

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,

v.

Case No. 1:19-CV-00991-MV-KK

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.

REPLY IN SUPPORT OF MOTION TO REMAND

COME NOW the Plaintiffs, Gloria Mendoza, Anthony Chavez and Maria Gallegos, individually and on behalf of all other similarly situated Plaintiffs, and hereby files this Reply in Support of Motion for Remand and states as follows.

I. Plaintiffs' claims are not based on federal law and the events which give rise to the claims did not occur in or on a federal enclave.

"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.'" *Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994) (citing *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)). Here, Plaintiffs' First Amended Complaint alleges that Defendants engaged in intentionally tortious and negligent conduct. The rights of the Plaintiffs are governed by state statutes and

common law, not federal laws.

Plaintiffs have not conspicuously ignored Defendants' "federal enclave" argument. Rather, Plaintiffs have fully briefed why the "federal enclave" doctrine is not applicable to the claims made in the underlying First Amended Complaint in their *Response to Defendant Hudson Insurance and Tribal First's Motion to Dismiss* [Doc. 8] To be clear, the events which give rise to Plaintiffs' state law claims did not occur on or in a federal enclave or within the Pueblo of Isleta but occurred outside the Pueblo and outside of the employment relationship with the Pueblo of Isleta. Plaintiffs do not allege "harm that arose as a result of their employment on a federal enclave" as mischaracterized by Defendants. [Doc. 6, p. 3] None of the harms complained of in the First Amended Complaint occurred as a result of actions/inactions taken by the Employer Isleta Pueblo. None of the harms complained of occurred during the course of employment with Employer Isleta Pueblo. None of the harms complained of are premised on any federal law.

Plaintiffs do not concede federal question jurisdiction and do not claim the harms suffered occurred in the course and scope of their employment at Isleta Resort & Casino, which may or may not be a federal enclave as more fully set forth in *Plaintiffs' Response to Defendant Hudson Insurance and Tribal First's Motion to Dismiss*. [Doc. 8] As clearly set forth in the First Amended Complaint, Plaintiffs do not seek damages for the initial work injuries, but for injuries subsequently occurring from entirely distinct events committed by the non-tribal entity Defendants. Nor, are Plaintiffs seeking damages from the Employer but from parties other than the Employer. The damages sought by Plaintiffs are in addition to the underlying workers' compensation insurance contract and are premised on actions/inactions taken by non-tribal entities which are wholly

unrelated to the underlying workplace injuries suffered. Put simply, the underlying work injuries may have occurred on what Defendants argue to be a federal enclave but the tortious acts complained of in the First Amended Complaint did not occur on or in a federal enclave but occurred in New Mexico.

In describing their claims as being extra-contractual, Plaintiffs are not distancing themselves from the underlying workers' compensation contract of insurance but clarifying that the damages sought are for the tortious acts complained of which warrant compensatory and potentially punitive damages. Plaintiffs' First Amended Complaint contains claims for: (1) Violation of New Mexico Unfair Practices Act, (2) Breach of Contract, (3) Breach of Covenant of Good Faith and Fair Dealing, and (4) Civil Conspiracy. All but the Breach of Contract claim are considered extra-contractual. *See Lopez v. GEICO Ins. Co.*, CIV 11-633 GBW/RHS (June 11, 2012) (Order Denying Motion to Dismiss or in the Alternative to Bifurcate Stay of Plaintiff's Extra-Contractual Claims) (out of the six claims for Breach of Contract, Insurance Bad Faith, Unfair Insurance Claim Practices, Unfair Trade Practices, Negligent Misrepresentation and Declaratory and Equitable Relief—"all but the first claim are considered extra-contractual with the first claim being the contractual claim"). Plaintiffs' case arises not out of their original employment relationship but out of their third party beneficiary relationship to Defendants and is not premised on any federal question which should dissuade this Court from exercising jurisdiction and order the matter remanded to the Second Judicial District Court.

II. Defendants Hudson Insurance and Tribal First failed to obtain unanimous consent within thirty days after the last-served Defendant and removal is incurably flawed.

Contrary to Defendants' arguments, Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Services, Inc. has been served with a copy of the First Amended Complaint and the undersigned has been in contact with counsel for same. In fact, counsel for Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Services, Inc. has requested and the undersigned agreed to an extension of time in which to file a responsive pleading to the First Amended Complaint until late January 2020. Specifically, on December 9, 2019 the undersigned received a telephone call from counsel for Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Services, Inc., Chuck Vigil with the Rodey Law Firm, and agreed to an extension to file an answer to the First Amended Complaint.

The New Mexico Superintendent of Insurance issued its Notice of Acceptance of Service on Defendant Hudson Insurance regarding the First Amended Complaint on November 5, 2019 and such Notice of Acceptance was received by the undersigned on November 6, 2019. Therefore, the undersigned would not have filed proof of service for all Defendants until November 6, 2019—the point at which all proofs of service were returned for all Defendants. As stated in the *Motion to Remand*, the undersigned intended to electronically file all of the returns of service for every Defendant in one packet with the Second Judicial District Court to save costs and fees (up to ten pleadings in one “envelope” may be filed which results in a only one filing fee charge in the Second Judicial District Court). Once the case was removed, no additional filings are accepted by the Second Judicial District Court making it an impossibility for proof of service to be filed now. “There is no record of First Santa Fe being filed” because Plaintiffs are prohibited from filing the return of service in the Second Judicial District Court now that the case has been removed to this

Court.

It is unclear how counsel for Defendants Hudson Insurance and Tribal First could have spoken “with First Santa Fe by telephone on October 24, 2019” as stated in footnote 4, page 6 of the *Response* when reports published in the “Insurance Journal” dated May 3, 2016 indicate that Hub International acquired the assets of First Santa Fe Insurance Services, Inc. and New Mexico Secretary of State records confirm that First Santa Fe Insurance Services, Inc. dissolved that following year. See **Exhibit # 1**, *Insurance Journal* article dated May 3, 2016 indicating acquisition of First Santa Fe Insurance Services by Hub International and **Exhibit #2**, New Mexico Secretary of State corporation records indicating articles of dissolution filed by First Santa Fe Insurance Services, Inc. on May 22, 2017.

Notably, any remedies available to Plaintiffs against Defendant First Santa Fe survive its dissolution. See NMSA 1978, Section 53-16-24, Survival of remedy after dissolution (The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution and any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.)

Service of process by mail is considered complete upon the date of receipt on Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Services, Inc. which was October 18, 2019 per U.S. Mail Return Receipt. See *Zambrano v. New Mexico Corrections Dept.*, Case No. 17-CV-459 WJ-KBM, (June 1, 2017) (Memorandum Opinion and Order Granting Plaintiff’s Motion to Remand and Denying As Moot Defendants’ Motions to Dismiss) at footnote 1, “...under the plain

reading of New Mexico's procedural rule governing service of the original complaint, which applies here since this Court did not have jurisdiction at the time Defendants were served with the complaint, service of process by mail or commercial courier service is considered complete upon the date of receipt. *See* Rule 1-004 NMRA." To recap, the pertinent dates are:

1. October 18, 2019, last-served Defendant First Santa Fe Insurance Services, Inc. n/k/a Hub International Services, Inc. was served via U.S. Mail Return Receipt.
2. October 22, 2019, Notice of Removal filed by Defendants Hudson Insurance and Tribal First.
3. November 18, 2019, thirty-day deadline from date of last-served Defendant for Defendants Hudson Insurance and Tribal First to obtain unanimous consent to removal.

As of the date of filing this *Reply* on December 11, 2019, the last-served Defendant did not consent to removal. The lack of unanimous consent by all served Defendants is not a *de minimus* defect that is curable now. Therefore, this matter should be remanded to the Second Judicial District Court.

WHEREFORE Plaintiffs respectfully request that this Court grant the *Motion to Remand* and order the case to be remanded to the Second Judicial District Court of the State of New Mexico for all of the reasons stated and consider awarding costs and fees herein.

Respectfully submitted,

/s/ LeeAnn Ortiz

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I hereby certify that on December 11, 2019, I filed this document electronically and thereby caused all counsel of record to be served through the CM/ECF system.

/s/ LeeAnn Ortiz

LeeAnn Ortiz
Attorney for Plaintiffs

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HUB Acquires Assets of First Santa Fe Insurance Services in New Mexico

May 3, 2016

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Hub International Ltd. has acquired the assets of New Mexico-based First Santa Fe Insurance Services Inc.

Terms of the deal were not disclosed.



First Santa Fe's operations will become a part of Hub New Mexico and be led by Randy Perkins, president of Hub New Mexico.

First Santa Fe specializes in providing commercial and personal insurance solutions, and has locations in Santa Fe and Albuquerque.

Chicago, Ill.-based Hub is an insurance brokerage that provides property/casualty, life and health, employee benefits, investment and risk management products and services.

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Search Information

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Entity Details

Business ID#: 1693274

Status: Dissolved

Entity Name: FIRST SANTA FE
INSURANCE SERVICES, INC.

Standing: N/A

DBA Name: Not Applicable

Entity Type and State of Domicile

Entity Type: Domestic Profit
Corporation

State of Incorporation: New Mexico

Statute Law Code: 53-11-1 to 53-18-12

Formation Dates

Date of Incorporation in NM: 10/18/1994

Date of Organization in NM: Not Applicable

Date of Formation in State of
Domicile: Not Applicable

Date of Authority in NM: Not Applicable

Date of Registration in NM: Not Applicable

Management Type: N/A

Reporting Information

Period of Existence and Purpose and Character of Affairs

Period of Duration: 01/01/1900

Business Purpose:

Character Of Affairs:

Outstanding Items

Reports:

No Pending Reports.

Registered Agent:

Type

Resigned

Resignation Date

08/04/2016

License:

No Records Found.

EXHIBIT #2



Mailing Address: 62 Lincoln Avenue, Santa Fe, NM 87501 - 2004

Principal Place of Business in New Mexico: 6501 AMERICAS PKWY NE, Albuquerque, NM 87110

Secondary Principal Place of Business in New Mexico:

Principal Office Outside of New Mexico: Not Applicable

Registered Office in State of Incorporation:

Principal Place of Business in Domestic State/ Country: Not Applicable

Principal Office Location in NM: Not Applicable

Registered Agent Information

Name: CAPITOL DOCUMENT SERVICES, INC.

Geographical Location Address:

Physical Address: 55 OLD SANTA FE TRL., SANTA FE, NM 87501

Mailing Address: NONE

Date of Appointment: 09/09/2015

Effective Date of Resignation: 09/03/2016

Director Information

Title	Name	Address
Director	William P. Sanders	62 Lincoln Avenue, Santa Fe, NM 87501
Director	Michelle Coons	62 Lincoln Avenue, Santa Fe, NM 87501
Director	Jennifer Fulton Anderson	62 Lincoln Avenue, Santa Fe, NM 87501

Officer Information

Title	Name	Address
Secretary	Kathy Gonzales	62 Lincoln Avenue, Santa Fe, NM 87501
Vice President	Jennifer Fulton Anderson	62 Lincoln Avenue, Santa Fe, NM 87501
President	William P. Sanders	62 Lincoln Avenue, Santa Fe, NM 87501

Organizer Information

Not Applicable

No Records to View.

Trustee Information

Not Applicable

Filing History



Filing Date	Filing Type	Fiscal Year End Date	Post Mark	Survivor/ Re-Domesticated Entity	Instrument Text	Processed Date	Filing #
10/18/1994	Certificate Of Incorporation				6260 CORPORATION (4 PGS) PERPETUAL	10/20/1994	505865
10/18/1994	Other/Initial Stock				100,000 SHARES/NPV	10/20/1994	505866
01/04/2001	Certificate Of Merger				MERGING NMB I CORPORATION (NM) 2131282 (FILED UNDER NEW MEXICO LAW). (146 PG. DOCUMENT)	01/04/2001	505868
02/28/2006	Certificate Of Merger				MERGED GERDING, MCMAHON, PADON & KOLLER, INC. (NM) 0656496 (FILED UNDER NM LAW SECTION 53-14-5) (3 PG)	02/28/2006	505872
07/18/2008	Certificate Of Amendment				CNT (2 PG)	07/21/2008	505875
07/08/2010	Certificate Of Amendment				AMENDED ARTICLE THIRD (PURPOSE); ARTICLE FOURTH (SHARES); ARTICLE FIFTH (REGISTERED AGENT/OFFICE); ARTICLE SIXTH (INTERNAL PROVISIONS) (3 PG)	07/09/2010	505883
09/08/2015	Certificate Of Amendment				AMENDED ARTICLE II - PURPOSE / AMENDED ARTICLE III - CAPITAL STOCK / AMENDED ARTICLE IV - REGISTERED AGENT/OFFICE / AMENDED ARTICLE V - INDEMNIFICATION (7 PAGES)	09/09/2015	505887

Filing Date	Filing Type	Fiscal Year End Date	Post Mark	Survivor/ Re-Documented Instrument Text Entity	Processed Date	Filing #
09/08/2015	Restated Certificate Of Incorporation			RESTATED IN ITS ENTIRETY (6 PAGES)	09/09/2015	505888
08/04/2016	RA Resignation	12/31/2016			09/06/2016	1719067
12/08/2016	Tax Clearance	12/31/2016			12/08/2016	1731644
12/16/2016	Intent to Dissolve (By Written Consent of Shareholders)	12/31/2016			12/19/2016	1732790
05/22/2017	Business Dissolution	12/31/2016			05/22/2017	1771574

License History