

Melanie E. Baillie, ISB #7232
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
mbaillie@jvwlaw.net
eserve: judy@jvwlaw.net

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MICHAEL WHITTLE,

Plaintiff,

vs.

ZIMS HOT SPRINGS, A BUSINESS
ENTERPRISE OF THE NEZ PERCE
TRIBE,

Defendant.

Case No. 2:12-cv-303

**COMPLAINT FOR DAMAGES and
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, MICHAEL WHITTLE, by and through his attorney Melanie Baillie of the law firm JAMES, VERNON & WEEKS, P.A., and for cause of action against Defendants ZIMS HOT SPRINGS, complains and alleges as follows:

I. PARTIES

1. Plaintiff MICHAEL WHITTLE is an adult and resident of Spokane County, State of Washington.

2. Upon information and belief, Defendant ZIMS HOT SPRINGS is a Nez Perce Tribal business Enterprise owned and operated by the Nez Perce Tribe and authorized to do business within the State of Idaho, and is a for-profit Idaho business entity doing business in Adams County, Idaho, at 2995 Zims Road, New Meadows, Idaho.

3. The Nez Perce Tribe is a federally recognized sovereign Indian Tribe whose boundaries are located in Clearwater, Idaho, Latah, Lewis and Nez Perce counties, wholly within the State of Idaho.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 1332(c)(1) because Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

5. The Court has personal jurisdiction over Defendant because it a for profit business enterprise with its principal place of business is in Adams County, Idaho and the acts and omissions that gave rise to Plaintiff's injuries and damages occurred in Adams County, State of Idaho.

6. Venue is proper in the Southern Division of the U.S. District Court for the District of Idaho pursuant to 28 U.S.C. §1391(b)(2) because the events giving rise to Plaintiff's claims occurred in Adams County, Idaho.

III. GENERAL ALLEGATIONS

7. On July 22 2019, Plaintiff entered upon the premises of Defendant Zims Hot Springs as a business invitee for the benefit of Defendant Zims Hot Springs. Plaintiff's intention was to use the facility as advertised by Zims Hot Springs.

8. Zims Hot Springs holds itself out to its invitees as an enterprise that offers hot mineral springs in which people may soak and that said mineral hot springs are safe for people to enter.

9. While in one of the hot spring pools offered to the public by Zims Hot Springs, Plaintiff's feet came into the proximity of the outflow pipe that supplies the hot water to the pool.

10. The subject pipe was not protected, nor was a warning sign posted to advise patrons that the water coming out of the pipe would cause severe injury.

11. Plaintiff's feet were severely burned as a result of the temperature of the water flowing from the pipe directly into the pool. Plaintiff ultimately required a below the knee amputation.

**IV. FIRST CAUSE OF ACTION: NEGLIGENT, RECKLESS, AND TORTIOUS
CONDUCT OF DEFENDANT**

12. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

13. At all times material hereto, Defendant had certain duties imposed upon it by law, which Defendant then and there owed to Plaintiff and other business invitees upon the premises. Defendant tortiously, negligently and recklessly breached said duties by:

- (a) Failing to keep the premises safe;
- (b) Failing to maintain the premises in a condition that was safe for foreseeable users;
- (c) Negligently and recklessly maintaining the hot springs;
- (d) Failing to fix the hazards on the premises, or warn the Plaintiff of said hazards, including the excess heat flowing into said hot spring pools; and
- (e) Exposing Plaintiff to an unreasonable risk of harm on the premises.

14. As a direct and proximate result of Defendant's tortious, negligent, and reckless acts or omissions, Plaintiff was seriously injured. Plaintiff has incurred, and will likely continue to incur, damages. These damages include past and future medical expenses, out-of-pocket expenses, lost wages, and other expenses to be proved at the time of trial. These damages further include physical injury, diminished ability to function at home and at work, anxiety, depression, frustration, and permanent disability.

V. SECOND CAUSE OF ACTION: NEGLIGENCE

15. Plaintiff incorporates the previous paragraph as if fully set forth herein.

16. At the time and place of the events described in the preceding paragraphs, Defendant had certain duties imposed on it by the statutes of the State of Idaho and common law obligations that it owed to Plaintiff and other users of the premises. It did negligently and carelessly breach those duties, vis a vis its employee or agent, which included, but were not limited to, the following:

- a. Failing to monitor and maintain safe temperatures in the hot spring outflow pipes;
- b. Other negligent acts not specifically mentioned herein.

17. As a direct and proximate result of the acts and omissions of the Defendant, Plaintiff suffered serious personal injuries, some of said injuries being permanent in nature. Plaintiff further suffered emotional distress, pain and suffering, and loss of enjoyment of life, past, present, and into the future; medical bills, past, present, and into the future; and other associated expenses which will be more fully proved at the time of trial.

VI. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant in said sums exceeding \$75,000.00, including:

- A. Past and future medical expenses;
- B. Past and future lost wages and earning capacity;
- C. Past, present, and future pain and suffering; loss of enjoyment of life; and permanent disability,
- D. attorney's fees, costs, and interest;
- E. such other relief as the Court may deem just.

DATED this 22nd day of July, 2021.

JAMES, VERNON & WEEKS, P.A.

By: /s/Melanie Baillie
Melanie Baillie
Attorney for Plaintiff