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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED FINANCIAL CASUALTY  
COMPANY, a foreign insurance company,

Plaintiff,

v.

SPENCER TRUCKING LLC, a Washington  
limited liability company; RYAN SPENCER,  
an individual; THE ESTATE OF IVAN  
EMMANUEL CARDENAS SR.; I.C., an  
individual,

Defendants.

No. 1:20-cv-03211-SMJ

REPLY BRIEF

INTRODUCTION

Before addressing plaintiff's principal arguments, defendant's attempted characterization of this case as one arising out of off-reservation conduct must be addressed. This case is not a personal injury suit against defendants seeking damages for a traffic accident, nor does plaintiff possess standing to assert such a claim on behalf of defendant Cardenas. Rather, plaintiff seeks to have this court *interpret a contract* consensually entered between plaintiff and defendant Spencer

REPLY BRIEF  
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1 Trucking, a Yakama Indian tribal corporation headquartered on the Yakama  
2 Reservation. The pertinent facts of this civil action are *not* that an action  
3 occurred on a roadway outside the reservation. The pertinent facts are that  
4 plaintiff did business on the Yakama Reservation by entering a written contract  
5 with a tribal corporation, the language of which plaintiff asserts should be  
6 interpreted in its favor. The interpretation of a contract consensually entered by  
7 plaintiff with an enrolled Indian on the Yakama Reservation is a matter within the  
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10 bailiwick of the tribal court.

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REPLY TO RESPONSE TO MOTION

Plaintiff makes several arguments in opposition to defendants' motion.  
These shall be addressed *seriatim*.

1. "Diversity of citizenship vitiates this Circuit's exhaustion of tribal remedies requirement".

The mere fact that plaintiff seeks to premise its complaint upon diversity of citizenship does not vitiate the obligation to exhaust its tribal remedies in tribal court. That plaintiff was incorporated in another jurisdiction does not automatically exempt it from the jurisdiction of a forum within which it engages in business. International Shoe v. State of Washington, 326 U.S. 310 (1945). Like any contemporary jurisdictional forum, the laws of the Yakama Nation provide for "long-arm" jurisdiction. Revised Yakama Code § 2.01.03. The

1 Tribal Court, as a matter of Comity, must in the first instance have the  
2 opportunity to determine whether the plaintiff's issuance of insurance coverage to  
3 an Indian tribal business on the Yakama Reservation, and its concomitant  
4 acceptance of premiums paid by the tribal owner, constitutes sufficient minimum  
5 contacts warranting tribal jurisdiction.  
6

7 2. "Plaintiff and decedent are not tribal members".

8 That plaintiff and defendant Cardenas are not Indians does not subvert the  
9 Tribal Court's opportunity to determine whether it possesses jurisdiction. As was  
10 eloquently stated by the United States Supreme Court:  
11

12 Tribal courts have repeatedly been recognized as appropriate forums  
13 for the exclusive adjudication of disputes affecting important personal  
14 and property interests of both Indians and non-Indians.

15 Santa Clara Pueblo v. Martinez, 436 U.S. 49 at 65 (1978). As to plaintiff  
16 implying that Cardenas is a necessary indispensable party to litigation over the  
17 extent of Spencer Trucking's insurance coverage, rendering tribal court litigation  
18 futile, Cardenas is not even a party to the insurance contract that plaintiff seeks a  
19 declaration of non-coverage of. As was stated in Burlington Northern R.R.  
20 Company v. Crow Tribal Council:  
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22 [B]oth the Supreme Court and this circuit have held that non-Indian  
23 defendants must exhaust tribal court remedies before seeking relief in  
24 federal court, even where defendants allege that proceedings in tribal  
25 court exceed tribal sovereign jurisdiction.

1 940 F. 2d 1239 at 1244 (9<sup>th</sup> Cir. 1991).

2 3 “The accident resulting in injury to defendant Cardenas did not occur on  
3 tribal lands”.

4 The *situs* of an accident is not determinative of how the *language* or *terms*  
5 of a contract entered consensually with a tribal member doing business on tribal  
6 lands should be interpreted.  
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8 4. “The Yakama Nation has not adopted the federal declaratory judgment  
9 act”.

10 Whether the declaratory judgments act applies in tribal court is matter for  
11 determination by the tribal court. It is expressly stated in Revised Yakama Code  
12 sections governing civil cases that “federal common law” applies to the  
13 determination of civil cases (Revised Yakama Code §7.01.01), that the Federal  
14 Rules of Civil Procedure and Evidence apply and, in the absence of governing  
15 tribal law the court shall look to the statutes of other jurisdictions for guidance.  
16 RCY §3.01.29. Had tribal member Spencer won the race to the courthouse, it is  
17 undeniable that the tribal court would possess jurisdiction had he sued the  
18 plaintiff for breach of his insurance contract by failing to provide coverage.  
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20 5. “Jurisdiction is lacking over defendant Cardenas and his estate”.  
21 Plaintiff seeks a declaratory judgment that the contract of insurance between  
22 plaintiff and Spencer Trucking excludes coverage. Cardenas is not a signatory to  
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1 such contract. Nor is he a necessary or indispensable party to interpretation of  
 2 the contract. On the other hand, Cardenas, in driving a logging truck for Spencer  
 3 was an *agent or employee* of the tribal corporation and therefore held the same  
 4 status as the tribal member. Yakama Indian Nation v. Flores, 955 F. Supp. 1229,  
 5 1260 (E.D. Wash. 1997) (“the Yakama Indian Nation has the autonomy to  
 6 regulate and exercise the Treaty right to travel among tribal members and non-  
 7 member agents or employees”).  
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 10 6. “The United States District Court possesses jurisdiction over this  
 11 cause”.

12 It is not apparent that there *is* diversity jurisdiction in this case. Clearly, plaintiff,  
 13 an Ohio corporation, is registered with the Washington State Insurance  
 14 Commission to do business in Washington and plaintiff’s insured is a resident of  
 15 Washington<sup>1</sup>. Except for a mere conclusory statement that the amount in  
 16 controversy meets the threshold requirement, there are no facts demonstrating that  
 17 the amount in controversy exceeds \$75,000.  
 18

19  
 20 7. “No action is pending in tribal court”.

21 Exhaustion of tribal remedies in the Ninth Circuit is a mandatory requirement  
 22 before federal court jurisdiction may be invoked—whether or not an action is  
 23

24 <sup>1</sup> See registry of the Washington State Insurance Commissioner for United Financial Casualty  
 25 Company, WAOIC No. 55028.  
<https://fortress.wa.gov/oic/consumertoolkit/Company/CompanyAgentAppointments.aspx?WAOIC=JmOaaqoSluA024%2fKXprJtw%253D%253D>

1 actually pending in tribal court. *See generally*, Navajo Nation v. International  
 2 Steel Bldgs., Inc., 42 F. Supp. 2d 1222 (D. N.M.1991).

3 8. “The accident occurred outside the reservation”.

4 Spencer Trucking was hauling logs from the Yakama Reservation on a public  
 5 roadway. This is a right reserved to members of the Yakama Nation by treaty  
 6 which the Tribe possesses the right to regulate the time, place and manner of to  
 7 the exclusion of State law. Yakama Indian Nation v. Flores, 955 F. Supp. 1229  
 8 (E.D. Wash. 1997). Public roads in Washington are impressed with an easement  
 9 which enables members of the tribe to exercise this right. Id. Cases, even those  
 10 occurring outside the reservation involving a member of the tribe exercising  
 11 treaty rights fall within the asserted jurisdiction of the tribal court. Revised  
 12 Yakama Nation Law & Order Code §2.01.03. *See also*, Settler v. Lameer, 507 F.  
 13 2d 231 (9<sup>th</sup> Cir. 1974).

14 9. “The Yakama Nation has not adopted contract laws”.

15 The Yakama Nation judiciary is fully capable of applying laws applicable to  
 16 interpretation of contracts. The Revised Yakama Code specifically provides that  
 17 in the absence of a governing law in the Code the Tribal Court applies  
 18 Washington State law in an advisory fashion.

19 In fact, the Yakama Tribal Court has previously determined provisions in a  
 20 contract of insurance identical to the provision relied upon by plaintiff to deny  
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1 coverage is unenforceable against a tribal company as it would be against public  
2 policy in that, due to the Washington State Department of Labor and Industries  
3 lack of jurisdiction to *apply* its Workers Compensation coverage to tribal  
4 corporations, that exclusionary clause would leave tribal businesses paying  
5 insurance premiums for nothing, while leaving injured employees without a  
6 remedy. Certainly, acceptance of plaintiff's arguments furthers its financial  
7 interests in that Spencer would receive nothing for his payments nor would the  
8 company have any obligation to compensate Cardenas—two needy persons could  
9 be stiffed in one fell swoop. A practice which equity and good conscience cannot  
10 condone.  
11  
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### 13 CONCLUSION

14  
15 Had plaintiff not engaged in a race to the courthouse, it is apparent that if  
16 the roles of plaintiff and defendant were reversed, there is a more than colorable  
17 basis for the tribal court to have exercised jurisdiction over this dispute over the  
18 contract language. It would plainly be within the tribal court's jurisdiction if  
19 Spencer Trucking—a tribal corporation—and its owner Ryan Spencer had sued  
20 the insurer in tribal court for breach of its policy of insurance by denying  
21 coverage under a contract it had consensually entered with a company domiciled  
22 on the Yakama Reservation.  
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1 For the foregoing reasons, the court should abstain from entertaining this  
2 case until tribal court remedies are exhausted.

3 DATED this 7th day of January, 2021.

4 Respectfully submitted,

5  
6 S/Jack W. Fiander  
7 Counsel for Defendants  
8 Spencer Trucking and Ryan Spencer  
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Certificate of Service

The foregoing document was filed with the Clerk of Court with copies served upon all counsel using the court's CM/ECF system.

S/Jack W. Fiander