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3 Attorney for Christian Luiz

4 IN THE NINTH CIRCUIT DISTRICT COURT  
5 IN AN FOR NORTHERN CALIFORNIA

6 CHRISTIAN LUIZ )

CASE NO:

7 )  
8 VS )

PETITION FOR WRIT OF  
HABEAS CORPUS

9 )  
10 NORTHERN CIRCLE INDIAN )  
HOUSING AUTHORITY (NCIHA) )  
& AMERIND RISK TRIBAL )  
11 WC PROGRAM, & )  
BERKELEY RISK )  
12 ADMINISTRATORS )

13  
14 PETITIONER CHRISTIAN LUIZ, petitions this court for a Writ of Habeas Corpus to  
15 remedy the denial of workers' compensation benefits by NCIHA and AMERIND, as  
16 administered by Berkeley Risk Administrators. The undersigned respectfully submits this  
17 Petition in an abundance of caution, for failure to timely appeal will lead to a statutory denial of  
18 rights because a Final Order has issued denying Petitioner workers' compensation claim within  
19 the AMERIND TRIBAL WORKERS COMPENSATION PROGRAM and there is apparently no  
20 jurisdiction at the California Workers Compensation Appeals Board.

21 INTRODUCTION

22 1. NCIHA is a Tribal housing authority on Indian land in Ukiah California providing  
23 housing assistance for native Americans in northern California. AMERIND RISK  
24 MANAGEMENT (AMERIND) is a federally chartered corporation under 25 U.S.C. 477  
25 providing workers compensation coverage for Indian housing authorities. It also enjoys tribal  
26 sovereign immunity. Through contract AMERIND provides workers compensation coverage for  
27 the NCIHA through the Amerind Tribal Workers Compensation Program. Petitioner's claim is  
28 administered by Berkeley Risk Administrators in Scottsdale AZ.

1           Petitioner Christian Luiz is (was) a non-native employee of NCIHA. He worked 18 years  
2 as an IT professional for NCIHA before his claimed injuries. On January 22, 2018, and again on  
3 February 14, 2018, Mr. Luiz filed a claim for workers compensation benefits with NCIHA for an  
4 injury to his neck and shoulder. The January 22, 2018 claim was denied on March 28, 2018 by  
5 Berkeley Risk Administrators as falling outside the coverage plan because the plan does not  
6 insure “idiopathic injuries arising from an obscure caus or unknown cause.” These types of  
7 injures are excluded form coverage under Section 3.1.G of the AMERIND Tribal policy. The  
8 February 14, 2018 claim, which would be considered a cumulative trauma under California law  
9 based upon Mr. Luiz’s statements, has been ignored.

10           Mr. Luiz timely objected to the denial of his benefits on a form provided by Berkeley  
11 Risk Administrators. He requested further discovery, a medical evaluation to clarify causation  
12 even though the medical record states he sustained a work injury. The form provided by Berkeley  
13 Risk Administrators formally states the denial is not final, providing that anyone objecting to the  
14 denial may still pursue a claim for benefits if the employee believes his injury to be work related.  
15 However, failure to object to the denial will lead to a loss of benefits. Mr. Luiz requested a  
16 medical evaluation on multiple occasions because the medical record, while finding a work  
17 injury, does not specify whether Mr. Luiz sustained a specific injury or cumulative trauma, or  
18 both. The undersigned has filed two applications for adjudication of claim at the Santa Rosa  
19 WCAB, a specific injury in January, 2018, and a cumulative trauma in February. The cumulative  
20 trauma claim was set for hearing on July 12, 2018 in Santa Rosa. Neither NCIHA or Berkeley  
21 Risk Administrators had anyone appear at a hearing. Consequently, the Workers Compensation  
22 Judge issued an order for someone to appear on October 11, 2018 in Santa Rosa and explain the  
23 basis of NCIHA’s tribal sovereignty.

24           The undersigned is attempting to join Mr. Luiz’s previous employer pursuant to Labor  
25 Code Section 5500.5. However, it seems unfair that an employer eighteen years removed will be  
26 saddled with a workers compensation claim because of NCIHA’s use of sovereign immunity  
27 when the medical record states Mr. Luiz has a work related injury.

JURISDICTION

1  
2 2. Northern Circle Indian Housing Authority is a tribal entity enjoying tribal sovereign  
3 immunity. Several litigated cases hold California workers compensation statutes do not apply to  
4 NCIHA and further that California has no jurisdiction on Indian land. On April 17, 2018 the  
5 Office of Hearing Examiners pursuant to the AMERIND Tribal Workers Compensation Program  
6 issued a Final Order dismissing Mr. Luiz's claim for workers compensation benefits. It is not  
7 clear who has jurisdiction over a claim denied by AMERIND and no information has been  
8 provided to Mr. Luiz on how to appeal the Findings. It is noted 25 USC §1302(a)(8) states that  
9 no Indian tribe, in exercising their powers of self-government, shall deny anyone within its  
10 jurisdiction the equal protection of its laws or deprive anyone of liberty or property without due  
11 process of law. In fact, it does not appear that any other court is able to exert jurisdiction and no  
12 further proceedings are allowed under the AMERIND Tribal Workers Compensation Program.

13 VENUE

14 3. 28 USC §1391(a) and (b) provide the Ninth Circuit District Court in San Francisco has  
15 jurisdiction to hear Mr. Luiz's petition objecting to the final order issuing on June 11, 2018.

16 FACTUAL ALLEGATIONS

17 4. A) The Findings and Order issuing on June 11, 2018, is submitted as Exhibit #1. The  
18 Berkeley Risk Administrators Denial of benefits is submitted as Exhibit #2.

19 B) The AMERIND RISK TRIBAL WORKERS COMPENSATION AND EMPLOYERS  
20 LIABILITY POLICY Section 6 E states the administrator (AMERIND) shall appoint a  
21 HEARING EXAMINER to resolve disputes arising under the Tribal Workers Compensation  
22 Policy. Examiners are required to be impartial, objective, and qualified persons, licensed to  
23 practice law and who have a minimum of three (3) years experience in Tribal or State law  
24 relating to employer liability and workers compensation. Petitioner asserts Christie Ahern, an  
25 attorney licensed in Minnesota and employed by Erstad & Reimer, self proclaimed as  
26 Minnesota's premier workers compensation defense firm, is not impartial or objective.

27 C) Petitioner asserts AMERIND has stepped outside its contract with NCIHA by failing to  
28

1 provide a non-biased forum for resolution of Mr. Luiz's workers' compensation claim.

2 D) Petitioner asserts AMERIND and NCIHA failed to provide him with the information  
3 necessary to object to the Findings denying his claim.

4 E) Petitioner asserts Minnesota is an improper venue for a Hearing Examiner deciding a  
5 claim for workers' compensation benefits in California. NCIHA is on Pomo land in northern  
6 California. Petitioner lives in Ukiah California and commutes to work. The injury occurred in  
7 California. The contract for hire was offered and accepted in California.

8 F) Petitioner asserts forum non conveniens for any further proceedings in a Tribal court  
9 due to the inequity of the parties. The AMERIND policy provides that each party is responsible  
10 for its own costs relating to litigation of a workers' compensation claim. For a Federally funded  
11 Tribal consortium with assets in place the cost of litigation is negligible. However, for an injured  
12 worker costs essentially amounts to a preclusion from further litigation.

13 G) Petitioner asserts a violation of the Indian Civil Rights Act relating because Mr. Luiz  
14 was not fully informed of his rights, duties, and obligations before his claim was denied by the  
15 claims administrator and a final order issued by a Hearing Examiner denying his benefits.

16 H) Petitioner asserts his February 2018 claim for a cumulative trauma was ignored in  
17 violation of Tribal Policy.

18 I) Petitioner asserts latches regarding any denial of his cumulative trauma claim. Under  
19 California Code of Regulations Title 8, Section 10109 a claims administrator has a good faith  
20 duty to conduct discovery to ascertain if workers compensation benefits are due. In neither the  
21 specific injury claim in January 2018 or the cumulative trauma claim in February did Berkeley  
22 Risk Administrators perform any discovery, nor allow Petitioner to conduct further discovery  
23 before submitting his claim for litigation. In essence Berkley Risk Administrators requested and  
24 received a summary judgement denying Petitioner's claim.

25 J) (*Deferred*) Petitioner asserts NCIHA did not comply with ADA statutes before  
26 dismissing Petitioner from employment. Mr. Luiz's position at NCIHA has been filled by  
27 someone else and he has been informed that he will not return to NCIHA.

28

PRAYER FOR RELIEF

5. WHEREFORE Petitioner prays for the following relief:

(1) Assume jurisdiction over this matter, and/or remand the matter to the Santa Rosa WCAB for further proceedings under the laws of the State of California.

(2) Issue an Order directing Respondents to show cause why Writ for Habeas Corpus should not be granted,

(3) Grant any other and further relief the court deems proper.

VERIFICATION

I, Ronald Mahurin, declare under penalty of perjury the above to be true and correct except as to those matters plead on information and belief and I believe them to be true.

Respectfully Submitted

/s/ Ronald Glenn Mahurin

DATE:

08/06/2018



1 Uniform Assigned Name Ronald Mahurin Point Arena  
 EAMS ID 4066526  
 2 EAMS Administrator Name: Ronald Mahurin  
 EAMS Administrator Phone 650-573-5637  
 3 EAMS Administrator Email mahurinlaw@yahoo.com

4 CHRISTIAN LUIZ VS NORTHERN CIRCLE INDIAN HOUSING AUTHORITY

5 CERTIFICATE OF SERVICE  
 6 (Proof of Service)

7 I, Ronald Glenn Mahurin, declare that:

- 8 1. At the time of service I was at least 18 years of age.  
 9 2. My Business Address is 42500 Eureka Hill Road, Point Arena, CA 95468  
 3. I am employed in the county where the mailing occurred.  
 4. I served copies of the following documents:

10 CIVIL COVER SHEET  
 ECF REGISTRATION FORM  
 11 EMECF CERTIFICATE OF SERVICE  
 PETITION FOR HABEAS CORPUS AND EXHIBITS

12 By placing true copies in a sealed envelope with postage fully paid and depositing the  
 13 envelope in the United States Mail in Point Arena California to the individuals listed below.

14 Christian Luiz (Electronic service)

15 Berkley Risk Administrators  
 14902 North 73<sup>rd</sup> Street  
 16 Scottsdale, AZ 85260

17 AMERIND RISK TRIBAL WC PROGRAM  
 C/O Christie Ahern  
 18 8009 34<sup>TH</sup> Ave. South #200  
 Minneapolis, MN 55425

19 Northern Circle Indian Housing Authority  
 20 694 Pinoleville Dr  
 Ukiah, CA 95482

21 Berkley Risk Administrators  
 22 14902 North 73<sup>rd</sup> Street  
 Scottsdale, AZ 85260

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

25 /s/ Ronald G. Mahurin

Date: 8/6/2018

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