

Hon. Robert J. Bryan

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

ALLSTATE INDEMNITY COMPANY,

Plaintiff,

v.

JOSHUA CORNELSON, *et al.*,

Defendants.

NO. 3:21-CV-05831-RJB

**MOTION TO DISMISS FOR LACK
OF TRIBAL COURT EXHAUSTION**

**NOTE ON MOTION CALENDAR:
March 18, 2022**

I. INTRODUCTION

Defendants Joshua and Jane Doe Cornelson (collectively, the “Cornelson Defendants”) respectfully seek an order dismissing this case for lack of tribal court exhaustion.

II. FACTS

This is a coverage dispute pertaining to a policy issued to a Lower Elwha Klallam Tribal family—the Cornelson Defendants—to insure a home permanently affixed to Lower Elwha Klallam Tribal trust land. *See* Second Decl. of Gabriel S. Galanda, Ex. A at 1-3. All of the relevant events occurred on trust land within the exterior boundaries of the Lower Elwha Klallam Reservation. *Id.*

Plaintiff filed its Complaint on November 11, 2021, initiating this action (the “Federal Action”). Dkt. #1. In the Federal Action, Plaintiff seeks a declaration that “the contracts of insurance issued by Allstate does not obligate Allstate to provide coverage or a defense to Joshua Cornelson and ‘Jane Doe’ Cornelson, husband and wife, in regard to the claims asserted against them.” *Id.* at 9–10. The Cornelson Defendants answered the Federal Action and affirmatively defended that it “must be dismissed for lack of personal and subject-matter jurisdiction, in great part because: “This action arose on the Lower Elwha Klallam Reservation, not in the State of Washington. Plaintiff fails to satisfy 28 U.S.C. § 1332’s amount in controversy requirement.”¹

On February 11, 2022, the Cornelson Defendants filed a declaratory judgment action in Lower Elwha Klallam Tribal Court (the “Tribal Action”) against Plaintiff and Defendant Ortega Carillo. *See* Second Galanda Decl., Ex. A. In the Tribal Action, the Cornelson Defendants seek declarations that Plaintiff must defend and indemnify them in connection with a Clallam County Superior Court action filed against them by Defendant Ortega Carillo; and that the Lower Elwha Klallam Tribal Court possesses jurisdiction over the coverage dispute. *Id.* at 5-6; *see also id.* at 2 (quoting *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808–09 (9th Cir. 2011); *Montana v. United States*, 450 U.S. 544, 565 (1981)).

Defendant Ortega Carillo has waived service of the summons in the Tribal Action. *Id.*, Exs. B, C. Plaintiff has been issued (but not yet served with) a summons in the Tribal Action. *Id.*, Ex. D.

III. ARGUMENT

“Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14–15

¹ The Cornelson Defendants have already moved to dismiss the Federal Action because Allstate failed to satisfy the amount-in-controversy requirement. Dkt. # 13. As foretold on reply to their first dismissal motion, the Cornelson Defendants now bring this Rule 12(b)(6) motion in response to the Court’s inquiry about whether the case can be decided on summary judgment. Dkt. # 21 at 2 n.2; Dkt. # 27. The Cornelson Defendants believe this case should be dismissed (or stayed) and not proceed towards Rule 56 motion practice or trial.

(1987) (internal citation omitted). “Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty.” *Id.* at 18 (collecting cases). “Regardless of the basis for jurisdiction, the federal policy supporting tribal self-government directs a federal court to stay its hand in order to give the tribal court a full opportunity to determine its own jurisdiction.” *Id.* at 16. “Considerations of comity require the exhaustion of tribal remedies before the claim may be addressed by the district court.” *Wellman v. Chevron U.S.A., Inc.*, 815 F.2d 577, 578 (9th Cir. 1987). “It is in non-Indian matters only that non-Indians can go to district court directly.” *Id.* at 579.

Here, the Lower Elwha Klallam Tribal Court has not yet had the opportunity to determine its own jurisdiction; a complaint has been filed, but no jurisdictional issues have yet been decided. *See* Second Galanda Decl., Ex. A. This case is analogous to *Iowa Mutual Insurance*, where the U.S. Supreme Court held a non-Indian insurance company’s diversity-of-citizenship action against tribal members must be stayed or dismissed until the Tribal Court can resolve the issue of its jurisdiction. *Iowa Mut. Ins. Co.*, 480 U.S. at 20 n.14.

VI. CONCLUSION

The Cornelson Defendants respectfully seek an order staying or dismissing this case for lack of tribal court exhaustion.

Respectfully submitted this 18th day of February 2022.

GALANDA BROADMAN, PLLC

s/Gabriel S. Galanda

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CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue NE, Suite L1, Seattle, WA 98115.

3. Today I served the foregoing document via the court's CM/ECF system on all parties of record.

The foregoing statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Seattle, Washington, this 18th day of February 2022.

s/Wendy Foster

Wendy Foster