IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GLORIA MENDOZA, ANTHONY CHAVEZ, MARIA GALLEGOS, individually and on behalf of all other similarly situated Plaintiffs,

Plaintiffs, **Case No. 1:19-cv-991**

v.

FIRST SANTA FE INSURANCE SERVICES, INC. n/k/a HUB INTERNATIONAL INSURANCE SERVICES, INC., HUDSON INSURANCE and ALLIANT SPECIALTY INSURANCE SERVICES, INC. d/b/a TRIBAL FIRST,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441(a), (c) and (f), 28 U.S.C. § 1446, and 28 U.S.C. § 1331, Defendant Alliant Specialty Insurance Services, Inc. d/b/a Tribal First, with consent of Defendant Hudson Insurance, and without knowledge of whether Defendant First Santa Fe Insurance Services Inc. n/k/a Hub International Insurance Services, Inc. has been served, gives Notice of Removal to this Court of the civil action originally filed on August 20, 2019, with a subsequent Amended Complaint filed on September 17, 2019, in the Second Judicial District Court for the State of New Mexico, County of Bernalillo, Case No. D-202-CV-2019-06577, as captioned above.

This Court has original jurisdiction over this action under 28 U.S.C. § 1331 as this case is a civil action arising under the Constitution, laws, or treaties of the United States, and because federal courts retain jurisdiction over federal enclaves, in which Congress has the power to exercise exclusive jurisdiction. *Benavidez v. Sandia Nat'l Labs.*, 212 F. Supp. 3d 1039, 1092 (D.N.M. 2016) (federal district court retained federal enclave jurisdiction over claims for age and

gender discrimination under New Mexico law, because employee's alleged injuries took place at employer located on Air Force Base, and base was federal enclave); *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1191 (10th Cir. 2002) (*en banc*) ("state right-to-work laws are of no effect in federal enclaves such as Indian reservations").

BACKGROUND

Plaintiffs filed this case in state court on August 20, 2019. Exhibit A. Plaintiffs filed a First Amended Complaint for Violation of New Mexico Unfair Practices Act, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, and Civil Conspiracy ("Amended Complaint") with the Second Judicial District Court on September 17, 2019. A copy of the Amended Complaint is attached as Exhibit B.

On October 2, 2019, the Amended Complaint was purportedly served on the corporation CSC in an attempt to serve Defendant Tribal First. As Plaintiffs' Amended Complaint confirms: "After searching records on file with the New Mexico Superintendent of Insurance, it is unknown whether Defendant Tribal First is licensed to administer claims in New Mexico." Tribal First does not do business within the jurisdiction of the State of New Mexico, and limits its services to Indian Reservations, some of which are located within the exterior boundaries of the State of New Mexico.

The Superintendent of Insurance of New Mexico accepted service of the original complaint on Defendant Hudson Insurance's behalf on September 13, 2019. Hudson has not been served with the Amended Complaint.

There is no indication in the docket that defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Insurance Services, Inc. has been served, nor do Defendants Tribal First and Hudson have any knowledge of whether Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Insurance Services, Inc. has been served. *May v. Bd. of Cnty. Comm'rs*

for Cibola Cnty., 945 F. Supp. 2d 1277, 1301 (D.N.M. 2013) ("defendants do not have to account for every unserved defendant in the Notice of Removal to advance the purpose of the unanimity rule or even the requirement that the defendants must establish all of the requirements for removal.").

The attached state court docket sheet confirms that no return of service has been filed indicating proper service on any of the three Defendants. Exhibit C.

This Notice of Removal is timely filed within thirty days after Tribal First's receipt of the summons and Amended Complaint.

GROUNDS FOR REMOVAL

This Court has subject matter jurisdiction under 28 U.S.C. § 1331, which confers original jurisdiction in the federal district court over "all civil actions arising under the Constitution, laws, or treaties of the United States." The claims stated against the Defendants in this case are subject to the jurisdiction of this Court pursuant to 28 U.S.C. § 1331 and are removable pursuant to 28 U.S.C. § 1441(a).

All of the Claims arise out of events on the Pueblo of Isleta. The Pueblo of Isleta is a federally recognized Indian Tribe. *Lucero v. Lujan*, 788 F. Supp. 1180, 1184 (D.N.M. 1992). As a federally recognized tribe, the Pueblo of Isleta has the sovereign authority to regulate commercial activities on its reservation. *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 19, 388 P.3d 977, 983. Resolution of this case requires resolution of a substantial question of federal law: whether a state and its courts have jurisdiction over claims arising out of a contract entered into by an Indian tribe for services to be performed on the tribe's reservation under tribal law. This Court recently stated, when addressing a similar issue:

> [A] plaintiff may not, however, circumvent federal jurisdiction by omitting federal issues that are essential to his or her claim. "**A case arises under federal law if** its

> 'well-pleaded complaint establishes either that federal law creates the cause of action or that **the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law**.'" Thus, even though a plaintiff asserts claims only under state law, federal-question jurisdiction may be appropriate if the state-law claims implicate significant federal issues.

Mayer v. Bernalillo Cnty., No. CIV 18-0666 JB\SCY, 2019 WL 130580, at *33 (D.N.M. Jan. 8, 2019) (emphasis added, citations omitted). Only the federal government has jurisdiction over these types of claims, and at a minimum the national interest in providing a federal forum is sufficiently substantial to support the exercises of federal question jurisdiction. As the United States Supreme Court has held:

> The question is whether want of a federal cause of action to try claims of title to land obtained at a federal tax sale precludes removal to federal court of a state action with nondiverse parties raising a disputed issue of federal title law. We answer no, and hold that **the national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal-question jurisdiction over the disputed issue on removal**, which would not distort any division of labor between the state and federal courts, provided or assumed by Congress.

Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 310 (2005) (emphasis added).

Moreover, the Pueblo of Isleta's reservation is a federal enclave. *Pueblo of San Juan*, 276 F.3d at 1191 (holding that Indian reservations are federal enclaves). Federal courts retain jurisdiction over federal enclaves, in which Congress has the power to exercise exclusive jurisdiction, even as to non-governmental third parties. *Benavidez*, 212 F. Supp. 3d at 1092 (employee's alleged injuries took place at employer located on Air Force Base).

As the Plaintiffs confirm in the First Amended Complaint, this case arises out of a contract entered into by a sovereign Indian Nation with a third party vendor to provide workers' compensation coverage for a tribal business conducting all of its activities on the sovereign

Indian Nation's reservation: "Plaintiffs are the third party beneficiaries to workers' compensation insurance policies sold to Isleta Pueblo to cover work injuries suffered while employed at Isleta Resort & Casino." First Am. Compl. at ¶ 16. Indeed, the state court docket sheet identifies the case as a "breach of contract action." Exhibit C. Plaintiffs acknowledge in the complaint that "Plaintiffs have intentionally not named their employer as a party herein." First Am. Compl. at ¶ 18. Nor could they do so as the Employer has sovereign immunity. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) ("Among the core aspects of sovereignty that tribes possess—subject, again, to congressional action—is the common-law immunity from suit traditionally enjoyed by sovereign powers. That immunity, we have explained, is a necessary corollary to Indian sovereignty and self-governance.") (internal quotations and citations omitted). Plaintiffs nevertheless seek to prohibit this un-joined sovereign Indian Nation from entering into contracts to be performed under tribal and federal law. Plaintiffs do so by suing the third party contract parties who agreed to provide services on the reservation pursuant to tribal law.

Finally, removal is appropriate even though the Plaintiffs allege that these claims are associated with claims Plaintiffs have brought in a state forum under New Mexico's workers compensation law. See*, e.g., Jones v. George F. Getty Oil Co.,* 92 F.2d 255, 258-259 (10th Cir.1937) ("the New Mexico Workers' Compensation Act . . . is designed to avoid the uncertainty of litigation and provide prompt basic compensation. It accomplishes these goals by providing typical administrative remedies followed by an appeal to the Court of Appeals, not by filing an action in district court"); see also *Hanna v. Fleetguard, Inc.*, 900 F. Supp. 1110, 1126, (N.D. Iowa 1995) ("bad faith is not a civil action arising under Iowa's worker's compensation laws and is properly removable to federal court pursuant to 28 U.S.C. § 1441(a).").

THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED

This Notice of Removal is timely filed. The relevant statute provides that "[e]ach defendant shall have 30 days after receipt … of the initial pleading … to file the notice of removal." 28 U.S.C. § 1446(b)(2)(B). Plaintiff filed the Amended Complaint with the state court on September 17, 2019. No return of service has been filed confirming service on any of the three Defendants as of the date of the filing of this Notice of Removal. A summons to Defendant Tribal First was issued on October 1, 2019, and Tribal First received an electronic copy of that summons and the complaint on October 4, 2019. This action is properly removed to the United States District Court for the District of New Mexico, which is "the district and division embracing the place where [the] action is pending." 28 U.S.C. § 1441(a). 28 U.S.C. § 1446(a), requires a copy of all process, pleadings, and orders served upon the removing defendant in the state court action (Case No. D-202-CV-2019-06577) to be included with this Notice of Removal. Those are attached as Exhibit D.

Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Second Judicial District Court, County of Bernalillo, State of New Mexico.

The Civil Cover Sheet is attached as Exhibit E.

By filing this Notice of Removal, Tribal First specifically reserves the right to assert any defenses and/or objections to which it may be qualified to assert, including lack of personal jurisdiction. If any question arises as to the propriety of the removal of this action, Tribal First respectfully requests the opportunity to submit briefing and oral argument and to conduct discovery in support of its position that subject matter jurisdiction exists in this Court.

Dated: October 22, 2019

Respectfully Submitted,

/s/ Randolph H. Barnhouse
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Counsel for Defendants Tribal First and Hudson Insurance

CERTIFICATE OF SERVICE

I CERTIFY that on October 22, 2019, I filed the foregoing electronically through the CM/ECF system, and served a copy of the foregoing by electronic mail and U.S. Mail to the following:

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/s/ Michelle T. Miano
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