No.

IN THE

Supreme Court of the United States

MYRNA MALATERRE, CAROL BELGARDE, AND LONNIE THOMPSON,

Petitioners,

v.

AMERIND RISK MANAGEMENT CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a tribal business corporation formed pursuant to 25 U.S.C. § 477 with the aim of insuring Indian Housing Authorities may properly invoke tribal sovereign immunity as a ground for avoiding its contractual obligation to provide insurance coverage for liability claims arising from injuries sustained by tribal-member tenants in Indian housing units.

PARTIES TO THE PROCEEDINGS

The caption of the case contains the names of all parties to this proceeding. *See* Sup. Ct. R. 14(1)(b).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

PETITION FOR WRIT OF CERTIORARI

Petitioners Myrna Malaterre, Carol Belgarde, and Lonnie Thompson respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a-32a) is published at 633 F. 3d 680 (8th Cir. 2011). The opinion of the District Court (App. 35a-54a) is published at 585 F. Supp. 2d 1121 (D.N.D. 2008). The opinion of the Turtle Mountain Tribal Court of Appeals (App. 55a-69a), issued in a separate but related proceeding, is unpublished.

JURISDICTION

The Court of Appeals issued its decision on February 15, 2011 (App. 1a), and denied a timely petition for rehearing and rehearing en banc on June 7, 2011. App. 33-34a. On August 5, 2011, Justice Alito extended the time within which to file a petition for a writ of certiorari, to and including October 6, 2011. No. 11A155. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Pertinent statutory provisions and regulations are reprinted at App. 70a-79a.

INTRODUCTION

A divided Court of Appeals held that a tribal business corporation formed pursuant to 25 U.S.C.

§ 477 with the aim of insuring Indian Housing Authorities may properly invoke tribal sovereign immunity as a ground for avoiding its contractual obligation to provide insurance coverage for liability claims arising from injuries sustained by tribal-member tenants in Indian housing units. That decision implicates a conflict concerning whether the very existence of a "sue and be sued" clause in a Corporate Charter constitutes a waiver of sovereign immunity. It also raises a critically important question of national significance regarding whether courts should even presume that a § 477 corporation formed with the aim of providing federally mandated insurance for third-party losses enjoys tribal sovereign immunity absent a Congressional abrogation of immunity, when § 477 was enacted before, rather than against the background of, this Court's decisions recognizing tribal sovereign immunity; and when § 477's text, legislative history, and purpose together suggest that Congress did not intend for such federally chartered tribal corporations to be immune from suit.

STATEMENT OF CASE

1. Statutory and Regulatory Framework.

The passage of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. §§ 461 *et seq.*, marked a shift in Congress's approach to American Indian affairs, from one of federal compulsion (*see* Indian General Allotment Act of 1887, ch. 119, 24 Stat. 388) to one of American Indian self-determination. Under the IRA, "tribes were encouraged to revitalize their self-government through the adoption of constitutions and bylaws and through the creation of chartered corporations, with power to conduct the business and

economic affairs of the tribe." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973). Specifically, § 16 of the IRA (codified at 25 U.S.C. § 476) provided for the organization of tribal governments; and § 17 (codified at 25 U.S.C. § 477) provided for the organization of tribal business corporations.

Section 477 enables tribes "to conduct business through th[e] modern device" of corporations. Dep't of Interior, Office of Solicitor, *Request for Interpretive Opinion on the Separability of Tribal Organizations Organized Under Sections 16 and 17 of the Indian Reorganization Act*, Op. No. M-36515, 65 Interior Dec. 483, 484 (1958). Although tribes also may, pursuant to § 476, engage in economic activities, § 477 "was added because of congressional concern that non-Indians would not do business with tribal governments that are immune from suit." William V. Vetter, *Doing Business with Indians and the Three "S"es: Secretarial Approval, Sovereign Immunity, and Subject Matter Jurisdiction*, 36 Ariz. L. Rev. 169, 175 & n.35 (1994) (citing Hearings on H.R. 7902, 73d Cong., 2d Sess. 90-100 (1934), and S. Rep. No. 1080, 73d Cong., 2d. Sess. (1934) (hereinafter "Vetter"); *see also* 65 Interior Dec. at 484. The model § 477 corporate charter, drafted by the Interior Department, thus includes a "sue and be sued" clause providing a general waiver of immunity with respect to suits against the corporation; at the same time, however, the model charter limits the tribal property subject to execution on judgments against the corporation. Vetter, *supra*, at 176, 179-80 & n.58.

Tribes establish business corporations and subordinate economic enterprises to facilitate participation in federal programs. These federal

programs often require the tribal business corporation or subordinate enterprise to consent to suit or possess surety bonding or insurance. Vetter, *supra*, at 180. One such important federal program—the subject of this petition—is the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. §§ 4101-4243. Federal Department of Housing and Urban Development (HUD) regulations require that tribes create a distinct entity known as an Indian Housing Authority as a precondition to receiving block grants under NAHASDA. Tribes give their "irrevocable consent to allowing the [Housing] Authority to sue and be sued in its corporate name"; but these regulations also disclaim tribal liability for debts or obligations of the Housing Authority. Vetter, *supra*, at 180 (quoting 24 C.F.R. Part 905, App. I to Part A, Art. V. ¶ 2 (1993)). In addition, Indian Housing Authorities that receive federal aid pursuant to NAHASDA must "maintain adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this Act." 25 U.S.C. § 4133. The federally mandated insurance must include adequate amounts to "indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by each recipient." 24 C.F.R. § 1000.136. Tribes may establish a § 477 business corporation in order to administer a tribal self-insurance risk pool for properties funded under NAHASDA. *See* 24 C.F.R. § 1000.138.

2. Proceedings Below.

On October 19, 2002, a fire spread through the Turtle Mountain Indian Reservation, destroying a house being leased from the Turtle Mountain

Housing Authority (TMHA), an entity of the Turtle Mountain Band of Chippewa Indians (Tribe). The fire killed two house guests and seriously injured a third. Three enrolled members of the Tribe—Myrna Malaterre and Carol Belgrade, mothers of the deceased house guests, and Lonnie Thompson, the injured house guest (here, petitioners)—brought a wrongful death and personal injury action against TMHA in Tribal Court.[1] The complaint was subsequently amended to include Amerind Risk Management Corporation (ARMC), a tribally chartered insurance risk pool for TMHA. ARMC challenged the Tribal Court's jurisdiction on tribal sovereign immunity grounds in a motion to dismiss.

While the case was pending in Tribal Court, the Department of Interior issued a federal corporate charter pursuant to 25 U.S.C. § 477 incorporating Amerind Risk Management Corporation (Amerind). Amerind's purpose is to administer a tribal self-insurance risk pool for a consortium of Indian Housing Authorities, in accordance with federal law mandating insurance coverage for Indian housing units. *See* 25 U.S.C. § 4133; 24 C.F.R. § 1000.136. The charter became effective on April 15, 2004, upon ratification by three Charter Tribes—the Red Lake Band of Chippewa Indians, the Confederated Salish and Kootani Tribes of the Flathead Reservation, and the Pueblo of Santa Ana. Although Amerind is jointly owned by these Charter Tribes, not the Turtle Mountain Band of Chippewa Indians, TMHA is among those Indian Housing Authorities insured by Amerind. In fact, Amerind's charter expressly

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[1] Lonnie Thompson became a party to the suit after the complaint was filed.

authorizes it to assume the rights and obligations of its tribally chartered, and identically named, predecessor, ARMC. App. 2a.

On July 1, 2004, petitioners filed suit for declaratory judgment in federal District Court seeking a determination that the ARMC insurance policy covered their tort claims. Amerind moved to dismiss the suit on the grounds that petitioners had failed to exhaust their tribal remedies and that Amerind was entitled to tribal sovereign immunity as a § 477 corporation. The District Court dismissed the suit without prejudice, finding that the tribal exhaustion doctrine required that the Tribal Court first entertain the dispute, including the issue of tribal sovereign immunity. *Malaterre v. Amerind Risk Mgmt. Corp.*, 373 F. Supp. 2d 980, 982 n.2, 985-86 (D.N.D. 2005).

Back in Tribal Court, petitioners filed a stipulation to dismiss TMHA with prejudice, which the Tribal Court granted. The sole remaining defendant, Amerind (here, respondent), moved to dismiss, asserting in part that it was entitled to tribal sovereign immunity as a § 477 corporation, and that petitioners' suit could not lie directly against it because petitioners were not a party to ARMC's contract with TMHA. The Tribal Court denied the motion to dismiss. It concluded that Amerind was not entitled to tribal sovereign immunity. It also concluded that, under Turtle Mountain tribal law, petitioners could proceed directly against Amerind, the insurer, because TMHA, the insured, was required by federal law to obtain, and did obtain, insurance designed to protect the public against losses.

Amerind appealed to the Turtle Mountain Tribal Court of Appeals, which affirmed. The Tribal Court of Appeals concluded that Amerind was not entitled to share in TMHA's sovereign immunity. "Federal or tribal law mandating insurance to protect the public," the court reasoned, "constitutes a limited waiver of the sovereign immunity defense that may be available to the party responsible for indemnifying the immune entity." App. 65a. The waiver would be limited in accordance with the coverage and limits of TMHA's insurance policy, which the court concluded required Amerind to cover any liability claim for personal injury or property damage up to $1,000,000. App. 67a. Established tribal law, the Tribal Court of Appeals further found, permitted a direct action against an insurer where, as here, federal law mandated insurance to protect against third-party losses and not merely to indemnify the insured.

On September 4, 2007, Amerind sought a declaration in federal District Court that, in view of *Montana v. United States*, 450 U.S. 544 (1981), the Tribal Court had exceeded its jurisdiction by exercising authority over it, a non-member of the Tribe. Amerind also sought an injunction barring petitioners from proceeding with their tort action in Tribal Court. It then filed a motion for summary judgment based on *Montana*. Amerind did not, however, raise in its complaint or motion for summary judgment the issue of tribal sovereign immunity. The District Court denied Amerind's summary judgment motion, finding that, consistent with Montana's "consensual relationship" exception, the Tribal Court has jurisdiction over Amerind because ARMC had entered into a consensual contractual relationship with TMHA to insure

TMHA against personal injury and property loss. App. 53a. The District Court, in addition, incorporated the Tribal Court of Appeals' decision by reference and *sua sponte* granted summary judgment in favor of petitioners, thereby ordering the parties to return to Tribal Court.

Amerind appealed, and a divided Court of Appeals reversed, issuing an injunction barring the proceedings in Tribal Court. Writing for himself and Judge Shepherd, Judge Beam concluded that Amerind was entitled to tribal sovereign immunity. Although not a tribe itself, the majority concluded that Amerind, as a § 477 corporation, was not a mere business but was an arm of the tribe, created with the purpose of administering a self-insurance risk pool for Indian Housing Authorities, and thus was entitled to tribal sovereign immunity. App. 9a.

Next, the majority considered whether Amerind's immunity had been waived. It concluded that petitioners could not establish a clear waiver, even though Amerind's charter contained a "sue and be sued" clause. That clause, according to the majority, was by its terms inoperative unless and until Amerind's Board of Directors adopted a resolution waiving its immunity. No such resolution was evident in the record, the majority found. The majority also rejected petitioners' arguments that Amerind's failure to raise tribal sovereign immunity as a defense in the District Court constituted waiver, and that Amerind, by assuming ARMC's obligations, had waived immunity. App. 10a-15a. Because the majority concluded that Amerind was entitled to tribal sovereign immunity, it did not decide whether ARMC was amenable to petitioners' suit in Tribal Court. App. 15a.

Judge Beam, in addition to writing for the majority, concurred specially, explaining that he would also reverse based on *Montana*, which limits tribal court jurisdiction over non-members. No exception to this rule applied in this case, according to Judge Beam, including the "consensual relationship" exception, which provides that a tribal court retains jurisdiction over the activities of non-members who enter consensual relationships with the tribe or its members through commercial dealings or contracts.

Judge Bye dissented from the majority's finding of tribal sovereign immunity. Judge Bye believed that Amerind had waived its sovereign immunity, and that waiver was evident in the contract between itself and TMHA. Assuming no waiver on this record, Judge Bye would have remanded to allow petitioners discovery limited to whether Amerind had adopted a corporate charter waiving immunity, or whether it had waived its immunity by its conduct. Lastly, Judge Bye dissented from the majority's extension of tribal sovereign immunity to a § 477 corporation whose very purpose was to insure TMHA from losses sustained by third parties. Calling the result in this case "perverse," Judge Bye wrote:

> As a condition of receiving federal funds, Congress mandated tribes and tribal housing authorities be required to purchase insurance. As a practical matter, requiring the purchase of insurance is perhaps the consummate indication Congress intended tribes and tribal housing authorities would be subject to suit. The fact that we now

> recognize Amerind—the commercial entity created for the very purpose of fulfilling such Congressional mandate—to itself be immune from suit, may require the Supreme Court to re-examine the "wisdom of perpetuating the doctrine [of tribal immunity]." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 758 (1998).

App. 22a (alterations in original).

REASONS FOR GRANTING THE PETITION

I. COURTS ARE DIVIDED AS TO WHETHER THE VERY EXISTENCE OF A "SUE AND BE SUED" CLAUSE WAIVES TRIBAL SOVEREIGN IMMUNITY

In this case, the Eighth Circuit concluded that a "sue and be sued" clause[2] did not effectuate waiver, but that additional evidence of waiver was

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[2] Charter § 8.18 states: "To sue and be sued in the Corporation's name in courts of competent jurisdiction within the United States, but only to the extent provided in and subject to the limitations stated in Article 16 of this Charter." Section 16.2 specifies that the Corporation may waive "any defense of sovereign immunity the Corporation . . . may otherwise enjoy" under federal, state, or tribal law. App. 108a (Charter § 16.2). But it does not indicate what immunity the Corporation may otherwise enjoy. It is necessary to resort back to the "sue and be sued" clause and ask whether it, standing alone, is an effective waiver of sovereign immunity under federal or tribal law, or whether more is needed. Courts are divided on that question.

needed.[3] App. 13a. In other jurisdictions, however, the very existence of a "sue and be sued" clause waives tribal sovereign immunity. This direct and pressing conflict is one the Court should resolve in this case. *See* Sup. Ct. R. 10.

The Eighth Circuit's conclusion, that the "sue and be sued" clause does not constitute waiver, is consistent with its prior decision in *Dillon v. Yankton Sioux Housing Authority*, 144 F.3d 581 (8th Cir. 1998). There, the court considered whether a tribal housing authority waived sovereign immunity as to former employee's federal civil rights claim. The tribal resolution at issue in *Dillon* contained a clause allowing the Housing Authority to sue and be sued; it also authorized the Housing Authority to agree by contract to waive any immunity from suit. The court in *Dillon* held that a "sue and be sued" clause was not an automatic waiver of immunity. For it to be operative, the Housing Authority had to agree by contract to waive any immunity from suit. Because the Housing Authority did not separately waive its immunity through a written or implied contract with employee, the court did not find a waiver.

On similar facts, the Second Circuit concluded that a "sue and be sued" clause in a tribal agency's enabling housing ordinance was only operative in

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[3] In support of this position, the Court stated that § 16.4 required further action by the Board of Directors for there to be an effective waiver of immunity. But § 16.4, by its terms, simply provides the *procedures* by which "[a]ny waiver by the Corporation authorized by Section 16.2" shall be made. App. 109a. No further action would be necessary if the very existence of a "sue and be sued" clause waived the Amerind's immunity.

tribal courts, and did not confer any right on the federal courts to hear the case. *Garcia v. Akwesasne Hous. Auth.*, 268 F.3d 76 (2d Cir. 2001). The *Garcia* court reasoned that a waiver of sovereign immunity by a foreign sovereign or a state sovereign waives immunity only in the courts of that sovereign; accordingly, a waiver in a tribal ordinance waived immunity only in tribal courts. *Id.* at 86-87.

Other courts hold that the very existence of a "sue and be sued" clause waives tribal immunity.[4] *Duluth Lumber & Plywood Co. v. Delta Dev., Inc.*, 281 N.W.2d 377, 383-84 (Minn. 1979) (collecting authorities); *see R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979 (9th Cir. 1983); *Parker Drilling Co. v. Metlakatla Indian Cmty.*, 451 F. Supp. 1127 (D. Alaska 1978). These courts reason that it would be "grossly unfair" to extend tribal sovereign immunity to a Housing Authority with a "sue and be sued" clause in its ordinance, where the tribe had "purported to create an independent corporation which would be legally responsible for its promises . . . [and] invited outsiders to do business with it on a contractual basis." *Namekagon Dev. Co. v. Bois Forte Reservation Hous. Auth.*, 395 F. Supp. 23, 29 (D. Minn. 1974), *aff'd*, 517 F.2d 508 (8th Cir. 1975). *See also Atkinson v. Haldane*, 569 P.2d 151, 175 (Alaska 1977) (implying that a "sue and be sued" clause has effect of waiving immunity if suit is

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[4] The Ninth Circuit criticized the holdings in *Dillon* and *Garcia*, discussed above, in *Marceau v. Blackfeet Housing Authority*, 455 F.3d 974, 979-81 (9th Cir. 2006). Although that opinion was adopted in part, modified in part on other grounds on rehearing, 519 F.3d 838 (9th Cir. 2008), the Ninth Circuit's discussion of these cases may still aid the Court.

against a corporate entity distinct from the governing body of the tribe).

Had the Court of Appeals in this case concluded, consistent with the authorities above, that the "sue and be sued" clause in Amerind's Charter was itself an automatic waiver of tribal sovereign immunity, then it would not have extended immunity to a corporation created with the express purpose of providing insurance against tort liability.

II. THE COURT OF APPEALS' UNWARRANTED EXTENSION OF TRIBAL SOVEREIGN IMMUNITY EFFECTIVELY INVALIDATES CONGRESSIONALLY MANDATED INSURANCE

The ruling below also raises a critically important question of national significance: whether the framework established in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998), for assessing whether Congress intended to abrogate tribal sovereign immunity should apply where, as here, the federal act in question was enacted *before* this Court explicitly held that tribes possess the common-law immunity from suit traditionally enjoyed by sovereign powers. Consideration of this question is especially warranted because the Eighth Circuit's holding in this case—that Congress intended for tribal sovereign immunity to extend to a § 477 tribal business corporation formed with the aim of providing insurance coverage for liability claims against Indian Housing Authorities—renders illusory the Congressional mandate that Indian

Housing Authorities obtain insurance as a condition of receiving federal funds.

In *Kiowa Tribe*, this Court ceded to Congress the lead role in drawing the bounds of tribal sovereign immunity. *Id.* at 759-60. Whether immunity promotes federal policies of tribal self-determination, economic development, and cultural autonomy is now primarily a question for Congress. Courts thus presume that a tribe is not subject to suit unless Congress (or the tribe) has expressly waived its sovereign immunity. *Id.* at 754.

The Court should reconsider this framework.[5] It makes no sense to demand or even expect to find an express waiver from Congress if the Congressional act in question was enacted before this Court explicitly held that tribes possess the common-law immunity from suit traditionally enjoyed by sovereign powers. Here, § 477 was enacted in 1934, before this Court explicitly recognized tribal sovereign immunity. *See United States v. United States Fidelity & Guar. Co.*, 309 U.S. 506, 512 (1940) (*USF&G*). Congress therefore was not "act[ing] against the background of [this Court's tribal immunity] decisions" (*Kiowa Tribe*, 523 U.S. at

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[5] The dissent itself urged this Court to reconsider *Kiowa Tribe*, arguing that "[w]here, as here, the already infirm concept of tribal immunity is extended so far as to shield a corporate entity whose very existence is at odds with the concept of immunity, it seems perhaps the time is now upon us to abrogate the doctrine." App. 32a (Bye, J., dissenting). While Petitioners do not ask this Court to repudiate the doctrine outright, it should not be extended to a § 477 business corporations formed with the aim of providing insurance against tort liability.

758) when it enacted § 477. Under these circumstances, deference to Congress's role in deciding the bounds of tribal sovereign immunity requires consideration of whether Congress intended for § 477 corporations to be immune from suit.

Here, there is no indication that Congress intended for a § 477 corporation to be immune from suit. Section 477's text says nothing of tribal sovereign immunity. *See* 25 U.S.C. § 477. Its language simply suggests that § 477 tribal corporations share some but not all attributes of tribes organized under § 476. Specifically, § 477 describes the holding and disposition of real and personal property as among a federally chartered tribal corporation's chief attributes. *See* § 477. Although § 477 refers to a chartered business as an "incorporated tribe," § 477 attributes are plainly limited in scope compared to the tribal functions contemplated under § 476. *See Gaines v. Ski Apache*, 8 F.3d 726, 729 (10th Cir. 1993) (finding a tribe's § 476 and § 477 entities to be separate and distinct); *S. Unique Ltd. v. Gila River Pima-Maricopa Indian Cmty*, 674 P.2d 1376 (Ariz. Ct. App. 1984) (entity entitled to tribal sovereign immunity because organized under § 476 rather than § 477). The Court of Appeals' conclusion that an entity incorporated under § 477 automatically shares in the tribe's sovereign immunity because it is referred to by statute as an "incorporated tribe" requires reading into that phrase far more than the text of the statute as a whole would permit.

In addition, § 477's legislative history and purpose strongly indicate that Congress did not intend to extend sovereign immunity to federally chartered tribal businesses. The Interior

Department, in an opinion published in 1958, summarized that legislative history as follows: "The original bills . . . introduced in 1934 to terminate the allotment system and to reestablish tribal autonomy," the opinion explains, "provided for the issuance of a single charter by the Secretary of the Interior to defined communities of Indians." 65 Interior Dec. at 484 (citations omitted). This single charter would have granted powers of government *and* privileges of corporate organization. *Id.* But "[t]he committee objected to the proposed legislation, suggesting that no one would give credit to such an organization *because of its immunities*, ..." The bill was redrafted to "permit[] the organization by the tribe of a separate business corporation in which any part, or all, of the tribe's property and business interests may be vested." *Id.* Congress thus enacted § 477 in addition to § 476 "because of congressional concern that non-Indians would not do business with tribal governments that are immune from suit." Vetter, *supra*, at 175 & n.35 (citing Hearings on H.R. 7902, 73d Cong., 2d Sess. 90-100 (1934), and S. Rep. No. 1080, 73d Cong., 2d. Sess. (1934)).

Not only would extending tribal sovereign immunity to § 477 corporations be contrary to Congressional intent, this extension would impede rather than advance federal policies of tribal self-determination, economic development, and cultural autonomy. The Charter Tribes in this case "pooled their resources in order to fulfill their obligations under NAHASDA to ensure that each individual Indian Housing Authority remains viable after losses are sustained." App. 63a. This insurance protects the TMHA's assets and also protects the public against losses. App. 67a. Extending tribal sovereign immunity to the insurer, a §477 corporation, which

does not perform governmental functions, is not necessary to protect the Tribe. *Cf. Smith Plumbing v. Aetna Casualty Ins. Co.*, 720 P.2d 499, 502 (Ariz. 1986) (holding that although tribe was immune from suit, surety could not invoke tribal immunity because "the compensated surety of a sovereign does not perform the governmental functions that require protection"). The extension, if anything, would be grossly unfair, as it would defeat an established cause of action under tribal law against an insurer that was formed in part to provide coverage for third-party losses.[6] TMHA was required to possess, and did possess, insurance coverage against third-part losses.[7] Consistent with Congressional intent, that coverage should be available to petitioners.

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[6] As the Tribal Court of Appeals recognized, a federal mandate to purchase insurance is a waiver of immunity to liability, up to the limits of the mandated insurance; and under such circumstances a direct action lies against the insurer. App. 61a; *see also Boyles v. Farmers Mut. Hail Ins. Co. of Iowa*, 78 F. Supp. 706, 708-09 (D. Kan. 1948). Even so, there should be no immunity for a § 477 corporation such as Amerind, given that Congress did not intend for § 477 corporations to be immune from suit.

[7] The Court of Appeals noted that Amerind administered a self-insurance risk pool (App. 9a), but as the Tribal Court of Appeals explained, "The actual certificate of coverage . . . provides that Amerind will cover any liability claim for personal injury or property damage up to $1 million. The Court has reviewed the policy and finds nothing therein excluding liability claims arising from losses sustained by tenants or guests in Housing units." App. 67a.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: October 6, 2011 Respectfully submitted,

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APPENDIX