

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION

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State Farm Insurance Companies	)	
	)	
Plaintiff,	)	Civil No. 1:12-cv-00094-CSM
	)	
vs.	)	<b>DEFENDANTS LLOYD GREENWOOD</b>
	)	<b>AND BRENDA GREENWOOD'S</b>
Turtle Mountain Fleet Farm, LLC;	)	<b>RESPONSE TO PLAINTIFF'S</b>
Rich's Construction, by its owner,	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
Rich Parisien; Lloyd Greenwood and	)	
Brenda Greenwood,	)	
	)	
Defendants.	)	

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Defendants Lloyd and Brenda Greenwood ("Greenwoods") submit this response to Plaintiff State Farm Insurance Companies' ("State Farm") Motion for Summary Judgment. The Greenwoods also brought a Motion for Summary Judgment dated July 30, 2013, which is currently pending before this Court. The Greenwoods hereby incorporate by reference all arguments made in their Memorandum in Support of Motion for Summary Judgment and attached exhibits.

**INTRODUCTION**

Plaintiff State Farm's Motion for Summary Judgment should be denied because the Turtle Mountain Tribal Court has jurisdiction over State Farm in this matter. Further, State Farm has not exhausted its remedies in Tribal Court prior to bringing this declaratory judgment action in the United States District Court for the District of North Dakota.

Exhaustion of tribal remedies is a prerequisite to bringing an action in federal court. As such, Plaintiff's Motion for Summary Judgment should be denied.

### **FACTS**

The material facts are undisputed. (See Plaintiff's Brief in Support of Summary Judgment, Docket No. 27, at p. 4). State Farm entered into a contractual relationship with the Greenwoods whereby State Farm agreed to provide homeowner's insurance for the Greenwoods. The Greenwoods' residence was located within the external boundaries of the Turtle Mountain Indian Reservation in North Dakota. The Greenwoods' home sustained significant damage when tornadoes came through the Turtle Mountain region on July 7, 2008. State Farm's Catastrophe Manager, Bret Taylor ("Taylor"), inspected the Greenwoods' home and prepared a home repair estimate for Rich's Construction. The Greenwoods, with Taylor's encouragement, hired Rich's Construction to complete the repair work.

The Greenwoods became dissatisfied with the workmanship of Rich's Construction. The Greenwoods informed Taylor of their complaints with the workmanship. The Greenwoods refused to pay for this shoddy workmanship. A collection action was subsequently brought by Rich's Construction against the Greenwoods in Tribal Court. The Greenwoods counterclaimed for defective workmanship and cross-claimed State Farm for its role in providing an allegedly inferior contractor. At the trial in the collection and defective workmanship matter, testimony was provided by the construction foreman. The foreman testimony revealed that 1) the Greenwood's house should be torn down, and 2) State Farm did not want to demolish and replace the Greenwood's home and instead told the contractor to "make due" with repairs. (Plaintiff's Brief in Support of Summary

Judgment, Docket No. 27, at p. 2). This testimony illustrates that State Farm knew that the house should be demolished and never informed the Greenwoods of the condition of the home. The Tribal Court initially granted State Farm's motion to dismiss the Greenwoods' cross-claim against State Farm based on lack of jurisdiction. On appeal, however, the Turtle Mountain Tribal Court of Appeals reversed and remanded the lower court's decision dismissing State Farm based on lack of jurisdiction. Specifically, the Tribal Court of Appeals found that tribal court has jurisdiction over this matter "because State Farm voluntarily entered into a contractual relationship with the Greenwoods . . . and the contract pertained to a home physically located on the Turtle Mountain Indian reservation." (Exhibit A to Defendant Greenwood's Motion for Summary Judgment, Docket No. 25, at p. 2).

### **ARGUMENT**

**I. Tribal Court Has Jurisdiction Over Plaintiff State Farm.** The issue before this Court is whether the Tribal Court has jurisdiction over State Farm. Generally, the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. Montana v. U.S., 450 U.S. 544, 565 (1981). However, the United States Supreme Court has established two exceptions when Indian tribes possess civil legal authority over the conduct of non-members. Id. The first exception states, "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Id. at 565. The second exception states that "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct

effect on the political integrity, the economic security, or the health or welfare of the tribe.” Id. The Tribal Court regularly exercises jurisdiction over fee land owned by tribal members on the Reservation. The Tribal Court decides cases involving fee land owned by tribal members on the Reservation in probate and other suits. This tribal authority is confirmed by ample precedent. See, e.g., New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983) (holding that the tribe can regulate hunting on the reservation and state license laws did not apply). Additionally, the Tribal Court handles suits brought by nonmembers against tribal members for matters that arise on the Reservation.

In Strate v. A-1 Contractors, 520 U.S. at 357, the United States Supreme Court listed cases that fit within the first Montana exception: Williams v. Lee, 358 U.S. 217, 223 (1959) (declaring tribal jurisdiction exclusive over lawsuit arising out of an on-reservation sales transaction between a non-member plaintiff and member defendants); Morris v. Hitchcock, 194 U.S. 384 (1904) (upholding tribe’s permit tax on non-member-owned livestock within reservation boundaries); Buster v. Wright, 135 F.947 (8th Cir. 1905) (upholding tribe’s permit tax on non-members for the privilege of conducting business within the tribe’s borders); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980) (tribe’s authority to tax on-reservation cigarette sales to non-members “is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status”). In Allstate Indem. Co. v. Stump, 191 F.3d 1071 (1999 U.S. App.), an automobile insurer sued to enjoin the Tribal Court from exercising its jurisdiction in a bad faith matter. The Ninth Circuit held that the insurer was required to exhaust “remedies” in Tribal Court.

Plaintiff argues that Tribal Court does not have jurisdiction over State Farm because the insurance application was completed off the reservation, State Farm is not a tribal member and has no offices within the external boundaries of the reservation, and no “ultimate decisions regarding coverage under the policy or on the Greenwoods’ claim was [sic] made or implemented on the reservation.” (Plaintiff’s Brief in Support of Summary Judgment, Docket No. 27, at p. 4). State Farm’s arguments fail to acknowledge that State Farm willingly entered into a contractual relationship with the Greenwoods to provide homeowner’s insurance for their home which is located within the external boundaries of the Turtle Mountain Indian Reservation. The first exception in Montana v. U.S. authorizes a tribe to possess civil legal authority over the conduct of non-members when the non-member enters into a consensual relationship with its tribal members through contracts or other arrangements. Montana v. U.S., 450 U.S. at 565. State Farm’s consensual conduct with the Greenwoods clearly falls within the first Montana exception, thus giving the Tribal Court civil jurisdiction over State Farm in this case.

State Farm’s arguments that it is not a tribal member, does not have an office on the reservation, and that the application was completed off the reservation are all red herrings. State Farm knew that it was selling a homeowner’s policy to a home on the reservation and willingly agreed to do so. As such, it cannot now claim that it is not subject to tribal jurisdiction. Further, State Farm’s argument that “no ultimate decisions . . . was [sic] made or implemented on the reservation” is simply an effort to distract from the actions and omissions that occurred on the reservation. For example, State Farm concedes that Taylor travelled to the reservation to inspect the Greenwood’s home for the purposes of preparing the home repair estimate. (Plaintiff’s Brief in Support of Summary Judgment, Docket No.

27, at p. 12). It was Taylor who encouraged the Greenwoods to hire Rich's construction. Additionally, Tribal Court jurisdiction is confirmed by the following actions and omissions by State Farm which occurred on the Turtle Mountain Indian Reservation:

1. Dealing directly with the contractor in charge of restoring the Greenwoods' home;
2. Being privy to contractor information and failing to provide information to its insured about a twisted home;
3. Knowing that the Greenwoods' home was recommended for demolition by the contractors;
4. Being privy to and failing to provide information to its insured that the home was recommended for demolition; and
5. Providing the cost estimate that the contractors would not or could not create and telling the contractors to, "make due."

State Farm also argues that a different analysis must be utilized when considering tribal court jurisdiction over Defendants' tort claims versus Defendant's contract claims. The Greenwoods do not dispute that an insurance bad faith claim sounds in tort, not contract. However, as set forth by State Farm, the question for determining tribal jurisdiction for each claim is whether the claim has a sufficient nexus to the consensual relationship between the member and non-member. Attorney's Process and Investigation Services, Inc. v. Sac & Fox Tribe of Mississippi in Iowa, 609 F.3d 927, 941 (8th Cir. 2010). Clearly, the bad faith claim relates to the consensual insurance contract entered into by the parties. Additionally, as set forth above, State Farm engaged in many actions and omissions within the external boundaries of the Turtle Mountain Indian Reservation. These actions and omissions constitute a sufficient nexus to authorize tribal court civil jurisdiction under the first Montana exception.

The Turtle Mountain Tribal Court has jurisdiction over State Farm because it entered into a consensual relationship with both the Greenwoods and then Rich's Construction.

The contract for insurance that State Farm had with the Greenwoods constitutes both commercial dealing and a contract. The relationship State Farm had with Rich's Construction, as noted in items 1 through 5 above, would fit within the Montana exception of "other arrangements" due to the involvement State Farm had with its insured and the significant ex parte communications State Farm had with the contractor.

## **II. State Farm Did Not Exhaust its Tribal Court Remedies.**

The Greenwoods assert Tribal Court remedies is a matter of comity. It is well established "that principles of comity require that Tribal Court remedies be exhausted before a federal district court should consider relief in a civil case regarding tribal-related activities on reservation land." Krempel v. Prairie Island Indian Community, 125 F. 3d 621, 622 (8th Cir. 1997) (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 845 (1971); Nat'l Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985); Bruce H. Lien v. Three Affiliated Tribes, 93 F. 3d 1412 (8th Cir. 1996)). Case law mandates Tribal Court jurisdiction and the exhaustion of Tribal Court remedies must be completed, if applicable. See Gaming World Int'l v. White Earth Band of Chippewa Indians, 317 F. 3d 840 (8th Cir. 2003), National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985), Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987), Duncan Energy Co. v. Three Affiliated Tribes, 27 F. 3d 1294 (8th Cir. 1994), Bruce H. Lien v. Three Affiliated Tribes, 93 F. 3d 1412 (8th Cir. 1996), Montana v. United States, 450 U.S. 544 (1981). Further, in an analogous case on point, the North Dakota Supreme Court decided, in Gustafson v. Poitra, that lease agreements regarding members within the exterior boundaries of the reservation required Tribal Court exhaustion. Gustafson v. Poitra, 800 N.W.2d 842 (N.D. 2011).

The United States Supreme Court has held that absent a cause for immediate federal court intervention, “a federal court should stay its hand ‘until after the tribal court has had a full opportunity to determine its own jurisdiction.’” Strate v. A-1 Contractors, 520 U.S. 438, 449 (1997). In National Farmers Unions Insurance Company v. Crow Tribe of Indians, the Supreme Court explained:

Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge.

471 U.S. 845 (1985).

Allowing the United States District Court suit to proceed will needlessly multiply the proceedings over the dispute arising on the Reservation. Tribal Court exhaustion of remedies would assist to expedite final judgment of this dispute by preventing waste of time, effort, and judicial resources. In Duncan Energy v. Three Affiliated Tribes, 27 F. 3d 1341 (8th Cir. 1994) (non-member oil company sued over tribal employment laws and oil tax; tribal forum deemed proper place to resolve disputes arising on the Reservation). The Tribal Court can exercise jurisdiction to resolve this matter. This is an important case for the Tribal Court to adjudicate. It is in the public interest to both avoid duplicate legal proceedings in multiple venues and to protect parties from being brought into venues which do not have jurisdiction over those parties and their activities. Because the federal court action will merely serve to duplicate and delay the legal proceedings in this matter, this Court should grant this summary judgment to avoid this duplication and delay.

### **III. Tribal Court Exhaustion is required.**

State Farm must first exhaust its tribal court remedies before bringing an action in

federal district court. Recently, this Court decided a Tribal Court jurisdictional case. See Ford v. Raymond Poitra, 4:10-cv- 00042, (March 2, 2011) (holding that Tribal Court and Tribal Appellate Court remedies had been exhausted regarding the jurisdictional questions and found Tribal Court to have jurisdiction.) “It is well-established that principles of comity require that Tribal court remedies must be exhausted before the federal district should consider relief in a civil case regarding tribal-related activities on reservation land.” Krempel v. Prairie Island Indian Community, 125 F.3d 621, 622 (8th Cir. 1997) (citing Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987); Nat’l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985); Bruce H. Lien Co. v. Three Affiliated Tribes, 93 F.3d 1412 (8<sup>th</sup> Cir. 1996).

“Exhaustion of tribal remedies means that tribal appellate courts must first have the opportunity to review the determinations of the lower tribal courts.” LaPlante, 480 U.S. 9,17. In short, “[t]he tribal exhaustion doctrine is based on ‘a policy of supporting self-government and self determination,’” and although the rule is prudential rather than jurisdictional, “[e]xhaustion is mandatory . . . when a case fits within the policy.”

This Court found the first Montana exception applied to Ford and Dish Network. However, the Ninth Circuit Court of Appeals has explained that the first Montana exception applies when a party consents to tribal court jurisdiction:

The power to exercise tribal civil authority over non-Indians derives not only from the tribe’s inherent power necessary to self-government and territorial management, but also from the power to exclude nonmembers from tribal land.” Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587,592 (9th Cir. 1983) (citing Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 141-144 (1982). If the power to exclude implies the power to regulate those who enter tribal lands, the jurisdiction that results is a consequence of the deliberate actions of those who would enter tribal lands to engage in commerce with the Indians. It is true that “a tribe has

no authority over a nonmember until the nonmember enters tribal lands or conducts business with the tribe[.]” Merrion, 455 U.S. at 142.

### **CONCLUSION**

Tribal authority over the activities of non-members is an important part of Tribal Sovereignty and civil jurisdiction presumptively lies with the Tribal Court, unless affirmatively limited by a specific treaty or federal statute. This case implicates tribal sovereignty. As case law dictates, the Greenwoods respectfully assert this matter interferes with the sovereign nation of the Turtle Mountain Tribes and infringes on its law making authority. The Greenwoods did not know their contractors had informed State Farm Insurance Company that their home should be demolished. The testimony by Rich's construction revealed it advised Taylor of State Farm to demolish the Greenwood's home. Although the contractors recommended that the house be demolished, the insurance company paid out \$73,000 instead of \$108,000 for the home portion of the policy. This Court should declare the Turtle Mountain Tribal Court of the Court of Appeals of the Turtle Mountain Jurisdiction has jurisdiction over this matter and the Tribal Court should exhaust their remedies before seeking action with the United States District Court for the District of North Dakota. Tribal Court exhaustion would assist to expedite final judgment of this dispute by preventing waste of time, effort, and judicial resources. For the above-stated reasons, Plaintiff State Farm's Motion for Summary Judgment should be denied.

Dated this 13th day of January, 2014.

PRINGLE & HERIGSTAD, P.C.

BY: /s/ Reed A. Soderstrom

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CERTIFICATE OF SERVICE

I certify that on the 13th day of January, 2014 the following documents:

**Defendants Lloyd and Brenda Greenwood's Brief in Response to Plaintiff's  
Motion for Summary Judgment.**

was filed electronically with the Clerk of Court through ECF, and that ECF will send a  
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