

IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK

JUL 07 2023

SUSAN LOZANO
COURT CLERK
BY *[Signature]* DEPUTY

SIDNEY JACKSON,

Plaintiff,

v.

CHOCTAW NATION OF OKLAHOMA
d/b/a THE CHOCTAW CASINO,

Defendant.

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) Case No. CJ-2022-12
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ORDER

On this 7th day of July, 2023, there came on before this Court The Choctaw Nation of Oklahoma d/b/a The Choctaw Casino's ("Defendant") Special Appearance and Motion to Dismiss with Brief in Support ("Motion to Dismiss"). After reviewing the arguments in the Motion to Dismiss, Plaintiff Sidney Jackson's ("Plaintiff") response brief, Defendant's reply brief and after hearing the oral arguments of counsel, the Court **DENIES IN PART** and **GRANTS IN PART** the Motion to Dismiss, as more fully set forth herein.

Defendant argues in its Motion to Dismiss that this Court should dismiss this matter on two grounds: (1) Plaintiff's tort claim notice is deficient, pursuant to the Nov. 24, 2004 Gaming Compact between the State of Oklahoma and the Choctaw Nation of Oklahoma; and (2) Plaintiff fails to allege sufficient facts in the Petition. For the reasons set forth herein, the Court finds Plaintiff's claims are not deficient pursuant to the terms of the Gaming Compact, but the Court does find that Plaintiff has failed to allege sufficient facts in the Petition.

*cc: Jason Reynolds
Renee Dennis*

I. DEFENDANT'S MOTION IS DENIED WITH RESPECT TO THE SUFFICIENCY OF THE TORT CLAIM NOTICE UNDER THE MODEL GAMING COMPACT.

Under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2722, state governments may negotiate a gaming compact with tribal governments so that those tribes may conduct Class III Gaming on tribal lands. *See Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, ¶ 4, 315 P.3d 359. In 2004, Oklahoma voters approved a state question that proposed a negotiated gaming compact as an offer to federally recognized tribes in Oklahoma to allow tribes to engage in Class III gaming on tribal lands, pursuant to the terms and conditions of the compact. This model gaming compact (the "Compact") has been codified in the Oklahoma State-Gaming Act, 3A Okla.Stat. §§ 261-282.

Pursuant to the Compact, all patrons of a casino/facility governed thereunder are afforded due process in seeking and receiving just and reasonable compensation for personal injury tort or property claims. *Id.* at Part 6 (A). The Compact at Part 6 sets forth the manner in which a party must seek to assert a tort claim, and requires that the tort claim notice:

shall state the date, time, place and circumstances of the incident upon which the tort claim is based, the identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident, the amount of compensation and the basis for said relief; the name address and telephone number of the claimant, and the name, address and telephone number of any representative authorized to act or settle the claim on behalf of the defendant.

Id. at Part 6, Subsection (A)(6).

A judicial proceeding may only be maintained if the claimant has followed the provisions of Part 6, including the delivery of a valid and timely written tort claim notice. *Id.* at subsection (A)(9). The entity/casino is required to post notices explaining the procedure and time limitations

with respect to making a tort claim. *Id.* at (A)(10). These notices are to explain the method and places for making a tort claim and those claims that do not follow these procedures "shall be forever barred." The casino/facility is required to make and provide pamphlets explaining these procedures. *Id.*

In the instant case, Defendant contends that when Plaintiff submitted his tort claim pursuant to the provisions of the Compact, he set out the amount of compensation sought as "\$70,000.00" and that when responding to the portion of the claim form asking for the basis for the amount of compensation sought the plaintiff responded: "I have been off work since March 20th until June or July pending MRI results. I worked 3 jobs but can't work now. I have a stabilizer on my left knee and I'm on crutches." *See* Motion to Dismiss, page 7; Ex. 1 (Plaintiff's "Claim Form").¹ The Plaintiff attached to his Claim Form information describing his employment, a letter from Dr. James Adam Moore, MD stating that Plaintiff was treated in the emergency department on 4/6/22, and an "After Visit Summary" showing that Plaintiff was prescribed naproxen and was to follow up with an orthopedic physician. *Id.* at Ex. 1. According to the Defendant, the foregoing claim is deficient pursuant to the terms of the Compact, Part 6, because when Plaintiff filed his Petition in the instant matter, he sought differing amounts and damages than those included in the Claim Form. Specifically, Defendant contends that Plaintiff's notice is deficient because he now seeks "in excess" of \$75,000 and Plaintiff also seeks money damages for "personal injuries, both past and future pain and suffering, medical expenses, loss of income, loss of quality of enjoyment of life and emotional distress." *See* Petition, ¶ 4; Motion to Dismiss, pg. 8. In Defendant's view, the

¹ Defendant attached the Claim Form and other evidentiary materials to its Motion to Dismiss, but because Defendant seeks dismissal based upon lack of jurisdiction, the Motion to Dismiss shall not be converted to one for summary judgment. *See Ford v. Tulsa Public Schools*, 2017 OKCIV APP 55, ¶ 8, 405 P.3d 142.

Plaintiff is limited in these proceedings to only seeking the \$70,000.00 set forth in the Claim Form and can only recover for loss of income, not for personal injuries. *See* Motion to Dismiss, pg. 8.

Both parties rely upon and cite to Oklahoma's Governmental Tort Claims Act, 51 Okla.Stat. §151 *et. seq.*, ("GTCA") and case law interpreting the same. The Court notes provisions of the Compact are not identical but do contain some similar requirements: both require a written notice setting forth the date, time, place and circumstances of the claim, and the amount of compensation. *See* 51 Okla.Stat. § 156. Accordingly, this Court views case law on GTCA notice requirements as instructive, but not controlling.

The Oklahoma Supreme Court has taken a practical approach to the statutory notice requirements pursuant to the GTCA. *See McWilliams v. Bd. of Cnty. Comm'rs*, 2011 OK 103, 268 P.3d 79, 85 (rejecting a "hyper-technical application" of the Act's notice requirements in favor of a "more reasoned approach sounding in equity").²

Oklahoma has "consistently recognized that substantial compliance with the notice provisions of the Act is sufficient when the political subdivision is not prejudiced, and the provided information satisfies the purposes of the statutory notice requirement." *Osterhout v. Bd. of County Com'r of LeFlore County, Okla.*, 10 F.4th 978, 985 (10th Cir. 2021) citing *Mansell v. City of Lawton*, 1995 OK 81, 901 P.2d 826, 830.

² The parties refer to *Grisham v. City of Oklahoma City*, 2017 OK 89, 44 P.3d 843. In *Grisham*, the plaintiffs filed a tort claim notice for damages from a sewer pipe and included *only* a claim for property damage. However, plaintiffs brought suit seeking to recover for both property damage and personal injuries. The Oklahoma Supreme Court ruled that a plaintiff's notice of a property damage claim without stating "any other loss" in the notice is sufficient only to assert a claim for property damage and is not sufficient for "any other loss." *Id.* at ¶ 20. In the instant matter, the Plaintiff recited in the Claim Form both that he had been off work *and* had also received medical treatment. Plaintiff even attached medical records. Thus, *Grisham* does not bar Plaintiff's claims.

Defendant argues that the Oklahoma Supreme Court has held that “substantial compliance” with the GTCA no longer applies. *See* Motion to Dismiss, pg. 6. Defendant points to *Slawson v. Bd. of County Com'rs of Logan County*, 2012 OK 87, 299 P.3d 533 to support this assertion. However, in that case the court was addressing the one-year statute of limitations and held: “The *limitations* of [the Act] are narrowly structured and a grant of substantial compliance under the general procedural regime is not allowed.” *Id.* (emphasis added). *Slawson* was addressing the GTCA's *time* limitations period, not the *notice* requirements.

Moreover, the Oklahoma Supreme Court recently reiterated it has not abrogated the doctrine of substantial compliance with respect to the GTCA *notice* provisions. *See I.T.K. v. Mounds Public Schools*, 2019 OK 59, 451 P.3d 125 (applying the doctrine of substantial compliance to the notice provisions of the GTCA); *Alburtus v. Indep. School Dist. No. 1 of Tulsa County*, 2020 OK CIV APP 39, ¶ 13, 469 P.3d 742 (noting substantial compliance doctrine has not been expressly overruled regarding the GTCA notice provisions); *Osterhout*, 10 F.4th at 986 (10th Cir. 2021) (noting the doctrine of substantial compliance applies to the notice requirements of the GTCA). While the filing of the written notice itself is mandatory, the manner and level of specificity in which the contents of the notice are set forth can, in appropriate circumstances, be subject to a “substantial compliance” analysis. *See e.g., Alburtus v. Indep. School Dist. No. 1 of Tulsa County*, 2020 OK CIV APP 39, ¶ 13, 469 P.3d 742; *see also Wallace v. Bd. of County Com'rs of Tulsa Co.*, 2000 OK CIV APP 131, 15 P.3d 985 (failure to include any monetary amount in claim was not fatal to notice's validity where remainder of notice was in substantial compliance with GTCA).

Oklahoma's GTCA statutory notice requirements were designed to facilitate (1) investigation of a claim; (2) repair of any dangerous conditions; (3) quick settlements; and (4)

fiscal planning to meet possible liability. *See Osterhout*, 10 F.4th at 987. Under a substantial compliance analysis, the notice requirements of the GTCA are met as long as enough information is provided to fulfill the purposes of these requirements. *Kennedy v. City of Talihina*, 2011 OK CIV APP 108, ¶ 6, 265 P.3d 757³; *Wallace* 15 P.3d at 989; ¶¶ 9, 15.

Utilizing the foregoing cases and authority as instructive, this Court finds that Plaintiff's Claim Form is sufficient pursuant to the Compact. Plaintiff's Claim Form attaches both information regarding his employment *and* medical records showing Plaintiff visited a doctor and was to follow up with an orthopedic physician. It is clear from the Claim Form that Plaintiff had not yet completed all medical treatment at the time of its filing so as to be able to provide all information to the Defendant, as Plaintiff noted he was waiting on MRI results. Under the provisions of the Compact, a claimant is required to file a tort claim notice within one (1) year of the date of the event which allegedly caused the claim loss or the claim is forever barred. *Id.* at subsection 4. A tort claim notice filed more than ninety (90) days, but within one (1) year shall be deemed timely filed, but any judgment is reduced by ten (10) percent. *Id.* Thus, there are time limits in place that may make it impractical for a claimant to be able to fully identify all damages at the time of the submission of the claim form.

Additionally, pursuant to subsection 7 of Part 6 (A) of the Compact, the Defendant had the right to interview or depose the Plaintiff if they had questions. Defendant is also required pursuant to subsection 8 of Part 6 (A) to promptly review and investigate the claim. There is no indication in the filings as to whether Defendant sought such additional information from the Plaintiff.

³ The Court is cognizant that 51 Okla.Stat. § 156 (E) provides that "failure to state [some information] shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by the state or political subdivision." The Compact does not include such language. However, the doctrine of substantial compliance is not based upon the language contained within § 156 (E) and applies for the reasons set forth herein.

The Claim Form provided the date, time, place and circumstances of the alleged incident, the amount of compensation sought and referenced the alleged knee injury and loss of work claimed by the Plaintiff. The attachments to the Claim Form also provided information regarding the personal injury Plaintiff alleges he suffered as a result of the alleged incident. Thus, the Claim Form provided sufficient information for the Defendant to commence an investigation into the alleged event, to correct any alleged dangerous situation deemed necessary, engage in any potential settlement discussions and plan for financial contingencies. Accordingly, this Court deems the Claim Form is in substantial compliance with Part 6, subsection (A) 6 of the Compact. *See e.g. I.T.K.*, 451 P.3d at 142, ¶¶ 3, 35 (letter that identified date of incident and that plaintiff sustained serious injuries was substantially compliant under GTCA where it gave sufficient information to commence investigation). Therefore, the Court **DENIES** the Motion to Dismiss with respect to the sufficiency of the Compact Claim Form.

The Court does note that there has been no indication on the amount of damages that Plaintiff is actually seeking in this matter, other than the generic pleading of "in excess of \$75,000.00." Defendant has also provided this Court with no authority that Plaintiff is limited to seeking only the *specific* damage number sought in the Claim Form, particularly if medical treatment was not completed at the time of the filing of the Claim Form. Depending on the specific amount of damages sought by Plaintiff, the Defendant may raise the issue regarding the sufficiency of the noticed damage amount in the Claim Form in a subsequent Motion for Summary Judgment.

The Court also notes that if there are other damages sought by Plaintiff that do not relate to the identified injuries noted in the Claim Form regarding Plaintiff's "left knee" those damages may also be subject to summary judgment, if appropriate.

II. DEFENDANT'S MOTION IS GRANTED AS PLAINTIFF HAS FAILED TO STATE SUFFICIENT FACTS WITH RESPECT TO THE ALLEGED INCIDENT IN QUESTION.

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, the United States Supreme Court analyzed Fed.R.Civ.P. 8 which requires that a plaintiff's complaint must allege "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* The Court established in those cases that Fed.R.Civ.P. 8 does not require detailed factual allegations in a complaint, but it does demand that a plaintiff plead more than "unadorned 'the defendant unlawfully harmed me' accusations" and that a pleading must offer more than mere labels, conclusions or formulaic recitation of elements of causes of action. *Iqbal* at 678. Thus, Federal Courts require that in order for a party to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim for relief that is plausible on its face." *Id.* A claim has facial probability when a plaintiff pleads factual contentions that allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Under this framework, Courts are not required to accept threadbare recitals of all of the elements of a cause of action, supported by mere conclusory allegations. *Id.* at 678.

In *Wright v. Cannady*, Order Granting Mot. Dismiss, Case No. CJ-2021-12 (District Court for the Choctaw Nation of Oklahoma), this Court adopted the foregoing federal pleading standards under *Twombly* and *Iqbal* as the most efficient and economical standard to utilize when considering a motion to dismiss pursuant to 2008 of the Choctaw Nation Code of Civil Procedure.⁴ The Court will therefore apply the foregoing to analyze the sufficiency of Plaintiff's claims.

⁴ As set forth in the *Wright* Order, 2008 of the Choctaw Nation Code of Civil Procedure is similar to Fed.R.Civ.P. 8 in that both require a "short and plain statement of the claim" showing the pleader is entitled to relief.

In his Petition, the Plaintiff alleges only that he was a patron of the Defendant and while staying in one of the hotel rooms, he "tripped over railing connected to the bed frame" causing him injuries. *See* Petition, ¶ 1. Plaintiff fails to explain how a bed railing caused his fall and the remainder of Plaintiff's allegations are merely formulaic recitations of negligence on the part of the Defendant. *Id.* at ¶¶ 2-4. At the June 8, 2023 hearing in this matter, Plaintiff's counsel provided more details regarding the alleged fall (i.e. that the extended bed frame was hidden by a bed spread which caused defendant not to recognize the railing was there and to subsequently trip and fall), but none of these allegations are included in the Petition. Plaintiff's Petition does not plead facts sufficient for this Court to reasonably infer that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 citing *Twombly*, 550 U.S. 556.

Accordingly, Defendant's Motion is **GRANTED** with respect to the sufficiency of the claims plead in Plaintiff's Petition, and the Petition is dismissed without prejudice. Plaintiff may file an Amended Petition within ten (10) days of this Order.

IT IS SO ORDERED.



AMY J. PIERCE
DISTRICT COURT JUDGE