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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

ZURICH AMERICAN INSURANCE  
COMPANY, a New York corporation,

Plaintiff,

vs.

DOREEN N. MCPAUL, Attorney  
General of the Navajo Nation in her  
official capacity; JUDGE CYNTHIA  
THOMPSON, in her official Capacity as  
tribal judge of the Navajo Nation District  
Court; JUDGE RUDY BEDONIE, in his  
Official Capacity as tribal judge of the  
Navajo Nation District Court,

Defendants.

No. \_

**COMPLAINT**

**(DECLARATORY JUDGMENT,  
PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF)**

For its Complaint against the Defendants, and each of them, Plaintiff Zurich  
American Insurance Company (Zurich) alleges as following:

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## PARTIES

1. Plaintiff Zurich American Insurance Company is a corporation organized under the laws of the State of New York having its principal place of business in Schaumburg, Cook County, Illinois. Zurich is not a member or member entity of the Navajo Nation. (Exhibit 2, ¶2.)
2. Defendant Doreen N. McPaul is the current attorney general and chief legal officer for the Navajo Nation, a federally-recognized Indian tribe located in the states of Arizona, New Mexico, and Utah. In her capacity as attorney general and chief legal officer for the Navajo Nation, Defendant McPaul filed suit on behalf of the Navajo Nation as the real party in interest against Zurich and other defendants in the District Court of the Navajo Nation, Chinle Judicial District, Case No. CH-CV-166-13, with respect to the cleanup of petroleum contamination at the Pic-N-Run gas station located on Navajo trust land within the boundaries of the Navajo Reservation and the Chinle Chapter, Chinle, Arizona.
3. Defendant Cynthia Thompson is a tribal court judge of the Navajo Nation District Court, Chinle District who is either presiding over Case No. CH-CV-166-13, and/or has rendered decisions adverse to Zurich concerning jurisdiction of the Navajo tribal courts.
4. Defendant Rudy Bedonie is a tribal court judge of the Navajo Nation District Court, Chinle District who is either presiding over Case No. CH-CV-166-13, and/or has rendered decisions adverse to Zurich concerning jurisdiction of the Navajo tribal courts.

## JURISDICTION AND VENUE

5. In this civil action, Zurich seeks declaratory and injunctive relief to prevent Defendant McPaul from prosecuting, and the District Court of the Navajo Nation, by and through Defendants Thompson, Bedonie, or any other tribal court judge, from adjudicating claims asserted by the Navajo Nation against Zurich due to the lack of subject matter jurisdiction over Zurich.

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6. The United States District Court has jurisdiction to hear and determine Zurich's request for declaratory and injunctive relief pursuant to 28 U.S.C. §1331 because the 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," *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 853 (1985), and involves an actual case or controversy pursuant to 28 U.S.C. §2201, *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008).
7. Venue is proper in the United States District Court for the District of Arizona pursuant to 28 U.S.C. §1391(b)(2) because the Navajo Nation's underlying complaint in Case No. CH-CV-166-13 is pending in the Chinle District Court, Chinle, Navajo Nation, Arizona, and seeks monetary relief against several tenants, subtenants, contractors and insurers arising out of the gasoline spill and other contamination of the Pic-N-Run gas station site located in Chinle, Navajo Nation, Arizona.

### FACTUAL ALLEGATIONS

8. Walter Baldwin and the Estate of Sybil Baldwin (hereinafter collectively "Baldwin") operated a gas station on Navajo Trust land within the boundaries of the Navajo Nation. (Exhibit 1, ¶¶2, 4; Exhibit 2, ¶6.)
9. The Baldwins are (or were) citizens of the Navajo Nation. Baldwin leased the site from the Navajo Nation, pursuant to a Business Site Lease approved by the Bureau of Indian Affairs. (Exhibit 1, ¶4; Exhibit 2, ¶6.)
10. In 1997, Baldwin subleased the site to Pic-N-Run, Inc. (hereinafter "PNR"). PNR is the current operator of the gas station (the "PNR Site"), and was the operator at the time of the alleged release in 2005. (Exhibit 1, ¶5 ; Exhibit 2, ¶7.)
11. From about June 2004 through about March 2005, PNR performed upgrades at the PNR Site including installing above-ground storage tanks (hereinafter "AST")

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- 1 to replace underground storage tanks, which were removed in 2004. (Exhibit 2, ¶¶
- 2 9, 11, 13; Exhibit 5, EPA's Findings of Fact, ¶¶22-25.)
- 3 12. PNR hired Milam Building Associates, Inc., to perform the site upgrades, and
- 4 Milam hired Defendant Shiprock Construction to perform concrete work at the
- 5 site. (Exhibit 1, ¶ 14; Exhibit 2, ¶9; Exhibit 5, ¶25.)
- 6 13. The Navajo Nation alleges in Chinle District Court cause No. CH-CV-166-13 that
- 7 Defendant SSES installed underground piping connecting the AST to the gas
- 8 station pumps. (Exhibit 1, ¶14.)
- 9 14. Zurich issued to PNR a Storage Tank System Third-Party Liability and Cleanup
- 10 Policy, No. USC3511051-03, for the policy period from September 9, 2003, to
- 11 September 9, 2004, Endorsement #2 of which excluded the Pic N Run site located
- 12 at Route 7, Chinle, Arizona, effective June 9, 2004. (Exhibit 3, p. 1.)
- 13 15. Zurich Policy No USC3511051-03 was issued to PNR at its offices in Flagstaff,
- 14 Arizona. (Exhibit 2, ¶8.)
- 15 16. After the leak was discovered, PNR made a claim to Zurich under Zurich Policy
- 16 No. USC3511051-03, which Zurich proceeded to investigate. (Exhibit 4)
- 17 17. Through its October 21, 2009, letter, Zurich generally denied coverage to PNR,
- 18 though allowed for submission of additional information by PNR. (Exhibit 4)
- 19 18. Zurich denied PNR's claim because between 2004 and 2009 Zurich had requested
- 20 additional information from PNR but never received it, PNR failed to cooperate
- 21 with the investigation, the 2005 release was not during the policy period, was not
- 22 reported during the policy period, and did not "emanate from scheduled storage
- 23 tank system," underground storage tanks T2 and T3 were known to be leaking
- 24 prior to the policy period, the decommissioning of underground storage tanks T2
- 25 and T3 was questionable, removal or replacement of USTs were not covered, and
- 26 any intermittent or continuous release prior to the retro date (September 26, 1992)
- 27 were not covered. (Exhibit 1, ¶35; Exhibit 4.)

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19. In Chinle District Court No. CH-CV-166-13, the Navajo Nation alleges that, in March 2005, while Shiprock was performing concrete work at the site, it pierced a fuel supply line to the AST, resulting in a release of over 15,000 gallons of gasoline at the site. (Exhibit 1, ¶15.)
20. The Navajo Nation's Complaint alleges that the damage from the release was compounded by the failure of SSES to properly install the AST piping system and to test the piping system for tightness prior to use. (Exhibit 1, ¶16.)
21. According to the Navajo Nation's Complaint, the release was not detected until September 2005, and was not reported until October 2005. (Exhibit 1, ¶16.)
22. The Navajo Nation acknowledged in Chinle District Court No. CH-CV-166-13 that various defendants, including Pic-N-Run, Baldwin, Milam and Shiprock, are not subject to the EPA's Administrative Order effective September 11, 2009. (Exhibit 2, ¶17.)
23. The EPA's Order was issued pursuant to Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"). (Exhibit 5, p. 1 [Jurisdiction and Procedure].)
24. The EPA Order states that it "shall apply to and be binding upon the Respondents." It further provides that "Respondents are jointly and severally responsible for carrying out all actions required of them by this order." (Exhibit 5, p. 1 at ¶4.)
25. The EPA Order contains Findings of Facts and Conclusions of Law regarding the March 2005, gasoline release. (Exhibit 5, p. 3.)
26. The Order requires the Respondents to remediate the PNR site under the direction and approval of the EPA. The three phases of the work include: (1) interim remedial measures; (2) site assessment and characterization of petroleum contamination; and (3) implementation of correcting measures as directed by the EPA. (Exhibit 5, pp. 15 – 21.)

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27. The EPA Order does not apply to Defendant SSES or to the insurance companies, including Zurich, named in Chinle Judicial District Case No. CH-CV 166-13. (Exhibit 2, ¶17; Exhibit 5.)
28. The EPA Order does not include among the “responsible parties” for the cleanup any insurance carrier, including Zurich. (Exhibit 5.)
29. In August, 2005, after the leak in the fuel supply line was discovered, PNR filed a lawsuit in the District Court of the Navajo Nation, Judicial District of Chinle, Arizona, against a number of operators and contractors whom it alleged were responsible for the spill, including Milan, its officers, agents, and related companies. Through an amended complaint filed on December 14, 2011, PNR asserted these claims against SSES, its officers, agents, and related companies. (Exhibit 1, ¶19.)
30. Neither in this action, nor any other lawsuit, has PNR contested in any tribal, state, or federal court, either directly or by way of counterclaim, cross-claim, or third-party claim, Zurich’s denial of insurance coverage under the Storage Tank System Third-Party Liability and Cleanup Policy, No. USC3511051-03. (Exhibit 1, ¶19.)
31. On November 8, 2013, by and through its attorney general and chief legal officer Defendant McPaul, the Navajo Nation filed suit against Zurich and other defendants in the District Court of the Navajo Nation, Chinle Judicial District, Case No. CH-CV 166-13. (Exhibit 1.)
32. The Navajo Nation alleged that “Zurich American has done business within the Nation selling insurance policies that insure interests on trust land within the Nation. Further, the conduct of its insured, PNR, threatens or has a direct effect on the political integrity, economic security, and health and welfare of the Navajo Nation. *Montana v. United States*, 450 U.S. 544 (1981).” (Exhibit 1, ¶13.)

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- 1 33. In Chinle Judicial District Case No. CH-CV 166-13, the Navajo Nation alleges  
2 that Zurich “disputed and/or refused to honor in full” its obligation to defend and  
3 indemnify PNR, (Exhibit 1, ¶¶71, 77.)
- 4 34. The Navajo Nation further alleges that the “Nation as the owner of the property,”  
5 has been harmed by Zurich’s failure to honor its obligations under the policy,  
6 (Exhibit 1, ¶¶72, 78.)
- 7 35. The Navajo Nation further alleges that “the Nation has an actual and justiciable  
8 interest in maximizing insurance funds available to investigate conditions at the  
9 PNR Site and perform any required remediation because, among other things, the  
10 Nation is interested in having the PNR Site cleaned up to protect the health,  
11 welfare, and environment of the Nation, its citizens, and other community  
12 members, and the Nation could be required to incur costs to achieve that result if  
13 the Policyholder Defendants’ insurance does not pay.” (Exhibit 1, ¶¶73, 79.)
- 14 36. Asserting that “an actual and justiciable controversy exists between the Nation and  
15 the Defendant Insurance Companies regarding the Defendant Insurance  
16 Companies’ obligation” to provide full and unconditional defense and indemnity  
17 coverage in connection with the PNR Site, PNR Suit, and EPA Order, subject to  
18 the Policies’ limits of liability, (Exhibit 1, ¶¶74, 80), the Nation alleged that it “is  
19 entitled to a declaration by the Court of the extent of the obligations of the  
20 Defendant Insurance Companies” to defend and indemnify the Policyholder  
21 Defendants in connection with the PNR Site, PNR Suit, and EPA Order. (Exhibit  
22 1, ¶75.)
- 23 37. In Chinle Judicial District Case No. CH-CV 166-13, the Navajo Nation further  
24 alleges a claim based on *nalyeeh* against “all Defendants,” including Zurich.  
25 (Exhibit 1, Count 10.)
- 26 38. The Navajo Nation alleges that “under *nalyeeh* Defendant Insurance Companies  
27 are ‘relatives’ of the Policyholder Defendants, and they therefore have a duty to  
28 provide money to compensate parties injured by those Policyholder Defendants.



1 *Benalli [v. First National Insurance Co. of America]* 7 Nav. R. [329] at 338  
2 [Nav.Sup.Ct. 1998)].” (Exhibit 1, ¶86.)

3 39. The Navajo Nation further alleges that “because of their responsibility under  
4 *nalyeeh* to assist in compensating the injured as holders of the ‘money bag,’ id. at  
5 337, the Insurance Company Defendants are parties to this litigation who can be  
6 joined as defendants separate and apart from their Policyholder Defendants.”  
7 (Exhibit 1, ¶86.)

8 40. In its Prayer for Relief, the “Navajo Nation requests declaratory relief  
9 against Defendant Insurance Companies, monetary damages from the  
10 Policyholder Defendants, and *nalyeeh* from all Defendants in an amount or  
11 amounts deemed appropriate by the Court, as well as any other relief the Court  
12 deems appropriate.” (Exhibit 1, p. 19.)

13 41. Following its Answer denying jurisdiction and liability, Zurich filed a Motion to  
14 Dismiss Case No. CH-CV 166-13.

15 42. Zurich’s Motion to Dismiss challenged the subject matter jurisdiction of the  
16 Navajo Nation courts, particularly claiming the lack of any applicable exception  
17 under *Montana v. United States*, 450 U.S. 544 (1981). (Exhibit 2, ¶2.)

18 43. Although Zurich’s Motion was heard by Defendant Thompson, she failed to issue  
19 any ruling for well over three (3) years.

20 44. When Defendant Bedonie took over the case, he directed the parties to submit a  
21 stipulated statement of fact on the jurisdiction issue which was filed in June, 2016.  
22 (Exhibit 2.)

23 45. Defendant Bedonie then referred the matter back to Defendant Thompson who  
24 again refused to rule.

25 46. Defendant Bedonie then invited the parties to submit proposed orders to him with  
26 which the parties complied; but it was Defendant Thompson, not Defendant  
27 Bedonie, who finally and ultimately decided to rule on the Motion.

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- 1 47. Nearly four (4) years after she heard oral argument, and after the case had been  
2 transferred to Defendant Bedonie for further proceedings, Defendant Thompson,  
3 though no longer assigned to the case, denied Zurich's Motion to Dismiss in an  
4 Order dated February 8, 2018. (Exhibit 6.)
- 5 48. Stating that "the first exception to Montana is inapplicable, as conceded by the  
6 Nation, as neither the Nation nor a member of the Nation has any consensual  
7 relationship with EMC or Zurich relevant to this matter," (Exhibit 6, p. 6),  
8 Defendant Thompson determined that, "as it is uncontested that the gasoline spill  
9 occurred on trust land, this Court has jurisdiction to hear this matter." (Exhibit 6,  
10 pp. 5 – 6.)
- 11 49. Judge Thompson stated that the denial of insurance coverage "threatens" or  
12 "imperils" the health and welfare of the Navajo Nation because "it affects the  
13 ability of the Nation to remedy the damage done to its lands and groundwater and  
14 to protect the Navajo community by cleaning up the Pic-N-Run site". (Exhibit 6,  
15 p. 6.)
- 16 50. Judge Thompson further stated that the denial of coverage affects the political  
17 integrity, economic security, health, and welfare of the Navajo Nation because "it  
18 is necessary for tribal self-government to be able to involve all parties with a  
19 responsibility to clean up, including insurers, because otherwise the Nation cannot  
20 effectively remedy the ongoing damage to its lands and protect the health and  
21 welfare of the Navajo people. An insurance company, by accepting or denying  
22 coverage for damage done by its insured to Navajo land, directly affects the  
23 responsible party's ability to remediate that damages and so is appropriately joined  
24 as a defendant." (Exhibit 6, p. 6.)
- 25 51. Stating that "damage to Navajo land and groundwater in a populated area of the  
26 Nation clearly imperils the subsistence of the Nation," Defendant Thompson  
27 concluded that "an insurer with a responsibility to assist its insured in paying for  
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1 such damages therefore is appropriately under the Nation's jurisdiction." (Exhibit  
2 6, p. 6.)

3 52. Defendant Thompson's February 8, 2018, Order Denying EMC and Zurich  
4 Motions to Dismiss also determined that "the Nation can join insurers when they  
5 refused to provide coverage for damage to the Nation's lands and its people"  
6 because "insurance companies, as holders of the 'money bag' for their insureds,  
7 can be joined in a case seeking compensation for environmental damage suffered  
8 by the Nation and its people. (Exhibit 6, p. 8, citation omitted.)

9 53. Finally, Defendant Thompson rejected the contention that the Resource  
10 Conservation and Recovery Act barred tribal court jurisdiction because the Navajo  
11 Nation did not bring an action under that statute. (Exhibit 6, pp. 10-12.)

12 54. On March 21, 2018, Zurich filed in the Supreme Court of the Navajo Nation, Case  
13 No. SC-CV-14-18, a Petition for a Writ of Prohibition challenging Judge  
14 Thompson's February 8, 2018, Order Denying EMC and Zurich Motions to  
15 Dismiss. (Exhibit 7)

16 55. Although the Navajo Nation's statutes and rules governing extraordinary writs (7  
17 N.N.C. §302, 7 N.N.C. 303(B), and Rule 26, Navajo Rules of Civil Appellate  
18 Procedure), have been employed by the Navajo Supreme Court to accept writs  
19 challenging tribal court jurisdiction, the Navajo Supreme Court denied Zurich's  
20 application for a Writ of Prohibition because it was "of the opinion that the  
21 Petitioner has a remedy at law by appeal after the merits of the case are fully  
22 determined in the Chinle District Court. This Court will not usurp the authority of  
23 the lower court to make determinations of merits at the district court level."  
24 (Exhibit 7, p. 2.)

25 56. Although the Navajo Supreme Court's Order Denying Permanent Writ of  
26 Prohibition was filed on April 10, 2018, it was never mailed, delivered, or served  
27 on Zurich or its counsel, despite requests by Zurich's counsel to the Navajo

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1 Supreme Court Clerk's Office inquiring into the status of Zurich's Petition which  
2 requests never received a response. (Exhibit 8)

- 3 57. Zurich did not receive a copy of the April 10, 2018, Order, until February 19,  
4 2019, when upon learning of its existence, Zurich requested a copy of the Order  
5 from the Navajo Attorney General's office. (Exhibit 8)

### 6 EXHAUSTION AND IMMUNITY

- 7 58. By reason of the denial of the Navajo Supreme Court's denial of a petition for  
8 discretionary, interlocutory review, Zurich has exhausted its tribal court remedies.  
9 A party "will be deemed to have exhausted its tribal remedies once the Navajo  
10 Nation Supreme Court either resolves the jurisdiction issue *or denies a petition*  
11 *for discretionary interlocutory review pursuant to Navajo Nation Code tit. 7,*  
12 *§303. . ."* *Ford Motor Company v. Todecheene*, 488 F.3d 1215, 1217 (9<sup>th</sup> Cir.  
13 2007) (emphasis added.)

- 14 59. Alternatively, exhaustion of tribal remedies is neither necessary nor proper in view  
15 of *Employers Mutual Casualty Company v. Branch*, No. CV-18-08110-PCT-  
16 DWL, 2019 U.S. Dist. LEXIS 58088, 2019 WL 1489121 (D.Ariz. 2019), *appeal*  
17 *pending*, No. 19-2019 (9<sup>th</sup> Cir. 2019) holding, with respect to the spill and  
18 contamination of the Pic-N-Run site, that, where an insurance company sells a  
19 policy to a nontribal member, neither the Navajo Nation's right to exclude nor any  
20 exception recognized in *Montana* [*Montana v. United States*, 450 U.S. 544  
21 (1981)] applies to permit the exercise tribal jurisdiction over the insurance  
22 company. (Exhibit 9)

- 23 60. As established by *State of Montana Department of Transportation v. King*, 191  
24 F.3d 1108, 1115 (9<sup>th</sup> Cir. 1999), *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S.  
25 9, 15 (1987), and *Strate v. A-1 Contractors*, 520 U.S. 438, 459, note 14 (1997),  
26 exhaustion of tribal remedies is not required where, as here, it is plain that no  
27 federal grant provides for tribal governance of nonmembers' conduct on land  
28 covered by *Montana's* main rule or when the assertion of tribal jurisdiction is

1 motivated by a desire to harass, is conducted in bad faith, is patently violative of  
2 express jurisdiction prohibition, or would be futile because of the lack of adequate  
3 opportunity to challenge the court's jurisdiction.

4 61. Zurich seeks declaratory and injunctive relief in the form of an order declaring  
5 that Defendant Thompson, Defendant Bedonie, and the Navajo Nation tribal  
6 courts lack subject matter jurisdiction over Zurich because Zurich has not engaged  
7 in any conduct on tribal land for which it liable under its policy and the  
8 enforcement of any contractual rights and obligations under Zurich's policy with  
9 its nonmember insured does not have a direct effect imperiling the health, welfare,  
10 or economic security of the Navajo Nation as required by *Montana*'s main rule.

11 62. Zurich also seeks declaratory and injunctive relief against the Navajo Nation  
12 Attorney General's Office, by and through Defendant McPaul, her officers,  
13 agents, or employees, to bar further prosecution of those claims for lack of subject  
14 matter jurisdiction.

15 63. Defendants McPaul, Thompson, and Bedonie do not enjoy, and cannot invoke,  
16 sovereign immunity from Zurich's suit seeking a declaration that the assertion and  
17 exercise of tribal court jurisdiction over Zurich is invalid under federal common  
18 law and praying for a permanent injunction prohibiting Defendants from  
19 exercising jurisdiction over, and enforcing tribal law in tribal courts, against  
20 Zurich inasmuch as Defendants, and each of them, have acted, and are continuing  
21 to act, under the purported authority of the Navajo Nation, to the injury of Zurich  
22 and in violation of federal law and in excess of federal limitations placed on the  
23 power of Defendants by seeking to enforce tribal law, and assert tribal jurisdiction  
24 over, Zurich that the Nation lacks the jurisdiction to impose.

25 64. Under *Burlington Northern & Santa Fe Railway Company v. Vaughn*, 509 F.3d  
26 1085, 1092 (9<sup>th</sup> Cir. 2007); *Arizona Public Service Co. v. Asapas*, 77 F.3d 1128  
27 (9<sup>th</sup> Cir. 1996), and *Salt River Project Agricultural Improvement & Power District*  
28 *v. Lee*, 2013 U.S. Dist. LEXIS 10952 (D. Ariz. 2013), tribal sovereign immunity

1 does not bar a suit for prospective declaratory and injunctive relief against tribal  
2 officers allegedly acting in violation of federal law when such officials are acting  
3 in their official capacities.

4 **COUNT ONE; DECLARATORY JUDGMENT**

5 65. Plaintiff incorporates Paragraphs 1 through 64 by reference as if set forth verbatim  
6 herein.

7 66. Plaintiff Zurich is an “interested party” within the meaning of 28 U.S.C. §2201.

8 67. Zurich seeks a declaration of its rights and legal relations with Defendants under  
9 federal common law concerning whether it is subject to the Navajo Nation’s  
10 purported adjudicatory jurisdiction in respect to the above-described claims  
11 asserted against Zurich.

12 68. An actual case or controversy exists between Zurich and Defendants, and  
13 declaratory and injunctive relief will effectively adjudicate the rights of the parties.

14 69. In particular, Zurich alleges, but the Defendants dispute, that the Navajo Nation  
15 lacks regulatory and/or adjudicatory jurisdiction over Zurich with respect to the  
16 matters herein above alleged because Zurich did not imperil the subsistence,  
17 threatened, or directly affected the political integrity, economic security, health,  
18 safety or welfare of the Navajo Nation, inasmuch as Zurich Policy No.  
19 USC3511051-03 is a contract issued by a nonmember insurer to a nonmember  
20 outside of the Navajo Nation, no covered loss occurred within the Navajo Nation  
21 between September 9, 2003, through June 9, 2004, when the PNR Chinle site was  
22 included under the policy, PNR has never judicially contested Zurich’s denial of  
23 coverage under the policy, and any tribal power to condition a nonmember’s entry  
24 or continued presence on tribal land does not provide a basis for tribal regulatory  
25 or adjudicatory jurisdiction over Zurich because the power of exclusion does not  
26 permit a tribe to impose new regulations on a nonmember’s conduct when that  
27 nonmember is no longer present on tribal land.

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70. Zurich further alleged, but the Defendants dispute, that the Navajo Nation cannot assert regulatory and/or adjudicatory jurisdiction over Zurich with respect to the matters hereinabove alleged because the purported assertion of such jurisdiction by a tribal entity unconstrained by, and not subject to, the Constitution, treaties, and laws of the United States and the State of Arizona infringes and violates Zurich's constitutional rights to the constitutional inviolability of contracts between insurers and insured, the liberty interest of nonmembers to litigate their property and contract disputes according to state or federal law in state or federal courts governed by federal and state constitutional principles of due process, and nonmember rights to be governed only by state and federal constitutional rights, including rights to remove state court actions to federal court and for trial and appellate review in courts subject to federal and state constitutional rights and protections.

71. For the reasons hereinabove alleged, Zurich requests a declaration that:

- a. Defendant Defendant McPaul, in her official capacity as attorney general for the Navajo Nation, her officers, agents and employees, have exceeded their jurisdiction and the jurisdiction of the Navajo Nation in bringing, prosecuting and seeking to adjudicate the claims of the Navajo Nation against Zurich in the tribal courts of the Navajo Nation;
- b. The Defendants Thompson and Bedonie, as members of the Navajo District Court, have exceeded their jurisdiction and the jurisdiction of the Navajo Nation in purporting to adjudicate the claims of the Navajo Nation against Zurich under Navajo tribal law in the tribal courts of the Navajo Nation;
- c. Defendants Thompson and Bedonie, as members of the Navajo District Court, are prohibited by federal law from adjudicating any claims by the Navajo Nation against Zurich under Navajo tribal law in the tribal courts of the Navajo Nation;

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- d. Any judgment, order, decision, decree, or the like that the Navajo Nation might procure from the Navajo Nation tribal courts, or which such courts may issue in the future with respect to the Navajo Nation's claims against Zurich are null, void, and of no force and effect;
- e. The efforts of the Navajo Nation to pursue its claims against Zurich according to Navajo tribal law in the tribal courts of the Navajo Nation would violate Zurich's rights, privileges, and immunities guaranteed by the Constitution, treaties, and laws of the United States and the State of Arizona; and
- f. The efforts of the members of the Navajo tribal courts to adjudicate the claims of the Navajo Nation against Zurich would violate Zurich's rights, privileges, and immunities guaranteed to Zurich under the Constitution, treaties, and laws of the United States and the State of Arizona.

## COUNT TWO: INJUNCTIVE RELIEF

72. Plaintiff incorporates by reference herein Paragraphs 1 through 71 hereinabove set forth.
73. Unless preliminarily and permanently enjoined, the Navajo Nation, Defendant McPaul, her officers, agents and employees, and Defendants Thompson and Bedonie as members of the Navajo District Court, will proceed with their actions to prosecute and/or adjudicate the claims of the Navajo Nation against Zurich according to Navajo tribal law in the tribal courts of the Navajo Nation without jurisdiction over the subject matter of the claims against Zurich as defined and limited by the Constitution, treaties, and laws of the United States and the State of Arizona.
74. The actions and threatened actions of the Navajo Nation, Defendant McPaul, Defendants Thompson and Bedonie as members of the Navajo District Court will cause irreparable injury to Zurich by subjecting Zurich to suit in the tribal courts of the Navajo Nation according to Navajo tribal law notwithstanding the absence



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of subject matter jurisdiction of the claims against Zurich as defined and limited by the Constitution, treaties, and laws of the United States and the State of Arizona.

75. Zurich lacks an adequate remedy at law, other than by this suit, to restrain and enjoin the acts and omissions of Defendants as hereinabove alleged inasmuch as Defendants, and each of them, have acted, and are continuing to act, under the purported authority of the Navajo Nation, to the injury of Zurich and in violation of federal law and in excess of federal limitations placed on the power of Defendants by seeking to enforce tribal law, and assert tribal jurisdiction over, Zurich that the Nation lacks the jurisdiction to impose.

76. The relative balance of hardship, together with the public interest, supports Zurich's prayer for preliminary and permanent injunctive relief because Zurich's right under the Constitution, treaties and laws of the United States and the State of Arizona not to be subjected to suit in the Navajo Nation courts in a civil action applying Navajo tribal law does not imperil directly the health, welfare, or economic security of the Navajo Nation, and Zurich's right under the Constitution, treaties, and laws of the United States not to be subjected to suit in the Navajo Nation courts in a civil action applying Navajo tribal law displaces any legally recognized interest in tribal rights of self-determination in defining and applying laws governing the relationship between tribes and their members.

**WHEREFORE**, Plaintiff Zurich prays that this Court grant judgment in its favor for the following relief:

1. For a declaratory judgment ordering, adjudging, and decreeing that:

a. Defendant Defendant McPaul, in her official capacity as attorney general for the Navajo Nation, together with her officers, agents and employees, is prohibited from pursuing or asserting claims against Zurich, either in the Navajo District Court or the Navajo Supreme

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1 Court, whether in Chinle District Court No. CH-CV-166-13 or any  
2 other action in the Navajo tribal courts.

3 b. Defendants Thompson and Bedonie, as members of the Navajo  
4 District Court, have exceeded their jurisdiction and the jurisdiction of  
5 the Navajo Nation as defined by federal law in purporting to  
6 adjudicate the claims of the Navajo Nation against Zurich in the  
7 Navajo Nation courts pursuant to Navajo tribal law.

8 c. Defendants Thompson and Bedonie, as members of the Navajo  
9 District Court, are prohibited by federal law from purporting to  
10 adjudicate the claims of the Navajo Nation against Zurich in the  
11 Navajo Nation courts pursuant to Navajo tribal law.

12 d. Any, judgment, order, decision, decree, or the like that the Navajo  
13 Nation might procure from the Navajo Nation tribal courts, or which  
14 such courts may issue in the future with respect to the Navajo Nation's  
15 claims against Zurich is null, void, and of no force or effect;

16 e. The efforts of the Navajo Nation to pursue its claims against Zurich  
17 in the Navajo tribal courts according to Navajo tribal law violate  
18 Zurich's rights, privileges, and immunities guaranteed by the  
19 Constitution, treaties, and laws of the United States and the State of  
20 Arizona; and

21 f. The efforts of Defendant McPaul to pursue and prosecute, and of  
22 Defendants Thompson and Bedonie, as members of the Navajo  
23 District Court, to adjudicate the claims of the Navajo Nation against  
24 Zurich in the Navajo tribal courts according to Navajo tribal law  
25 would violate the rights, privileges, and immunities guaranteed to  
26 Zurich under the Constitution, treaties, and laws of the United States  
27 and the State of Arizona.

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2. For a preliminary and permanent injunction, independent and in furtherance of Zurich's prayer for a declaratory judgment, enjoining:

- a. Defendant McPaul, in her official capacity as Attorney General of the Navajo Nation, her officers, agents, or employees, from pursuing and prosecuting the Navajo Nation's claims against Zurich in the Navajo Nation tribal court, or in any other Navajo Nation court or forum, whether in Chinle District Court No. CH-CV-166-13 or any other action in the Navajo tribal courts.
- b. Defendants Thompson and Bedonie, as members of the Navajo District Court, from adjudicating, and continuing to adjudicate, any claims of the Navajo Nation against Zurich in the Navajo tribal courts pursuant to Navajo tribal law, whether in Chinle District Court No. CH-CV-166-13 or any other action in the Navajo tribal courts.
- c. For Zurich's costs incurred in this case; and
- d. For such other and further relief as the Court deems just and proper in the circumstances.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of July, 2019.

MANGUM, WALL, STOOPS & WARDEN, P.L.L.C.

By /s/Kenneth H. Brendel  
Kenneth H. Brendel  
*Attorneys for Plaintiff Zurich American Insurance Co.*