

EXHIBIT 2

August 25, 2023, Order of the Miccosukee Tribal Court

**MICCOSUKEE TRIBAL COURT
MICCOSUKEE TRIBE OF INDIANS OF FLORIDA
CIVIL DIVISION**

**MICCOSUKEE TRIBE OF INDIANS
D/B/A MICCOSUKEE INDIAN GAMING,
Plaintiff,**

CASE NO.: CV – 22 – 59 – A

v.

**GREAT AMERICAN INSURANCE COMPANY
Defendant.**

ORDER MOTION TO DISMISS THE COMPLAINT

THIS CAUSE came before the Court on May 31, 2023 for hearing on the Defendant's Motion to Dismiss the Complaint filed on January 3, 2023. This Court has jurisdiction pursuant to Title X, Section 9, and Section 11 ("Civil Procedures") of the Miccosukee Law and Order Code, as well as the customs, traditions, and usages of the Miccosukee Tribe of Indians of Florida. After hearing legal argument from counsel, review of the case file and being advised in the premises, the Court makes the following findings,

1. On May 31, 2023, the attorneys for the parties appeared before this Court to present their legal argument regarding their respective motions.
2. The Plaintiff, **MICCOSUKEE TRIBE OF INDIANS, D/B/A MICCOSUKEE INDIAN GAMING**, (hereafter referred to as "MIG") filed their Complaint on December 8, 2022.
3. The Defendant, **GREAT AMERICAN INSURANCE COMPANY**, (hereafter referred to as "GAIC") filed their Motion to Dismiss on January 3, 2023. The Defendant raises the following arguments:
 - a. This Court is an Improper Venue.
 - (1) The Defendant argues that Miccosukee Tribal Court is not the proper venue relying upon a Tolling Agreement entered into by the parties in this action.
 - (2) The Defendant states that paragraph 14 of the Tolling Agreement provides that *"The parties agree that any lawsuits arising out of this Agreement, the alleged loss, or the claim shall be filed in the United States District Court for the Southern District of Florida, unless it lacks jurisdiction, in which any such lawsuits shall be filed in the Circuit Court for Miami-Dade County."* The Defendant maintains that said language in said paragraph is a mandatory forum selection clause and based on the mandatory language the Court should dismiss the action.
 - b. Complaint is Time-Barred.
 - (1) The Defendant raises two (2) arguments for this issue. First, all three policies attached to the complaint provide that the Plaintiff cannot bring a legal action against the Defendant "unless brought within five years from the date you 'discover' the loss". The second argument relies on Title X, §12 of the Miccosukee Code which provides that "the court shall have no jurisdiction over a

claim when a statement of claim is filed more than two years after the claim arose”.

- (2) The Defendant argues that the Plaintiff failed to meet the contractual period of limitations in the insurance policies in filing their claim. Furthermore, that if the Plaintiff alleges that it discovered the loss on August 17, 2017, but it did not file an action until five (5) years later, thus barred under the Miccosukee Code.
- c. Complaint fails to state a viable claim.
- (1) The Defendant argues that the Plaintiff alleges that they discovered the loss on August 17, 2017, but did not seek coverage until almost two (2) years later on August 8, 2019.
 - (2) The Defendant maintains that if the dates of discovery and notice are true, they cannot recover under any of the policies.
- d. Lack of Jurisdiction under Federal Law.
- (1) The Defendant maintains that the Plaintiff cannot assert jurisdiction over nonmembers. The Defendant alleges that the sole claim in the complaint asserts that the Defendant breached a contract by denying an insurance claim, there is no allegations that the Defendant was physically present on tribal land when it denied the claim. Based on this assertion, the Court does not have jurisdiction. includes a argues that the complaint should be dismissed on the basis of Improper Venue, Complaint is Time-Barred, Compliant fails to state a viable claim and lack of jurisdiction under Federal Law.
4. The Plaintiff filed their Response in Opposition to Defendant’s Motion to Dismiss on May 22, 2023, arguing that venue and jurisdiction are proper; the complaint is filed timely; lack of viable claim is not subject to a Motion to Dismiss.

IMPROPER VENUE.

5. The Defendant relies on paragraph 14 of the Tolling Agreement provides that “*The parties agree that any lawsuits arising out of this Agreement, the alleged loss, or the claim shall be filed in the United States District Court for the Southern District of Florida, unless it lacks jurisdiction, in which any such lawsuits shall be filed in the Circuit Court for Miami-Dade County.*” The Defendant maintains that said language in said paragraph is a mandatory forum selection clause and based on the mandatory language the Court should dismiss the action.
6. The Plaintiff argues that paragraph 15 of the Tolling Agreement supports their filing within tribal court. Said paragraph, in part, provides *The parties recognize that the Miccosukee Tribe of Indians of Florida, being a federally recognized Indian Tribe...Nothing in the agreement shall be construed to limit or diminish that sovereignty nor to abridge or waive any sovereign rights, privileges or immunities of the Miccosukee Tribe of Indians of Florida, its agencies, its divisions, corporation, commercial enterprises (including Miccosukee Indian School, Miccosukee Indian Gaming,*

Miccosukee Resort and Convention Center and Miccosukee Corporation) or their respective officers and representatives.

7. The language in paragraph 15 of the Tolling Agreement is clear on its face that the Plaintiff did not waive their sovereignty when entering into said agreement.
8. There is extensive case law both federal and state which provide that Indian Tribes and their agents are immune from suit in federal or state court without (1) a clear, explicit and unmistakable waiver of sovereign immunity or (2) congressional abrogation of that immunity.¹
9. The Plaintiff cites *Williams v. Lee*, 358 US 217 (1959), wherein a non-native parties filed suit in Arizona state court against members of the Navajo Tribe and ran a business on the reservation. Although the state court issued a judgment against the Defendants, the appellate court affirmed the lower court decision, the Supreme Court held that Arizona courts are not free to exercise jurisdiction over civil suits by non-Indians against Indians where cause of action arises on Indian reservations. The only authority that can remove said powers from an Indian government over their reservations is Congress.
10. There is nothing presented in the arguments before this court which support the argument that the Plaintiff have waived their sovereignty or there has been an act of Congress removing such authority from the Plaintiff.
11. The Plaintiff accurately points to the Tribal Exhaustion Rule, which requires litigants to exhaust tribal court remedies before pursuing claims in a nontribal court.
12. There is no conflict between paragraphs 14 and 15, of the Tolling Agreement, the Tribal Exhaustion Rule must be satisfied before moving forward in a nontribal court.
13. Venue is proper with the Miccosukee Tribal Court. To make a finding on the contrary would go directly against the federal and state laws that Indian Tribes are independent sovereign governments. Therefore, the litigants must proceed and exhaust all tribal court remedies before pursuing claims in a nontribal court.

COMPLAINT FAILS TO STATE A VIABLE CLAIM

14. In reviewing the Motion to Dismiss, this court can only test the legal sufficiency of the complaint and not determine factual issues at this time.²
15. The question of whether there is a viable claim by the Plaintiff in this matter is a factual argument which is not ripe for determination on a Motion to Dismiss at this time.
16. The Plaintiff's complaint is legally sufficient in that it states a cause of action. The complaint alleges that the Defendant failed to meet their contractual obligation pursuant to insurance policies that were in place during the time of the loss.

¹ *Miccosukee Tribe of Indians v. Napoleoni*, 890 So. 2d 1152 (1st DCA 2004)

² *Minor v. Brunetti*, 43 So. 3d 178 (2010)

17. At this stage in the litigation, it is not proper for the court to determine question of facts when there is a dispute by both parties as to when the claim was discovered or discoverable.
18. As such, the Defendant’s argument as to the lack of a viable claim is denied.

COMPLAINT IS TIME - BARRED

19. With regards to the Defendant’s argument that the complaint is time-barred, this court will first address the statute of limitations of the Miccosukee Code.
20. Pursuant to Title X, § 12, the claim must be filed no later than two (2) years after the claim arose.
21. The Defendant relies on the date of August 17, 2017 in their argument noting that the Plaintiff utilizes said date “when the loss was discovered”. However, based on the pleadings filed, the Plaintiff sought relief from this court after the Defendant denied the claim, April 8, 2021.
22. As such, the Plaintiff complied with the statute of limitations of the Miccosukee Code and the Defendant’s argument pursuant to the Miccosukee Code is denied.
23. Furthermore, the parties entered a tolling agreement which tolled the “contractual limitations period applicable to any claim for breach of contract Miccosukee may assert under the policies in connection with the alleged loss and the claim”, this court finds that the action was filed within the time parameters of the policy.

LACK OF JURISDICTION

24. The Defendant argues that Plaintiff cannot assert jurisdiction over the Defendant based on their position that the Plaintiff fails to allege that the Defendant was physically present on the reservation.
25. The Defendant relies on *Montana v. U.S.*, 450 U.S. 544, noting that regardless of which exception applies, the court’s jurisdiction over nonmembers is limited to conduct on tribal land.
26. The *Montana* exception provide that (1) a tribe may regulate...the activities of non-members who enter consensual relationships with the tribe or its members and (2) it may exercise authority over conduct that threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe”.
27. The court finds that this matter falls under said exception. The Defendant entered into a consensual relationship with the tribe and the denial of coverage on losses threatens or has some direct effect on the economic security of the tribe.
28. The Plaintiff cites *Iowa Mutual Insurance Company v. LaPlante*³, which is similar to the actions in this case. The insurance carrier in said case sued in federal court for

³ 480 U.S. 9 (1987)

declaration that LaPlante's injuries, sustained in an accident on reservation land, was not covered under their policy. The allegations raised by the Plaintiff is that it sustained losses due to theft suffered on reservation land. The Defendant issued the policy or policies to the Plaintiff for business operated and conducted on the reservation.

29. The court also relies on the tribal exhaustion doctrine as stated above. There is extensive case law which provides the requirement that litigants must exhaust tribal court remedies before pursuing claims in a nontribal court.

30. Therefore, the Defendant's claim of lack of jurisdiction is denied.

IT IS THEREFORE ORDERED AND ADJUDGED that:

31. The Defendant's Motion to Dismiss the Complaint is hereby denied.

32. The Defendant shall have twenty (20) days from the date of this Order to file their Answer to the Complaint.

33. The Court retains jurisdiction on this matter and to enforce the terms of this Order.

DONE AND ORDERED on this 25th day of August 2023.



TRIBAL COURT JUDGE



TRIBAL COURT JUDGE

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