

1 ERIC F. HARTMAN, ESQ. (SB # 083571)
2 LAW OFFICE OF ERIC F. HARTMAN
3 300 S. FIRST STREET, #210
4 SAN JOSE, CA. 95113
5 (408) 297-7254 / Fax (408) 297-0608

6 Attorney for Defendant/Cross-Complainant, Wood's Roofing Inc. a California
7 Corporation

8
9 IN THE TRIBAL COURT OF
10 BLUE LAKE RANCHERIA
11

12
13 MAINSTAY BUSINESS SOLUTIONS,)
14)
15 Plaintiff,)
16 vs.)
17)
18 WOOD'S ROOFING INC., a California)
19 Corporation, DOES 1-10.)
20 Defendants.)

CASE NO. C-09-0612-LJM

CROSS-COMPLAINANT WOOD'S
ROOFING INC.'S REQUEST TO
ENTER CLERK'S DEFAULT OF
CROSS-DEFENDANT ADMIRAL
INSURANCE COMPANY

21 AND CROSS ACTION.
22

I, Eric F. Hartman, declare :

- 23 1. I am the attorney for Cross-Complainant Wood's Roofing Inc. and duly
24 admitted to practice before the Blue Lake Rancheria Tribal Court.
25 2. I have personal knowledge of the facts herein stated and could and would
26 competently testify.
27

1 3. The original Proof of Service of Summons and Cross-Complaint personally
2 served on Admiral Insurance Company by a State of New Jersey Registered Process Service
3 was served on October 21, 2011 and Federal Expressed to your court on December 21, 2011
4 (with cover letter). I enclose a copy of the Affidavit (Exhibit A).

5 4. Cross-Defendant Admiral Insurance Company's Answer to Cross-Complaint
6 was due on November 26, 2011.

7 5. Cross-Complainant Wood's Roofing Inc. requests pursuant to Rule 15 and
8 Rule 34(b)(1) for a Clerk's Default to be entered against cross-defendant Admiral Insurance
9 Company.

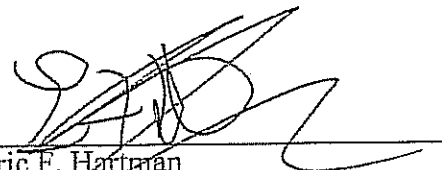
10 6. Cross-Complainant never granted an extension to cross-defendant Admiral
11 Insurance Company to file an Answer pass the November 26, 2011 deadline.

12 7. Cross-defendant Admiral Insurance Company's Motion to Quash Service of
13 the Wood's Roofing's Cross-Complaint only pertained to service via Certified Mail (only)
14 and was granted on January 4, 2012. The above personal service on October 21, 2011 was
15 not part of the January 4, 2012 Order and was served on October 21, 2011 and Cross-
16 defendant Admiral Insurance Company has defaulted and has not appeared after the Motion
17 to Quash was granted re: only the Certified Mail Proof of Service.

18 I declare under penalty of perjury of the laws of the Blue Lake Rancheria Sovereign
19 Nation and of the United States that the foregoing is true and correct.

20 Executed February 14, 2012 at San Jose, California.

21
22
23
24 By:


Eric F. Hartman
Attorney for Cross-Complainant
Wood's Roofing Inc.

AFFIDAVIT OF SERVICE

AFFIDAVIT OF SERVICE

State of CA

County of

In The Tribal Court Of Blue Lake Rancher Court

Case Number: C-09-0612-LJM

Plaintiff:

MAINSTAY BUSINESS SOLUTIONS

vs.

Defendant:

WOOD'S ROOFING INC., A CALIFORNIA CORPORATION, DOES 1-10

VS.

UNITED CONTRACTORS INSURANCE COMPANY INC., ADMIRAL INSURANCE COMPANY; ROES 1-100

For:

Eric Hartman
LAW OFFICE OF ERIC F. HARTMAN
300 South First Street, #210
San Jose, CA 95113

Received by PROFESSIONAL PROCESS SERVERS on the 20th day of October, 2011 at 4:40 pm to be served on ADMIRAL INSURANCE COMPANY, 1255 CALDWELL ROAD, CHERRY HILL, NJ 08034.

I, Kevin Robbins, being duly sworn, depose and say that on the 21st day of October, 2011 at 2:30 pm, I:

served a CORPORATION by delivering a true copy of the SUMMONS, CROSS COMPLAINT FOR DAMAGES, FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING. REFUSAL OF INSURER TO DEFEND ACTION AGAINST INSURED AND INDEMNIFY AND TO WRONGFULLY REFUSAL TO SETTLE with the date and hour of service endorsed thereon by me, to: JANE R HILL as CLAIMS UNIT MANAGER for ADMIRAL INSURANCE COMPANY, at the address of: 1255 CALDWELL ROAD, CHERRY HILL, NJ 08034, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 55, Sex: F, Race/Skin Color: White, Height: '55", Weight: 150, Hair: Blond, Glasses: Y

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

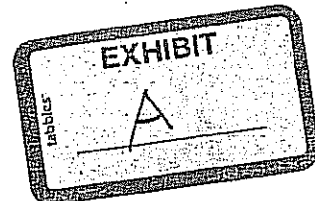
Subscribed and Sworn to before me on the 25th day of October, 2011 by the affiant who is personally known to me.

Fran A. Nigro
NOTARY PUBLIC

FRAN A. NIGRO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 23, 2014

Kevin Robbins
Kevin Robbins
Process Server

PROFESSIONAL PROCESS SERVERS
100 SPRINGDALE AVE
SUITE A3
CHERRY HILL, NJ 08003
(877) 566-0006
Our Job Serial Number: KRR-2011000034



1 Regan Furcolo (SBN 162956)
Lynn Trang (SBN 221808)
Christopher M. Lea (207723)
2 WALSH MCKEAN FURCOLO LLP
625 Broadway, Suite 1402
3 San Diego, CA 92101-5420
Telephone: (619) 232-8486
4 Facsimile: (619) 232-2691

5 Attorneys for Cross-Defendant ADMIRAL INSURANCE COMPANY
6
7

8 IN THE TRIBAL COURT OF
9 BLUE LAKE RANCHERIA

10 MAINSTAY BUSINESS SOLUTIONS,

11 Plaintiff,

12 vs.

13 WOOD'S ROOFING INC., a California
14 Corporation, DOES 1-10.

15 Defendants.

16
17 WOOD'S ROOFING INC., a California
18 Corporation,

19 Cross-Complainant.

20 vs.

21 UNITED CONTRACTORS INSURANCE
22 COMPANY, INC., ADMIRAL
INSURANCE COMPANY; ROES 1-100.

23 Cross-Defendants.
24
25
26
27

CASE NO. C-09-06212-LJM
C-09-06212A-LJM

**EX PARTE APPLICATION OF CROSS-
DEFENDANT ADMIRAL INSURANCE
COMPANY FOR AN ORDER
SHORTENING TIME TO HEAR A
MOTION TO DISMISS THE CROSS-
COMPLAINT, OR IN THE
ALTERNATIVE, AN ORDER
CONTINUING THE BRIEFING
SCHEDULE FOR THE COURT-
ORDERED SCHEDULED MOTIONS FOR
SUMMARY JUDGMENT;
DECLARATION OF CHRISTOPHER M.
LEA**

**[PROPOSED ORDER FILED
CONCURRENTLY HEREWITH]**

DATE: March 2, 2012
TIME: 1:30 p.m.
JUDGE: Hon. Lester J. Marston, Chief Judge

COMPLAINT FILED: 6/12/09
TRIAL DATE: TBD

ADMIRAL'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT

Exhibit K

1 TO THE CLERK OF THE COURT, ALL PARTIES HEREIN AND TO THEIR
2 COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Cross-Defendant ADMIRAL INSURANCE COMPANY,
4 (hereinafter "Admiral"), will specially appear and apply *ex parte* of the above-entitled court,
5 located at 428 Chartin Road, Blue Lake, CA 95525, on March 2, 2012 at 1:30 p.m.

6 This *ex parte* application is made by Admiral on the following grounds:

7 1. The current time frame does not allow Admiral to properly notice a Motion to
8 Dismiss the Cross-Complaint prior to having to comply with the Court-ordered
9 motions for summary judgment. Admiral's motion to dismiss is a "jurisdictional"
10 issue and needs to be heard prior to filing any motion for summary judgment. The
11 hearing/briefing schedule ordered by the Court forces Admiral to expend significant
12 resources to file a motion for summary judgment when it contends it is not subject to
13 the jurisdiction of this Court.

14 2. Admiral first filed a motion to dismiss on October 25, 2011 in conjunction with a
15 motion to quash service of the summons. On January 9, 2012, this Court granted the
16 motion on the basis that Admiral had not been personally served and did not address
17 the motion to dismiss. Admiral first received notice that such a proof of service had
18 been filed via a letter from WRI's counsel received on February 21, 2012. Admiral
19 intends to renew its Motion to Dismiss on the grounds that the Tribal Court does not
20 have subject matter jurisdiction over the pending dispute. However, to comply with
21 statutory requirements as to notice periods, the new hearing date for the Motion to
22 Dismiss comes after Admiral would be required to file a cross-motion for summary
23 judgment. So alternatively, Admiral seeks an order modifying the briefing schedule
24 this Court set for filing cross-motions for summary judgment to a date at least two (2)
25 weeks after the hearing on the Motion to Dismiss.

28 ADMIRAL'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO
DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING
SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT

This Application is based upon this Notice, Memorandum of Points and Authorities, the accompanying Declaration of Christopher M. Lea with attached exhibits, [proposed] order, the papers and pleadings on file with this Court for which judicial notice is requested, and such other and further oral and documentary evidence as may be presented at the time of hearing on this matter.

DATED: February 21, 2012

WALSH-MCKEAN FURCOLO LLP

By: 

Regan Furcolo
Lynn Trang
Christopher M. Lea
Attorneys for Cross-Defendant
ADMIRAL INSURANCE COMPANY

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ADMIRAL'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. AUTHORITY

3 In the absence of applicable tribal law, the Court shall use as guidance the laws of the
 4 State of California. Blue Lake Rancheria Business Council Ordinance No. 07-01 ("Ordinance
 5 No. 07-01), Section 11.1.1.060. Rule 10 of the Court's Civil Rules of Procedure for the Tribal
 6 Court of the Tribe ("C.R.P.T.C.T.") specifies that "[t]he Chief Judge...shall manage assigned
 7 cases so as to provide for the prompt dispatch of business." California Rules of Court, Rule
 8 3.1300, subd. (b) provides that: "The court, on its own motion or on application for an order
 9 shortening time supported by a declaration showing good cause, may prescribe shorter times for
 10 the filing and service of papers than the times specified in Code of Civil Procedure section
 11 1005." In addition, this Court has power under CCP section 128(8) to "amend and control its
 12 process and orders so as to make them conform to law and justice."

13 II. GOOD CAUSE EXISTS TO SHORTEN THE NOTICE PERIOD FOR A MOTION
 14 TO DISMISS

15 Cross-Defendant, Admiral Insurance Company ("ADMIRAL"), was brought into the
 16 action by Woods Roofing, Inc. ("WRI") in an attempt to seek insurance benefits under the policy
 17 of insurance issued by Admiral to WRI. ADMIRAL contends in its Motion to Dismiss that it is
 18 not subject to the jurisdiction of this Court.

19 Admiral had previously filed a motion to dismiss the cross-complaint on October 25,
 20 2011 in conjunction with a motion to quash service of the summons. On January 9, 2012 the
 21 court granted Admiral's motion to quash service of the summons and ruled that based upon the
 22 evidence submitted, it had not been properly served. The Court declined to address the merits of
 23 Admiral's motion to dismiss for lack of jurisdiction. WRI was thereafter obligated to file a proof
 24 of service with the court indicating Admiral had been personally served with the cross-
 25 complaint. Admiral first received notice that such a proof of service had been filed via a letter
 26 from WRI's counsel received on February 21, 2012.

1 ADMIRAL plans on re-filing its Motion to Dismiss on the grounds that the Tribal Court
2 does not have jurisdiction over the cross-complaint. As more thoroughly addressed in the
3 motion, there is no jurisdiction as there is no connection between the Admiral insurance policy
4 and the Tribe's land. The Court has also not been granted subject matter jurisdiction over the
5 cross-complaint by the Tribe or under Federal law. Nor does the Court have personal
6 jurisdiction over Admiral. To comply with C.R.P.T.C.T. rule 18(b), the earliest possible hearing
7 date for Admiral's second motion to dismiss is April 6, 2012. However, a January 9, 2012 order
8 mandates Admiral to file a motion for summary judgment on substantive coverage issues by
9 March 15, 2012. Complying with this order will force ADMIRAL to file an opening brief,
10 which Admiral fears will be viewed as a submission to the Court's jurisdiction, before the Tribal
11 Court has a chance to rule on Admiral's second Motion to Dismiss. Accordingly, good cause
12 exists to have Admiral's motion to dismiss heard on shortened notice and in advance of when
13 opening briefs on the court ordered cross-motions for summary judgment are due. Otherwise,
14 Admiral will be unable to exhaust tribal remedies and will be forced to file a federal court
15 complaint requesting a preliminary injunction. See, e.g. *National Farmers Union Ins. Co. v.*
16 *Crow Tribe of Indians* (1985) 471 US 845.

17 Jurisdiction "will involve no arduous inquiry" and both judicial economy and the
18 consideration ordinarily accorded the plaintiff's choice of forum "should impel the federal court
19 to dispose of [those] issue[s] first." *Ruhrgas AG v. Marathon Oil Co.* (1999) 526 U.S. 574, 587-
20 588. Denial of this ex parte application will be a violation of Admiral's due process rights as it
21 will be forced to submit to the jurisdiction of the Court. Under this hearing schedule, Admiral
22 would be forced to file its opening brief on its motion for summary judgment on March 15, 2012.
23 Admiral adamantly disputes that it is subject to the jurisdiction of this Court. As such, it would
24 be unfair to force Admiral to expend significant resources on filing a Motion for Summary
25 Judgment on its meritorious coverage defenses when the threshold jurisdictional issue has yet to
26 be decided.

27
28 ADMIRAL'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO
DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING
SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT


1 Conversely, there is no prejudice to the other parties as they have been well aware of
2 Admiral's position as conveyed in the motion to dismiss. The first motion was filed over four
3 months ago. This second motion is substantively identical. It has also been attached as an
4 exhibit to this ex parte application.

5 **III. CONCLUSION**

6 Admiral requests that its second Motion to Dismiss for Lack of Jurisdiction be heard
7 prior to filing opening briefs on cross-motions for summary judgment. This can be
8 accomplished by shortening the notice period for Admiral's second motion to dismiss.
9 Alternatively, the Court can adjust the briefing schedule for the cross-motions for summary
10 judgment to a date well after ADMIRAL's Motion to Dismiss is heard.

11
12 DATED: February 27, 2012

WALSH, MCKEAN, FURCOLO, LLP


By: _____

Regan Furcolo
Lynn Trang
Christopher M. Lea
Attorneys for Cross-Defendant
ADMIRAL INSURANCE COMPANY

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ADMIRAL'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT

WALSH, MCKEAN, FURCOLO, LLP
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SUITE 1402
SAN DIEGO, CALIFORNIA
92101-5600
TELEPHONE (619) 552-8468

DECLARATION OF CHRISTOPHER M. LEA

I, Christopher M. Lea, declare as follows:

1. I am an associate in the law firm of Walsh McKean Furcolo LLP. I am an attorney in good standing and licensed to practice in the State of California, and licensed to practice before the Blue Lake Rancheria Court. I have personal knowledge of the matters stated herein, except where stated on information and belief, and if called as a witness, I could and would testify competently thereto.

2. Walsh McKean Furcolo LLP is counsel of record for ADMIRAL INSURANCE COMPANY (referred to collectively herein as "Admiral") in the instant matter. This declaration is brought in support of Admiral's ex-parte application for an order shortening the notice period for Admiral's second Motion to Dismiss, or in the alternative, an order modifying the hearing date for the cross-motions for summary judgment. Timely notice of this ex-parte application was provided to all counsel. (See Exhibit "A" attached hereto, being a true and correct copy of my February 22, 2012 letter to counsel for WRI and February 27, 2012 letter to all counsel advising of this *ex parte* application.)

3. Admiral had previously filed a motion to dismiss the cross-complaint on October 25, 2011 in conjunction with a motion to quash service of the summons. On January 9, 2012 the court granted Admiral's motion to quash service of the summons and ruled that based upon the evidence submitted, it had not been properly served. The Court declined to address the merits of Admiral's motion to dismiss for lack of jurisdiction. WRI was thereafter obligated to file a proof of service with the court indicating Admiral had been personally served with the cross-complaint. Admiral first received notice that such a proof of service had been filed via a letter from WRI's counsel received on February 21, 2012.

4. ADMIRAL plans on re-filing are filing its Motion to Dismiss on the grounds that the Tribal Court does not have jurisdiction over the cross-complaint. As more thoroughly addressed in the motion, there is no jurisdiction as there is no connection between the Admiral

1 insurance policy and the Tribe's land. The Court has also not been granted subject matter
 2 jurisdiction over the cross-complaint by the Tribe or under Federal law. Nor does the Court have
 3 personal jurisdiction over Admiral. Attached hereto as Exhibit "B" is a true and correct copy of
 4 Admiral's second motion to dismiss which it intends on filing.

5 5. To comply with C.R.P.T.C.T. rule 18(b), the earliest possible hearing date for
 6 Admiral's second motion to dismiss is April 6, 2012. However, a January 9, 2012 order
 7 mandates Admiral to file a motion for summary judgment on substantive coverage issues by
 8 March 15, 2012. Complying with this order will force ADMIRAL to file an opening brief,
 9 which Admiral fears will be viewed as a submission to the Court's jurisdiction, before the Tribal
 10 Court has a chance to rule on Admiral's second Motion to Dismiss. Accordingly, good cause
 11 exists to have Admiral's motion to dismiss heard on shortened notice and in advance of when
 12 opening briefs on the court ordered cross-motions for summary judgment are due. Otherwise,
 13 Admiral will be unable to exhaust tribal remedies and will be forced to file a federal court
 14 complaint requesting a preliminary injunction. See, e.g. *National Farmers Union Ins. Co. v.*
 15 *Crow Tribe of Indians* (1985) 471 US 845.

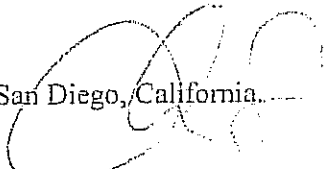
16 ADMIRAL will be substantially prejudiced if forced to file a motion for summary
 17 judgment before there is a ruling on jurisdiction. Without regard to the jurisdictional question,
 18 ADMIRAL believes its coverage denial is correct and plans on bringing a motion for summary
 19 judgment at the appropriate time.

20 4. I believe that good cause exists to grant the requested relief.

21 5. This application is not being brought to harass any other party or counsel, nor
 22 cause undue delay in these proceedings.

23 I declare under penalty of perjury under the laws of the State of California that the
 24 foregoing is true and correct.

25 Executed this 21st day of February, 2012 at San Diego, California.

26 
 27 Christopher M. Lea

28 ADMIRAL'S EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO
 DISMISS THE CROSS-COMPLAINT, OR IN THE ALTERNATIVE, ORDER CONTINUING BRIEFING
 SCHEDULED FOR THE COURT-ORDERED SCHEDULED MOTIONS FOR SUMMARY JUDGMENT



WALSH MCKEAN FURCOLO LLP

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WRITER'S EMAIL
LTRANG@WMFLP.COM

OF COUNSEL
FOSTER FURCOLO JR

WWW.WMFLP.COM

February 22, 2012

VIA FACSIMILE

Eric F. Hartman, Esq.
LAW OFFICES OF ERIC F. HARTMAN
300 S. First Street, Suite 210
San Jose, CA 95113

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.
Insured : Wood's Roofing, Inc.
Our File No. : ADM.11861-1/17/25

Dear Mr. Hartman:

I have recently received a copy of your February 14, 2012 letter to the court clerk requesting an entry of default against Admiral. Admiral takes issue with the fact that this letter was sent to the court clerk via federal express but the copy sent to our office was via regular mail, thereby preventing a swift response. At this time, I inquire as to whether you have received confirmation that a default has been entered or denied. An immediate response is requested so that quick action can now be taken.

As you know, there is a deadline looming for when Admiral is allegedly required to file a motion for summary judgment. Admiral cannot comply with that deadline until 1) any default is lifted and 2) Admiral's to-be-re-filed motion to dismiss the cross-complaint is heard and ruled upon. I am in the process of re-filing the motion to dismiss at this time, along with an ex parte application for an order shortening time to hear the motion. The ex parte application is being made to ensure that Admiral's motion to dismiss is heard before opening briefs on the court-ordered motions for summary judgment are due. But I need to know if a default has been entered to see if a motion to set aside the default is also required.

If a default has been entered, we can also quickly resolve that issue if Wood's Roofing stipulates to set it aside. The request for default was based on Admiral's alleged failure to answer Wood's Roofing's cross-complaint. As you know, Admiral filed a motion to quash and motion to dismiss the cross-complaint on October 25, 2011.¹ This constitutes a response to the cross-complaint. Thus the time to answer the cross-complaint, if warranted, is extended until the

¹ You should be aware that this motion was sent to the Court via federal express on October 18, 2011, i.e. before the purported personal service of the cross-complaint occurred. We have confirmation that the Court received the motion on October 19, 2011 but for reasons unknown, the motion was not stamped and entered into the court records until October 25, 2011.

Exhibit A

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

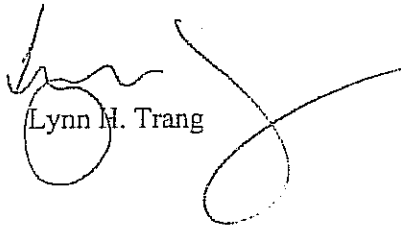
February 22, 2012 - Page 2

motion is ruled upon. See, *Blue Lake Rancheria Business Council Ordinance No. 07-01* section 11.1.1.060(A); *Cal. Code Civ. Pro.* §418.10, *Federal Rules of Civ. Pro. Rule 12(a)(4)*. I therefore anticipate any motion to set aside the default would be granted. Please let us know if Wood's Roofing is amenable to setting aside the default, if it has been entered. If so, we will gladly prepare a stipulation to be filed with the court as soon as possible.

I look forward to hearing from you regarding the matters set forth above. Should you have any questions or concerns, please do not hesitate to contact our office. Thank you.

Very truly yours,

WALSH MCKEAN FURCOLO LLP



Lynn M. Trang

It

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W|M|F
WALSH MCKEAN FURCOLO LLP

Fax

To:	Eric F. Hartman, Esq.	From:	Lynn H. Trang
Company:	Law Offices of Eric F. Hartman	Our Phone:	(619) 232-8486
Fax Number:	(408) 297-0608	Our Fax:	(619) 232-2691
Pages:	3	Our Case Name:	Mainstay Business Solutions v. Wood's Roofing, Inc.
Date:	February 22, 2012	Our File No.:	ADM.11861-1/17/25

Urgent For Review Please Reply Please call if facsimile is incomplete

o Comments:

Please see attached.

THIS FACSIMILE TRANSMISSION AND THE INFORMATION CONTAINED HEREIN IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

TRANSMISSION VERIFICATION REPORT

TIME : 02/22/2012 15:16
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 TEL : 6192328486
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DATE, TIME : 02/22 15:14
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 PAGE(S) : 03
 RESULT : OK
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W | M | F
 WALSH MCKEAN FURCOLO LLP

Fax

To:	Eric F. Hartman, Esq.	From:	Lynn H. Trang
Company:	Law Offices of Eric F. Hartman	Our Phone:	(619) 232-8486
Fax Number:	(408) 297-0608	Our Fax:	(619) 232-2691
Pages:	3	Our Case Name:	Mainstay Business Solutions v. Wood's Roofing, Inc.
Date:	February 22, 2012	Our File No.:	ADMI.11881-1/17/25

Urgent For Review Please Reply Please call if facsimile is incomplete

o Comments:

Please see attached.

W|M|F

WALSH MCKEAN FURCOLO LLP

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OF COUNSEL
FOSTER FURCOLO JR

WRITER'S EMAIL
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February 27, 2012

VIA FACSIMILE

Eric F. Hartman, Esq.
LAW OFFICES OF ERIC F. HARTMAN
300 S. First Street, Suite 210
San Jose, CA 95113

VIA EMAIL

Michael A. Peart, Esq.
MAINSTAY BUSINESS SOLUTIONS
13389 Folsom Blvd., #300-189
Folsom, CA 95630

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.
Blue Lake Case No. : C-09-0612
Our File No. : ADM.11861-1/17/25

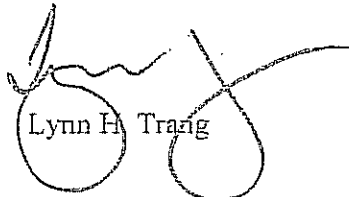
Dear Counsel:

Please take notice that Admiral Insurance Company will appear *ex parte* on March 2, 2012 at 1:30 p.m. at the Tribal Court of Blue Lake Rancheria, 428 Chartin Road, Blue Lake, CA 95525, for an Order Shortening Time to Hear a Motion to Dismiss the Cross-Complaint, or in the Alternative, an Order Continuing the Briefing Schedule for the Court Ordered Scheduled Motions for Summary Judgment.

Please advise if you will agree to accept service of the *ex parte* papers by facsimile or email, otherwise, our office will personally serve each party on February 28, 2012.

Very truly yours,

WALSH MCKEAN FURCOLO LLP


Lynn H. Trang

It

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W|M|F
WALSH MCKEAN FURCOLO LLP

Fax

To:	Eric F. Hartman, Esq.	From:	Lynn H. Trang
Company:	Law Offices of Eric F. Hartman	Our Phone:	(619) 232-8486
Fax Number:	(408) 297-0608	Our Fax:	(619) 232-2691
Pages:	2	Our Case Name:	Mainstay Business Solutions v. Wood's Roofing, Inc.
Date:	February 27, 2012	Our File No.	ADM.11861-1/17/25

Urgent For Review Please Reply Please call if facsimile is incomplete

o **Comments:**

Please see attached ex parte notice.

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DATE, TIME : 02/27 15:48
FAX NO./NAME : 914082970608
DURATION : 00:00:32
PAGE(S) : 02
RESULT : OK
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625 BROADWAY SUITE 1402
SAN DIEGO CA 92101
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W | M | F
WALSH MCKEAN FURCOLO LLP

Fax

To:	Eric F. Hartman, Esq.	From:	Lynn H. Trang
Company:	Law Offices of Eric F. Hartman	Our Phone:	(619) 232-8486
Fax Number:	(408) 297-0608	Our Fax:	(619) 232-2691
Pages:	2	Our Case Name:	Mainstay Business Solutions v. Wood's Roofing, Inc.
Date:	February 27, 2012	Our File No.:	ADM 11861-1/17/25

Urgent For Review Please Reply Please call if facsimile is incomplete

Comments:

Please see attached ex parte notice.

Lori Ramsey

From: Lori Ramsey
Sent: Monday, February 27, 2012 3:12 PM
To: 'maplaw@earthlink.net'
Subject: Mainstay v. Wood's Roofing
Attachments: Ex Parte Notice 3.2.12.pdf

Dear Mr. Peart,

Please review the attached ex parte notice.

Thank you,

Lori Ramsey
Legal Assistant to John H. Walsh,
Dinah McKean and Regan Furcolo
W|M|F
WALSH MCKEAN FURCOLO LLP
625 Broadway, Suite 1402
San Diego, CA 92101
(619) 232-8486; Fax: (619) 232-2691
lramsey@wmflp.com

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W|M|F

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OF COUNSEL
FOSTER FURCOLO JR

WRITER'S EMAIL
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February 27, 2012

VIA FACSIMILE

Eric F. Hartman, Esq.
LAW OFFICES OF ERIC F. HARTMAN
300 S. First Street, Suite 210
San Jose, CA 95113

VIA EMAIL

Michael A. Peart, Esq.
MAINSTAY BUSINESS SOLUTIONS
13389 Folsom Blvd., #300-189
Folsom, CA 95630

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.
Blue Lake Case No. : C-09-0612
Our File No. : ADM.11861-1/17/25

Dear Counsel:

Please take notice that Admiral Insurance Company will appear *ex parte* on March 2, 2012 at 1:30 p.m. at the Tribal Court of Blue Lake Rancheria, 428 Chartin Road, Blue Lake, CA 95525, for an Order Shortening Time to Hear a Motion to Dismiss the Cross-Complaint, or in the Alternative, an Order Continuing the Briefing Schedule for the Court Ordered Scheduled Motions for Summary Judgment.

Please advise if you will agree to accept service of the *ex parte* papers by facsimile or email, otherwise, our office will personally serve each party on February 28, 2012.

Very truly yours,

WALSH MCKEAN FURCOLO LLP


Lynn H. Trang

1 Regan Furcolo (SBN 162956)
Lynn Trang (SBN 221808)
2 Christopher M. Lea (SBN 207723)
WALSH MCKEAN FURCOLO LLP
3 625 Broadway, Suite 1402
San Diego, CA 92101-5420
4 Telephone: (619) 232-8486
Facsimile: (619) 232-2691

5 Attorneys for Cross-Defendant ADMIRAL INSURANCE COMPANY
6
7

8 IN THE TRIBAL COURT OF
9 BLUE LAKE RANCHERIA

10 MAINSTAY BUSINESS SOLUTIONS,

11 Plaintiff,

12 vs.

13 WOOD'S ROOFING INC., a California
14 Corporation, DOES 1-10.
Defendants.

CASE NO. C-09-06212-LJM
C-09-06212A-LJM

ADMIRAL INSURANCE COMPANY'S
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO DISMISS CROSS-
COMPLAINT

DATE: TBD
TIME: TBD
JUDGE: Hon. Lester J. Marston, Chief Judge

15
16
17
18 WOOD'S ROOFING INC., a California
Corporation,

19 Cross-Complainant.

20 Vs.

21 UNITED CONTRACTORS INSURANCE
COMPANY, INC., ADMIRAL
22 INSURANCE COMPANY; ROES 1-100.

23 Cross-Defendants.
24
25

COMPLAINT FILED: 6/12/09
TRIAL DATE: TBD

26 ///

27 ///

28 ///

1 Cross-Defendant, Admiral Insurance Company ("Admiral"), hereby makes the following
 2 special appearance to dismiss the cross-complaint that has been filed against it in this matter on
 3 the grounds that this Court lacks jurisdiction over Admiral and the cross-complaint.

4 **STATEMENT OF FACTS**

5 The first amended complaint ("FAC") in this matter alleges that "[o]n or about June 15,
 6 2007, Plaintiff and defendant...entered into a written agreement...[which] was renewed on June
 7 1, 2008." FAC ¶7. "Under the Agreement, Plaintiff assigned its employees to Wood's to work
 8 at various Wood's worksites in exchange for consideration provided in the Agreement. The
 9 Agreement established a co-employment relationship between the parties with respect to the
 10 assigned employees." FAC ¶8. Under this contract Wood's Roofing, Inc. ("WRI") is obligated
 11 to "ensure a safe workplace" which included complying with Mainstay Business Solution's
 12 ("Mainstay") workplace safety requirements. FAC ¶9. WRI allegedly breached this obligation
 13 which resulted in injuries to Mainstay's employees on October 24, 2007, December 17, 2007 and
 14 November 10, 2008. Under the contract, Mainstay was obligated to provide workers'
 15 compensation benefits in accordance with applicable laws. FAC Exh. 1, Para. A.7.¹ After
 16 paying out the benefits due to the injured employees, Mainstay filed this lawsuit seeking
 17 indemnity from WRI for the monies it paid out.

18 Admiral had issued a Commercial General Liability insurance policy, number
 19 CA000001043-06, to Larry Woods DBA: Woods Roofing for the period of September 28, 2007
 20 to September 28, 2008. Cross-Complaint ¶4. WRI tendered Mainstay's lawsuit to Admiral who
 21 denied coverage under this policy. Cross-Complaint ¶9. As a result, WRI filed the instant cross-
 22 complaint and brought Admiral in as a party to the underlying litigation.

23
 24
 25
 26 ///

27
 28 ¹ See also, FAC Exh. 1, Second Amendment to the Standard Customer Agreement thereto; FAC Exh. 1, Alternate Employer Endorsement Certificate thereto; and FAC Exh. 2, Para. A.6. and 13.

LEGAL ARGUMENT

I. THE COURT HAS NO TRIBAL JURISDICTION

The Blue Lake Rancheria Tribal Court's scope of jurisdiction is mandated and controlled by Blue Lake Rancheria Business Council Ordinance No. 07-01 ("Ordinance No. 07-01").

Under the heading subject matter jurisdiction, it states "[t]he Tribal Court shall have civil jurisdiction over all matters in law or in equity which the Business Council *expressly authorizes by ordinance.*" Section 11.1.1.030(A)(1), emphasis added. Thus, if WRI's cross-complaint does not fall within an area the Court is authorized to have jurisdiction over, the cross-complaint must be dismissed due to lack of jurisdiction. The Court simply cannot adjudicate disputes over which it has not been granted authority.

Section 11.1.1.030(2) of Ordinance No. 07-01 outlines the Court's territorial jurisdiction. It states: "[t]he Tribal Court shall exercise civil jurisdiction...over all causes of action that arise (1) on lands within the exterior boundaries of the Reservation and (2) on all lands owned by the United States of America in trust for the Tribe." So if a matter did not arise upon tribal land, the Tribal Court cannot have territorial jurisdiction over the claim. Clearly, there is no connection between the Admiral insurance policy and the Tribe's land. There are only two possible locations where the insurance dispute outlined in the cross-complaint could have arisen. First is in New Jersey since Admiral is located there and issued the subject policy. Cross-Complaint ¶2; see also, Proof of Service re: Summons and Cross-Complaint. The second possible location is Morgan Hill, California since that is where WRI is located and thus where the policy was entered into.² Cross-Complaint, Exh. B. Under either scenario, only one conclusion can be made, the dispute arose outside of tribal lands. It is clear the Court has no territorial jurisdiction over the cross-complaint.

² Alternatively, Wood's Roofing is located in Torrance, California, which is also off tribal lands. FAC ¶2.

1 Blue Lake Rancheria Business Council Ordinance No. 07-02 (“Ordinance No. 07-02”)
 2 identifies the Tribal Court’s subject matter jurisdiction concerning contract claims. It states
 3 “[t]he purpose of this ordinance is to provide the Blue Lake Rancheria Tribal Court with subject
 4 matter jurisdiction over causes of action arising under contracts *with the Tribe*.” Ordinance No.
 5 07-02, Section 1.5, emphasis added. Thus, for contract actions such as the subject cross-
 6 complaint, “[t]he Tribal Court shall have jurisdiction over civil causes of action regarding...
 7 contracts *to which the Tribe or Tribal Entities are parties*.” Ordinance No. 07-02, Section
 8 11.1.2.030, emphasis added. Again, it is beyond dispute that neither the tribe nor any tribal
 9 entities are a party to the subject contract, i.e. the Admiral policy. The only parties to that policy
 10 are Admiral and WRI. The Court has not been granted subject matter jurisdiction over the cross-
 11 complaint.
 12

13 Section 11.1.1.030(3) of Ordinance No. 07-01 identifies the parties over whom the Court
 14 shall have personal jurisdiction. It states:

15 The Scope of the Tribal Court’s civil jurisdiction shall extend to the following:

- 16
- 17 (a) The Tribe;
 - 18 (b) Legal entities owned by the Tribe;
 - 19 (c) Persons or entities employed by the Tribe or its wholly owned legal
 20 entities;
 - 21 (d) Persons or entities who have entered into contracts with the Tribe or its
 22 wholly owned legal entities;
 - 23 (e) Persons or entities doing business within the territorial jurisdiction of the
 24 Tribal Court;
 - 25 (f) Tribal members;
 - 26 (g) Anyone the Tribe formally recognizes as Indian;
 - 27 (h) Other Indians;
 - 28 (i) Anyone who consents to Tribal Court jurisdiction;
 - (j) Other individuals or entities whose conduct affects the ability of the Tribe
 to govern itself;
 - (k) All other individuals whose conduct threatens or has some direct effect on
 the political integrity, the economic security, or the health and welfare of
 the Tribe.

Admiral does not fit within any of these categories. It has no association or connection
 with the Tribe. Its contract is with WRI and has no bearing on the Tribe’s autonomy and
 sovereignty. The Tribe has no direct interest in the Admiral insurance policy. Admiral likewise

1 has done nothing to avail itself to the Tribe or the Tribe's land. Accordingly, the Court lacks
2 personal jurisdiction over Admiral.

3 This leaves only the Court's ancillary jurisdiction which is found in Ordinance No. 07-
4 02. Section 11.1.2.030 of this ordinance states that "[t]he tribal court shall have ancillary
5 jurisdiction over any *non-contract claims* which arise out of the same transaction or occurrence,
6 relate to or arise out of the contract, or are asserted as counter- or cross-claims in the same
7 action." Emphasis added. The cross-complaint is clearly a contract dispute between Admiral
8 and WRI. Accordingly, the court's ancillary jurisdiction does not reach this matter.
9

10 Moreover, we note that the cross-complaint is not the typical type of claim over which
11 ancillary jurisdiction would normally exist. The doctrine of ancillary jurisdiction has been
12 folded into the notion of supplemental jurisdiction as codified in 28 U.S.C. §1367. *Peacock v.*
13 *Thomas* (1996) 516 U.S. 349, fn. 5.³ Ancillary jurisdiction and supplemental jurisdiction is used
14 for when a court has proper jurisdiction over part of the lawsuit, but lacks jurisdiction over the
15 remaining claims. Under the proper circumstances, the court can nevertheless adjudicate the
16 claims over which it lacks jurisdiction. Unfortunately, those proper circumstances are not
17 present here.
18

19 The United States Supreme Court explained the doctrine of ancillary jurisdiction as
20 follows:

21 Generally speaking, we have asserted ancillary jurisdiction (in the very broad
22 sense in which that term is sometimes used) for two separate, though sometimes
23 related, purposes: (1) to permit disposition by a single court of claims that are, in
24 varying respects and degrees, factually interdependent, and (2) to enable a court to
25 function successfully, that is, to manage its proceedings, vindicate its authority,
26 and effectuate its decrees. *Fed. Sav. and Loan Ins. Corp. v. Ferrante* (Cal. 2004)
27 364 F.3d 1037, 1039-1040, citing *Kokkenen v. Guardian Life Ins. Co.* (1994) 511
28 U.S. 375, 379-380.

³ Section 11.1.1.060 of Ordinance No. 07-01 states that "[i]n the absence of applicable tribal law, the Court shall use as guidance the laws of the State of California, the laws of other federally recognized Tribes and federal law."

1 For a court to have supplemental jurisdiction over a claim, it must be shown that the
 2 claims "are so related to claims in the action within such original jurisdiction that they form part
 3 of the same case or controversy." 28 U.S.C. §1367(a). The "claims must derive from a common
 4 nucleus of operative fact. ...[A] plaintiff's claim are such that he would ordinarily be expected
 5 to try them all in one judicial proceeding." *United Mine Workers of Amer. V. Gibbs* (1966) 383
 6 U.S. 715, 725. WRI's cross-complaint does not fall under any of these criteria. Resolution of
 7 any disputes between WRI and Admiral, on the one hand, and between WRI and Mainstay, on
 8 the other, are wholly independent of each other. The WRI cross-complaint involves
 9 interpretation of an insurance policy and whether it provides coverage for a certain claim.
 10 Adjudicating the cross-complaint, and thus the operative facts for the cross-complaint, will entail
 11 the review and analysis of that policy's terms and conditions. Conversely, the Mainstay
 12 complaint involves allegations of whether WRI is required to indemnify Mainstay for workers
 13 compensation benefits it had paid. Adjudicating that dispute, and thus the complaint's operative
 14 facts, will require analyzing WRI's indemnity obligations to Mainstay and the circumstances
 15 surrounding the execution of the Mainstay contract. There are two wholly separate contracts at
 16 issue.

17 Combining the two claims also runs afoul of the notion that a party "may not sue both the
 18 insurer and the insured in the same lawsuit." *Royal Globe Ins. Co. v. Super. Ct. of Butte County*
 19 (1979) 23 Cal.3d 880, 891 (overruled on other grounds in *Moradi-Shalal v. Fireman's Fund Ins.*
 20 *Co.* (1988) 46 Cal.3d 287); see also, *Indust. Indem. Co. v. Mazon* (1984) Cal.App.3d 862; *Smith*
 21 *v. Interinsurance Exch. of the Auto. Club of South. Cal.* (1985) 167 Cal.App.3d 301.⁴ That is
 22 because to do so would contravene the protections afforded under California Evidence Code
 23 section 1155 and the parallel federal rule of evidence, Rule 411. It would also be an abuse of the
 24 court's powers under Rule 22 of the Blue Lake Rancheria Tribal Court Rules of Evidence to
 25 admit evidence which "creates a substantial danger of prejudice, of confusing the issues, or of
 26

27
 28 ⁴ Should this motion to dismiss be overruled, Admiral intends on filing a subsequent motion to dismiss on the
 grounds of a misjoinder of parties under California law. It abstains from doing so in this motion so there is no
 dispute that Admiral is not subjecting itself to the jurisdiction of the Court.

1 misleading the jury.” Thus, no party would expect these claims to be tried in the same judicial
 2 proceeding such that supplemental jurisdiction can be had.

3 Nor will dismissing WRI’s cross-complaint make the Court any less effective in
 4 resolving Mainstay’s complaint. Win or lose, WRI’s cross-complaint has no effect upon whether
 5 WRI is required to indemnify Mainstay for workers’ compensation benefits. That depends only
 6 on what was negotiated between WRI and Mainstay.

7 **II. THE COURT HAS NO JURISDICTION AS A MATTER OF FEDERAL**
 8 **LAW**

9 The only conclusion based on the foregoing is the Court has no jurisdiction over Admiral
 10 or the cross-complaint. “The question whether an Indian tribe retains the power to compel a
 11 non-Indian...to submit to the civil jurisdiction of a tribal court is one that must be answered by
 12 reference to federal law and is a ‘federal question’ under § 1331.” *National Farmers Union Ins.*
 13 *Co. v. Crow Tribe of Indians* (1985) 471 US 845, 852. A review of federal court decisions
 14 makes it clear that the Court will be exceeding its jurisdiction in this matter.

15 “Absent express authorization by federal statute or treaty, tribal jurisdiction over the
 16 conduct of nonmembers exists only in limited circumstances.” *Strate v. A-1 Contractors* (1997)
 17 520 U.S. 438, 445. “[T]he inherent sovereign powers of an Indian tribe’ – those powers a tribe
 18 enjoys apart from expression provision by treaty or statute – ‘do not extend to the activities of
 19 nonmembers of the tribe.’” *Id.* at 445-446, citing *Montana v. US* (1981) 450 U.S. 544, 565.
 20 “*Montana* thus describes a general rule that, absent a different congressional direction, Indian
 21 tribes lack civil authority over the conduct of non-members on non-Indian land...subject to two
 22 exceptions: The first exception relates to nonmembers who enter consensual relationships with
 23 the tribe or its members; the second concerns activities that directly affects the tribe’s political
 24 integrity, economic security, health, or welfare.” *Id.* at 446. More directly to the point, “a non-
 25 Indian’s breach of an independent duty to another non-Indian, occurring off of the reservation,
 26 falls *without* the nebulous confines of a ‘reservation affair’ and *does not arise* on the
 27 reservation.” *Stock West Corp. v. Taylor* (9th Cir. 1991) 942 F.2d 655, 663, emphasis added.

28 The miniscule connection between Admiral and the Tribe does not suffice for purposes of

1 finding jurisdiction exists. "As the Supreme Court has stated, '[t]he impact must be
 2 demonstrably serious and must imperil the political integrity, the economic security, or the health
 3 and welfare of the tribe.'" *Yellowstone County v. Pease* (Mont. 1996) 96 F.3d 1169, 1177, citing
 4 *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation* (1989) 492 U.S. 408, 431.
 5 The lone fact that Admiral insured someone, a non-indian, who did business with a wholly
 6 owned tribal entity does not meet the only exceptions available under *Montana* to bring Admiral
 7 before this Court. WRI's cross-complaint must be dismissed for lack of jurisdiction.

8 **III. THE COURT SHOULD DECLINE TO EXERCISE ANY JURISDICTION**
 9 **IT MAY HAVE**

10 Assuming jurisdiction exists in this matter, Ordinance No. 07-01 directs that the Court
 11 "may decline to exercise its jurisdiction if it finds any of the following to exist: (1) another court
 12 has the jurisdiction to hear the case and would be more convenient for the parties than the Tribal
 13 Court; (b) One or more of the parties is not a person over which the Tribal Court can exercise its
 14 authority; or (c) The case is of such a nature that the Tribal Court should not hear it." Section
 15 11.1.1.030(1). The cross-complaint filed against Admiral is no better example of a case where
 16 the Court should decline to exercise any jurisdiction it may have over it. The dispute between
 17 Admiral and WRI can properly be heard in another court system where Admiral would be
 18 subject to service of process. Adjudicating the dispute elsewhere would also be much more
 19 convenient for the parties since there is no connection to the Blue Lake Rancheria area for
 20 Admiral, WRI or any potential witnesses. Moreover, Admiral fits the description as a party over
 21 which the Court has no authority. It would also not be surprising if co-Cross-Defendant, United
 22 Contractors Insurance Company, also fits the bill as a party over whom the Court cannot exercise
 23 authority. Without Admiral and United Contractors' presence in the action, the cross-complaint
 24 cannot be resolved.

25 It is also clear that the dispute outlined in the cross-complaint is better served to be
 26 adjudicated in another court system. While this Court is just as skilled as any other court to
 27 resolve a contract dispute, it will nevertheless have to rely on case law from other jurisdictions as
 28 to insurance disputes and the intricacies of interpreting insurance contracts, having no body of

1 case law of its own to derive from. In fact, the Tribe has acknowledged that it will need to utilize
2 California law to resolve contract disputes having adopted "the contract law of the State or
3 California, set forth in California Civil Code §1427 through 1742...as the contract law of the
4 Blue Lake Rancheria." Ordinance No. 07-02, Section 11.1.2.020. It would quite simply be a
5 waste of the Court and Tribe's resources to adjudicate a dispute which has no connection with
6 the Tribe and would inevitably result in an unenforceable verdict.

7 **IV. CONCLUSION**

8 For all the foregoing reasons, WRI's cross-complaint against Admiral should be
9 dismissed without leave to amend. The Court has no form of jurisdiction to adjudicate WRI's
10 cross-complaint against Admiral. It has not been granted authority to resolve this cross-
11 complaint by the Tribe. It would also be reaching beyond its authority as a matter of federal law
12 should it adjudicate the cross-complaint. Lastly, even if jurisdiction exists, the Court should
13 decline to exercise the same since that would be in the best interests of the parties, the Court and
14 the Tribe.

15
16 DATED:

WALSH MCKEAN FURCOLO LLP

17
18 By: _____
19 Regan Furcolo
20 Lynn Trang
21 Christopher M. Lea
22 Attorneys for Cross-Defendant
23 ADMIRAL INSURANCE COMPANY
24
25
26
27
28

Lynn Trang

From: Anita Huff <AHuff@bluelakerancheria-nsn.gov>
Sent: Thursday, March 01, 2012 12:06 PM
To: Lynn Trang; Chris Lea; jhart75442@aol.com; maplaw@earthlink.net; Regan Furcolo
Subject: C-09-0612LJM & C-09-0612ALJM

Counsel,

This is to advise you that there is no Ex-Parte Hearing scheduled for tomorrow, Friday, March 2nd, 2012 with the Blue Lake Rancheria Tribal Court.

Chief Judge Marston will be issuing an Order on Monday, March 5th, 2012 to resolve/address the following;

- Request for an Ex-Parte Hearing
- Entry of Clerks Default against Admiral Insurance Company
- Current Briefing Schedule that was established

No further pleadings are to be filed with the Tribal Court until receipt of the Order by your office on Monday, March 5th, 2012.

Please reply that you have received this email.

Thank you,

Anita Huff

Tribal Court Clerk

Blue Lake Rancheria Tribal Court

P.O. Box 426

Blue Lake, CA 95525-0426

Phone (707) 668-5101 x 1032

FAX (707) 668-4272

ahuff@bluelakerancheria-nsn.gov

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Lynn Trang

From: Anita Huff <AHuff@bluelakerancheria-nsn.gov>
Sent: Monday, March 12, 2012 4:17 PM
To: Michael Peart
Cc: jhart75442@aol.com; Regan Furcolo; Chris Lea; Lynn Trang
Subject: RE: Mainstay v Wood's Status

Mr. Peart,
After speaking with Chief Judge Marston, I was asked to advise you that Briefs are still due on 3/17, but no further filings re ex parte hearing or requests for default.

Thank you,

Anita Huff
Tribal Court Clerk
Blue Lake Rancheria Tribal Court
P.O. Box 426
Blue Lake, CA 95525-0426
Phone (707) 668-5101 x 1032
FAX (707) 668-4272

ahuff@bluelakerancheria-nsn.gov

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From: Michael Peart [<mailto:mpeart2@gmail.com>]
Sent: Monday, March 12, 2012 11:39 AM
To: Anita Huff
Subject: Mainstay v Wood's Status

Clerk of the Court Huff,

On behalf of counsel in the case (Mainstay, Wood's, and Admiral), I have been asked to seek clarification as to the e-mail the court sent regarding no further filings until the Court issues an order. The Court was to issue an order last Monday. However, the parties have Summary Judgment Motions briefings due on March 17th. The parties would like clarification that those briefings are to be held and not filed until the Court issues its order, or whether the briefings are still due on the 17th

Thanks.

1 Regan Furcolo (SBN 162956)
Lynn Trang (SBN 221808)
2 Christopher M. Lea (SBN 207723)
WALSH MCKEAN FURCOLO LLP
3 625 Broadway, Suite 1402
San Diego, CA 92101-5420
4 Telephone: (619) 232-8486
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5 Attorneys for Cross-Defendant ADMIRAL INSURANCE COMPANY

6
7
8 IN THE TRIBAL COURT OF
9 BLUE LAKE RANCHERIA

10
11 MAINSTAY BUSINESS SOLUTIONS,

12 Plaintiff,

13 vs.

14 WOOD'S ROOFING INC., a California
15 Corporation, DOES 1-10.

16 Defendants.

17
18 WOOD'S ROOFING INC., a California
19 Corporation,

20 Cross-Complainant.

21 vs.

22 UNITED CONTRACTORS INSURANCE
23 COMPANY, INC., ADMIRAL
INSURANCE COMPANY; ROES 1-100.

24 Cross-Defendants.
25

CASE NO. C-09-06212-LJM
C-09-06212A-LJM

ADMIRAL INSURANCE COMPANY'S
NOTICE OF MOTION TO QUASH
SERVICE OF SUMMONS AND DISMISS
CROSS-COMPLAINT

DATE: April 16, 2012
TIME: 1:30 p.m.
JUDGE: Hon. Lester J. Marston, Chief Judge

COMPLAINT FILED: 6/12/09
TRIAL DATE: TBD

26
27
28 EXHIBIT N

ADMIRAL INSURANCE COMPANY'S NOTICE OF HEARING ON
MOTION TO QUASH SERVICE OF SUMMONS AND DISMISS CROSS-COMPLAINT


1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 16, 2012 at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in the above entitled court, located at 428 Chartin Road, Blue Lake, CA
4 95525, Cross-Defendant ADMIRAL INSURANCE COMPANY will make a special appearance
5 to move the court for an order to quash service of summons and dismiss the cross-complaint.
6 The motion is based on the grounds that this Court lacks jurisdiction over Admiral and the cross-
7 complaint.

8 The motion will be based on this notice of motion, the memorandum of points and
9 authorities, the pleadings filed with the court, and on such evidence as may be presented at the
10 hearing of the motion.
11

12
13 DATED: March 15, 2012

WALSH MCKEAN FURCOLO LLP

14
15
16 By: 
17 Regan Furcolo
18 Lynn Trang
19 Attorneys for Cross-Defendant
20 ADMIRAL INSURANCE COMPANY
21
22
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7
8 **IN THE TRIBAL COURT OF**
9 **BLUE LAKE RANCHERIA**

10 MAINSTAY BUSINESS SOLUTIONS,
11 Plaintiff,
12 vs.

13 WOOD'S ROOFING INC., a California
Corporation, DOES 1-10.
14 Defendants.

CASE NO. C-09-06212-LJM
C-09-06212A-LJM

ADMIRAL INSURANCE COMPANY'S
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO QUASH SERVICE OF
SUMMONS AND DISMISS CROSS-
COMPLAINT

DATE: April 16, 2012
TIME: 1:30 p.m.
JUDGE: Hon. Lester J. Marston, Chief Judge

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17 WOOD'S ROOFING INC., a California
Corporation,
18
19 Cross-Complainant.
Vs.

COMPLAINT FILED: 6/12/09
TRIAL DATE: TBD

20 UNITED CONTRACTORS INSURANCE
COMPANY, INC., ADMIRAL
21 INSURANCE COMPANY; ROES 1-100.
22 Cross-Defendants.
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1 Cross-Defendant, Admiral Insurance Company (“Admiral”), hereby makes the following
 2 special appearance to quash the service of summons and dismiss the cross-complaint that has
 3 been filed against it in this matter on the grounds that this Court lacks jurisdiction over Admiral
 4 and the cross-complaint.

5 STATEMENT OF FACTS

6 The first amended complaint (“FAC”) in this matter alleges that “[o]n or about June 15,
 7 2007, Plaintiff and defendant...entered into a written agreement...[which] was renewed on June
 8 1, 2008.” FAC ¶7. “Under the Agreement, Plaintiff assigned its employees to Wood’s to work
 9 at various Wood’s worksites in exchange for consideration provided in the Agreement. The
 10 Agreement established a co-employment relationship between the parties with respect to the
 11 assigned employees.” FAC ¶8. Under this contract Wood’s Roofing, Inc. (“WRI”) is obligated
 12 to “ensure a safe workplace” which included complying with Mainstay Business Solution’s
 13 (“Mainstay”) workplace safety requirements. FAC ¶9. WRI allegedly breached this obligation
 14 which resulted in injuries to Mainstay’s employees on October 24, 2007, December 17, 2007 and
 15 November 10, 2008. Under the contract, Mainstay was obligated to provide workers’
 16 compensation benefits in accordance with applicable laws. FAC Exh. 1, Para. A.7.¹ After
 17 paying out the benefits due to the injured employees, Mainstay filed this lawsuit seeking
 18 indemnity from WRI for the monies it paid out.
 19
 20

21 Admiral had issued a Commercial General Liability insurance policy, number
 22 CA000001043-06, to Larry Woods DBA: Woods Roofing for the period of September 28, 2007
 23 to September 28, 2008. Cross-Complaint ¶4. WRI tendered Mainstay’s lawsuit to Admiral who
 24 denied coverage under this policy. Cross-Complaint ¶9. As a result, WRI filed the instant cross-
 25 complaint and brought Admiral in as a party to the underlying litigation.
 26

27
 28 ¹ See also, FAC Exh. 1, Second Amendment to the Standard Customer Agreement thereto; FAC Exh. 1, Alternate Employer Endorsement Certificate thereto; and FAC Exh. 2, Para. A.6. and 13.

LEGAL ARGUMENT

I. THE COURT HAS NO TRIBAL JURISDICTION

California Code of Civil Procedure section 418.10 states that a party “may serve and file a notice of motion...to quash service of summons on the ground of lack of jurisdiction of the court over him or her.”² California Code of Civil Procedure section 430.10(a) also allows a party to object to a pleading on the grounds that “the court has no jurisdiction of the subject of the cause of action alleged in the pleading.” Similarly, rule 12(b) of the Federal Rules of Civil Procedure allows a party to attack a pleading based on lack of subject-matter jurisdiction and/or personal jurisdiction.

The Blue Lake Rancheria Tribal Court’s scope of jurisdiction is mandated and controlled by Blue Lake Rancheria Business Council Ordinance No. 07-01 (“Ordinance No. 07-01”). Under the heading subject matter jurisdiction, it states “[t]he Tribal Court shall have civil jurisdiction over all matters in law or in equity which the Business Council *expressly authorizes by ordinance.*” Section 11.1.1.030(A)(1), emphasis added. Thus, if WRI’s cross-complaint does not fall within an area the Court is authorized to have jurisdiction over, the cross-complaint must be dismissed due to lack of jurisdiction. The Court simply cannot adjudicate disputes over which it has not been granted authority.

Section 11.1.1.030(2) of Ordinance No. 07-01 outlines the Court’s territorial jurisdiction. It states: “[t]he Tribal Court shall exercise civil jurisdiction...over all causes of action that arise (1) on lands within the exterior boundaries of the Reservation and (2) on all lands owned by the United States of America in trust for the Tribe.” So if a matter did not arise upon tribal land, the Tribal Court cannot have territorial jurisdiction over the claim. Clearly, there is no connection between the Admiral insurance policy and the Tribe’s land. There are only two possible

² Section 11.1.1.060 of Ordinance No. 07-01 states that “[i]n the absence of applicable tribal law, the Court shall use as guidance the laws of the State of California, the laws of other federally recognized Tribes and federal law.”

1 locations where the insurance dispute outlined in the cross-complaint could have arisen. First is
 2 in New Jersey since Admiral is located there and issued the subject policy. Cross-Complaint ¶2;
 3 see also, Proof of Service re: Summons and Cross-Complaint. The second possible location is
 4 Morgan Hill, California since that is where WRI is located and thus where the policy was entered
 5 into.³ Cross-Complaint, Exh. B. Under either scenario, only one conclusion can be made, the
 6 dispute arose outside of tribal lands. It is clear the Court has no territorial jurisdiction over the
 7 cross-complaint.
 8

9 Blue Lake Rancheria Business Council Ordinance No. 07-02 (“Ordinance No. 07-02”)
 10 identifies the Tribal Court’s subject matter jurisdiction concerning contract claims. It states
 11 “[t]he purpose of this ordinance is to provide the Blue Lake Rancheria Tribal Court with subject
 12 matter jurisdiction over causes of action arising under contracts *with the Tribe*.” Ordinance No.
 13 07-02, Section 1.5, emphasis added. Thus, for contract actions such as the subject cross-
 14 complaint, “[t]he Tribal Court shall have jurisdiction over civil causes of action regarding...
 15 contracts *to which the Tribe or Tribal Entities are parties*.” Ordinance No. 07-02, Section
 16 11.1.2.030, emphasis added. Again, it is beyond dispute that neither the tribe nor any tribal
 17 entities are a party to the subject contract, i.e. the Admiral policy. The only parties to that policy
 18 are Admiral and WRI. The Court has not been granted subject matter jurisdiction over the cross-
 19 complaint.
 20

21 Section 11.1.1.030(3) of Ordinance No. 07-01 identifies the parties over whom the Court
 22 shall have personal jurisdiction. It states:
 23

24 The Scope of the Tribal Court’s civil jurisdiction shall extend to the following:

- 25 (a) The Tribe;
- 26 (b) Legal entities owned by the Tribe;
- 27 (c) Persons or entities employed by the Tribe or its wholly owned legal
 entities;
- 28 (d) Persons or entities who have entered into contracts with the Tribe or its

³ Alternatively, Wood’s Roofing is located in Torrance, California, which is also off tribal lands. FAC ¶2.

- 1 wholly owned legal entities;
 2 (e) Persons or entities doing business within the territorial jurisdiction of the
 Tribal Court;
 3 (f) Tribal members;
 4 (g) Anyone the Tribe formally recognizes as Indian;
 5 (h) Other Indians;
 6 (i) Anyone who consents to Tribal Court jurisdiction;
 7 (j) Other individuals or entities whose conduct affects the ability of the Tribe
 to govern itself;
 8 (k) All other individuals whose conduct threatens or has some direct effect on
 the political integrity, the economic security, or the health and welfare of
 the Tribe.

9 Admiral does not fit within any of these categories. It has no association or connection
 10 with the Tribe. Its contract is with WRI and has no bearing on the Tribe's autonomy and
 11 sovereignty. The Tribe has no direct interest in the Admiral insurance policy. Admiral likewise
 12 has done nothing to avail itself to the Tribe or the Tribe's land. Accordingly, the Court lacks
 personal jurisdiction over Admiral.

13 This leaves only the Court's ancillary jurisdiction which is found in Ordinance No. 07-
 14 02. Section 11.1.2.030 of this ordinance states that "[t]he tribal court shall have ancillary
 15 jurisdiction over any *non-contract claims* which arise out of the same transaction or occurrence,
 16 relate to or arise out of the contract, or are asserted as counter- or cross-claims in the same
 17 action." Emphasis added. The cross-complaint is clearly a contract dispute between Admiral
 18 and WRI. Accordingly, the court's ancillary jurisdiction does not reach this matter.
 19

20 Moreover, we note that the cross-complaint is not the typical type of claim over which
 21 ancillary jurisdiction would normally exist. The doctrine of ancillary jurisdiction has been
 22 folded into the notion of supplemental jurisdiction as codified in 28 U.S.C. §1367. *Peacock v.*
 23 *Thomas* (1996) 516 U.S. 349, fn. 5. Ancillary jurisdiction and supplemental jurisdiction is used
 24 for when a court has proper jurisdiction over part of the lawsuit, but lacks jurisdiction over the
 25 remaining claims. Under the proper circumstances, the court can nevertheless adjudicate the
 26 claims over which it lacks jurisdiction. Unfortunately, those proper circumstances are not
 27 present here.
 28

1 The United States Supreme Court explained the doctrine of ancillary jurisdiction as
2 follows:

3 Generally speaking, we have asserted ancillary jurisdiction (in the very broad
4 sense in which that term is sometimes used) for two separate, though sometimes
5 related, purposes: (1) to permit disposition by a single court of claims that are, in
6 varying respects and degrees, factually interdependent, and (2) to enable a court to
7 function successfully, that is, to manage its proceedings, vindicate its authority,
8 and effectuate its decrees. *Fed. Sav. and Loan Ins. Corp. v. Ferrante* (Cal. 2004)
9 364 F.3d 1037, 1039-1040, citing *Kokkenen v. Guardian Life Ins. Co.* (1994) 511
10 U.S. 375, 379-380.

11 For a court to have supplemental jurisdiction over a claim, it must be shown that the
12 claims “are so related to claims in the action within such original jurisdiction that they form part
13 of the same case or controversy.” 28 U.S.C. §1367(a). The “claims must derive from a common
14 nucleus of operative fact. ...[A] plaintiff’s claim are such that he would ordinarily be expected
15 to try them all in one judicial proceeding.” *United Mine Workers of Amer. V. Gibbs* (1966) 383
16 U.S. 715, 725. WRI’s cross-complaint does not fall under any of these criteria. Resolution of
17 any disputes between WRI and Admiral, on the one hand, and between WRI and Mainstay, on
18 the other, are wholly independent of each other. The WRI cross-complaint involves
19 interpretation of an insurance policy and whether it provides coverage for a certain claim.
20 Adjudicating the cross-complaint, and thus the operative facts for the cross-complaint, will entail
21 the review and analysis of that policy’s terms and conditions. Conversely, the Mainstay
22 complaint involves allegations of whether WRI is required to indemnify Mainstay for workers
23 compensation benefits it had paid. Adjudicating that dispute, and thus the complaint’s operative
24 facts, will require analyzing WRI’s indemnity obligations to Mainstay and the circumstances
25 surrounding the execution of the Mainstay contract. There are two wholly separate contracts at
26 issue.

27 Combining the two claims also runs afoul of the notion that a party “may not sue both the
28 insurer and the insured in the same lawsuit.” *Royal Globe Ins. Co. v. Super. Ct. of Butte County*
(1979) 23 Cal.3d 880, 891 (overruled on other grounds in *Moradi-Shalal v. Fireman’s Fund Ins.*
Co. (1988) 46 Cal.3d 287); see also, *Indust. Indem. Co. v. Mazon* (1984) Cal.App.3d 862; *Smith*

1 *v. Interinsurance Exch. of the Auto. Club of South. Cal.* (1985) 167 Cal.App.3d 301.⁴ That is
 2 because to do so would contravene the protections afforded under California Evidence Code
 3 section 1155 and the parallel federal rule of evidence, Rule 411. It would also be an abuse of the
 4 court's powers under Rule 22 of the Blue Lake Rancheria Tribal Court Rules of Evidence to
 5 admit evidence which "creates a substantial danger of prejudice, of confusing the issues, or of
 6 misleading the jury." Thus, no party would expect these claims to be tried in the same judicial
 7 proceeding such that supplemental jurisdiction can be had.

8 Nor will dismissing WRI's cross-complaint make the Court any less effective in
 9 resolving Mainstay's complaint. Win or lose, WRI's cross-complaint has no effect upon whether
 10 WRI is required to indemnify Mainstay for workers' compensation benefits. That depends only
 11 on what was negotiated between WRI and Mainstay.

12 **II. THE COURT HAS NO JURISDICTION AS A MATTER OF FEDERAL**
 13 **LAW**

14 The only conclusion based on the foregoing is the Court has no jurisdiction over Admiral
 15 or the cross-complaint. "The question whether an Indian tribe retains the power to compel a
 16 non-Indian...to submit to the civil jurisdiction of a tribal court is one that must be answered by
 17 reference to federal law and is a 'federal question' under § 1331." *National Farmers Union Ins.*
 18 *Co. v. Crow Tribe of Indians* (1985) 471 US 845, 852. A review of federal court decisions
 19 makes it clear that the Court will be exceeding its jurisdiction in this matter.

20 "Absent express authorization by federal statute or treaty, tribal jurisdiction over the
 21 conduct of nonmembers exists only in limited circumstances." *Strate v. A-1 Contractors* (1997)
 22 520 U.S. 438, 445. "[T]he inherent sovereign powers of an Indian tribe' – those powers a tribe
 23 enjoys apart from expression provision by treaty or statute – 'do not extend to the activities of
 24 nonmembers of the tribe.'" *Id.* at 445-446, citing *Montana v. US* (1981) 450 U.S. 544, 565.
 25 "*Montana* thus describes a general rule that, absent a different congressional direction, Indian
 26 tribes lack civil authority over the conduct of non-members on non-Indian land...subject to two

27 ⁴ Should this motion to dismiss be overruled, Admiral intends on filing a subsequent motion to dismiss on the
 28 grounds of a misjoinder of parties under California law. It abstains from doing so in this motion so there is no
 dispute that Admiral is not subjecting itself to the jurisdiction of the Court.

1 exceptions: The first exception relates to nonmembers who enter consensual relationships with
 2 the tribe or its members; the second concerns activities that directly affects the tribe's political
 3 integrity, economic security, health, or welfare." *Id.* at 446. More directly to the point, "a non-
 4 Indian's breach of an independent duty to another non-Indian, occurring off of the reservation,
 5 falls *without* the nebulous confines of a 'reservation affair' and *does not arise* on the
 6 reservation." *Stock West Corp. v. Taylor* (9th Cir. 1991) 942 F.2d 655, 663, emphasis added.

7 The miniscule connection between Admiral and the Tribe does not suffice for purposes of
 8 finding jurisdiction exists. "As the Supreme Court has stated, '[t]he impact must be
 9 demonstrably serious and must imperil the political integrity, the economic security, or the health
 10 and welfare of the tribe.'" *Yellowstone County v. Pease* (Mont. 1996) 96 F.3d 1169, 1177, citing
 11 *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation* (1989) 492 U.S. 408, 431.
 12 The lone fact that Admiral insured someone, a non-Indian, who did business with a wholly
 13 owned tribal entity does not meet the only exceptions available under *Montana* to bring Admiral
 14 before this Court. WRI's cross-complaint must be dismissed for lack of jurisdiction.

15 **III. THE COURT SHOULD DECLINE TO EXERCISE ANY JURISDICTION**
 16 **IT MAY HAVE**

17 Assuming jurisdiction exists in this matter, Ordinance No. 07-01 directs that the Court
 18 "may decline to exercise its jurisdiction if it finds any of the following to exist: (1) another court
 19 has the jurisdiction to hear the case and would be more convenient for the parties than the Tribal
 20 Court; (b) One or more of the parties is not a person over which the Tribal Court can exercise its
 21 authority; or (c) The case is of such a nature that the Tribal Court should not hear it." Section
 22 11.1.1.030(1). The cross-complaint filed against Admiral is no better example of a case where
 23 the Court should decline to exercise any jurisdiction it may have over it. The dispute between
 24 Admiral and WRI can properly be heard in another court system where Admiral would be
 25 subject to service of process. Adjudicating the dispute elsewhere would also be much more
 26 convenient for the parties since there is no connection to the Blue Lake Rancheria area for
 27 Admiral, WRI or any potential witnesses. Moreover, Admiral fits the description as a party over
 28 which the Court has no authority. It would also not be surprising if co-Cross-Defendant, United

1 Contractors Insurance Company, also fits the bill as a party over whom the Court cannot exercise
 2 authority. Without Admiral and United Contractors' presence in the action, the cross-complaint
 3 cannot be resolved.

4 It is also clear that the dispute outlined in the cross-complaint is better served to be
 5 adjudicated in another court system. While this Court is just as skilled as any other court to
 6 resolve a contract dispute, it will nevertheless have to rely on case law from other jurisdictions as
 7 to insurance disputes and the intricacies of interpreting insurance contracts, having no body of
 8 case law of its own to derive from. In fact, the Tribe has acknowledged that it will need to utilize
 9 California law to resolve contract disputes having adopted "the contract law of the State or
 10 California, set forth in California Civil Code §1427 through 1742...as the contract law of the
 11 Blue Lake Rancheria." Ordinance No. 07-02, Section 11.1.2.020. It would quite simply be a
 12 waste of the Court and Tribe's resources to adjudicate a dispute which has no connection with
 13 the Tribe and would inevitably result in an unenforceable verdict.⁵

14 IV. CONCLUSION

15 For all the foregoing reasons, WRI's cross-complaint against Admiral should be
 16 dismissed without leave to amend and service of the summons quashed. The Court has no form
 17 of jurisdiction to adjudicate WRI's cross-complaint against Admiral. It has not been granted
 18 authority to resolve this cross-complaint by the Tribe. It would also be reaching beyond its
 19 authority as a matter of federal law should it adjudicate the cross-complaint. Lastly, even if
 20 jurisdiction exists, the Court should decline to exercise the same since that would be in the best
 21 interests of the parties, the Court and the Tribe.

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25 _____
 26 ⁵ Admiral has filed a complaint with the Federal District Court of California for the Northern District requesting,
 27 among other things, a preliminary injunction to prohibit the Court from further attempts to exercise jurisdiction over
 28 Admiral until the instant motion to dismiss is ruled upon. The Court has continued to attempt to exercise
 jurisdiction over Admiral through its various orders by demanding Admiral file a cross-motion for summary
 judgment on substantive issues while refusing to entertain the jurisdictional issues first. This complaint is in the
 process of being served and a copy is attached hereto as Exhibit 1, minus the exhibits.

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DATED: March 15, 2012

WALSH MCKEAN FURCOLO LLP

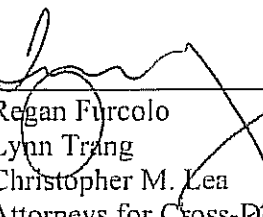
By: 
Regan Furcolo
Lynn Trang
Christopher M. Lea
Attorneys for Cross-Defendant
ADMIRAL INSURANCE COMPANY

EXHIBIT "1"



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ORIGINAL FILED

MAR 14 2012

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E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE BRANCH

ADMIRAL INSURANCE COMPANY,

Plaintiff,

vs.

BLUE LAKE RANCHERIA TRIBAL COURT; LESTER J. MARSTON, Chief Judge of the BLUE LAKE RANCHERIA TRIBAL COURT OF THE BLUE LAKE RANCHERIA INDIAN TRIBE; WOOD'S ROOFING INC., a California Corporation, DOES 1-10.

Defendants.

CASE NO. CV12-01266

COMPLAINT FOR:

- 1) INJUNCTIVE RELIEF;
- 2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

TRIAL DATE: TBD

HRL

INTRODUCTION

1. This is an action to join the prosecution of a civil action in the Blue Lake Rancheria Tribal Court ("Tribal Action"). In the Tribal Action, plaintiff, Mainstay Business Solutions ("MBS") filed a complaint against Wood's Roofing, Inc. ("WRI") for breach of written contract, money on an open book account, breach of the covenant of good faith and fair dealing, and negligence. A cross-complaint was filed by WRI in the Tribal Action against Admiral Insurance Company ("Admiral"), its general liability carrier, for failure to defend WRI in the Tribal Action.

FAXED

2. This action also seeks a declaratory judgment that the Blue Lake Rancheria Tribal Court may not exercise jurisdiction over Admiral.

3. This action also seeks a declaratory judgment that Admiral does not have a duty to defend or indemnify WRI in the Tribal Action.

PARTIES AND JURISDICTION

4. An actual case or controversy exists between the parties warranting this Court's declaratory and related relief pursuant to 28 U.S.C §§ 2201 and 2202 and the action is ripe for adjudication.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Federal Common Law, 28 U.S.C. § 1332 and 28 U.S.C. § 1367 as this case arises under the laws and treaties of the United States since the outer limits of tribal sovereignty are defined by federal Indian law. See *Nat'l Farmers Union Ins. Co. v. Crow Tribe* (1985) 471 U.S. 845 (stating "[t]he question whether an Indian tribe retains the power to compel a non-Indian [...] to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law, and is a 'federal question' under § 1331.").

6. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state law claims asserted against WRI.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as the district in which any defendant resides since all defendants reside in the same state, the district in which a substantial part of the events or omissions giving rise to the claim occurred, the district where a substantial part of the property that is the subject of the action is situated and/or the district where any defendant is subject to personal jurisdiction.

8. Admiral is a Delaware Corporation, doing business in Cherry Hill, New Jersey. It is domiciled in Delaware with its office in Cherry Hill, New Jersey. Admiral is duly authorized to transact business in this State by the commissioner of the California Department of Insurance as an eligible surplus lines insurer.

1 9. Defendant in the underlying action, WRI, based upon information and belief is
 2 and was a corporation duly formed and organized within the State of California with its principal
 3 place of business at 1584 Branham Lane, #136, San Jose, California 95118. WRI filed a Cross-
 4 Complaint in the underlying Tribal Court Action against Admiral. This Court has personal
 5 jurisdiction over WRI, which conducts business activities in this forum with said activities
 6 relating to the same occurrence out of which this Declaratory Judgment action arises.

7 10. The Blue Lake Rancheria Tribal Court ("Tribal Court") is a federally recognized
 8 Indian Tribe and is located at 428 Chartin Road, Blue Lake, California 95525. The Tribal Court
 9 is an independent judiciary, organized subject to the U.S. Code of Federal Regulations.

10 11. Lester J. Marston is the Chief Tribal Judge ("Judge Marston") presiding over the
 11 Tribal Action. Judge Marston is sued herein in his official capacity.

12 12. MBS, is and at all times mentioned was a division of Blue Lake Rancheria
 13 Economic Development Corporation, a federally chartered corporation pursuant to Section 17 of
 14 the Indian Reorganization Act (25 U.S.C § 477), wholly owned by Blue Lake Rancheria, a
 15 federally recognized Indian tribe.

16 FACTUAL BACKGROUND

17 13. The Blue Lake Rancheria Tribe is a Federally-recognized Tribe located in Blue
 18 Lake, California, and claims its reservation consists of approximately 91 acres near the City of
 19 Blue Lake, California. The underlying Tribal Action is a dispute between an Indian tribal entity,
 20 MBS, and a non-Indian contractor, WRI, with whom MBS did business. In particular, WRI
 21 entered into written contracts dated June 2007 and June 2008 with MBS wherein MBS assigned
 22 its employees to WRI to work at various WRI worksites in exchange for certain consideration as
 23 provided for in the contracts. As part of those contracts, WRI agreed to submit to the jurisdiction
 24 of the Blue Lake Tribal Court.

25 14. During the course of the contracts, three of the MBS employees suffered injuries
 26 while working with WRI from October 2007 to November 2008. Pursuant to the agreement
 27

1 between MBS and WRI, MBS provided workers compensation benefits to those workers. MBS
2 now seeks recovery of the benefits it paid from WRI.

3 15. On or about June 29, 2011, MBS initiated an action in Tribal Court, Case No.
4 C-09-06212-LJM seeking these monies from WRI. A first amended complaint ("FAC") was
5 filed on or about June 23, 2011. Attached hereto as Exhibit "A" is a true and correct copy of the
6 FAC.

7 16. The FAC alleges that "[o]n or about June 15, 2007, Plaintiff and defendant...
8 entered into a written agreement...[which] was renewed on June 1, 2008." "Under the
9 Agreement, Plaintiff assigned its employees to Wood's to work at various Wood's worksites in
10 exchange for consideration provided in the Agreement. The Agreement established a co-
11 employment relationship between the parties with respect the assigned employees." Under this
12 contract WRI is obligated to "ensure a safe workplace" which included complying with MBS'
13 workplace safety requirements. WRI allegedly breached this obligation which resulted in
14 injuries to three of MBS' employees on October 24, 2007, December 17, 2007 and November
15 10, 2008.

16 17. WRI tendered its defense of the Tribal Action to Admiral pursuant to the terms of
17 a commercial general liability insurance policy Admiral issued to WRI, policy number
18 CA000001043-06 for the period of September 28, 2007 to September 28, 2008 ("Policy").
19 Attached hereto as Exhibit "B" is a true and correct copy of this policy. Admiral denied
20 coverage for the tender. Attached hereto as Exhibit "C" is a true and correct copy of Admiral's
21 denial letter.

22 18. On or about September 7, 2011, WRI filed a cross-complaint, Case No. C-09-
23 06212A-LJM, against Admiral as a result of its refusal to defend and indemnify WRI in the
24 Tribal Action ("Cross-Complaint"). Attached hereto as Exhibit "D" is a true and correct copy of
25 the Cross-Complaint.

1 19. Admiral received notice of the cross-complaint via certified mail on September
2 27, 2011. Attached hereto as Exhibit "E" is a true and correct copy of the proof of certified mail
3 of the Cross-Complaint.

4 20. On or about October 18, 2011, Admiral filed and served a Notice of Motion to
5 Quash Summons and Dismiss the Cross-Complaint ("Motion to Dismiss") in the Tribal Action
6 on the grounds that (1) the summons and cross-complaint were not properly served and (2) that
7 the Court lacks jurisdiction over Admiral and the cross-complaint. The Motion to Dismiss was
8 stamped endorsed-filed by the court on October 25, 2011. Attached hereto as Exhibit "F" is a
9 true and correct copy of this motion. The first argument in the Motion to Dismiss was based
10 upon Rule 14 of the Civil Rules of Procedure for the Tribal Court of the Tribe which require that
11 "[i]f service must be made off the tribal trust land...services shall be made in accordance with
12 the laws of the State in which the defendant to be served resides." The Cross-Complaint clearly
13 establishes that WRI knew Admiral is located in New Jersey. Cross-Complaint ¶2. Rule 4:4-
14 4(a)(6) of the New Jersey Rules of Court requires *personal delivery* of a copy of the relevant
15 pleadings "on any officer, director, trustee or managing or general agent, or any person
16 authorized by appointment or by law to reserve service of process on behalf of the corporation,
17 or on a person at the registered office of the corporation in charge thereof." Service on Admiral
18 was clearly inadequate.

19 21. Admiral next argued in its Motion to Dismiss that the Tribal Court lacked
20 jurisdiction over Admiral and the cross-complaint. "Absent express authorization by federal
21 statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited
22 circumstances." *Strate v. A-1 Contractors* (1997) 520 U.S. 438, 445. "[T]he inherent sovereign
23 powers of an Indian tribe' – those powers a tribe enjoys apart from expression provision by
24 treaty or statute – 'do not extend to the activities of nonmembers of the tribe.'" *Id.* at 445-446,
25 citing *Montana v. US* (1981) 450 U.S. 544, 565. "*Montana* thus describes a general rule that,
26 absent a different congressional direction, Indian tribes lack civil authority over the conduct of
27 non-members on non-Indian land...subject to two exceptions: The first exception relates to

1 nonmembers who enter consensual relationships with the tribe or its members; the second
2 concerns activities that directly affects the tribe's political integrity, economic security, health, or
3 welfare." *Id.* at 446. More directly to the point, "a non-Indian's breach of an independent duty
4 to another non-Indian, occurring off of the reservation, falls without the nebulous confines of a
5 'reservation affair' and does not arise on the reservation." *Stock West Corp. v. Taylor* (9th Cir.
6 1991) 942 F.2d 655, 663. The hearing date on Admiral's Motion to Dismiss was scheduled for
7 December 9, 2011.

8 22. On or about October 27, 2011, the Tribal Court issued an order specifying that the
9 parties shall file cross-motions for summary judgment ("Court Ordered Summary Judgment
10 Motions") addressing the following issues: "(1) does the Court have personal jurisdiction over
11 the cross-defendants; (2) does the Court, as a matter of tribal law, have subject matter
12 jurisdiction over the cross-defendants; (3) does the Court, as a matter of federal law, have subject
13 matter jurisdiction over the cross-defendants, and (4) do the cross-defendants have an obligation
14 to tender a defense on behalf of Woods Roofing in this case pursuant to policies of insurance
15 entered into between cross-complainant and cross-defendants." A true and correct copy of the
16 October 27, 2011 order is attached hereto as Exhibit "G".

17 23. On or about November 4, 2011, the Tribal Court held a telephone conference with
18 counsel for all parties to discuss the briefing schedule and requirement for the Court Ordered
19 Summary Judgment Motions. Counsel for Admiral *specialy appeared* at the conference
20 objecting to the Tribal Court's order to the extent it required any substantive appearance/action
21 by Admiral before the hearing on its motion to dismiss. Admiral objected to the order as it
22 forces Admiral to file a motion for summary judgment on substantive coverage issues before
23 there has been a determination on the jurisdictional issues, and before it has generally appeared
24 in the litigation. This is inconsistent with federal law and exceeds the Tribal Court's authority.

25 24. During this conference call, the Tribal Court also indicated that Admiral's Motion
26 to Dismiss *would not be heard* on the currently scheduled date of December 9, 2011 and the
27 Court would assign a new date.

1 25. On or about December 20, 2011, the Tribal Court issued a formal order vacating
2 the hearing date on Admiral's Motion to Dismiss. The Tribal Court indicated that "it will set a
3 hearing on the Motion to Dismiss *after* the Court hears oral arguments on the jurisdictional
4 issues set for hearing on February 17, 2012." The December 20 Order still required the parties,
5 including Admiral, to file briefs on the substantive coverage issues before the Tribal Court would
6 hear or address the jurisdictional issues in Admiral's Motion to Dismiss. A true and correct copy
7 of this order is attached at Exhibit "H".

8 26. On December 21, 2011 Counsel for Admiral filed an Ex Parte Application with
9 the Tribal Court requesting that the Tribal Court hear the Motion to Dismiss before Admiral was
10 required to file the Court Ordered Summary Judgment Motions on the substantive legal issue of
11 whether it owes a defense to WRI. A true and correct copy of this ex parte application is
12 attached hereto as Exhibit "I".

13 27. On January 9, 2012, Judge Marston issued an order granting Admiral's Motion to
14 Dismiss on the basis that Admiral had not been personally served. Judge Marston gave WRI
15 sixty-days (until March 12, 2012) to file a proof of service evidencing that Admiral had been
16 properly served with the cross-complaint. Having granted Admiral's motion to quash service of
17 the summons, Judge Marston specifically deferred the jurisdictional issue stating that he need not
18 now address the second argument raised in Admiral's motion that the Court lacks jurisdiction
19 over Admiral. Judge Marston also ordered that if service is perfected upon Admiral within the
20 sixty-day time frame, Admiral would be required to file its Court Ordered Summary Judgment
21 Motion by March 15, 2012. A true and correct copy of the January 9, 2012 order is attached as
22 Exhibit "J".

23 28. On February 14, 2012, counsel for WRI filed a request for entry of default.
24 WRI's request was based on the grounds that Admiral had apparently been personally served
25 with the cross-complaint on October 21, 2011, and that Admiral's original motion to dismiss did
26 not address that particular service. Significantly, Admiral's original motion to dismiss
27 challenging service **and jurisdiction** had been served and filed before the personal service

1 occurred. The February 14 request for entry was the first time that Admiral's counsel became
2 aware of a claim from WRI that Admiral had been personally served. It was the first time
3 Admiral's counsel was served with a proof asserting personal service on Admiral and, based on
4 information and belief, it also was the first time such proof had been filed with the Tribal Court.
5 Attached as an exhibit to the Request for Entry of Default was a copy of the proof of personal
6 service of the cross-complaint against Admiral. This is the first time Admiral was made aware
7 that WRI had been trying to file said proof of service. A true and correct copy of the request for
8 entry of default is attached as Exhibit "K".

9 29. As a result of WRI's actions, on February 28, 2012, Admiral filed an ex-parte
10 application in the Tribal Action seeking an order shortening time to hear another Motion to
11 Dismiss, since the jurisdictional issues within the motion had yet to be addressed. An order
12 shortening time was necessary since to comply with rule 18(b) of the Civil Rules of Procedure
13 for the Tribal Court, the earliest possible hearing date for Admiral's second motion to dismiss
14 would be April 6, 2012, i.e. after opening briefs would be due on the Court Ordered Summary
15 Judgment Motions. Complying with this order will force Admiral to file an opening brief, which
16 Admiral fears will be viewed as a submission to the Court's jurisdiction, before the Tribal Court
17 has a chance to rule on Admiral's second Motion to Dismiss. Attached hereto as Exhibit "L" is a
18 true and correct copy of this ex parte application.

19 30. On or about March 1, 2012, Ms. Anita Huff, Court Clerk for the Blue Lake Tribal
20 Court, wrote an email to all counsel indicating that Judge Marston was issuing an order on
21 March 5, 2012 addressing the (1) ex-parte application of Admiral; (2) Entry of Clerks Default
22 against Admiral Insurance Company; and (3) Current Briefing Schedule that was established. A
23 true and correct copy of this letter is attached as Exhibit "M".

24 31. To date, this order has not been issued. Instead, on March 12, 2012 the Tribal
25 Court's Court Clerk notified all parties that the Court Ordered Summary Judgment Motions are
26 still due but the Court would not accept any further filings with respect to Admiral's ex parte
27 application. Attached hereto as Exhibit "N" is a true and correct copy of this e-mail.

1 32. By virtue of this e-mail, the Tribal Court has refused to allow Admiral to be heard
2 on its Motion to Dismiss for lack of jurisdiction before forcing Admiral to submit to the
3 jurisdiction of the Tribal Court. Jurisdiction “will involve no arduous inquiry” and both judicial
4 economy and the consideration ordinarily accorded the plaintiff’s choice of forum “should impel
5 the federal court to dispose of [those] issue[s] first.” *Ruhrgas AG v. Marathon Oil Co.* (1999)
6 526 U.S., at 587–588, 119 S.Ct. 1563. By ordering the parties to file substantive motions before
7 deciding the jurisdictional issues, Judge Marston is forcing Admiral to submit to the jurisdiction
8 of the Tribal Court.

9 33. Admiral has exhausted all tribal remedies and/or is unable to exhaust all tribal
10 remedies due to the Tribal Court’s aforementioned acts. Admiral is not subject to the jurisdiction
11 of the Tribal Court. Admiral is not a tribal entity and is not a tribal member. Admiral’s policies
12 of insurance are only with WRI and not with MBS. Admiral has not done business with the
13 Tribe, did not enter into a contractual relationship with MBS and did not sell an insurance policy
14 to MBS. Admiral has adamantly disputed the jurisdiction of the Tribal Court as there is no
15 connection between Admiral and the Blue Lake Rancheria Tribe. Accordingly, Admiral is not
16 subject to the jurisdiction of the Tribal Court.

17 34. The Blue Lake Rancheria Tribal Court has acted to the injury of Admiral, in
18 interference with Admiral’s rights afforded by federal law, and in excess of federal limitations
19 placed upon the power of tribal courts to adjudicate cases or controversies.

20 35. Pursuant to federal Indian law, there is a significant geographic limitation to tribal
21 jurisdiction. *White Mt. Apache Tribe v. Bracker* (1980) 448 U.S. 136, 151. The limited
22 authority of a tribe over nonmembers does not arise until the nonmember enters tribal lands or
23 conducts business with the tribe. *Merrion v. Jicarill Apache Tribe* (1981) 455 U.S. 130, 142.

24 36. In *Montana v. United States* (1981) 450 U.S. 544, 565, the Supreme Court
25 established two exceptions under which tribal courts may acquire power over nonmembers. The
26 first exception allows a tribe to exercise governmental authority over nonmembers who enter
27 consensual relationships with the tribe or with its members. *Id.* The second exception allows

1 tribal regulation of nonmember conduct “when that conduct threatens or has some direct effect
2 on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566.

3 37. The *Montana* exceptions have no application to nonmembers off-reservation. A
4 “tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts
5 business with the tribe.” *Merrion*, 455 U.S. 142; see also *Hornell Brewing Co. v. Rosebud Sioux*
6 *Tribal Court* (8th Cir. 1998) 133 F. 3d 1087, 1091 (stating “Neither Montana nor its progeny
7 purports to allow Indian tribes to exercise civil jurisdiction over the activities of non-Indians
8 occurring outside their reservations.”).

9 38. The United States Supreme Court has held that exhaustion of tribal remedies may
10 not be required when “where an assertion of tribal jurisdiction ‘is motivated by a desire to harass
11 or is conducted in bad faith,’ or where the action is patently violative of express jurisdictional
12 prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity
13 to challenge the court’s jurisdiction.” *National Farmers Union Ins. Cos. v. Crow Tribe*, (1985)
14 471 U.S. 845, 857 n.21. Judge Marston has thwarted any attempt by Admiral to have the
15 jurisdictional issues decided prior to submitting to the jurisdiction of the Court.

16 39. The Blue Lake Tribal Court lacks jurisdiction to adjudicate matters relating to the
17 conduct of a non-Indian and a non-tribal corporation on land that is not a reservation or
18 otherwise Indian land, and such individual and corporation can challenge any such jurisdictional
19 exercise in federal court without first exhausting tribal remedies. See *Burlington Northern &*
20 *Santa Fe Railway Co. v. Vaughn* No. 05-16755 (9th Cir. 2007), relying on *Montana v. United*
21 *States* (1981) 450 U.S. 544; see also *Strate v. A-1 Contractors* (1997) 520 U.S. 438.

22 40. Under well-established federal law, the Blue Lake Rancheria Tribal Court lacks
23 jurisdiction over Admiral because (a) there is no express congressional grant of tribal jurisdiction
24 over them, (b) there is no consensual relationship between either plaintiff and the Tribe meeting
25 Supreme Court requirements, and (c) no actions of either plaintiff threatens or has some direct
26 effect on the political integrity, the economic security, or the health or welfare of the Tribe. As
27 such, the Blue Lake Tribal Court is acting in violation of federal law to the injury of Admiral.

1 The Blue Lake Tribal Court has no colorable claim of tribal court jurisdiction. *Burlington*
2 *Northern & Santa Fe Railway Co. v. Vaughn* No. 05-16755 (9th Cir. 2007).

3 **FIRST CAUSE OF ACTION**

4 **(INJUNCTIVE RELIEF)**

5 41. Admiral incorporates the allegations of paragraphs 1 through 40 as if fully set
6 forth herein.

7 42. It is clear that Admiral is not subject to the jurisdiction of the Tribal Court as
8 “the inherent sovereign powers of an Indian tribe’ – those powers a tribe enjoys apart from
9 expression provision by treaty or statute – ‘do not extend to the activities of nonmembers of the
10 tribe.’” *Montana v. US* (1981) 450 U.S. 544, 565.

11 43. The Tribal Court and Judge Marston lack any authority or jurisdiction to hear or
12 decide any aspect of the civil case filed against Admiral, a non-Indian corporation with no
13 contacts to the Blue Lake Indian Tribe or its land, and further proceedings in the Tribal Court
14 would be contrary to law.

15 44. Further, the tribal exhaustion doctrine in this case “would be futile because of the
16 lack of an adequate opportunity to challenge the court’s jurisdiction.” *National Farmers Union*
17 *Ins. Cos. v. Crow Tribe*, (1985) 471 U.S. 845, 857 n.21. Judge Marston has forced Admiral to
18 submit a brief on a substantive issue of law prior to deciding the jurisdiction issue. A motion for
19 summary judgment would subject Admiral to the general jurisdiction of the Tribal Court.
20 Therefore, Admiral cannot exhaust its remedies on the jurisdictional issue before it is required to
21 submit to the jurisdiction of the Tribal Court by virtue of Judge Marston’s rulings. Likewise,
22 Admiral is aware of no provision in the Blue Lake Rancheria Ordinances or the Blue Lake
23 Rancheria Rules of Civil Procedure which would permit an appeal to a tribal appellate system. It
24 is unclear whether such a tribal appellate system even exists. Blue Lake Rancheria Business
25 Council Ordinance No. 07-01 which establishes a tribal appellate court system indicates that:
26 “Until the Business Council adopts a separate Ordinance establishing a Court of Appeal and
27 providing for its scope of review, the decisions of the Tribal Court shall be final and non-

1 appealable.” *Section 11.1.1.070 Appeals*. Accordingly, there is no alternative to seeking federal
2 court review.

3 45. The Tribal Court and Judge Marston have ordered Admiral to file summary
4 judgment motions on substantive issues prior to any hearing being held on the issue of
5 jurisdiction thereby threatening irreparable injury to Admiral by causing it to submit to
6 jurisdiction of the Tribal Court.

7 46. Admiral has no adequate or speedy remedy at law for the above mentioned
8 conduct of Defendants and this action for injunctive relief is Admiral’s only means for securing
9 relief.

10 **SECOND CAUSE OF ACTION**

11 **(DECLARATORY RELIEF)**

12 47. Admiral incorporates the allegations of paragraphs 1 through 46 as if fully set
13 forth herein.

14 48. Admiral brings this declaratory judgment action pursuant to 28 U.S.C § 2201,
15 seeking a determination that the Tribal Court may not exert jurisdiction over Admiral in the
16 action filed in Tribal Court, Case Nos. C-09-06212-LJM and C-09-06212A-LJM.

17 49. There exists an actual controversy between Admiral and the Defendants within
18 the jurisdiction of this Court involving the authority of the Tribal Court, which controversy may
19 be determined by a judgment of this Court.

20 50. Plaintiff is entitled to a declaratory judgment declaring that the Blue Lake Tribal
21 Court has no jurisdiction over Admiral in the Tribal Action or in any future actions filed in
22 Tribal Court against Admiral related to the lawsuit between MBS and WRI.

23 **THIRD CAUSE OF ACTION**

24 **(DECLARATORY RELIEF)**

25 51. Admiral incorporates the allegations of paragraphs 1 through 50 as if fully set
26 forth herein.

27 52. Admiral contends that there is no potential for coverage or actual coverage, and it

1 has no obligation to defend or indemnify WRI in the Tribal Action under the terms of the Policy.

2 53. The Insuring Agreement of the applicable General Commercial Liability Policy
3 No. CA000001403-06 provided by Admiral to Woods, Section 1 "Coverage", provides as
4 follows:

5 **SECTION I – COVERAGES**

6 **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

7 **I. Insuring Agreement**

8
9 a. We will pay those sums that the insured becomes legally obligated to pay as
10 damages because of "bodily injury" or "property damage" to which this insurance
11 applies. We will have the right and duty to defend the insured against any "suit"
12 seeking those damages. However, we will have no duty to defend the insured
13 against any "suit" seeking damages for "bodily injury" or "property damage" to
14 which this insurance does not apply. We may, at our discretion, investigate any
15 "occurrence" and settle any claim or "suit" that may result. But:

- 16 (1) The amount we will pay for damages is limited as described in Section III
17 – Limits Of Insurance; and
- 18 (2) Our right and duty to defend ends when we have used up the applicable
19 limit of insurance in the payment of judgments or settlements under
20 Coverages A or B or medical expenses under Coverage C.

21 No other obligation or liability to pay sums or perform acts or services is covered unless
22 explicitly provided for under Supplementary Payments – Coverage A and B.

23 b. This insurance applies to "bodily injury" and "property damage" only if:

- 24 (1) The "bodily injury" or "property damage" is caused by an "occurrence"
25 that takes place in the "coverage territory";
- 26 (2) The "bodily injury" or "property damage" occurs during the policy period;
27 and

28 * * *

2. Exclusions

This insurance does not apply to:

* * *

1 **b. Contractual Liability**

2 "Bodily injury" or "property damage" for which the insured is obligated to pay
 3 damages by reason of the assumption of liability in a contract or agreement. This
 4 exclusion does not apply to liability for damages:

- 5 (1) That the insured would have in the absence of the contract or agreement;
 6 or
- 7 (2) Assumed in a contract or agreement that is an "insured contract"; provided
 8 the "bodily injury" or "property damage" occurs subsequent to the
 9 execution of the contract or agreement. Solely for the purposes of liability
 10 assumed in an "insured contract", reasonable attorney fees and necessary
 11 litigation expenses incurred by or for a party other than an insured are
 12 deemed to be damages because of "bodily injury" or "property damage";
 13 provided:

 - 14 (a) Liability to such party for, or for the cost of, that party's defense
 has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that
 party against a civil or alternative dispute resolution proceeding in
 which damages to which this insurance applies are alleged.

15 **d. Workers' Compensation and Similar Law**

16 Any obligation of the insured under a workers' compensation, disability benefits
 17 or unemployment compensation law or any similar law.

18 **e. Employer's Liability**

19 "Bodily injury" to:

- 20 (1) An "employee" of the insured arising out of and in the course of
 - 21 (a) Employment by the insured; or
 - 22 (b) Performing duties related to the conduct of the insured's business;
 23 or
- 24 (2) The spouse, child, parent, brother or sister of that "employee" as a
 25 consequence of Paragraph (1) above.

26 This exclusion applies:

- 1 (1) Whether the insured may be liable as an employer or in any other
2 capacity; and
3 (2) To any obligation to share damages with or repay someone else who must
4 pay damages because of the injury.

5 This exclusion does not apply to liability assumed by the insured under an
6 "insured contract".

7 * * *

8 54. The entirety of MBS' complaint is centered around WRI's alleged failure to
9 ensure the safety of persons it was contractually obligated to protect. WRI's failure to comply
10 with the terms of its contract resulted in MBS having to pay workers compensation benefits for
11 three separate injuries. It is settled that under California law, strictly economic losses are not
12 "property damage" for liability insurance purposes. *Waller v. Truck Ins. Exch., Inc.* (1995) 11
13 Cal.4th 1, 26-27. "CGL policies do not provide coverage for intangible property losses, including
14 economic losses." *Id.* "Strictly economic losses like lost profits, loss of goodwill, loss of the
15 anticipated benefit of a bargain, and loss of an investment, do not constitute damage or injury to
16 tangible property covered by a comprehensive general liability policy." *Giddings v. Industrial
17 Indemnity Co.* (1980) 112 Cal.App.3d 213, 217.

18 55. Coverage is also precluded in that the contractual liability exclusion states that
19 there is no coverage for "'bodily injury' ...for which the insured is obligated to pay damages by
20 reason of the assumption of liability in a contract or agreement." MBS seeks to have WRI
21 reimburse it for monies it has already paid. The second applicable exclusion here is the
22 Employer's Liability exclusion. It operates to preclude coverage for "'bodily injury' to an
23 'employee' of the insured." The three injured parties were "employees" of WRI as that term is
24 defined in the Policy. Moreover, this exclusion equally applies "[t]o any obligation to share
25 damages with or repay someone else who must pay damages because of the injury." While not
26 exhaustive, these are a few of the reasons WRI is not entitled to a defense or indemnity under the
27 Policy.
28

1 56. Admiral is informed and believes, and thereon alleges, that WRI contends that it
2 is entitled to a defense and indemnity from Admiral in the Tribal Action under the terms of the
3 Policy.

4 57. An actual and justiciable controversy exists between Admiral and WRI over the
5 rights, duties and obligations of the parties arising out of the terms of the Policy, namely
6 concerning whether Admiral is obligated to defend and indemnify WRI in the Tribal Action.

7 58. Admiral desires a judicial determination of the respective rights and duties of
8 Admiral and WRI under the Policy, particularly a declaratory judgment that Admiral owes no
9 contractual duty under the Policy to defend and/or indemnify WRI in the Tribal Action.

10 59. A judicial declaration of Admiral's and WRI's rights is necessary and appropriate
11 at this time in order that Admiral may ascertain its rights, responsibilities and duties under the
12 Policy.

13 WHEREFORE, the Plaintiff prays for the following relief:


- 14 1. For a preliminary injunction pursuant to Federal Rule of Civil Procedure 65
15 enjoining Defendants, their agents, employees, successors and assigns from
16 further proceedings against Admiral herein in the action filed in Tribal Court,
17 Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 18 2. For a permanent injunction pursuant to Federal Rule of Civil Procedure 65
19 enjoining Defendants, their agents, employees, successors and assigns from
20 further proceedings against Plaintiff herein in the action filed in Tribal Court,
21 Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 22 3. For a declaratory judgment, pursuant to U.S.C. § 2201, that the Blue Lake
23 Rancheria Tribal Court may not exert jurisdiction over Plaintiff in the action filed
24 in Tribal Court, Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 25 4. For a declaratory judgment that Admiral has no duty to defend or indemnify WRI
26 in the Tribal Action.
- 27 5. For such other and further relief as may be warranted.

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6. Plaintiff hereby demands trial by jury.

DATED: March 14, 2012

WALSH MCKEAN FURCOLO LLP

By: 

Regan Furcolo
Lynn Trang
Christopher M. Lea
Attorneys for Plaintiff
ADMIRAL INSURANCE COMPANY



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ORIGINAL FILED

MAR 14 2012

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

Attorneys for Plaintiff ADMIRAL INSURANCE COMPANY

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE BRANCH

ADMIRAL INSURANCE COMPANY,

Plaintiff,

vs.

BLUE LAKE RANCHERIA TRIBAL
COURT; LESTER J. MARSTON, Chief
Judge of the BLUE LAKE RANCHERIA
TRIBAL COURT OF THE BLUE LAKE
RANCHERIA INDIAN TRIBE; WOOD'S
ROOFING INC., a California Corporation,
DOES 1-10.

Defendants.

CASE NO. CV12-01266

COMPLAINT FOR:

- 1) INJUNCTIVE RELIEF;
- 2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

TRIAL DATE: TBD

HRL

INTRODUCTION

1. This is an action to enjoin the prosecution of a civil action in the Blue Lake Rancheria Tribal Court ("Tribal Action"). In the Tribal Action, plaintiff, Mainstay Business Solutions ("MBS") filed a complaint against Wood's Roofing, Inc. ("WRI") for breach of written contract, money on an open book account, breach of the covenant of good faith and fair dealing, and negligence. A cross-complaint was filed by WRI in the Tribal Action against Admiral Insurance Company ("Admiral"), its general liability carrier, for failure to defend WRI in the Tribal Action.

FAXED

1 2. This action also seeks a declaratory judgment that the Blue Lake Rancheria Tribal
2 Court may not exercise jurisdiction over Admiral.

3 3. This action also seeks a declaratory judgment that Admiral does not have a duty
4 to defend or indemnify WRI in the Tribal Action.

5 PARTIES AND JURISDICTION

6 4. An actual case or controversy exists between the parties warranting this Court’s
7 declaratory and related relief pursuant to 28 U.S.C §§ 2201 and 2202 and the action is ripe for
8 adjudication.

9 5. This Court has jurisdiction over the subject matter of this action pursuant to 28
10 U.S.C. § 1331, Federal Common Law, 28 U.S.C. §1332 and 28 U.S.C. § 1367 as this case arises
11 under the laws and treaties of the United States since the outer limits of tribal sovereignty are
12 defined by federal Indian law. See *Nat’l Farmers Union Ins. Co. v. Crow Tribe* (1985) 471 U.S.
13 845 (stating “[t]he question whether an Indian tribe retains the power to compel a non-Indian
14 [...] to submit to the civil jurisdiction of a tribal court is one that must be answered by reference
15 to federal law, and is a ‘federal question’ under § 1331.”).

16 6. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over the
17 state law claims asserted against WRI.

18 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as the district in
19 which any defendant resides since all defendants reside in the same state, the district in which a
20 substantial part of the events or omissions giving rise to the claim occurred, the district where a
21 substantial part of the property that is the subject of the action is situated and/or the district
22 where any defendant is subject to personal jurisdiction.

23 8. Admiral is a Delaware Corporation, doing business in Cherry Hill, New Jersey. It
24 is domiciled in Delaware with its office in Cherry Hill, New Jersey. Admiral is duly authorized
25 to transact business in this State by the commissioner of the California Department of Insurance
26 as an eligible surplus lines insurer.
27

1 between MBS and WRI, MBS provided workers compensation benefits to those workers. MBS
2 now seeks recovery of the benefits it paid from WRI.

3 15. On or about June 29, 2011, MBS initiated an action in Tribal Court, Case No.
4 C-09-06212-LJM seeking these monies from WRI. A first amended complaint ("FAC") was
5 filed on or about June 23, 2011. Attached hereto as Exhibit "A" is a true and correct copy of the
6 FAC.

7 16. The FAC alleges that "[o]n or about June 15, 2007, Plaintiff and defendant...
8 entered into a written agreement...[which] was renewed on June 1, 2008." "Under the
9 Agreement, Plaintiff assigned its employees to Wood's to work at various Wood's worksites in
10 exchange for consideration provided in the Agreement. The Agreement established a co-
11 employment relationship between the parties with respect the assigned employees." Under this
12 contract WRI is obligated to "ensure a safe workplace" which included complying with MBS'
13 workplace safety requirements. WRI allegedly breached this obligation which resulted in
14 injuries to three of MBS' employees on October 24, 2007, December 17, 2007 and November
15 10, 2008.

16 17. WRI tendered its defense of the Tribal Action to Admiral pursuant to the terms of
17 a commercial general liability insurance policy Admiral issued to WRI, policy number
18 CA000001043-06 for the period of September 28, 2007 to September 28, 2008 ("Policy").
19 Attached hereto as Exhibit "B" is a true and correct copy of this policy. Admiral denied
20 coverage for the tender. Attached hereto as Exhibit "C" is a true and correct copy of Admiral's
21 denial letter.

22 18. On or about September 7, 2011, WRI filed a cross-complaint, Case No. C-09-
23 06212A-LJM, against Admiral as a result of its refusal to defend and indemnify WRI in the
24 Tribal Action ("Cross-Complaint"). Attached hereto as Exhibit "D" is a true and correct copy of
25 the Cross-Complaint.

1 19. Admiral received notice of the cross-complaint via certified mail on September
2 27, 2011. Attached hereto as Exhibit "E" is a true and correct copy of the proof of certified mail
3 of the Cross-Complaint.

4 20. On or about October 18, 2011, Admiral filed and served a Notice of Motion to
5 Quash Summons and Dismiss the Cross-Complaint ("Motion to Dismiss") in the Tribal Action
6 on the grounds that (1) the summons and cross-complaint were not properly served and (2) that
7 the Court lacks jurisdiction over Admiral and the cross-complaint. The Motion to Dismiss was
8 stamped endorsed-filed by the court on October 25, 2011. Attached hereto as Exhibit "F" is a
9 true and correct copy of this motion. The first argument in the Motion to Dismiss was based
10 upon Rule 14 of the Civil Rules of Procedure for the Tribal Court of the Tribe which require that
11 "[i]f service must be made off the tribal trust land...services shall be made in accordance with
12 the laws of the State in which the defendant to be served resides." The Cross-Complaint clearly
13 establishes that WRI knew Admiral is located in New Jersey. Cross-Complaint ¶2. Rule 4:4-
14 4(a)(6) of the New Jersey Rules of Court requires *personal delivery* of a copy of the relevant
15 pleadings "on any officer, director, trustee or managing or general agent, or any person
16 authorized by appointment or by law to reserve service of process on behalf of the corporation,
17 or on a person at the registered office of the corporation in charge thereof." Service on Admiral
18 was clearly inadequate.

19 21. Admiral next argued in its Motion to Dismiss that the Tribal Court lacked
20 jurisdiction over Admiral and the cross-complaint. "Absent express authorization by federal
21 statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited
22 circumstances." *Strate v. A-1 Contractors* (1997) 520 U.S. 438, 445. "[T]he inherent sovereign
23 powers of an Indian tribe' – those powers a tribe enjoys apart from expression provision by
24 treaty or statute – 'do not extend to the activities of nonmembers of the tribe.'" *Id.* at 445-446,
25 citing *Montana v. US* (1981) 450 U.S. 544, 565. "*Montana* thus describes a general rule that,
26 absent a different congressional direction, Indian tribes lack civil authority over the conduct of
27 non-members on non-Indian land...subject to two exceptions: The first exception relates to

1 nonmembers who enter consensual relationships with the tribe or its members; the second
2 concerns activities that directly affects the tribe's political integrity, economic security, health, or
3 welfare." *Id.* at 446. More directly to the point, "a non-Indian's breach of an independent duty
4 to another non-Indian, occurring off of the reservation, falls without the nebulous confines of a
5 'reservation affair' and does not arise on the reservation." *Stock West Corp. v. Taylor* (9th Cir.
6 1991) 942 F.2d 655, 663. The hearing date on Admiral's Motion to Dismiss was scheduled for
7 December 9, 2011.

8 22. On or about October 27, 2011, the Tribal Court issued an order specifying that the
9 parties shall file cross-motions for summary judgment ("Court Ordered Summary Judgment
10 Motions") addressing the following issues: "(1) does the Court have personal jurisdiction over
11 the cross-defendants; (2) does the Court, as a matter of tribal law, have subject matter
12 jurisdiction over the cross-defendants; (3) does the Court, as a matter of federal law, have subject
13 matter jurisdiction over the cross-defendants, and (4) do the cross-defendants have an obligation
14 to tender a defense on behalf of Woods Roofing in this case pursuant to policies of insurance
15 entered into between cross-complainant and cross-defendants." A true and correct copy of the
16 October 27, 2011 order is attached hereto as Exhibit "G".

17 23. On or about November 4, 2011, the Tribal Court held a telephone conference with
18 counsel for all parties to discuss the briefing schedule and requirement for the Court Ordered
19 Summary Judgment Motions. Counsel for Admiral *specialy appeared* at the conference
20 objecting to the Tribal Court's order to the extent it required any substantive appearance/action
21 by Admiral before the hearing on its motion to dismiss. Admiral objected to the order as it
22 forces Admiral to file a motion for summary judgment on substantive coverage issues before
23 there has been a determination on the jurisdictional issues, and before it has generally appeared
24 in the litigation. This is inconsistent with federal law and exceeds the Tribal Court's authority.

25 24. During this conference call, the Tribal Court also indicated that Admiral's Motion
26 to Dismiss *would not be heard* on the currently scheduled date of December 9, 2011 and the
27 Court would assign a new date.

1 25. On or about December 20, 2011, the Tribal Court issued a formal order vacating
2 the hearing date on Admiral's Motion to Dismiss. The Tribal Court indicated that "it will set a
3 hearing on the Motion to Dismiss *after* the Court hears oral arguments on the jurisdictional
4 issues set for hearing on February 17, 2012." The December 20 Order still required the parties,
5 including Admiral, to file briefs on the substantive coverage issues before the Tribal Court would
6 hear or address the jurisdictional issues in Admiral's Motion to Dismiss. A true and correct copy
7 of this order is attached at Exhibit "H".

8 26. On December 21, 2011 Counsel for Admiral filed an Ex Parte Application with
9 the Tribal Court requesting that the Tribal Court hear the Motion to Dismiss before Admiral was
10 required to file the Court Ordered Summary Judgment Motions on the substantive legal issue of
11 whether it owes a defense to WRI. A true and correct copy of this ex parte application is
12 attached hereto as Exhibit "I".

13 27. On January 9, 2012, Judge Marston issued an order granting Admiral's Motion to
14 Dismiss on the basis that Admiral had not been personally served. Judge Marston gave WRI
15 sixty-days (until March 12, 2012) to file a proof of service evidencing that Admiral had been
16 properly served with the cross-complaint. Having granted Admiral's motion to quash service of
17 the summons, Judge Marston specifically deferred the jurisdictional issue stating that he need not
18 now address the second argument raised in Admiral's motion that the Court lacks jurisdiction
19 over Admiral. Judge Marston also ordered that if service is perfected upon Admiral within the
20 sixty-day time frame, Admiral would be required to file its Court Ordered Summary Judgment
21 Motion by March 15, 2012. A true and correct copy of the January 9, 2012 order is attached as
22 Exhibit "J".

23 28. On February 14, 2012, counsel for WRI filed a request for entry of default.
24 WRI's request was based on the grounds that Admiral had apparently been personally served
25 with the cross-complaint on October 21, 2011, and that Admiral's original motion to dismiss did
26 not address that particular service. Significantly, Admiral's original motion to dismiss
27 challenging service **and jurisdiction** had been served and filed before the personal service

1 occurred. The February 14 request for entry was the first time that Admiral's counsel became
2 aware of a claim from WRI that Admiral had been personally served. It was the first time
3 Admiral's counsel was served with a proof asserting personal service on Admiral and, based on
4 information and belief, it also was the first time such proof had been filed with the Tribal Court.
5 Attached as an exhibit to the Request for Entry of Default was a copy of the proof of personal
6 service of the cross-complaint against Admiral. This is the first time Admiral was made aware
7 that WRI had been trying to file said proof of service. A true and correct copy of the request for
8 entry of default is attached as Exhibit "K".

9 29. As a result of WRI's actions, on February 28, 2012, Admiral filed an ex-parte
10 application in the Tribal Action seeking an order shortening time to hear another Motion to
11 Dismiss, since the jurisdictional issues within the motion had yet to be addressed. An order
12 shortening time was necessary since to comply with rule 18(b) of the Civil Rules of Procedure
13 for the Tribal Court, the earliest possible hearing date for Admiral's second motion to dismiss
14 would be April 6, 2012, i.e. after opening briefs would be due on the Court Ordered Summary
15 Judgment Motions. Complying with this order will force Admiral to file an opening brief, which
16 Admiral fears will be viewed as a submission to the Court's jurisdiction, before the Tribal Court
17 has a chance to rule on Admiral's second Motion to Dismiss. Attached hereto as Exhibit "L" is a
18 true and correct copy of this ex parte application.

19 30. On or about March 1, 2012, Ms. Anita Huff, Court Clerk for the Blue Lake Tribal
20 Court, wrote an email to all counsel indicating that Judge Marston was issuing an order on
21 March 5, 2012 addressing the (1) ex-parte application of Admiral; (2) Entry of Clerks Default
22 against Admiral Insurance Company; and (3) Current Briefing Schedule that was established. A
23 true and correct copy of this letter is attached as Exhibit "M".

24 31. To date, this order has not been issued. Instead, on March 12, 2012 the Tribal
25 Court's Court Clerk notified all parties that the Court Ordered Summary Judgment Motions are
26 still due but the Court would not accept any further filings with respect to Admiral's ex parte
27 application. Attached hereto as Exhibit "N" is a true and correct copy of this e-mail.

1 32. By virtue of this e-mail, the Tribal Court has refused to allow Admiral to be heard
2 on its Motion to Dismiss for lack of jurisdiction before forcing Admiral to submit to the
3 jurisdiction of the Tribal Court. Jurisdiction “will involve no arduous inquiry” and both judicial
4 economy and the consideration ordinarily accorded the plaintiff’s choice of forum “should impel
5 the federal court to dispose of [those] issue[s] first.” *Ruhrgas AG v. Marathon Oil Co.* (1999)
6 526 U.S., at 587–588, 119 S.Ct. 1563. By ordering the parties to file substantive motions before
7 deciding the jurisdictional issues, Judge Marston is forcing Admiral to submit to the jurisdiction
8 of the Tribal Court.

9 33. Admiral has exhausted all tribal remedies and/or is unable to exhaust all tribal
10 remedies due to the Tribal Court’s aforementioned acts. Admiral is not subject to the jurisdiction
11 of the Tribal Court. Admiral is not a tribal entity and is not a tribal member. Admiral’s policies
12 of insurance are only with WRI and not with MBS. Admiral has not done business with the
13 Tribe, did not enter into a contractual relationship with MBS and did not sell an insurance policy
14 to MBS. Admiral has adamantly disputed the jurisdiction of the Tribal Court as there is no
15 connection between Admiral and the Blue Lake Rancheria Tribe. Accordingly, Admiral is not
16 subject to the jurisdiction of the Tribal Court.

17 34. The Blue Lake Rancheria Tribal Court has acted to the injury of Admiral, in
18 interference with Admiral’s rights afforded by federal law, and in excess of federal limitations
19 placed upon the power of tribal courts to adjudicate cases or controversies.

20 35. Pursuant to federal Indian law, there is a significant geographic limitation to tribal
21 jurisdiction. *White Mt. Apache Tribe v. Bracker* (1980) 448 U.S. 136, 151. The limited
22 authority of a tribe over nonmembers does not arise until the nonmember enters tribal lands or
23 conducts business with the tribe. *Merrion v. Jicarilla Apache Tribe* (1981) 455 U.S. 130, 142.

24 36. In *Montana v. United States* (1981) 450 U.S. 544, 565, the Supreme Court
25 established two exceptions under which tribal courts may acquire power over nonmembers. The
26 first exception allows a tribe to exercise governmental authority over nonmembers who enter
27 consensual relationships with the tribe or with its members. *Id.* The second exception allows

1 tribal regulation of nonmember conduct “when that conduct threatens or has some direct effect
2 on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566.

3 37. The *Montana* exceptions have no application to nonmembers off-reservation. A
4 “tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts
5 business with the tribe.” *Merrion*, 455 U.S. 142; see also *Hornell Brewing Co. v. Rosebud Sioux*
6 *Tribal Court* (8th Cir. 1998) 133 F. 3d 1087, 1091 (stating “Neither Montana nor its progeny
7 purports to allow Indian tribes to exercise civil jurisdiction over the activities of non-Indians
8 occurring outside their reservations.”).

9 38. The United States Supreme Court has held that exhaustion of tribal remedies may
10 not be required when “where an assertion of tribal jurisdiction ‘is motivated by a desire to harass
11 or is conducted in bad faith,’ or where the action is patently violative of express jurisdictional
12 prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity
13 to challenge the court’s jurisdiction.” *National Farmers Union Ins. Cos. v. Crow Tribe*, (1985)
14 471 U.S. 845, 857 n.21. Judge Marston has thwarted any attempt by Admiral to have the
15 jurisdictional issues decided prior to submitting to the jurisdiction of the Court.

16 39. The Blue Lake Tribal Court lacks jurisdiction to adjudicate matters relating to the
17 conduct of a non-Indian and a non-tribal corporation on land that is not a reservation or
18 otherwise Indian land, and such individual and corporation can challenge any such jurisdictional
19 exercise in federal court without first exhausting tribal remedies. See *Burlington Northern &*
20 *Santa Fe Railway Co. v. Vaughn* No. 05-16755 (9th Cir. 2007), relying on *Montana v. United*
21 *States* (1981) 450 U.S. 544; see also *Strate v. A-1 Contractors* (1997) 520 U.S. 438.

22 40. Under well-established federal law, the Blue Lake Rancheria Tribal Court lacks
23 jurisdiction over Admiral because (a) there is no express congressional grant of tribal jurisdiction
24 over them, (b) there is no consensual relationship between either plaintiff and the Tribe meeting
25 Supreme Court requirements, and (c) no actions of either plaintiff threatens or has some direct
26 effect on the political integrity, the economic security, or the health or welfare of the Tribe. As
27 such, the Blue Lake Tribal Court is acting in violation of federal law to the injury of Admiral.

1 The Blue Lake Tribal Court has no colorable claim of tribal court jurisdiction. *Burlington*
2 *Northern & Santa Fe Railway Co. v. Vaughn* No. 05-16755 (9th Cir. 2007).

3 **FIRST CAUSE OF ACTION**

4 **(INJUNCTIVE RELIEF)**

5 41. Admiral incorporates the allegations of paragraphs 1 through 40 as if fully set
6 forth herein.

7 42. It is clear that Admiral is not subject to the jurisdiction of the Tribal Court as
8 “the inherent sovereign powers of an Indian tribe’ – those powers a tribe enjoys apart from
9 expression provision by treaty or statute – ‘do not extend to the activities of nonmembers of the
10 tribe.’” *Montana v. US* (1981) 450 U.S. 544, 565.

11 43. The Tribal Court and Judge Marston lack any authority or jurisdiction to hear or
12 decide any aspect of the civil case filed against Admiral, a non-Indian corporation with no
13 contacts to the Blue Lake Indian Tribe or its land, and further proceedings in the Tribal Court
14 would be contrary to law.

15 44. Further, the tribal exhaustion doctrine in this case “would be futile because of the
16 lack of an adequate opportunity to challenge the court’s jurisdiction.” *National Farmers Union*
17 *Ins. Cos. v. Crow Tribe*, (1985) 471 U.S. 845, 857 n.21. Judge Marston has forced Admiral to
18 submit a brief on a substantive issue of law prior to deciding the jurisdiction issue. A motion for
19 summary judgment would subject Admiral to the general jurisdiction of the Tribal Court.
20 Therefore, Admiral cannot exhaust its remedies on the jurisdictional issue before it is required to
21 submit to the jurisdiction of the Tribal Court by virtue of Judge Marston’s rulings. Likewise,
22 Admiral is aware of no provision in the Blue Lake Rancheria Ordinances or the Blue Lake
23 Rancheria Rules of Civil Procedure which would permit an appeal to a tribal appellate system. It
24 is unclear whether such a tribal appellate system even exists. Blue Lake Rancheria Business
25 Council Ordinance No. 07-01 which establishes a tribal appellate court system indicates that:
26 “Until the Business Council adopts a separate Ordinance establishing a Court of Appeal and
27 providing for its scope of review, the decisions of the Trial Court shall be final and non-

1 appealable.” *Section 11.1.1.070 Appeals*. Accordingly, there is no alternative to seeking federal
2 court review.

3 45. The Tribal Court and Judge Marston have ordered Admiral to file summary
4 judgment motions on substantive issues prior to any hearing being held on the issue of
5 jurisdiction thereby threatening irreparable injury to Admiral by causing it to submit to
6 jurisdiction of the Tribal Court.

7 46. Admiral has no adequate or speedy remedy at law for the above mentioned
8 conduct of Defendants and this action for injunctive relief is Admiral’s only means for securing
9 relief.

10 **SECOND CAUSE OF ACTION**

11 **(DECLARATORY RELIEF)**

12 47. Admiral incorporates the allegations of paragraphs 1 through 46 as if fully set
13 forth herein.

14 48. Admiral brings this declaratory judgment action pursuant to 28 U.S.C § 2201,
15 seeking a determination that the Tribal Court may not exert jurisdiction over Admiral in the
16 action filed in Tribal Court, Case Nos. C-09-06212-LJM and C-09-06212A-LJM.

17 49. There exists an actual controversy between Admiral and the Defendants within
18 the jurisdiction of this Court involving the authority of the Tribal Court, which controversy may
19 be determined by a judgment of this Court.

20 50. Plaintiff is entitled to a declaratory judgment declaring that the Blue Lake Tribal
21 Court has no jurisdiction over Admiral in the Tribal Action or in any future actions filed in
22 Tribal Court against Admiral related to the lawsuit between MBS and WRI.

23 **THIRD CAUSE OF ACTION**

24 **(DECLARATORY RELIEF)**

25 51. Admiral incorporates the allegations of paragraphs 1 through 50 as if fully set
26 forth herein.

27 52. Admiral contends that there is no potential for coverage or actual coverage, and it

1 has no obligation to defend or indemnify WRI in the Tribal Action under the terms of the Policy.

2 53. The Insuring Agreement of the applicable General Commercial Liability Policy
3 No. CA000001403-06 provided by Admiral to Woods, Section 1 "Coverage", provides as
4 follows:

5 **SECTION I – COVERAGES**

6 **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

7 **1. Insuring Agreement**

8 a. We will pay those sums that the insured becomes legally obligated to pay as
9 damages because of "bodily injury" or "property damage" to which this insurance
10 applies. We will have the right and duty to defend the insured against any "suit"
11 seeking those damages. However, we will have no duty to defend the insured
12 against any "suit" seeking damages for "bodily injury" or "property damage" to
13 which this insurance does not apply. We may, at our discretion, investigate any
14 "occurrence" and settle any claim or "suit" that may result. But:

- 15 (1) The amount we will pay for damages is limited as described in Section III
16 – Limits Of Insurance; and
- 17 (2) Our right and duty to defend ends when we have used up the applicable
18 limit of insurance in the payment of judgments or settlements under
19 Coverages A or B or medical expenses under Coverage C.

20 No other obligation or liability to pay sums or perform acts or services is covered unless
21 explicitly provided for under Supplementary Payments – Coverage A and B.

22 b. This insurance applies to "bodily injury" and "property damage" only if:

- 23 (1) The "bodily injury" or "property damage" is caused by an "occurrence"
24 that takes place in the "coverage territory";
- 25 (2) The "bodily injury" or "property damage" occurs during the policy period;
26 and

27 * * *

28 **2. Exclusions**

This insurance does not apply to:

* * *

1 **b. Contractual Liability**

2 “Bodily injury” or “property damage” for which the insured is obligated to pay
3 damages by reason of the assumption of liability in a contract or agreement. This
4 exclusion does not apply to liability for damages:

- 5 (1) That the insured would have in the absence of the contract or agreement;
6 or
- 7 (2) Assumed in a contract or agreement that is an “insured contract”, provided
8 the “bodily injury” or “property damage” occurs subsequent to the
9 execution of the contract or agreement. Solely for the purposes of liability
10 assumed in an “insured contract”, reasonable attorney fees and necessary
11 litigation expenses incurred by or for a party other than an insured are
12 deemed to be damages because of “bodily injury” or “property damage”,
13 provided:
- 14 (a) Liability to such party for, or for the cost of, that party’s defense
15 has also been assumed in the same “insured contract”; and
- 16 (b) Such attorney fees and litigation expenses are for defense of that
17 party against a civil or alternative dispute resolution proceeding in
18 which damages to which this insurance applies are alleged.

19 **d. Workers’ Compensation and Similar Law**

20 Any obligation of the insured under a workers’ compensation, disability benefits
21 or unemployment compensation law or any similar law.

22 **e. Employer’s Liability**

23 “Bodily injury” to:

- 24 (1) An “employee” of the insured arising out of and in the course of
- 25 (a) Employment by the insured; or
- 26 (b) Performing duties related to the conduct of the insured’s business;
27 or
- 28 (2) The spouse, child, parent, brother or sister of that “employee” as a
consequence of Paragraph (1) above.

This exclusion applies:

- 1 (1) Whether the insured may be liable as an employer or in any other
2 capacity; and
3 (2) To any obligation to share damages with or repay someone else who must
4 pay damages because of the injury.

5 This exclusion does not apply to liability assumed by the insured under an
6 “insured contract”.

7 * * *

8 54. The entirety of MBS’ complaint is centered around WRI’s alleged failure to
9 ensure the safety of persons it was contractually obligated to protect. WRI’s failure to comply
10 with the terms of its contract resulted in MBS having to pay workers compensation benefits for
11 three separate injuries. It is settled that under California law, strictly economic losses are not
12 “property damage” for liability insurance purposes. *Waller v. Truck Ins. Exch., Inc.* (1995) 11
13 Cal.4th 1, 26-27. “CGL policies do not provide coverage for intangible property losses, including
14 economic losses.” *Id.* “Strictly economic losses like lost profits, loss of goodwill, loss of the
15 anticipated benefit of a bargain, and loss of an investment, do not constitute damage or injury to
16 tangible property covered by a comprehensive general liability policy.” *Giddings v. Industrial
17 Indemnity Co.* (1980) 112 Cal.App.3d 213, 217.

18 55. Coverage is also precluded in that the contractual liability exclusion states that
19 there is no coverage for “‘bodily injury’ ...for which the insured is obligated to pay damages by
20 reason of the assumption of liability in a contract or agreement.” MBS seeks to have WRI
21 reimburse it for monies it has already paid. The second applicable exclusion here is the
22 Employer’s Liability exclusion. It operates to preclude coverage for “‘bodily injury’ to an
23 ‘employee’ of the insured.” The three injured parties were “employees” of WRI as that term is
24 defined in the Policy. Moreover, this exclusion equally applies “[t]o any obligation to share
25 damages with or repay someone else who must pay damages because of the injury.” While not
26 exhaustive, these are a few of the reasons WRI is not entitled to a defense or indemnity under the
27 Policy.

1 56. Admiral is informed and believes, and thereon alleges, that WRI contends that it
2 is entitled to a defense and indemnity from Admiral in the Tribal Action under the terms of the
3 Policy.

4 57. An actual and justiciable controversy exists between Admiral and WRI over the
5 rights, duties and obligations of the parties arising out of the terms of the Policy, namely
6 concerning whether Admiral is obligated to defend and indemnify WRI in the Tribal Action.

7 58. Admiral desires a judicial determination of the respective rights and duties of
8 Admiral and WRI under the Policy, particularly a declaratory judgment that Admiral owes no
9 contractual duty under the Policy to defend and/or indemnify WRI in the Tribal Action.

10 59. A judicial declaration of Admiral's and WRI's rights is necessary and appropriate
11 at this time in order that Admiral may ascertain its rights, responsibilities and duties under the
12 Policy.

13 WHEREFORE, the Plaintiff prays for the following relief:

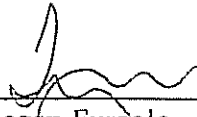
- 14 1. For a preliminary injunction pursuant to Federal Rule of Civil Procedure 65
15 enjoining Defendants, their agents, employees, successors and assigns from
16 further proceedings against Admiral herein in the action filed in Tribal Court,
17 Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 18 2. For a permanent injunction pursuant to Federal Rule of Civil Procedure 65
19 enjoining Defendants, their agents, employees, successors and assigns from
20 further proceedings against Plaintiff herein in the action filed in Tribal Court,
21 Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 22 3. For a declaratory judgment, pursuant to U.S.C. § 2201, that the Blue Lake
23 Rancheria Tribal Court may not exert jurisdiction over Plaintiff in the action filed
24 in Tribal Court, Case No.'s C-09-06212-LJM and C-09-06212A-LJM.
- 25 4. For a declaratory judgment that Admiral has no duty to defend or indemnify WRI
26 in the Tribal Action.
- 27 5. For such other and further relief as may be warranted.

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6. Plaintiff hereby demands trial by jury.

DATED: March 14, 2012

WALSH MCKEAN FURCOLO LLP

By: 

 Regan Furcolo
 Lynn Trang
 Christopher M. Lea
 Attorneys for Plaintiff
 ADMIRAL INSURANCE COMPANY