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SUPREME COURT

2019 APR 26 PM 1:25

NAVAJO NATION

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Chinle District Court

IN THE SUPREME COURT OF THE NAVAJO COURT

SC CV-7-19

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 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**

COMES NOW Respondent Chinle District Court, and in response to the Petition for Writ of Prohibition, seeks dismissal of the Petition for Writ of Prohibition on the grounds that Petitioner failed to show it is entitled to any of the relief requested. Petitioner have not shown that the Chinle District Court is acting or about to act beyond its jurisdiction.

## 1. STATEMENT OF THE CASE:

Since 2008, the Petitioner Ohio Casualty has been seeking a dismissal order in the Chinle District Court in relation to litigation arising from gasoline spill that occurred in March of 2005 on the site of the present Pic-n-Run convenience store and gasoline station. In 2008, the Petitioner Ohio Casualty filed a motion to dismiss against Pic-N-Run on ground that the Chinle District Court lacked personal jurisdiction over Ohio Casualty. *See October 28, 2011 Order Denying Ohio Casualty's Motion for Summary Judgment (the "2011 Order"), petitioner Exhibit" D.*

In 2011, the Petitioner Ohio Casualty filed a Motion for Summary Judgement against Pic-n-Run claim for breach of contract. The motion for summary judgement was based on (1) lack of personal jurisdiction, (2) subject matter jurisdiction, (3) Rule 11 of Navajo Rules of Evidence, (4) satisfaction of Nalyeeh, and (5) satisfaction of indemnification obligation under the Shiprock Policy. *2011 Order.*

In 2014, Petitioner once again moved this Court for summary judgment. The Petitioner's motion for summary judgement was grounded on (1) lack of subject matter jurisdiction, (2) lack of personal jurisdiction, (3) lapse of statute of limitation, (4) collateral estoppel, and (5) satisfaction of indemnification obligation under the Shiprock policy limit. The Chinle District Court again denied the Petitioner's motion for summary judgement. *See September 10, 2018 Order Granting Plaintiff Navajo Nation's Motion for Summary Judgment in Part, (the "2018 Order"), petitioner Exhibit E.*

After these attempts, the Petitioner Ohio Casualty filed for writ with Navajo Nation Supreme Court for a review of Chinle District Court's jurisdiction over Ohio Casualty.

Petitioner requested this Court to rule Chinle District Court lack both subject matter and personal jurisdiction. Alternatively, Ohio Casualty seek a ruling that jurisdiction no longer exit because it has complied with the 2011 Order.

## 2. FACTS:

Pic-n-Run (PNR) is Arizona Corporation operating a convenience store and gas station in Chinle Arizona. *See NNDOJ's Complaint CH-CV-166-13, petitioner's Exhibit "I" at 2.*

Shiprock Construction is a New Mexico Corporation registered with the Navajo Nation Business Regulatory office to do business on the Navajo Nation. It is owned by Navajo member and advertised three business addresses during the relevant times, including an address in Chinle, Arizona; *Id. at 3.*

On or about December of 2004, Shiprock Construction was selected as concrete sub-contractor for the renovation of the Pic-n-Run business; *The 2018 Order at 3.*

On or about June 1, 2004, Shiprock Construction purchased a one million dollar commercial general liability insurance policy from Petitioner Ohio Casualty Group (Shiprock Policy);

Sometime in March 2005, while Shiprock Construction was performing concrete work at the Pic-n-Run site, it pierced a gasoline fuel line from the storage tanks to the fuel islands; Between March and August 2005, an estimated fifteen-thousand six hundred and thirty-three (15,633) gallons of gasoline was released into the environment at the site due to the damaged line; *Id. at 2.*

On November 10, 2006, the Pic-n-Run and Ohio Casualty entered into an Agreement for Partial Settlement of Claims (“Agreement”); *Partial Settlement Agreement, petitioner’s Exhibit “J”*.

On or about August 1, 2007, Pic-n-Run filed complaint, Case No. CH-CV-359-07, against Petitioner Ohio Casualty and against other Defendants. Pic-n-Run’s alleged in the complaint Ohio Casualty breached the “Agreement” by failing to conduct site investigation and remediation clean up the gasoline contamination. *Pic-n-Run Amended Complaint, petitioner’s Exhibit H*.

By letter dated August 14, 2007, Ohio Casualty accepted coverage in connection with the PNR site under the Shiprock Policy. *2018 Order at 3*.

In its letter of August 14, 2007, Ohio Casualty stated to Shiprock that: “this is further notice that if the cost to remediate the damages exceed your liability limits, the policy condition state the duty to indemnify will cease. We will not be responsible for any loss payments that exceed the \$1 million liability limit.” *2018 Order at 3*.

On or about May 20, 2008, Ohio Casualty filed Motion to Dismiss claiming the Chinle District Court lacked personal jurisdiction over Ohio Casualty. The Chinle District Court denied the motion to dismiss based on 7 NNC §253a©(6). *2011 Order at 2*.

On or about June 20, 2011, Ohio Casualty filed a motion for summary judgment regarding Pick-n- Run’s claim for breach of contract. Ohio raised five arguments: (1) the Chinle Court lacked subject matter jurisdiction per Montana and progeny; (2) the Chinle Court lacked personal jurisdiction; (3) Evidence Rule 11 prohibit them from being a party; (4) Ohio Casualty has satisfied any and all potential liability under Nalyeeh; and (5) Ohio Casualty satisfied indemnity limit under insurance policy with Shiprock Construction. *See 2011 Order*

The Chinle District Court denied Petitioner Ohio Casualty's 2011 motion for summary judgment. *Id.*

On November 8, 2013, the Navajo Nation filed Complaint, against Shiprock Construction and Ohio Casualty, and other Policyholders and Insurance Companies defendants, for declaratory judgement and Nalyeeh. *See NNDOJ's Complaint CH-CV-166-13, petitioner's Exhibit "I"*

On or about March 12, 2014, Petitioner Ohio Casualty filed motion for summary judgement in Chinle District Court, Case No. CH-CV-166-13, against the Navajo Nation on five grounds: (1) lack of subject matter jurisdiction, (2) lack of personal jurisdiction, (3) statute of limitation, (4) collateral estoppel, and (5) satisfaction of Nalyeeh. The Chinle District Court denied Petitioner Ohio Casualty Motion for Summary Jurisdiction on September 10, 2018. *See 2018 Order.*

The Petitioner Ohio Casualty subsequently filed a Petition for Writ with the Navajo Nation Supreme Court.

### **3. WRIT OF PROHIBITION ON NAVAJO NATION**

Ohio Casualty petition the Navajo Nation Supreme Court for a writ to order the District Court of the Navajo Nation Judicial District of Chinle to cease exercising authority over Ohio Casualty in Civil Action on the Navajo Nation.

Petitioner claims an appeal will not be able to remedy the unreasonable burdens imposed on Ohio Casualty's personnel and resources if Petitioner Ohio Casualty is forced to continue litigating a case over which the District Court has no jurisdiction.

Petitioner Ohio Casualty submitted the Petition for Writ Dismissing Ohio Casualty for Lack of Jurisdiction and Subject Matter Jurisdiction pursuant to 7 N.N.C § 303 (B).

7 N.N.C § 303 states:

The Supreme Court shall have the power to issue any writs or orders:

- A. Necessary and Proper to the complete exercise of its jurisdiction;
- B. To prevent or remedy any act of any Court which is beyond such Court's jurisdiction; or to cause a Court to act where act of any Court fails or refuses to act within its jurisdiction

The Navajo Nation Supreme Court has stated a writ is not a substitute for an appeal; The Navajo Nation Supreme Court will issue a Writ only if there no plain, speedy and adequate remedy at law. *Yellowhorse v Window Rock District Court*, 5 Nav.R.85, 87 (Nav. Sup. Ct. 1986).

The Navajo Nation further said it will exercise 7 NNC section 303 (B) writ of prohibition powers when the trial court lacks jurisdiction to proceed in a case. *Peabody Western Coal Co. v. Navajo Nation Labor Commission*, 8 Nav. R. 488, 490 (Nav. Sup. Ct 2004); *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, 8 Nav.R.453, 456 (Nav. Sup. Ct. 2004).

The Supreme Court has further explained a Writ of Prohibition is a discretionary writ and is appropriately issued where the trial court is proceeding without or in excess of its jurisdiction, or has abused its discretion in exercising its function over matters within its authority to decide, and petitioner has no plain, speedy and adequate remedy at law. *Nelson J. McCabe, Chief Justice v. The Honorable Robert B. Walters*, 5 Nav. R. 43 (Nav. Ct. App. 1985)

The use of the word "discretion" as applied to judges or court means discretion to act within certain boundaries. For judicial discretion those boundaries are the rules and principals of law. *Id at 38 (Nav. Ct. App 1985)*.

Each application for a writ of prohibition requires a thorough consideration of the nature and circumstances of each case. In cases where it is unclear that the lower court is without jurisdiction or that it is exceeding its jurisdiction, we are inclined to deny the application.

*Yellowhorse at 86.*

We do not purport that every petition for a writ of prohibition is granted or denied solely on the Court's discretion. This Court will grant writ of prohibition as a matter of right if the lower court clearly has no jurisdiction of the action over prove that he is entitled to the writ as a matter of right. *Yellowhorse at 87.*

In a proceeding for writ of prohibition the primary concern is whether the lower court is proceeding without, or in excess of its jurisdiction. The focus is on jurisdiction. *Yellowhorse at 87.*

We revised our previous statements to clarify that an extraordinary writ is not a substitute for appeal, and therefore the Court will consider a petition only when there is no plain, speedy, and adequate remedy at law. This role respects the lower court to hear cases in the first instance without this Court's interference, except when necessary to prevent potential irreversible damage to litigates. *Hurley v. To'hajillee Family Court, 8 Nav.R. 705, 708, n.1).*

#### **4. JURSDICTION**

##### **A. Chinle District Court determined it had Personal Jurisdiction over Ohio Casualty under Navajo Nation Statute and Facts and Circumstances of the Case.**

In its writ application, Petitioner Ohio Casualty stated the Chinle District Court lack Personal Jurisdiction over it, as the Navajo Nation is not an insured or beneficiary under the Ohio Casualty's insurance policy, and because the insured Shiprock Construction is an entity organized and headquartered off the Navajo Nation, arguably an preposition to illustrate that both defendants have no prior and current connection to the Navajo Nation.

Under Navajo law, a non-resident's act must fall within the Navajo Nation's Long Arm Statute Civil Jurisdiction and Service of Process Act to be subject to the personal jurisdiction of the Navajo Courts. *7 NNC § 253a (2005)*. In the present case, the Chinle District Court found the specific Navajo Nation long arm statute applicable for jurisdiction purpose is found at *7 NNC §*

253a©(6). *The 2018 Order at 10*. This provision provides personal jurisdiction over a person who insures any person, property or risk located within the Navajo Nation. *Allstate Indemnity Co. v. Stumps, 191 F.3d 1071, 1075 (9<sup>th</sup> Cir. 1999)* (the tribal court has personal jurisdiction over an insurer who sold policy to reservation residents covering activities on reservation).

The Court further found the defendants conduct and relationship provided additional grounds for exercising personal jurisdiction over Shiprock Construction and Ohio Casualty. The District court focused on Shiprock Construction's responsibility for causing the gasoline spill on Navajo Trust land. The Court linked Petitioner Ohio Casualty to Shiprock's conduct through the insurance policy insuring Shiprock Construction activities on Navajo trust land where the gasoline spill occurred. *Id. at 11*. Accordingly, the Chinle District Court correctly found Ohio Casualty act of contracting with Shiprock for insurance coverage subjected Ohio Casualty to personal jurisdiction in a Navajo court under the Navajo Nation Long Arm Statute Civil Jurisdiction and Service of Process Act. *Id.*

Even in situations where personal jurisdiction is certain, the Navajo courts must ascertain whether under all circumstance of the case, the assertion of personal jurisdiction over the party is fair under Navajo due process. *Navajo Transport Services, et al. v. Schroeder, 8 Nav R. 103, 106 (Nav. Sup. Ct. 2007)*.

The Chinle District Court found, under all circumstances of the case, it is reasonable to conclude that Ohio Casualty would be subject to the personal jurisdiction of the Nation with respect to a tort action. As discussed previously, the act of insuring Shiprock Construction activities performed on the Navajo Nation placed Ohio Casualty on notice that a claim could arise from a legal action on the Navajo Nation. Under that consideration, the Chinle District Court exercise of personal jurisdiction over Ohio Casualty did not violate Navajo concept of



fairness, given the fact Ohio Casualty knowingly agreed to insure a business entity conducting business on the Navajo Nation. *2018 Order at 11*.

As presented under the Statement of the Case section, above, Ohio Casualty challenged the Chinle District Court exercise of personal jurisdiction on previous occasions. In March of 2008 litigation, the Ohio Casualty filed a Motion to Dismiss claiming the Chinle court lacked jurisdiction over Ohio Casualty. *2011 Order at 2*. The Chinle District Court denied Ohio Casualty's Motion to Dismiss based on 7 NNC § 253a©(6). *Id.*

In June of 2011, Ohio Casualty filed Motion for Summary Judgment in Pic-n-Run's claim for Breach of Contract; Ohio Casualty challenged personal jurisdiction in that case as well. In the 2011 Order, the Chinle District Court found as determinative Ohio Casualty's failure to raise the lack of jurisdiction defense in its responsive pleading to Pic-n-Run's complaint against Ohio Casualty and other defendants. *Id.* The court found Pic-n-Run filed its complaint on August 1, 2007 and Ohio Casualty filed its Answer on August 18, 2008 – over one year later. The Chinle District court found Ohio Casualty failed to comply with Navajo Rule of Civil Procedures to amend its pleading to assert the affirmative defense and concluded Ohio Casualty had waived lack of personal jurisdiction affirmative defense. *Id at 5 & 6*.

**B. Chinle District Court Found it had Subject Matter Jurisdiction.**

By the Treaty of 1868, the United States recognizes the Navajo Nation with broad civil and criminal powers over all who enter the Navajo Nation. *see Dale Nicholson Trust v. Chavez, 8 Nav.R.417, 428-29 (Nav. Sup. Ct 2004)* However the United States Supreme Court has imposed severe limitation on “inherent’ tribal jurisdiction over non-Indian. The U.S. Supreme Court has adopted a narrow view of civil jurisdiction that requires, in certain circumstances, fulfillment of the one of the exceptions announced in *Montana v. United States, 450 U.S. 544, 565-66 (1981)*,

to justify the Nation's authority over non-Indians, even on tribal lands. *In the Matter of A.P., a minor vs. Tuba City Family Court* 8 Nav. R. 671, 678 (Nav. Sup. Ct 2005) (discussing *Nevada v. Hick*, 533 U.S. 353, 358 (2001) ruling and application of Montana to tribal lands in limited circumstances.)

In the case at bar the conducts that gave rise to gasoline contamination and insurance coverage occurred on tribal trust and, eviscerating need for Montana analysis under the Treaty of 1868 scope of authority. The Navajo Nation Supreme Court, aware of the increasing attack on tribal jurisdiction in federal common law, however now require lower courts to additionally analyze jurisdiction under the two Montana exceptions. *Doe v. Diocese of Gallup*, 9 Nav. R. 527, 531 (Nav. Sup. Ct. 2011).

Ohio Casualty argued Navajo Nation has no jurisdiction under Montana over it. Ohio Casualty claimed it did not enter into a consensual relationship with the Nation or a member, and further claimed Ohio Casualty has never threatened the political integrity, economic security, health or welfare of the Nation. Accordingly, Ohio Casualty argues the Chinle District Court lacks Subject Matter Jurisdiction over a non-Indian, Ohio Casualty, pursuant to *Montana v. United States*, 450 U.S. 544 (1981).

Under Montana's first exception the nation courts have jurisdiction over a non-member if that non-member has entered a consensual relationship with the nation or one its members. *Montana at 565*. The term "member" been interpreted to include tribal members, tribal business and .. member owned corporations. *Plains Commerce Bank. Long Family land a& Cattle company* 491 F 3d 878, 886 (8th circuit) Analyzed under this principle, Ohio Casualty entered a consensual relationship with a Navajo member through its insurance policy with Shiprock Construction. *2018 Order at 9*. Shiprock Construction is a Navajo owned business with a

preferential treatment certificate as a Navajo-owned company under the Navajo Nation Business Opportunity Act. For Shiprock Construction to receive preferential certification from the Navajo Nation Division of Economic Development Regulatory Department, the Department would have to find Shiprock Construction was a Navajo-owned and controlled business *See 5 NNC section 204 (A)(1)-(2); (B) (2005)*.

At the time of the gasoline incident, Shiprock Construction's address listed on the insurance policy with Ohio Casualty was in Chinle, Arizona, which is clearly on the Navajo Nation. *2018 Order at 8*. Therefore, Shiprock Construction, who was certified as a Navajo-owned business and whose mailing address was located on the Nation, was overwhelming tribal in character and considered a member for purposes of Montana. *see Plains Commerce Bank, 491 F.3d at 886 ( a company was formed to take of advantage of BIA incentives for developing Indian enterprises located on the reservation made it overwhelming tribal in character)* The Chinle District Court found that Ohio Casualty by contracting with Shiprock Construction entered into consensual relationship with a member and a certified business of the Navajo Nation, thereby bringing it within the Montana's first exception.

This Court also found subject matter jurisdiction under Montana's second exception. Montana's second exception recognizes tribal jurisdiction if the non-member's conduct threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe. *Montana*. The Supreme Court of the United States has described the exception as applying when it is necessary to protect the tribal self-government or to control internal relations. *Atkinson Trading Post v. Shirley, 532 U.S. 645, 658 (2001)*.

Petitioner Ohio Casualty contends its only conduct relating to the litigation is its agreement to insure Shiprock Construction and payment of funds in accordance with the

insurance policy. In Case No. CH-CV-166-13, the Navajo Nation portray Ohio Casualty's denial of full liability coverage in remediating the oil spill directly endangered the nation 's lands and local water supply, clearly threatens the health and welfare of the nation. *2018 Order at 9, Trading Post v. Shirley, 532 U.S. 645, 658 (2001)*. Moreover, the gasoline spill itself has the potential to have an adverse effect on the political integrity, economic security, and health and welfare of the nation to meet Montana's second exception. *2018 Order at 10*. In this perspective, all those responsible to remediate that spill are therefore properly under this Court's jurisdiction. *Id.* The District court found the insurance relationship connects Ohio Casualty to the underlying event. *Id.*

The Chinle District Court found it is necessary for tribal self-government to be able to involve all parties with the responsibility to contribute to the cleanup, including insurers, because otherwise the Nation cannot effectively remedy the ongoing damage. *Id.* In this context, the Chinle District Court found it has subject matter jurisdiction over the dispute under the facts and circumstances of the case. *Id.*

It is worth noting Ohio Casualty did not raised the lack of subject matter jurisdiction defense at the onset of gasoline spill litigation. In the 2008 Motion to Dismiss litigation the Chinle District Court found Ohio Casualty conceded subject matter jurisdiction. The Court therefore viewed that concession as written consent to Chinle District Court's jurisdiction in the 2011 Summary Judgement litigation. *2011 Order at 4.*

## 5. NALYEEH

Ohio Casualty claimed it complied with the Navajo Law of Nalyeeh and therefore the Chinle District Court exercise of jurisdiction should cease. *See Ohio Casualty Insurance Co's Petition for a Writ Dismissing Ohio Casualty for Lack Subject Matter and/or Personal*

*Jurisdiction: And Enforcement of the Chinle District Court's Order of October 28, 2011.* Ohio Casualty further claimed it complied with the Chinle District Court's Order of October 28, 2011 ("2011 Order") and therefore the District Court should excuse Ohio Casualty from further responsibility for gasoline spill remediation. In its petition for writ, Ohio Casualty claim the then presiding judge invited Ohio Casualty "to renew its motion (to dismiss) once it is shown that one million dollars has been expended". Ohio Casualty stated it renewed the motion in the 2018 Order but the motion for summary judgment was denied by a different presiding judge. It worth mention here the 2018 motion was litigated against the Navajo Nation not Pic-n-Ran. *See 2018 Order.* Ohio Casualty claimed in the writ petition the 2018 ruling was a horizontal appeal on part of the Navajo Nation and seek relief from the Navajo Supreme Court to overrule the 2018 Order.

In the October 28, 2011 Summary Judgement Motion litigation, Ohio Casualty submitted to the court (5) five grounds to dismiss Pic-n-Run's breach of contract claims against it, with Nalyeeh being one of the five grounds. *See 2011 Order at 7-9.* Ohio Casualty, claiming it complied with Navajo law of Nalyeeh, requested the Chinle District Court to summarily dismiss Pic-n-Run breach of contract claim because it had nearly expended the entire policy of limit of one million dollars on remediation (the exact figure was \$928,111.48). Pic-n-Run stipulated to the issue and the court accepted that number as the total of Ohio Casualty's responsibility to Pic-n-Run's claim for remediation and clean up. *Id at 9.*

The Chinle District court however refused to recognize Ohio Casualty had fully complied with the Navajo Law of Nalyeeh in its obligation to Pic-n-Run, stating, "almost fulfilling the Agreement is not the same as fulfilling the agreement." *See 2011 Order at 8.* The presiding judge

then invited Ohio Casualty “to renew its motion (to dismiss) once it is shown that one million dollars has been expended”. *Id.*

Related to the expenditure issue is whether Ohio Casualty’s expenditures toward remediation and clean up is indemnity costs or defense costs. Ohio Casualty had requested the Chinle District Court to classify the costs expended thus far as indemnity costs and not defense costs. The Chinle District Court “agreed that determination of whether such expenses are indemnification or defense costs is fact specific inquiry”. *Id.* The Chinle District Court determined “Ohio Casualty have not submitted sufficient information for this Court to determine that there are no genuine issues of material facts, at this time, to show that all of Ohio’s expenses are indemnification costs. Ohio Casualty did not disagree with the Chinle District Court legal determination of these two issues. *Id.*

The Chinle Court reviewed these matters by applying the Navajo courts’ summary judgment standard. Summary Judgment can only be granted where there is no genuine issue of material facts. Nav. R. Civ. P. 56©. “The trial judge’s function is not to weigh the evidence or determine the truth of the material facts, but to decide whether there is a genuine issue for trial.” *Benally v. Mobil Oil Corp.* 8 Nav. R. 387, 397 (Nav. Sup. Ct. 2003). “A dispute of fact is genuine if a reasonable jury could return a verdict for the nonmoving party based upon a disputed fact. If a genuine factual dispute is found, then summary judgment is inappropriate.” *Id.* “Summary judgment is an extreme remedy that should not be employed if there is slightest doubt to the existence of an issue of material fact.” *Id.*

On the merits, the Chinle District found there was no dispute of material fact on the issue of whether Nalyeeh was satisfied when Ohio Casualty admitted it had spent less than one million dollars towards the contamination clean up. The District court however had insufficient facts to

decide whether the expenses Ohio Casualty claimed were indemnity or defense costs and could not grant summary judgment for Ohio Casualty. *See 2011 Order at 9*

The Court also made a significant observation with regards to Nalyeeh claim made by Ohio Casualty. The District court stated, “even if all the costs are indemnification costs, there is a genuine issue of fact of whether such a determination summarily authorizes their dismissal as party.” *Id. at 9*. Apparently, Ohio Casualty did not provide the court legal arguments in support of this proposition, and the District court was left to muse that question. Ohio Casualty again is seeking the same relief from the Navajo Nation Supreme Court without providing supporting legal arguments for the requested relief.

## 6. HORIZONTAL APPEAL

Horizontal Appeal been described as power of trial judge to overrule another judge. *Lee v. Tallman, 7 Nav. R. 246, 251 (Nav. Sup. Ct. 1996)*. The Lee Court admonished trial judges to respect the prior ruling of judges with equal authority. *Lee at 251*. In stating the policy, the Lee Court established a presumption [not a rule] in favor of the ruling of the first judge. *Lee at 251*. The Lee Court also gave guidance on the circumstances under which overruling prior ruling would be allowed. *Lee at 252*. Viewed under scenario, the presumption in favor of the prior ruling can be overcome.

Ohio Casualty argued the Chinle court violated the “rule” against horizontal appeal. Ohio Casualty argued the 2011 Order was ignored and overturned by the 2018 order and signed by a different judge. The Chinle court neither ignored nor overturned the 2011 Order. Instead, the Chinle court discussed the 2011 Order extensively and distinguished it on ground consistence with the principles of claim and issue preclusion.

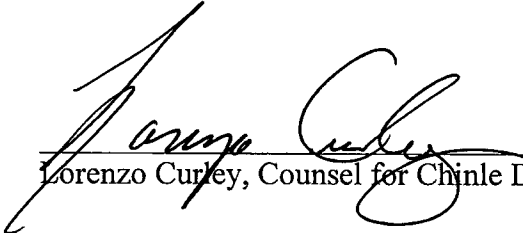
In the 2018 case, the Chinle District Court addressed Ohio Casualty's argument that the issue of Nalyeeh expenditure could not be relitigated because the Court had already decided the issue in its 2011 Order. The District court rejected Ohio Casualty's argument, namely because the court in the 2011 litigation decline to grant summary judgment on the issue of whether Ohio Casualty's expenditures were all indemnity costs and not defense costs. The court found insufficient facts to make that determination. Consequently, the Navajo Nation was allowed to re-litigate the same issue in the 2018 summary judgment motion. The court also considered the 2011 dispute was between Pic-n-Run and Ohio Casualty. The court determined it could not bind the Navajo Nation for concession Pic-n-Run made in the 2011 litigation. The court further determined the Pic-n-Run concession on remediation expenditure applied to only Pic-n-Run breach of contract claim and not to the general issue of Shiprock Construction remediation expenditure under its insurance policy. The court correctly concluded the Navajo Nation was not party to the 2011 dispute and therefore not precluded by Collateral Estoppel to challenge Ohio Casualty assertion that it should be excused from the gasoline spill litigation matter based on its claim it satisfied Nalyeeh.

After denying Ohio Casualty summary judgment motion against Pic-n-Run in 2011, the Chinle District Court invited Ohio Casualty to renew its motion when it expended one million dollars. The District Court made no promises to dismiss Ohio Casualty from the court's jurisdiction once it expended or exceeded the one million dollars policy limit. Ohio Casualty sought just to do that in the 2018 Order. It brought before the Chinle District Court a listing of expenditures worth over one million dollars and claimed it complied with Nalyeeh and requested an Order for Summary Judgment in its favor. The Chinle District Court, still not convinced Ohio Casualty spend the one million dollars on indemnity costs, denied the motion.



For these reasons, the Supreme Court should not issue a permanent writ of prohibition in this case. The Chinle Court applied the correct legal rules and correctly observed the parameters of those rules in handling Ohio Casualty's legal rights under the laws of the Navajo Nation. Issues regarding Nalyeeh and Indemnity remain to be determined and the Chinle District Court clearly has personal and subject matter over Petitioner under federal Indian law. Moreover, the Petitioner has plain, speedy and adequate remedy at law. Therefore Petitioner Ohio Casualty request to dismiss on ground of no jurisdiction should be dismissed.

Respectfully submitted this 26 day of April, 2019.

  
Lorenzo Curley, Counsel for Chinle District Court

**CERTIFICATION OF SERVICE**

I hereby certify on this 26<sup>th</sup> of April, 2019, provided a copy of the following **Response to Ohio Casualty Insurance Co's Petition for Writ Dismissing Ohio Casualty for Lack of Subject Matter Jurisdiction and Personal Jurisdiction and/or Enforcement of the Chinle District Court's Order of October 28, 2011** was mailed to all parties on record via US Postal Service.

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