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NAVAJO NATION

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IN THE SUPREME COURT OF THE NAVAJO NATION

OHIO CASUALTY INSURANCE COMPANY, Petitioner, v. CHINLE DISTRICT COURT, Respondent, and concerning, NAVAJO NATION, PIC-N-RUN, et al. Real Parties in Interest.	Case No.: CH-CV-166-13 Case No.: CH-CV-359-07 Case No.: CH-CV-333-09 **OHIO CASUALTY INSURANCE CO.'S PETITION FOR A WRIT DISMISSING OHIO CASUALTY FOR LACK OF SUBJECT MATTER AND/OR PERSONAL JURISDICTION: AND, ENFORCEMENT OF THE CHINLE DISTRICT COURT'S ORDER OF OCTOBER 28, 2011**

Ohio Casualty Insurance Company ("Ohio Casualty"), through counsel and pursuant to 7 N.N.C. § 303(B) and other applicable law, submits this Petition for a Writ Dismissing Ohio Casualty for Lack of Personal and Subject Matter Jurisdiction (the "Petition"). Alternatively, Ohio Casualty seeks a ruling that jurisdiction no longer exists, because it has complied with the Order of the Chinle District Court which provided that, once it tendered its policy limits, it would be dismissed pursuant to the doctrine of *nályéél*.

This Petition respectfully asks the Navajo Nation Supreme Court for a Writ ordering the District Court of the Navajo Nation, Judicial District of Chinle, to cease exercising authority over Ohio Casualty in Civil Action.

The District Court lacks subject matter jurisdiction over non-member Ohio Casualty, because Ohio Casualty did not enter into a consensual relationship with the Nation or its Members. Ohio Casualty has never threatened the political integrity, economic security, health or welfare of the Nation but has only improved circumstances on the Nation.

The Chinle District Court lacks personal jurisdiction, as the Navajo Nation is not an insured or beneficiary under Ohio Casualty's insurance policy, which established coverage for an entity organized and headquartered off the Navajo Nation. Furthermore, Ohio Casualty has satisfied the Navajo law of *nályéél*, tendering the entire "money bag", and Navajo courts recognize that parties, who comply with *nályéél,* should be dismissed. In sum, and respectfully, the Courts of the Navajo Nation do not have jurisdiction over Ohio Casualty, and, even if there were jurisdiction, that jurisdiction ceased, when Ohio Casualty complied with the Chinle District Court's Order of October 28, 2011.

I. OHIO CASUALTY HAS SATISFIED *Nályéél*, ENDING ANY CLAIM OF JURISDICTION – EVEN IF JURISDICTION EXISTED.

Navajo tort law is based on *nályéél*, which is the overarching goal to restore harmony, *hozho*, and make parties whole. *Nályéél* can be roughly translated into English as "restitution," but, in doing so, a deeper meaning is overlooked; the concept encompasses a restorative value inherent in Navajo understanding, and has been recognized as having "the power to correct wrongs of any kind." *Benally v. DOJ*, 5 Nav. R. 209, 213 (W.R. Dist. Ct. 1986).

Traditionally, *nályéél* was a symbolic payment of material goods in an effort to bring *hozho* to an injured party. Over time, it has evolved and been analogized to the idea of monetary damages. *See, e.g., Bryant v. Bryant*, 3 Nav. R. 194 (S.R. Dist. Ct. 1981)

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(incorporating Navajo community standards, values, and customs in determining cash damages). *Benally v. Mobil Oil Corporation*, No. SC-CV-05-01 (November 24, 2003); *Allstate Indemnity Co. v. Blackgoat*, 8 Nav. Rptr. 627 (Nav. Sup. Ct. 2005).

The Navajo Supreme Court applies *nályéél* to insurance proceeds. In *Benalli v. First National Insurance Co. of America*, the Supreme Court likened the insurance company to a Navajo clan, with its employees compared to a Navajo relative, like a cousin. 2 Nav. App. Rep. 595 (Nav. Sup. Ct. 1998). The amount of damages owing to the injured party from the insurance "clan" was based on the nature of the tort, including the alleged damages, and the ability of the "clan" to pay. *Id.* In sum, parties are "expected to set things right . . . That is done on the basis of the ability to help, and in [the case of insurance], that ability is measured by the amount of money put into the bag and the understanding that there are certain persons who should benefit from the money in the bag." *Id.* Thus, in the insurance context, this means that an insured person is liable only up to policy limits but no further. Navajo law would never require someone to give up more than he has.

Here, the amount of the money bag is defined by a policy's limits, which Ohio Casualty has offered on behalf of its insured. *See* Affidavit of Jill Crosbie, Exhibit "A"; Itemized Bill, Exhibit "B"; and, Invoices Submitted by Environmental Engineering Companies for Testing and Remediation Services, Exhibit "C".

The policy limits are one million dollars. Ohio Casualty has paid the million.

The Navajo Supreme Court must accept Ohio Casualty's willingness to do the right thing and release it from this litigation; indeed, the "money bag" is exhausted. *See Id.* And, therefore, exercising continued jurisdiction over Ohio Casualty should cease.

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Respectfully, *hozho* is violated, when a party – like the Navajo Nation Department of Justice ("NNDOJ") – seeks to keep a Party in a case, after the money bag is tendered.

II. THE CHINLE DISTRICT COURT'S OCTOBER 28, 2011 ORDER MUST BE ENFORCED BECAUSE OHIO CASUALTY HAS SATISFIED *Nályéél.*

On October 28, 2011, the Chinle District Court issued an order, recognizing Ohio Casualty's tender. *See* October 28, 2011 Order Denying Ohio Casualty's Motion for Summary Judgment (the "2011 Order"), attached as Exhibit "D". The 2011 Order stated that the Court accepted Ohio Casualty's *nályéél* claim that all expenditures to date ($928,111.48) were for "remediation and cleanup costs." *See Id.* at p. 9. The 2011 Order also stated Ohio Casualty would be "allowed to renew its motion (to dismiss) once it is shown that one million dollars has been expended." *Id.* Ohio Casualty renewed its motion, but, seven years later, on September 10, 2018, instead of honoring the ruling set by the 2011 Order, the District Court, though a different trial judge, signed an order which was drafted and submitted by the NNDOJ. Doing so violated the rule against a horizontal appeal. *See* 2018 Order, Exhibit "E".

According to Navajo and any other jurisdiction's laws, if the NNDOJ believed the 2011 Order was in error, it should have filed an appeal with a higher court. Instead, seven years later, the NNDOJ submitted a proposed order that completely ignored and overturned the 2011 Order. Now that the million was paid, the continued jurisdiction over Ohio Casualty, even if it once existed, must cease. The 2011 Order is ignored, and the NNDOJ sought and obtained a horizontal appeal.

The Navajo Supreme Court strongly discourages horizontal appeals. *See Lee v. Tallman*, No. SC-CV-02-95, ¶ 43 (Navajo 11/27/1996). Indeed, Navajo common law disfavors second-guessing a decision maker. *Id.* It is well established that "the decision of

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a *naat'aanii*, when made in good faith, is to be respected and followed." *Id.* The word of a decision maker, in propounding the way of things, is to be respected and followed. *Id.* Thus, there is a "presumption in favor of the rulings of the first judge." *Id.* The NNDOJ did not and has not rebutted that presumption, and clearly, the 2011 Order remains effective.

The Court's 2011 Order confirms that, as of October 28, 2011, all payments were for "remediation and cleanup costs." Exhibit "D" at 9. The 2011 Order, and the abundance of evidence provided with Ohio Casualty's Motions for Summary Judgment, and here with this Petition, prove Ohio Casualty has satisfied *nályéél* and tendered the full amount of the money bag. Thus, Ohio Casualty should be dismissed; continued jurisdiction should cease.

III. THE NAVAJO SUPREME COURT HAS THE AUTHORITY TO ISSUE A WRIT DISMISSING OHIO CASUALTY FOR EITHER THE CESSATION OR LACK OF JURISDICTION.

The Navajo Supreme Court has "the power to issue any writs or orders: . . . [t]o prevent or remedy any act of any Court which is beyond such Court's jurisdiction[.]" 7 N.N.C § 303(B). In interpreting this statute, the Court has held that "original writ jurisdiction under the 'necessary and proper' clause in 7 N.N.C. §303 means that, when the Court has jurisdiction, matters need not be decided at the trial level prior to being considered by this Court." *Office of the Navajo Nation President and Vice-President v. Navajo Board of Election Supervisors*, No. SC-CV-59-10 (Navajo 10/25/2010). Accordingly, pursuant to 7 N.N.C § 303(B), the Supreme Court clearly has the authority and jurisdiction to hear this Petition.

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Although the Supreme Court stated in *Hurley v. Ta'hajiiliee Family Court*, that a writ is not a substitute for an appeal, *see* 8 Nav. R. 795, 798 n.1 (Nav. Sup. Ct. 2005), the Court has also held that where there is "potential damage . . . that would be irreversible on appeal," there is no adequate remedy at law and a writ is appropriate. *See id.*, No. SC-CV-44-05, slip op. at 3. Here, an appeal will not be able to remedy the unreasonable burdens imposed on Ohio Casualty's personnel and resources if Ohio Casualty is forced to continue litigating a case over which the District Court has no jurisdiction. Moreover, the interest of judicial efficiency is best served by the Supreme Court deciding the jurisdictional issues now, before the District Court wastes more time and resources on a Party that was never subject to the jurisdiction of the Navajo Nation's Courts.

IV. THE ONLY EVIDENCE ESTABLISHES OHIO CASUALTY'S POSITION THAT THE NAVAJO NATION DOES NOT HAVE SUBJECT MATTER AND/OR PERSONAL JURISDICTION.

On or about July 12, 2004, Pic-N-Run, Inc. (Plaintiff in CH-CV-359-07 arising under these same facts) contracted with Milam Building Associates, Inc. for the renovation of an existing gas station and store in the Chinle, Arizona area. *See* Agreement between Owner and Contractor, Exhibit "F". Milam Building Associates, Inc. ("Milam"), as general contractor, then entered into a subcontract with Daniel and Dorothy Felix, d/b/a Shiprock Construction ("Shiprock Construction"), under which Shiprock Construction would provide concrete work for Pic-N-Run's construction project. *See* Proposal and Contract, Exhibit "G". Shiprock Construction performed the concrete work at the Pic-N-Run site ("Site"). *See* Pic-N-Run's Amended Complaint and Ohio Casualty's Answer to Amended Complaint, Exhibit "H". Pic-N-Run alleged that in the course of pouring concrete at the site, Shiprock Construction's employees caused damage to an underground fuel supply line. *Id.*

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Subsequent testing of the contamination at the Site revealed the majority of alleged damages were not related to Shiprock Construction's alleged conduct. Exhibit "A". Specifically, lead contaminants and methylcyclopentadienyl manganese tricarbonyl ("MMT") were found at the Site. *Id.* Leaded gasoline was phased out of the American market in the 1970s, and completely banned for use in on-road vehicles via the Clean Air Act of 1996, and MMT was a gasoline additive for only a few years in the 1970s – long before the spill and the damage allegedly caused by Shiprock Construction. *Id.* The presence of these substances indicates that contamination existed at the Site for decades prior to the subject incident. *Id.* The evidence also indicates that approximately 78,000 gallons of fuel have been released at the Site since the 1940s. *Id.*

The spill allegedly caused by Shiprock Construction in early 2005 supposedly released only approximately 15,000 gallons of fuel. *Id.* Shiprock Construction has provided evidence that much of this spill – up to 14,450 gallons – could and would have been avoided had Defendants Riedel installed the leak detectors it promised and was paid to install. *Id.* Thus, at most, Shiprock Construction's alleged conduct was responsible for the release of only 550 of the 78,000 gallons of gasoline released in the last sixty-five years – or only 0.66% of the alleged contamination. *Id.* Assuming there is sufficient evidence that Shiprock Construction punctured the underground gas line, Shiprock Construction should be responsible for only 0.66% of the total remediation bill, but it has seen a tendering of its money bag, so its liability, if any, is over. *Id.*

V. OHIO CASUALTY WAS IMPROPERLY SUED AND MUST BE DISMISSED.

An Amended Complaint was filed by Pic-N-Run in case number CH-CV-359-07 on December 14, 2011. Exhibit "H". The Complaint alleged Shiprock Construction was

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responsible for causing a gas leak on or around March, 2005, and asserted that Pic-N-Run discovered the damage "on or about August 15, 2005." *Id.*

Although the NNDOJ knew in 2005 of the discovery of the spill, the NNDOJ's Complaint, CH-CV-166-13, with allegations against Ohio Casualty, was not filed until November 8, 2013 ("Complaint CH-CV-166-13"). *See* NNDOJ's Complaint CH-CV-166-13, Exhibit "I". In Complaint CH-CV-166-13, the NNDOJ alleged "Defendant Insurance Companies have disputed and/or refused to honor in full their obligations under the Policies to defend the Policyholder Defendants in connection with the Pic-N-Run ("PNR") Site, PNR Suit, and EPA Order." *See Id.* However, the exact opposite is true with regard to Ohio Casualty. In fact, Ohio Casualty has honored its Policy by paying the policy limits in connection with the PNR Site, PNR Suit and the EPA Order.[1] Exhibits "A", "B" and "C". Therefore, there is absolutely no reason for Ohio Casualty to remain in the lawsuit, and it must be dismissed.

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[1] Red Hawk, the primary environmental engineering and consulting firm hired for testing, remediation and clean-up efforts at the site, submitted unredacted bills totaling $552,317.31. Invoices submitted by environmental engineering companies for testing and remediation services, Exhibit "C". Red Hawk also submitted bills with line items entries that had redactions. To eliminate any question that these line item entries were for defense costs, the line item entries containing redactions were subtracted from the invoices to provide a total of 250,140.62 for the redacted bills (total of the bills minus the line item entries). *See Id.* Accordingly, Red Hawk's billings (($250,140.62 + $552,317.31) = $802,457.93 (total). *See Id.* Other environmental engineering firms and consultants working with Red Hawk submitted bills totaling $195,088.88. Added to Red Hawk's billings ($195,088.88 + $802,457.93) equals a total of $997,546.81.

Finally, on November 10, 2006, Ohio Casualty and Pic-N-Run agreed to $60,000.00 as partial settlement for damages, and to cover efforts of testing and remediation. *See* Agreement for Partial Settlement of Claim, Exhibit "J". When this amount is added to the total for the environmental services providers, it provides a grand total of $1,057,546.81, substantially more than policy limits.

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Ohio Casualty is a group of business entities engaged in the insurance industry, licensed and authorized to do business in the State of Arizona. Exhibit "H". At all relevant times to the underlying claim, Ohio Casualty provided insurance coverage to Shiprock Construction under policy number BLO53213542 with $1,000,000.00 in liability coverage. *See* Summary of Limits and Charges for Policy Number BLO53213542, Exhibit "K". In fact, despite the evidence of significant prior contamination from unrelated sources, Ohio Casualty has voluntarily made payments for remediation and clean-up of more than its entire policy limits of $1,000,000.00 – many, many times the maximum amount of Shiprock Construction's proportionate share of the damages.[2] *See* Exhibits "A", "B" and "C".

VI. SUBJECT MATTER JURISDICTION OVER NON-MEMBER OHIO CASUALTY SHOULD NOT AND CANNOT OCCUR ON THESE FACTS.

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[2] On January 22, 2019, the Navajo Nation Department of Justice ("NNDOJ") provided a draft summary of "Site Characterization and Remediation Actions" ("SCRA") for the Chinle Pic-N-Run site for an upcoming mediation on February 15, 2019. Exhibit "L." The SCRA correctly lists the majority but not all of the work done at Ohio Casualty's expense. Although it acknowledges Ohio Casualty paid for testing and remediation, the SCRA does not include or mention the actual amounts paid. *See Id.*

The omission of the amounts paid is disingenuous and misleading. The NNDOJ cannot acknowledge Ohio Casualty's role in testing and remediation efforts, then refuse to acknowledge the amounts paid for those efforts. A cursory review of the invoices that correspond to the "dates" and "events" listed by the SCRA, shows why the NNDOJ failed to include the amounts. Ohio Casualty has paid its policy limits.

To rectify the NNDOJ's omission, Ohio Casualty drafted a "Site Characterization and Remediation Actions-REVISED" summary that includes the missing amounts. *See* Exhibit "M." Corresponding to the dated entries and events listed by the NNDOJ, in the "Source of Funds and Costs" column, Ohio Casualty provides notations, exhibits and invoice references (in red ink). *See Id.* In fact, Ohio Casualty not only provides the amounts paid, but also lists and provides the specific invoices as evidence. *Id.*

The NNDOJ drafted the SCRA knowing Ohio Casualty was the sole source of insurance money for testing and remediation efforts. Given the information collected and provided in the SCRA, the NNDOJ can no longer allege a dispute exists as to whether Ohio Casualty paid indemnity or defense costs. The SCRA proves Ohio Casualty paid over $1,000,000.00 in indemnity costs, and should be dismissed.

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Ohio Casualty is not a corporate "member" of the Navajo Nation. Navajo Nation Court regulation of nonmembers is governed by "the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *See Montana v. United States*, 450 U.S. 544, 565 (1981). The United States Supreme Court "establishes that, absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited circumstances." *See Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997) (rejecting the notion that a tribal Court has a broad grant of jurisdictional authority over nonmembers related to conduct "arising from occurrences on any land within a reservation.").

In *Plains Commerce Bank v. Long Family Land & Cattle Co.*, the United States Supreme Court further delineated the limits of Tribal Court jurisdiction over nonmembers and reaffirmed the principle that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." 128 S. Ct. 2709, 2718-19 (2008) (*citing Montana*, 450 U.S. at 565). Indeed, the U.S. Supreme Court has held that "efforts by a tribe to regulate nonmembers . . . are presumptively invalid." *Id.* at 2720 (*citing Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001)). Moreover, Tribal Courts are affirmatively *not* Courts of general jurisdiction. *See Nevada v. Hicks*, 533 U.S. 353, 367 (2001) ("Plaintiffs' contention that tribal courts are courts of 'general jurisdiction' is also quite wrong."); *Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 939 (9th Cir. 2009) ("As a general rule, tribes do not have jurisdiction, either legislative or adjudicative, over nonmembers, and tribal courts are not courts of general jurisdiction. . . . The *Montana* framework is applicable to tribal adjudicative jurisdiction, which extends no further than the *Montana* exceptions.").

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To overcome the legal presumption of no jurisdiction, the Nation has the burden to demonstrate their claims fit into one of the two exceptions established by *Montana*. *See Philip Morris*, 569 F.3d at 939. Specifically:

> (A) A tribe may regulate the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, or leases.
>
> (B) A tribe may exercise civil authority over nonmember conduct when the conduct threatens political integrity, economic security, or the health and welfare of the tribe.

Montana, 450 U.S. at 565-66; s*ee also Plains Commerce*, 128 S. Ct. at 2719 (the burden rests on the tribe to establish one of the two *Montana* exceptions). In this case, neither of the *Montana* exceptions applies to the Nation's claims against Ohio Casualty.

A. The NNDOJ Concedes That Montana "Exception No. 1" Does Not Apply In This Case.

The first *Montana* exception, authorizing a tribe to "regulate the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, or leases," applies "only to the extent necessary to protect tribal self-government and to control internal relations." 450 U.S. at 565-66. The NNDOJ concedes that the first exception does not apply here. *See* Navajo Nation's Response to Zurich's Motion to Dismiss at 3, Exhibit "N". Indeed, regulating Ohio Casualty's contract with Shiprock Construction is certainly not "necessary to protect tribal self-governance or to control internal relations." *Id.*

Furthermore, the U.S. Court of Appeals for the Tenth Circuit, specifically held that an insurance company's contract to insure another entity, when both entities are not members of the Nation, is insufficient to establish the consensual relationship exception. *MacArthur v. San Juan County*, 309 F.3d 1216, 1223 (10th Cir. 2002). "Here, [Ohio

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Casualty's] contractual relationship was with [Shiprock Construction], another nonmember. Thus, the Nation's exertion of authority over [Ohio Casualty] is too attenuated to fall under *Montana's* consensual relationship exception." *Id.* The Nation is not a named beneficiary under the insurance agreement and is not an intended third-party beneficiary. Consequently, Ohio Casualty's insurance agreement with Shiprock Construction does not trigger the consensual relationship exception.

Ultimately there exists no proper basis establishing the *Montana* consensual exception and, therefore, the second exception must apply or dismissal is mandatory. As discussed below, the second exception does not apply, either.

B. *Montana* "Exception No. 2" Also Does Not Apply To Ohio Casualty, As Ohio Casualty's Conduct Has Not Caused "Catastrophic Consequences," But Has Only Improved The Situation.

The United States Supreme Court has warned that the second *Montana* exception must be narrowly interpreted and should not be construed in a manner that "would severely shrink the rule." *See A-1*, 520 U.S. at 458. A Tribal Court's power does not reach "beyond what is necessary to protect tribal self-government or to control internal relations." *Id.* at 459. The second *Montana* exception only authorizes tribal jurisdiction "when the non-Indian conduct menaces the political integrity, the economic security, or the health and welfare of the tribe." *See Plains Commerce*, at 2726. "The conduct must do more than injure the tribe, it must imperil the subsistence of the tribal community" and be necessary "to avert catastrophic consequences." *Id.* (citations omitted).

The Nation has the burden of establishing that the second exception applies, *Plains Commerce Bank v. Long Family Land and Cattle Co.,* 554 U.S. at 330, but the second *Montana* exception is also unavailable to the Nation. Ohio Casualty's only "conduct" relevant to the subject litigation is its agreement to insure Shiprock Construction and its

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payment of funds in accordance with the insurance policy. Ohio Casualty's actions did not, in any way, "menace" or "imperil the subsistence of the tribal community." Further, Ohio Casualty's conduct has not caused or threatened to cause "catastrophic consequences" for the Nation. To the contrary, Ohio Casualty's conduct has had the opposite effect; Ohio Casualty has paid policy limits to largely fund the remediation efforts to date, despite the fact that its insured is not entirely responsible for the contamination. Exhibits "A", "B" and "C". Thus, the second *Montana* exception does not apply, either.

Because neither *Montana* exception applies under these facts, this Court does not have subject matter jurisdiction of Ohio Casualty, a non-tribal entity. Consequently, the NNDOJ's claims against Ohio Casual must be dismissed.

VII. THERE IS NO BASIS FOR PERSONAL JURISDICTION OVER OHIO CASUALTY BECAUSE THE NATION IS NOT AN INSURED OR BENEFICIARY UNDER OHIO CASUALTY'S POLICY, AND THE POLICY ESTABLISHED COVERAGE FOR A ENTITY THAT DID NOT RESIDE ON THE NATION.

Even if this Court were to conclude that subject matter jurisdiction exists, the Nation's courts do not have personal jurisdiction over Ohio Casualty. The Nation's long arm jurisdiction statute only provides personal jurisdiction over a person arising from that person's "contracting at any place to supply services or things within the Nation" or "contracting to insure any person, property or risk located within the Nation." 7 N.N.C. §§ 253a(C)(2) and (6). In the present case, neither situation is present.

The Navajo Nation is not an insured or beneficiary under Ohio Casualty's policy. The only insured is Shiprock Construction, which has not brought a claim against Ohio Casualty. When Ohio Casualty's insurance agreement with Shiprock Construction was executed, it established coverage for an entity and/or facility that was not located on the

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Nation. Exhibit "I". As demonstrated by the Declarations Page, when the policy was issued, the address for the Shiprock Construction location was listed as 126 Bishop Drive, Gallup, New Mexico 87301-9403, and the mailing address for the business was listed as PO BOX 4498, Gallup, New Mexico 87305. *See Id.* This was not a Navajo Nation insurance policy, and, in any event, Ohio Casualty did not cause any harm on the Nation.

The Navajo Nation has no sustainable claim based upon Ohio Casualty's insurance contract with Shiprock Construction; and the Nation is not an insured or a beneficiary under Ohio's policy. Again, the only insured is Shiprock Construction. *See* Exhibits "F", "I" and Partial Settlement Agreement, Exhibit "J". Ohio Casualty's insurance agreement with Shiprock Construction does not provide the Nation with personal jurisdiction over Ohio Casualty. Consequently, there is no proper basis for exercising personal jurisdiction over Ohio Casualty, and it must be dismissed.

VIII. CONCLUSION: THERE IS NO VALID REASON FOR THE NNDOJ TO HAVE SUED OHIO CASUALTY; THERE IS NO JURISDICTION; AND, OHIO CASUALTY HAS ALREADY TENDERED ITS "MONEY BAG."

As demonstrated above, there is no subject matter or personal jurisdiction over Ohio Casualty. Moreover, Ohio Casualty should never have been named in any lawsuit, but has acted reasonably at all times in relation to its obligation to defend and indemnify Shiprock Construction, as its insured. Equally important, the Navajo law of *nályéél* has been fulfilled, and, for this reason alone, the claim against Ohio Casualty must be dismissed. Everyone has benefitted from Ohio Casualty's tendering of the entire "money bag", and Navajo courts recognize that parties, who comply with *nályéél,* should be dismissed from the case. *See Allstate v. Blackgoat*, 8 Nav. R. 660 (Nav. Sup. Ct. 2005); *Benally v. First National Ins. Co.*, 7 Nav. R. 329, 337-338 (Nav. Sup. Ct. 1998).

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