

IN THE DISTRICT COURT OF MUSKOGEE COUNTY
STATE OF OKLAHOMA

FILED BY PAULA SEXTON
DISTRICT COURT CLERK

APR 24 2020

MUSKOGEE COUNTY, OK

(1) MUSCOGEE (CREEK) NATION d/b/a)
MUSCOGEE (CREEK) NATION CASINOS et al.,)
Plaintiff,)

vs.)

Case No. CS-20-159

- (1) LEXINGTON INSURANCE COMPANY;)
- (2) UNDERWRITERS AT LLOYD'S –)
SYNDICATES; ASC1414, XLC 2003, TAL 1183,)
MSP 318, ATL1861, KLN 510, AGR 3268;)
- (3) UNDERWRITERS AT LLOYD'S – SYNDICATE:)
CNP 4444;)
- (4) UNDERWRITERS AT LLOYD'S – ASPEN)
SPECIALTY INSURANCE COMPANY;)
- (5) UNDERWRITERS AT LLOYD'S –)
SYNDICATES: KLN 0510, ATL 1861, ASC 1414,)
QBE 1886, MSP 0318, APL 1969, CHN 2015,)
XLC 2003;)
- (6) UNDERWRITERS A LLOYD'S – SYNDICATE)
BRT 2987;)
- (7) UNDERWRITERS AT LLOYD'S –)
SYNDICATES: KLN 0510, TMK 1880, BRT 2987,)
BRT 2988, CNP 4444, ATL 1861, NEON)
WORLDWIDE PROPERTY CONSORTIUM,)
AUW 0609, TAL 1183, AUL 1274;)
- (8) HOMELAND INSURANCE)
COMPANY OF NY (ONE BEACON);)
- (9) HALLMARK SPECIALTY INSURANCE)
COMPANY;)
- (10) ENDURANCE WORLDWIDE INSURANCE)
LTD T/AS SOMPO INTERNATIONAL;)
- (11) ARCH SPECIALTY INSURANCE COMPANY;)
- (12) EVANSTON INSURANCE COMPANY;)
- (13) ALLIED WORLD NATIONAL ASSURANCE)
COMPANY;)
- (14) LIBERTY MUTUAL FIRE INSURANCE)
COMPANY;)
- (15) XL INSURANCE AMERICA, INC.;)
- (16) AXA/XL AMERICA, INC.;)
- (17) UNDERWRITERS AT LLOYD'S LONDON;)
- (18) ABC INSURANCE COMPANIES (to be)
determined);)

**PETITION FOR
DECLARATORY JUDGMENT**

Defendants.)

PETITION FOR DECLARATORY JUDGMENT

Plaintiff Muscogee (Creek) Nation d/b/a Muscogee (Creek) Nation Casinos et al. through undersigned counsel, respectfully represents and requests:

PARTIES

1. Plaintiff Muscogee (Creek) Nation d/b/a Muscogee (Creek) Nation Casinos et al. (the “Nation”) is an Indian tribe with its headquarters located in Okmulgee, Oklahoma, which operates numerous businesses throughout Muskogee County. The Nation is not a citizen for purposes of federal diversity jurisdiction.

2. Upon information and belief, Defendant Lexington Insurance Company is a foreign insurer doing business in the State of Oklahoma.

3. Upon information and belief, the various Defendant syndicates of Underwriters of Lloyd’s (“Defendant Syndicates”) are individuals or groups that share respective and several liability through a representative underwriter but do not share citizenship. Defendant Syndicates are foreign insurers doing business in the State of Oklahoma.

4. Upon information and belief, Defendant Underwriters of Lloyd’s London is a foreign insurer doing business in the State of Oklahoma.

5. Upon information and belief, Defendant Homeland Insurance Company of NY (One Beacon) is a foreign insurer doing business in the State of Oklahoma.

6. Upon information and belief, Defendant Hallmark Specialty Insurance Company is an Oklahoma insurer.

7. Upon information and belief, Defendant Endurance Worldwide Insurance Ltd t/as Sompo International is a foreign insurer doing business in the State of Oklahoma.

8. Upon information and belief, Defendant Arch Specialty Insurance Company is a foreign insurer doing business in the State of Oklahoma.

9. Upon information and belief, Defendant Evanston Insurance Company is a foreign insurer doing business in the State of Oklahoma.

10. Upon information and belief, Defendant Allied World National Assurance Company is a foreign insurer doing business in the State of Oklahoma.

11. Upon information and belief, Defendant Liberty Mutual Fire Insurance Company is a foreign insurer doing business in the State of Oklahoma.

12. Upon information and belief, Defendant XL Insurance America, Inc. is a foreign insurer doing business in the State of Oklahoma.

13. Upon information and belief, Defendant AXA/XL America, Inc. is a foreign insurer doing business in the State of Oklahoma.

14. ABC Insurance Companies (hereinafter, together with Defendants identified above, "Defendant Insurers") is the alias for other unidentifiable insurers doing business in the State of Oklahoma.

15. Defendant Insurers insure the Nation's property located within the State of Oklahoma.

16. Venue is proper pursuant to 12 O.S. § 137.

FACTUAL BACKGROUND

17. The Nation, as the named insured, owns and operates property used in connection with multiple commercial businesses and services located within the State of Oklahoma (the "Nation's Property").

18. Alliant Specialty Insurance Services, Inc./Alliant Insurance Services, Inc./Alliant Underwriting Solutions/Tribal First, using the name Tribal First ("Alliant") represented to the Nation it was providing underwriting, claims/risk management, and administrative services to the Nation. Alliant issued TPIP Policy No. 017471589/06 (Dec 16) 9315 with "all risk" benefits, for

a policy period July 1, 2019 to July 1, 2020. Based upon such representations and Alliant's "Tribal Property Insurance Program Proposal," which the Nation relied upon, Alliant obtained multiple policies issued by Defendant Insurers, providing the "all risk" benefits covering the Nation's Property. Some, but not all, of the benefits provided include business interruption, interruption by civil authority, limitations of ingress and egress, and extra expense. The Nation has paid all premiums for the coverage.

19. On or about March of 2020, the United States of America became infected by COVID-19 resulting in a pandemic. As a result of this pandemic and infection, the Nation's Property sustained direct physical loss or damage and will continue to sustain direct physical loss or damage covered by the policies, including but not limited to business interruption, extra expense, interruption by civil authority, limitations on ingress and egress, and expenses to reduce loss. As a direct result of this pandemic and infection, the Nation's Property has been damaged, as described above, and cannot be used for its intended purpose.

20. The Nation has been advised by agents of Defendant Insurers and others that the losses sustained by the Nation are not covered under the policies that are subject of this action.

CAUSE OF ACTION – DECLARATORY JUDGMENT

21. The previous paragraphs are incorporated here as if restated in full.

22. This is an action for declaratory judgment pursuant 12 O.S. § 1651.

23. For the sake of clarity, and in the event any Defendant seeks to remove this case and/or claims that any federal claim or question is raised by this petition or any other paper, the Nation hereby expressly disavows any such federal claim or question as being part of this lawsuit. The Nation's claims are based in contract and insurance laws under Oklahoma law. The Nation makes no claim with regard to providing healthcare in this lawsuit.

24. The Nation seeks a declaratory judgment from this Court declaring the policies cover the Nation's losses and expenses related to the COVID-19 pandemic and infection and Defendant Insurers are responsible for said losses and expenses.

PRAYER FOR RELIEF

WHEREFORE, the Nation seeks a declaratory judgment from this Court declaring the policies cover the Nation's losses and expenses related to the COVID-19 pandemic and infection and Defendant Insurers are responsible for said losses and expenses and such further relief which may be appropriate.

Respectfully submitted,



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