

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 26, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
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;
ESTATE OF IVAN EMMANUEL
CARDENAS SR.; and I C, an
individual,

Defendants.

No. 1:20-cv-3211-SMJ

**ORDER STAYING CASE
PENDING EXHAUSTION OF
TRIBAL REMEDIES**

Before the Court is Defendants Spencer Trucking and Ryan Spencer's (together "Spencer Defendants") Motion to Dismiss Complaint, ECF No. 5. Based on principles of comity adopted by the Supreme Court and the Ninth Circuit, this Court grants the motion.

BACKGROUND

Plaintiff United Financial Casualty Company seeks a declaratory judgment that it "owes no defense or indemnity to the Spencer Defendants" for any claims arising out of an accident that caused the death of Spencer Trucking, LLC's

1 (“Spencer Trucking”) employee, Ivan Emmanuel Cardenas, Sr. ECF No. 3 at 19.
2 Plaintiff seeks a judicial determination of Plaintiff’s rights and obligations under a
3 commercial automobile insurance policy issued to Spencer Trucking (“Insurance
4 Policy” or “Policy”). *Id.* Plaintiff joined the Spencer Defendants as well as the
5 Estate of Ivan Emmanuel Cardenas Sr. and I.C., Cardenas’s minor child (together
6 “Cardenas Defendants”). *See id.* at 2–3. Ryan Spencer is a member of the Yakama
7 Nation, and Spencer Trucking is a tribally licensed business. ECF No. 5 at 7–8.
8 Cardenas was not a tribal member. ECF No. 8 at 2.

9 Plaintiff alleges the following facts. Cardenas was transporting timber on
10 Forest Service Road 5603—non-tribal land—when he crashed and rolled his truck,
11 trapping him until he died from his injuries. ECF No. 3 at 3–4. Afterward, I.C. sent
12 a letter to Plaintiff requesting documents for a potential personal injury cause of
13 action against Spencer Trucking. *Id.* at 4. Spencer Trucking sent a claim to Plaintiff
14 for defense and indemnity for liability arising out of the accident. *Id.* at 5. Plaintiff
15 now argues that the terms and conditions of the Insurance Policy preclude its
16 coverage from this claim. *See generally id.* It bases its argument, at least in part, on
17 the fact that Cardenas was injured in the scope of his employment. *See, e.g., id.* at
18 15 (“There is an actual and justiciable controversy as to whether the claim is for
19 bodily injury to an employee of Spencer Trucking arising out of or within the courts
20 of that employee’s employment.”); *see generally id.* at 14–17.

1 The Spencer Defendants now ask the Court to dismiss this action and require
2 that Plaintiff first exhaust tribal remedies. ECF No. 5.

3 DISCUSSION

4 “[A]though the existence of tribal court jurisdiction present[s] a federal
5 question within the scope of 28 U.S.C. § 1331, considerations of comity direct that
6 tribal remedies be exhausted before the question is addressed by the District Court.”
7 *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15 (1987) (citing *Nat. Farmers Union*
8 *Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985)); *see also Burlington*
9 *N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1245 (9th Cir. 1991) (“The
10 requirement of exhaustion of tribal remedies is not discretionary; it is mandatory.”).
11 The exhaustion requirement promotes tribal self-government and self-
12 determination. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. at 15. “[T]he orderly
13 administration of justice in federal court [is] served by allowing a full record to be
14 developed in Tribal Court before either the merits or any question concerning
15 appropriate relief is addressed.” *Id.* A fully developed record avoids a “procedural
16 nightmare” and “encourage[s] tribal courts to explain to the parties the precise basis
17 for accepting jurisdiction, and will also provide other courts with the benefit of their
18 expertise in such matters in the event of further judicial review.” *Id.*

19 “Tribal courts have repeatedly been recognized as appropriate forums for the
20 exclusive adjudication of disputes affecting personal and property interests of both

1 Indians and non-Indians.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978).
2 Just because Plaintiff and Cardenas are non-Indians and that the accident occurred
3 on non-tribal land does not distinguish this case from Supreme Court precedent.
4 Despite Plaintiff’s arguments, parties must exhaust tribal remedies even when no
5 tribal proceeding has already commenced. *Wellman v. Chevron U.S.A., Inc.*, 815
6 F.2d 577 (9th Cir. 1987); *see also* ECF No. 7 at 4.

7 And none of the enumerated exceptions to the exhaustion requirement exist
8 here. Parties need not exhaust tribal remedies if the assertion of tribal jurisdiction is
9 brought in bad faith or to harass a litigant, if it would serve no purpose other than
10 delay, or if the tribal court plainly lacks jurisdiction. *See Strate v. A-1 Contrs.*, 520
11 U.S. 438, 459 n.14 (1997); *Nevada v. Hicks*, 533 U.S. 353, 369 (2001). First, the
12 Spencer Defendants have brought this motion in good faith. The Court agrees this
13 matter involved a “race to the courthouse.” ECF No. 12 at 4, 7. Had the Spencer
14 Defendants filed this suit, they likely would have done so in tribal court. *See id.*
15 Second, exhaustion of tribal remedies will ensure that this Court and the parties
16 respect the principles of comity and self-determination. Even if the tribal court
17 ultimately rejects jurisdiction over this matter, adherence to these principles serves
18 an important purpose.

19 Third, tribal jurisdiction is not plainly lacking. “To exercise civil authority
20 over a defendant, a tribal court must have both personal and subject matter

jurisdiction.” *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802, 819 (9th Cir. 2011). “[T]ribal adjudicatory jurisdiction over non-members is ill-defined.” *Smith v. Salish Kootenai Coll.*, 434 F.3d 1127, 1137 (9th Cir. 2006) (quoting *Hicks*, 533 U.S. at 367 n.8) (alterations omitted). “A tribe may regulate . . . the activities of nonmembers who enter consensual relationships with the tribe or its members.” *Montana v. United States*, 450 U.S. 544, 555 (1981). The Spencer Defendants have presented colorable bases for tribal jurisdiction. Although Plaintiff frames this issue as one in tort, the court which decides this case on the merits will need to interpret the Insurance Policy. *See* ECF No. 7 at 10 (Plaintiff states that “[t]here are no extra-contractual claims against UFCC at issue. The instant action was filed in this Court and pertains *solely* to contractual issues found in the Policy.”) (emphasis added). The accident site—off tribal land—may not constitute the most salient factor. Instead, the tribal court may consider that Plaintiff voluntarily entered into the Insurance Policy with a Yakama Nation business. *See Montana*, 450 U.S. at 555.

True, the court may determine that the Cardenas Defendants lacked sufficient minimum contacts with the Yakama Nation to establish personal jurisdiction. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Allstate Ins. Co. v. King*, No. C13-433 TSZ, 2013 WL 5302494, *1 (W.D. Wash. Sept. 19, 2013) (injured person is a necessary party in insurance declaratory judgment action) (collecting cases). But it may also determine that Cardenas’s employment Spencer

1 Trucking constitutes minimum contacts for this declaratory judgment action as to
2 the Insurance Policy, especially because Plaintiff argues, in part, that the Spencer
3 Defendants do not have a right to indemnify *because of* Cardenas’s employment.
4 ECF No. 3 at 14–17; *see also Montana*, 450 U.S. at 555; *Thompson v. Wayne*
5 *Lovelady’s Frontier Ford*, 1 Nav. R. 282, 1978 Navajo App. LEXIS 33, *12–*13
6 (Navajo Ct. App. May 15, 1978) (determining that tribal jurisdiction over “non-
7 Indians outside the territorial jurisdiction of the Tribe” exists in certain
8 circumstances). Each party in this matter has a consensual tribal connection. *Cf.*
9 *Strate*, 520 U.S. at 457 (“the Tribes were strangers to the accident.”).

10 CONCLUSION

11 To be sure, the tribal court may determine it lacks jurisdiction. But this Court
12 *must* allow the tribal court to make that determination in the first instance—even if
13 it results in delay. For these reasons, the Court will stay this matter, as a matter of
14 comity, pending exhaustion of tribal remedies. *See Burlington N. R.R. Co.*, 940 F.2d
15 at 1247 (holding that district court could have dismissed or stayed the case pending
16 exhaustion of tribal remedies).

17 Accordingly, **IT IS HEREBY ORDERED:**

18 **1.** Spencer Defendants’ Motion to Dismiss Complaint, **ECF No. 5**, is

19 **GRANTED IN PART AND DENIED IN PART.**

20 **2.** This case is **STAYED** pending exhaustion of tribal remedies.

1 **3.** The parties' pending motions, **ECF Nos. 10, 14, 17 & 18**, are
2 **DENIED WITH LEAVE TO RENEW.**

3 **4.** The parties shall file a **joint status report** regarding the status of tribal
4 proceedings by no later than the **EARLIEST** of:

5 **A.** 180 days after the date of this Order;

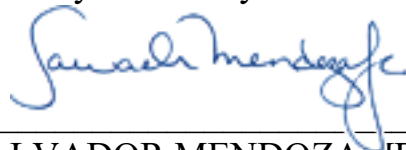
6 **B.** Fourteen (14) days after a FINAL tribal court determination
7 (including any appeals) that it does not have jurisdiction over
8 this dispute; or

9 **C.** Thirty (30) days after a FINAL disposition of this dispute by a
10 tribal court on the merits (including any appeals).

11 **D.** Alternatively, the parties may also file a stipulated motion to
12 dismiss at any earlier time.

13 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
14 provide copies to all counsel.

15 **DATED** this 26th day of January 2021.

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17 _____
18 SALVADOR MENDOZA, JR.
19 United States District Judge
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