to NOTICE OF REMOVAL

*Jorgina Herrera v.  
Alliant Specialty Insurance Services, Inc. and Hudson Insurance Company*

DOCUMENTS SERVED ON DEFENDANT  
ALLIANT SPECIALTY INSURANCE SERVICES, INC.  
in Case No. 2010-CV-493

12/10  
240 P


DISTRICT COURT LA PLATA COUNTY, COLORADO P.O. Box 3340 Durango, CO 81302		
Plaintiff: Jorgina Herrera		▲ COURT USE ONLY ▲
Defendants: <del>Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company</del>		Case Number:
		Division: Courtroom:
<b>DISTRICT COURT CIVIL SUMMONS</b>		

**TO THE ABOVE NAMED DEFENDANT: Alliant Specialty Insurance Services, Inc., c/o Corporation Service Company, Registered Agent, 1560 Broadway, Suite 2090, Denver, CO 80202**

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 30 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: 12/06/10

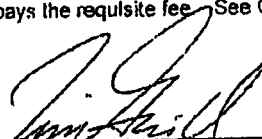
  
 \_\_\_\_\_  
 Signature of Plaintiff's Attorney  
 Tim Gull, No. 19489  
 1075 Main Avenue, Suite 211  
 Durango, CO 81301  
 (970) 247-3777  
 (970) 247-1712 Facsimile

**This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.**

District Court <u>LaPlata</u> County, Colorado		▲ COURT USE ONLY ▲
Court Address: 1060 E. 2nd Avenue Durango, CO 81301		
Plaintiff(s): Jorgina Herrera v.		Case Number:
Defendant(s): Alliant Specialty Insurance Services, Inc., and Hudson Insurance Co.		
Attorney or Party Without Attorney (Name and Address): Tim Gull, Esq. 1073 Main Avenue, Suite 211 Durango, CO 81301 Phone Number: (970) 247-3777 E-mail: <a href="mailto:coloradocw@corp@est.com">coloradocw@corp@est.com</a> FAX Number: (970) 247-1712 Atty. Reg. #: 19489		Division Courtroom
<b>DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT</b>		

- This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases.
- Check the boxes applicable to this case.
  - Simplified Procedure under C.R.C.P. 16.1 applies to this case because this party does not seek a monetary judgment in excess of \$100,000.00 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.
  - Simplified Procedure under C.R.C.P. 16.1, does not apply to this case because (check one box below identifying why 16.1 does not apply):
    - This is a class action or forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, or
    - This party is seeking a monetary judgment for more than \$100,000.00 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs (see C.R.C.P. 16.1(c)), or
    - Another party has previously stated in its cover sheet that C.R.C.P. 16.1 does not apply to this case.
- This party makes a Jury Demand at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: December 6, 2010

  
\_\_\_\_\_  
Signature of Party or Attorney for Party

**NOTICE**

- ✓ This cover sheet must be filed in all District Court Civil (CV) Cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.
- ✓ This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.
- ✓ This cover sheet shall not be considered a pleading for purposes of C.R.C.P. 11.

DISTRICT COURT LA PLATA COUNTY, COLORADO P.O. Box 3340 Durango, CO 81302	▲ COURT USE ONLY ▲
Plaintiff: <b>Jorgina Herrera</b>  Defendants: <b>Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company</b>	
Attorney for Plaintiff:  Tim Guill, Esq. 1075 Main Avenue, Ste. 211 Durango, CO 81301 Phone: 970-247-3777 Fax: 970-247-1712 E-Mail: <a href="mailto:ColoradoWorkComp@aol.com">ColoradoWorkComp@aol.com</a> Atty. Reg. #: 19489	Case No.:  Div.
<b>COMPLAINT and JURY DEMAND</b>	

**Plaintiff Jorgina Herrera**, by and through her attorney, Tim Guill, Esq., for her Complaint against Defendants Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company, states and alleges as follows:

**I. JURISDICTION**

1. Plaintiff Jorgina Herrera resides, at 110 Empire Street in Ignacio, La Plata County, Colorado 81137.
2. Defendant Alliant Specialty Insurance Services, Inc. ("Alliant") is an insurance company incorporated in the State of California and doing business in the State of Colorado. It may be served through its registered agent, Corporation Service Company, at 1560 Broadway, Suite 2090, Denver, CO 80202.

3. Defendant Hudson Insurance Company ("Hudson") is a Delaware Corporation doing business in the State of Colorado, and may be served through its registered agent, Division of Insurance, 1560 Broadway, Denver, CO 80202.
4. Defendants Hudson and Alliant are in the business of underwriting workers' compensation insurance policies for Native American tribal nations across the United States, including the Southern Ute Tribe. Defendants Hudson and Alliant engage in said business under the name of Tribal First Insurance," which, upon information and belief, is not a legal entity, but merely a trademark utilized by Defendants for marketing with Native American tribes.
5. Plaintiff Jorgina Herrera was an employee of the Southern Ute Tribe and the Southern Ute Tribe Growth Fund. Plaintiff Jorgina Herrera sustained injuries arising out of and within the course of her employment with the Southern Ute Tribe and the Southern Ute Tribe Growth Fund.
6. At all times pertinent hereto, Defendants Hudson Insurance Company and Alliant Specialty Insurance Services, Inc., were required by contract with the Southern Ute Tribe to provide workers' compensation benefits to injured employees of the Southern Ute Tribe commensurate with workers' compensation benefits mandated by the Colorado Workers' Compensation Act. The policy of insurance was issued in the State of Colorado.
7. Plaintiff Herrera was, and is, covered by the policy of insurance issued by Defendants Hudson Insurance Company and Alliant Specialty Services, Inc.
8. Defendant Alliant Specialty Services, Inc., operating as "Tribal First Insurance," is responsible for the adjustment of claims brought by employees of the Southern Ute Tribe who sustained injuries arising from and within the course of their employment with the Southern Ute Tribe, including the claim brought by Plaintiff Jorgina Herrera.
9. Jurisdiction and venue are proper in the District Court of La Plata County, Colorado because the subject injuries occurred in La Plata County, Colorado, Defendants Hudson and Alliant regularly transact business in La Plata County, Colorado, and the policy of workers' compensation insurance covering the Southern Ute Tribe was issued in La Plata County, Colorado. Moreover, the policies of insurance issued by Defendants herein are specifically designed to protect and indemnify injured workers of the Southern Ute Tribe, most of whom, like Plaintiff Herrera, are

residents of La Plata County, Colorado.

## II. GENERAL ALLEGATIONS

10. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 9 as if fully set forth herein.
11. Defendants Alliant and Hudson issued a policy of insurance to the Southern Ute Tribe that promises to pay workers' compensation benefits to the Tribe's injured workers, including Plaintiff Jorgina Herrera, comparably to benefits due and payable under the Colorado Workers' Compensation Act.
12. Defendants Hudson and Alliant have a contractual and implied obligation of good faith and fair dealing to Plaintiff Herrera and all other injured workers in the investigation and processing of Herrera's and other workers' compensation claims.
13. Further, Defendants Hudson and Alliant breached the covenant of good faith and fair dealing through their conduct as described above, and by intentionally posing obstacles to payment, and engaging in the following actions and deliberate omissions by their claims adjusters, Myra Harrison and Marisela Villalva:
  - a. Defendants Hudson and Allied have intentionally, maliciously, and routinely understated the injured workers' average weekly wages, and consequently, have routinely, intentionally, and maliciously underpaid Plaintiff Herrera's and other injured workers' temporary and permanent wage loss benefits, as said benefits are mandated by the Colorado Workers' Compensation Act.
  - b. Defendants Hudson and Allied have routinely failed and/or refused to provide indemnity benefits in a timely manner to Plaintiff Herrera and other injured employees of the Native American tribes, as payment schedules are mandated by the Colorado Workers' Compensation Act.
  - c. Defendants Hudson and Allied have routinely failed and/or maliciously refused to provide to Plaintiff Herrera, as well as other injured workers, compensation for disfigurement benefits, as mandated by the Colorado Workers' Compensation Act.

- d. Defendants Hudson and Allied have routinely failed and/or maliciously refused to authorize, provide, and pay for medical benefits for injured workers in a timely manner, and have further failed to pay outstanding medical expenses when due, as required by the Colorado Workers' Compensation Act.
- e. Defendants Hudson and Allied have routinely failed and/or maliciously refused to timely investigate Plaintiff Herrera's claims, as well as claims asserted by other injured workers of the Native American tribes, or pay or acknowledge claims when liability has become reasonably clear.
- f. Defendants Hudson and Allied have routinely and maliciously refused to provide medical records to the injured worker, or the injured worker's legal counsel, upon request, as mandated by the Colorado Workers' Compensation Act.
- g. Defendants Hudson and Allied maliciously "closed" Plaintiff Herrera's case and refused to provide PPD benefits to Plaintiff Herrera even though Plaintiff has clearly sustained a permanent partial disability, and Defendants were aware that Plaintiff had clearly sustained permanent injuries and disfigurement to her upper extremities.
- h. Defendants Hudson and Allied have engaged in correspondence directly with Plaintiff Herrera even though Defendants knew that Plaintiff Herrera was represented by legal counsel.
- i. Defendants Hudson and Alliant have routinely failed to provide timely notice to Injured workers, including Plaintiff Herrera, whether claims and benefits were being contested or admitted so that injured workers could determine if litigation was necessary.
- j. Defendants Hudson and Alliant have routinely breached 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 prescribed by treating physicians, which has resulted in increased permanent consequences for the injuries sustained by Plaintiff Herrera.
- k. Defendants have engaged in a course of conduct to intentionally and maliciously obstruct the provision of benefits to injured workers by soliciting medical reports from physicians known by Defendants to be



predisposed to deliver opinions and reports favorable to Defendants Hudson and Alliant, who refer a large volume of cases to those physicians.

- i. Defendants Hudson and Alliant have failed to provide adequate supervision to ensure that claims adjusters did not make *de facto* medical decisions, such as allowing adjusters to substitute their own judgment, instead of relying upon the recommendations of the authorized treating, board certified, physicians. Such supervision failures permitted adjusters to unreasonably delay and deny authorization for reasonable and necessary medical care.
  - m. Defendants Hudson and Alliant have employed claims adjusters Myra Harrison and Marisela Villalva and are vicariously liable for the acts and omissions engaged in by said adjusters, as well as any other adjusters who have handled or processed the claims asserted by Plaintiff Herrera for workers' compensation benefits.
14. The conduct engaged in by Defendants Hudson and Alliant to intentionally and maliciously deprive Plaintiff Herrera and other injured workers from receiving adequate compensation for workers' compensation benefits, violates 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 and unfair or deceptive acts or practices."

### **III. FIRST CLAIM FOR RELIEF BREACH OF CONTRACT**

15. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 14 as if fully set forth herein *verbatim*.
16. Plaintiff Herrera, as well as all other employees of the Southern Ute Tribe, are intended third party beneficiaries of the contract of insurance between the Southern Ute Tribe and Defendants Hudson and Alliant. The actions and omissions of Defendants as stated herein constitute a breach of said contract by totally failing to provide workers' compensation benefits to Plaintiff Herrera in a manner consistent with the standards established by the Colorado Workers' Compensation Act.

**IV. SECOND CLAIM FOR RELIEF  
BREACH OF THE COVENANT OF  
GOOD FAITH AND FAIR DEALING**

17. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 16, as if fully set forth herein *verbatim*.
18. Defendants Hudson and Alliant have a contractual and implied obligation of good faith and fair dealing to Plaintiff in the handling of Plaintiff's workers' compensation claim.
19. Defendants' obligation to Plaintiff includes, but is not limited to, processing her claim in an honest fashion, providing benefits when due under standards set by the State of Colorado, and to act in a manner consistent with the purposes of the Colorado Workers' Compensation Act, to provide prompt payments and medical care to injured workers who are injured while working for the Southern Ute Tribe, in order to relieve the affects of her industrial injuries.
20. Defendants actions are reckless, malicious and ongoing, and calculated to deprive injured workers, including Plaintiff Herrera, of benefits to which they are entitled pursuant to the policy of insurance issued by Defendants Hudson and Alliant, and the standards set by the Colorado Workers' Compensation Act.
21. Defendants Hudson Insurance Company and Alliant Specialty Insurance Services, Inc., breached the covenant of good faith and fair dealing through its conduct as described above, and are liable to Plaintiff for the bad faith adjustment of Plaintiff's industrial injuries.

**V. THIRD CLAIM FOR RELIEF  
VICARIOUS LIABILITY**

22. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 21, as if fully set forth herein *verbatim*.
23. Defendants Hudson and Alliant have employed claims adjusters Myra Harrison and Marisela Villalva and are vicariously liable for the acts and omissions engaged in by said adjusters, as well as any other adjusters who have handled or processed, on behalf of Defendants Hudson and Alliant, the claims asserted by Plaintiff Herrera for workers' compensation benefits.

## VI. DAMAGES

24. As a result of Defendants' breach of contract, refusal to timely accept liability for Plaintiff's injuries, failure to process her claims in good faith, and provide benefits when due, Plaintiff Herrera has endured unnecessary pain and suffering, mental anguish, and physical impairment.
25. As a direct result of Defendants' acts and omissions, Plaintiff Herrera has been damaged in the following particulars, including, but not necessarily limited to:
  - a. Plaintiff has endured unnecessary pain and suffering, mental anguish and depression;
  - b. Plaintiff has suffered unnecessary financial hardship and severe emotional distress;
  - c. Plaintiff has suffered a past loss of income, due to an inability to return to work and will suffer financial losses in the future, over the remainder of her working life, due to diminished work capability and the inability to return to substantial gainful employment, and the expense of continuing medical care and palliative care.

**WHEREFORE**, Plaintiff Jorgina Herrera prays for judgment against Defendants Hudson Insurance Company and Alliant Specialty Servicers, Inc., for:

- a. Actual and compensatory damages;
- b. Pre and post judgment interest as provided by law;
- c. Attorney fees, expert witness fees and costs;
- d. Punitive damages; and
- e. Such other and further relief as the Court deems just and proper.

## VII. JURY DEMAND

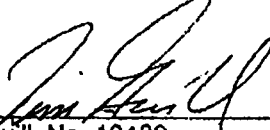
Plaintiff hereby demands a trial by jury as to all issues so triable.

Date: Dec. 6, 2010

Respectfully Submitted,

**Tim Guill, Attorney for Plaintiff**

*A signed original is maintained in our office*

  
/s/ Tim Guill

Tim Guill, No. 19489

1075 Main Avenue, Ste. 211

Durango, Colorado 81301

(970) 247-3777

(970) 247-1712 fax

coloradoworkcomp@aol.com

Plaintiff's address:

Jorgina Herrera

110 Empire Street

Ignacio, Colorado 81137

DOCUMENTS SERVED ON DEFENDANT  
HUDSON INSURANCE COMPANY  
in Case No. 2010-CV-493

11-7710



**Dora**

Department of Regulatory Agencies

**Division of Insurance**  
John J. Postolowski  
Interim Commissioner of Insurance

Bill Ritter, Jr.  
Governor

Barbara J. Kelley  
Executive  
Director

December 9, 2010

**HUDSON INSURANCE COMPANY**  
22 CORTLANDT ST 18TH FLR  
NEW YORK NY 10007

Attention: Secretary Officer of Company

**Re: Jorgina Herrera v. Hudson Insurance Company and Alliant Specialty Insurance Services**

As provided by § 10-3-107, Colorado Revised Statutes, on **December 8, 2010** service was made upon the Commissioner of Insurance as your registered agent for the above referenced matter.

Enclosed is your copy of the documents, which were served in the above-entitled cause of action.

Sincerely,  
Marcy Morrison

Commissioner of Insurance  
By:

  
Christine Gonzales-Ferrer  
Compliance Assistant

Enc.

Cc;

**THE CORPORATION COMPANY**  
1675 BROADWAY, SUITE 1200  
DENVER CO 80202



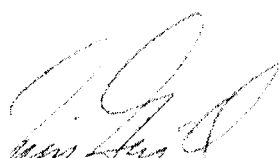
DISTRICT COURT LA PLATA COUNTY, COLORADO P.O. Box 3340 Durango, CO 81302		
Plaintiff: Jorgina Herrera	▲ COURT USE ONLY ▲	
Defendants: Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company	Case Number:	
	Division:	Courtroom:
<b>DISTRICT COURT CIVIL SUMMONS</b>		

**TO THE ABOVE NAMED DEFENDANT: Hudson Insurance Company, c/o Division of Insurance, Registered Agent, 1560 Broadway, Denver, CO 80202**

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 30 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

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Dated: 12/06/10

  
 \_\_\_\_\_  
 Signature of Plaintiff's Attorney  
 Tim Guill, No. 19489  
 1075 Main Avenue, Suite 211  
 Durango, CO 81301  
 (970) 247-3777  
 (970) 247-1712 Facsimile

**This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.**

District Court <u>LaPlata</u> County <u>Colorado</u>		
Court Address <b>1060 E. 2nd Avenue Durango, CO 81301</b>		
Plaintiff(s) <b>Jorgina Herrera</b>		
Defendant(s): <b>Alliant Specialty Insurance Services, Inc., and Hudson Insurance Co.</b>		▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address) <b>Tim Grant, Esq. 1075 Main Avenue, Suite 211 Durango, CO 81301</b>		Case Number
Phone Number (970) 247-3777	E-mail <a href="mailto:timgrant@hudsonins.com">timgrant@hudsonins.com</a>	Division
FAX Number (970) 247-1712	Atty. Reg # 19489	Courtroom
<b>DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS CLAIM OR THIRD PARTY COMPLAINT</b>		

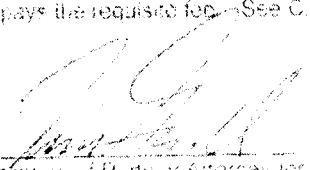
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2. Check the boxes applicable to this case.

- Simplified Procedure under C.R.C.P. 16.1 applies to this case because this party does not seek a monetary judgment in excess of \$100,000.00 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.
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  - Another party has previously stated in its cover sheet that C.R.C.P. 16.1 does not apply to this case.

3.  This party makes a **Jury Demand** at this time and pays the required fee. (See C.R.C.P. 38. (Checking this box is optional))

Date: December 6, 2010

  
Signature of Party or Attorney for Party

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DISTRICT COURT LA PLATA COUNTY, COLORADO P.O. Box 3340 Durango, CO 81302	<b>▲ COURT USE ONLY ▲</b>
<b>Plaintiff: Jorgina Herrera</b>  <b>Defendants: Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company</b>	
Attorney for Plaintiff:  Tim Guill, Esq. 1075 Main Avenue, Ste. 211 Durango, CO 81301 Phone: 970-247-3777 Fax: 970-247-1712 E-Mail: <a href="mailto:ColoradoWorkComp@aol.com">ColoradoWorkComp@aol.com</a> Atty. Reg. #: 19489	Case No.:  Div.
<b>COMPLAINT and JURY DEMAND</b>	

**Plaintiff Jorgina Herrera**, by and through her attorney, Tim Guill, Esq., for her Complaint against Defendants Alliant Specialty Insurance Services, Inc., and Hudson Insurance Company, states and alleges as follows:

**I. JURISDICTION**

1. Plaintiff Jorgina Herrera resides, at 110 Empire Street in Ignacio, La Plata County, Colorado 81137.
2. Defendant Alliant Specialty Insurance Services, Inc. ("Alliant") is an insurance company incorporated in the State of California and doing business in the State of Colorado. It may be served through its registered agent, Corporation Service Company, at 1560 Broadway, Suite 2090, Denver, CO 80202.

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5. Plaintiff Jorgina Herrera was an employee of the Southern Ute Tribe and the Southern Ute Tribe Growth Fund. Plaintiff Jorgina Herrera sustained injuries arising out of and within the course of her employment with the Southern Ute Tribe and the Southern Ute Tribe Growth Fund.
6. At all times pertinent hereto, Defendants Hudson Insurance Company and Alliant Specialty Insurance Services, Inc., were required by contract with the Southern Ute Tribe to provide workers' compensation benefits to injured employees of the Southern Ute Tribe commensurate with workers' compensation benefits mandated by the Colorado Workers' Compensation Act. The policy of insurance was issued in the State of Colorado.
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residents of La Plata County, Colorado.

## II. GENERAL ALLEGATIONS

10. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 9 as if fully set forth herein.
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12. Defendants Hudson and Alliant have a contractual and implied obligation of good faith and fair dealing to Plaintiff Herrera and all other injured workers in the investigation and processing of Herrera's and other workers' compensation claims.
13. Further, Defendants Hudson and Alliant breached the covenant of good faith and fair dealing through their conduct as described above, and by intentionally posing obstacles to payment, and engaging in the following actions and deliberate omissions by their claims adjusters, Myra Harrison and Marisela Villalva:
  - a. Defendants Hudson and Allied have intentionally, maliciously, and routinely understated the injured workers' average weekly wages, and consequently, have routinely, intentionally, and maliciously underpaid Plaintiff Herrera's and other injured workers' temporary and permanent wage loss benefits, as said benefits are mandated by the Colorado Workers' Compensation Act.
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- i. Defendants Hudson and Alliant have routinely failed to provide timely notice to injured workers, including Plaintiff Herrera, whether claims and benefits were being contested or admitted so that injured workers could determine if litigation was necessary.
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- k. Defendants have engaged in a course of conduct to intentionally and maliciously obstruct the provision of benefits to injured workers by soliciting medical reports from physicians known by Defendants to be

predisposed to deliver opinions and reports favorable to Defendants Hudson and Alliant, who refer a large volume of cases to those physicians.

- I. Defendants Hudson and Alliant have failed to provide adequate supervision to ensure that claims adjusters did not make *de facto* medical decisions, such as allowing adjusters to substitute their own judgment, instead of relying upon the recommendations of the authorized treating, board certified, physicians. Such supervision failures permitted adjusters to unreasonably delay and deny authorization for reasonable and necessary medical care.
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### **III. FIRST CLAIM FOR RELIEF BREACH OF CONTRACT**

15. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 14 as if fully set forth herein *verbatim*.
16. Plaintiff Herrera, as well as all other employees of the Southern Ute Tribe, are intended third party beneficiaries of the contract of insurance between the Southern Ute Tribe and Defendants Hudson and Alliant. The actions and omissions of Defendants as stated herein constitute a breach of said contract by totally failing to provide workers' compensation benefits to Plaintiff Herrera in a manner consistent with the standards established by the Colorado Workers' Compensation Act.

**IV. SECOND CLAIM FOR RELIEF  
BREACH OF THE COVENANT OF  
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17. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 16, as if fully set forth herein *verbatim*.
18. Defendants Hudson and Alliant have a contractual and implied obligation of good faith and fair dealing to Plaintiff in the handling of Plaintiff's workers' compensation claim.
19. Defendants' obligation to Plaintiff includes, but is not limited to, processing her claim in an honest fashion, providing benefits when due under standards set by the State of Colorado, and to act in a manner consistent with the purposes of the Colorado Workers' Compensation Act, to provide prompt payments and medical care to injured workers who are injured while working for the Southern Ute Tribe, in order to relieve the affects of her industrial injuries.
20. Defendants actions are reckless, malicious and ongoing, and calculated to deprive injured workers, including Plaintiff Herrera, of benefits to which they are entitled pursuant to the policy of insurance issued by Defendants Hudson and Alliant, and the standards set by the Colorado Workers' Compensation Act.
21. Defendants Hudson Insurance Company and Alliant Specialty Insurance Services, Inc., breached the covenant of good faith and fair dealing through its conduct as described above, and are liable to Plaintiff for the bad faith adjustment of Plaintiff's industrial injuries.

**V. THIRD CLAIM FOR RELIEF  
VICARIOUS LIABILITY**

22. Plaintiff repeats and incorporates by reference each and every allegation of paragraphs 1 through 21, as if fully set forth herein *verbatim*.
23. Defendants Hudson and Alliant have employed claims adjusters Myra Harrison and Marisela Villalva and are vicariously liable for the acts and omissions engaged in by said adjusters, as well as any other adjusters who have handled or processed, on behalf of Defendants Hudson and Alliant, the claims asserted by Plaintiff Herrera for workers' compensation benefits.

## VI. DAMAGES

24. As a result of Defendants' breach of contract, refusal to timely accept liability for Plaintiff's injuries, failure to process her claims in good faith, and provide benefits when due, Plaintiff Herrera has endured unnecessary pain and suffering, mental anguish, and physical impairment.
25. As a direct result of Defendants' acts and omissions, Plaintiff Herrera has been damaged in the following particulars, including, but not necessarily limited to:
  - a. Plaintiff has endured unnecessary pain and suffering, mental anguish and depression;
  - b. Plaintiff has suffered unnecessary financial hardship and severe emotional distress;
  - c. Plaintiff has suffered a past loss of income, due to an inability to return to work and will suffer financial losses in the future, over the remainder of her working life, due to diminished work capability and the inability to return to substantial gainful employment, and the expense of continuing medical care and palliative care.

**WHEREFORE**, Plaintiff Jorgina Herrera prays for judgment against Defendants Hudson Insurance Company and Alliant Specialty Servicers, Inc., for:

- a. Actual and compensatory damages;
- b. Pre and post judgment interest as provided by law;
- c. Attorney fees, expert witness fees and costs;
- d. Punitive damages; and
- e. Such other and further relief as the Court deems just and proper.

## VII. JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

Date: Dec. 6, 2010

Respectfully Submitted,

**Tim Guill, Attorney for Plaintiff**

*A signed original is maintained in our office.*

  
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is/

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