

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BURREL JONES

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION 9:20-cv-00063

VS.

ALABAMA-COUSHATTA TRIBE OF
TEXAS AND NASKILA GAMING

PLAINTIFF'S ORIGINAL COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES. iii

I. PARTIES. 1

II. JURISDICTION; SOVEREIGN IMMUNITY; VENUE. 1

III. INTRODUCTION. 2

IV. FACTUAL ALLEGATIONS. 4

 Plaintiff Suffered Severe Injury at the Casino. 4

 The Tribe Has No Tribal Court Within Which
 Injured Parties Can Adjudicate Their Claims. 6

V. ARGUMENTS AND AUTHORITIES. 7

 This Court Has Jurisdiction over Actions
 for Declaratory Relief Against Defendants. 7

 Defendants Were Operating the Casino in
 Violation of the Law at the Time of Plaintiff’s Injuries. 8

 Defendants Waived Sovereign Immunity Against and
 Jurisdiction over Plaintiff’s Premises Liability Claim

 Defendants’ Illegal Operations Created the
 Circumstances Which Led to Plaintiff’s Injuries. 9

 Plaintiff Has Been Left with
 No Mechanism for Obtaining Relief. 9

 The Casino and/ the Tribe Forfeited
 Tribal Status Through Repeated Violation
 of Texas Gaming Laws and the Restoration Act. 13

VI. CLAIMS FOR RELIEF. 14

 Declaratory Judgment and Declaratory Relief 14

 Premises Liability. 15

VII. DAMAGES. 16

VIII. JURY DEMAND	17
IX. PRAYERS FOR RELIEF	17
Declaratory Judgment and Declaratory Relief.....	17
Premises Liability.....	18

TABLE OF AUTHORITIES

CASES

Alabama-Coushatta Tribes of Texas v. Texas,
208 F. Supp. 2d 670 (E.D. Tex. 2002). 2

Comstock Oil & Gas Inc. v. Alabama & Coushatta Indian Tribes of Texas,
261 F.3d 567 (5th Cir. 2001). 1, 2, 7, 8, 11, 12

Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.,
523 U.S. 751 (1998). 9, 11

Texas v. Alabama Coushatta Tribe of Texas,
298 F. Supp. 3d 909 (E.D. Tex. 2018). 3, 4, 9

Texas v. Alabama Coushatta Tribe of Texas,
918 F.3d 440 (5th Cir. 2019). 1, 3, 4

Texas v. Alabama Coushatta Tribe of Texas,
140 S. Ct. 855 (2020). 3

Wilkes v. PCI Gaming Auth.,
287 So. 3d 330 (Ala. 2017). 10, 11

STATUTES

25 U.S.C. § 731. 1

25 U.S.C. § 732. 1, 13

25 U.S.C. § 733. 1, 13

25 U.S.C. § 734. 1

25 U.S.C. § 735. 1

25 U.S.C. § 736. 1

25 U.S.C. § 737. 1, 13

28 U.S.C. § 1331. 1, 2

28 U.S.C. § 1367. 2

28 U.S.C. § 1391(b). 2

28 U.S.C. § 2201.....	1
28 U.S.C. § 2202.....	1
Texas Penal Code § 47.01.....	3
Texas Penal Code § 47.02.....	4
Texas Penal Code § 47.03(a)(1).....	4
Texas Penal Code § 47.03(a)(5).....	4
Texas Penal Code § 47.04(a).....	4
Texas Penal Code § 47.06(a).....	4
Texas Penal Code § 47.06(c).....	4

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BURREL JONES (Plaintiff), in the above entitled and numbered cause, complaining of and against Defendants, ALABAMA-COUSHATTA TRIBE OF TEXAS and NASKILA GAMING (Defendants), and for cause of action would respectfully show unto the Court and Jury the following:

I. PARTIES

1. Plaintiff, BURREL JONES, is an individual who resides in Houston, Texas.
2. Defendant, ALABAMA-COUSHATTA TRIBE OF TEXAS (the Tribe), is a federally recognized Indian Tribe that owns and operates an unincorporated casino, Defendant, NASKILA GAMING (the Casino), on tribal lands in Livingston, Texas. Defendants may be served with process at 540 State Park Rd. Livingston, Texas 77351.

II. JURISDICTION; SOVEREIGN IMMUNITY; VENUE

3. This action is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201, 2202. Jurisdiction for Plaintiff's declaratory judgment action is proper in this Court because, pursuant to 28 U.S.C. § 1331, this case arises under the laws of the United States, namely the Restoration Act (RA), previously codified at 25 U.S.C. §§ 731-37.¹ Further or alternatively, jurisdiction is proper because Defendants are not entitled to tribal sovereign immunity against claims for declaratory relief. *Comstock Oil & Gas Inc. v. Alabama & Coushatta Indian Tribes of Texas*, 261 F.3d 567, 572 (5th Cir. 2001). Further or alternatively, jurisdiction for such action is proper in this Court because the United States Court of Appeals for the Fifth Circuit has agreed that "[t]he question whether an Indian tribe retains the power to compel a non-Indian... to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a

¹ The U.S. Code was updated and now omits the Restoration Act; however, the Restoration Act is still in effect. *Texas v. Alabama-Coushatta Tribe of Texas*, 918 F.3d 440, 442 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 855 (2020).

‘federal question’ under [28 U.S.C.] § 1331.” *Id.* Further or alternatively, jurisdiction for such action is proper because Tribe’s tribal court is either dysfunctional or non-existent. *See id.* at 573.

4. Supplemental jurisdiction for Plaintiff’s premises liability claim is proper in this Court, pursuant to 28 U.S.C. §1367, because this Court has original jurisdiction over the declaratory judgment action, and the two claims are related such that they form part of the same case or controversy. Further or alternatively, jurisdiction for such claim is proper in this Court on the grounds stated in paragraph 3 (*Comstock*, at 572, 573).

5. Venue for both claims is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred within this Judicial District.

III. INTRODUCTION

6. Controversy surrounding the Tribe’s operation of a casino on its reservation has persisted in this Court, on and off, for about twenty years. In 2001, the Tribe opened the Alabama-Coushatta Entertainment Center on its lands.² Shortly thereafter, the State discovered that the gaming activities being offered at that casino violated Texas law.³ The State then sought to have the casino shut down.⁴

7. In *Alabama-Coushatta Tribes of Texas v. Texas*, 208 F. Supp. 2d 670, 674 (E.D. Tex. 2002), this Court granted the State a permanent injunction enjoining the Tribe from offering or promoting gaming activities which violate Texas law. The Fifth Circuit affirmed this Court’s decision the following year.

² Emily Foxhall, *Alabama-Coushatta tribe fights for a gaming center - again*, HOUS. CHRON., (last updated Feb. 27, 2018, 9:12 AM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Alabama-Coushatta-fight-for-the-right-to-a-gaming-12707848.php>.

³ *Id.*

⁴ *Id.*

8. Thereafter, the Tribe ceased operation of any such casino on its land for fourteen years, but eventually opened the Casino in 2016.⁵ Upon inspection of the Casino by the State shortly after it opened, the State discovered that electronic bingo and other activities being offered there violated Texas law.⁶ After the State moved to hold the Tribe in contempt for violating this Court's permanent injunction, the Tribe brought action against the State in *Texas v. Alabama Coushatta Tribe of Texas*, 298 F. Supp. 3d 909 (E.D. Tex. 2018), *aff'd*, 918 F.3d 440 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 855 (2020).

9. Such games which Defendants may have been offering at that time, and which they are offering now, upon information and belief, include: "Total Meltdown," "Jackpot Inferno," "Myths & Legends," "Moby Dick," "Aces & Hogs," "Mr. Martini," "Lion's Share Double Jackpot," "Lightning Zap," "Smokin' Hot Dice," "Golden Wins," "Gems Double Jackpot," "Pac-Man," "Cabinet of Curiosities," "Pac-Man Wild Edition," "Gold Dragon Red Dragon," "Fu Panda," "Fu Nan Fu Nu," "Willie Nelson Whiskey River," "Willie Nelson Shotgun Willie," "Jade Wins," "Double Wolf," "Super 10X Wild Gambler," "New Money," "Coin Slinger" and "Arctic Cash."⁷

10. In *Texas v. Alabama-Coushatta Tribe of Texas*, 298 F. Supp. 3d 909, the Tribe sought declaratory and injunctive relief to allow the Tribe to govern its gaming activities under the Indian Gaming Regulatory Act (IGRA), as opposed to governance thereof by the State under the RA. *Id.* The Tribe also sought injunctive relief from this Court's permanent injunction. *Id.* The State argued that the RA federalizes Texas gaming laws, and therefore the RA and Texas' gaming laws govern the Tribe's gaming activities. *Id.* at 916. The State further argued that the operation of electronic bingo games offered by the Casino definitely violated Texas Penal Code § 47.01, and

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

likely violated six other provisions of the Texas Penal Code, including §§ 47.02, 47.03(a)(1), (5), 47.04(a) and 47.06(a), (c). *Id.* The Tribe argued that because the electronic bingo qualified as a “Class II gaming” activity under the IGRA, the RA and Texas’ laws did not apply. *Id.* This Court ruled for the State, holding that the RA and Texas’ gaming laws apply to the Tribe’s gaming activities, and upholding the injunction. *Id.* at 925.

11. Shortly after disposition of *Texas v. Alabama-Coushatta Tribe of Texas*, 298 F. Supp. 3d 909, the Tribe appealed this Court’s decision to the Fifth Circuit. On appeal, in *Texas v. Alabama-Coushatta Tribe of Texas*, 918 F.3d 440 (5th Cir. 2019), the circuit court both affirmed this Court’s ruling that the RA and Texas’ gaming laws, as opposed to the IGRA, govern the Tribe’s gaming activities, as well as upheld this Court’s injunction. The Supreme Court of the United States (SCOTUS) subsequently denied the Tribe’s petition for writ of certiorari.

12. Despite the fact that this Court’s injunction was upheld and remains in effect, the Tribe continued operating and, upon information and belief, still operates the Casino as a casino, offering and promoting gaming activities in violation of Texas’ gaming laws and the RA.

IV. FACTUAL ALLEGATIONS

Plaintiff Suffered Severe Injury at the Casino.

13. Plaintiff would show that this lawsuit has become necessary as a result of personal injuries which he sustained on or about October 13, 2019, when he went to the Casino, located at 540 State Park Road 56, Livingston, Texas, 77351. Plaintiff was an invitee of the Casino because he went there as a patron, which was mutually beneficial to all parties.

14. Since it opened, the Tribe and/or the Casino heavily advertised the very gaming activities enjoined by this Court via its permanent injunction, in and around Harris County where Plaintiff resides. The Tribe and/or the Casino advertised the activities in radio ads, on billboards, and

through other media. The Tribe's and/or the Casino's advertising efforts reached Plaintiff, who was enticed by them, thereafter deciding to visit the Casino with his wife.

15. After Plaintiff had finished playing games at the Casino, he made his way to the staircase which leads from its elevated front door to ground level. The staircase is about five steps high, twenty feet across, and split into three separate sections by six wooden support beams; two on either end of the top of the staircase, and four across the bottom. The beams at the top of the staircase are both aligned with a beam at the bottom, and both sets of aligned beams are connected by an ungainly wooden railing. The two inner beams at the bottom of the staircase are not aligned with any beams at the top, but are connected to the top step by similar railings. The beams at the top and across the bottom of the staircase, and by extension the attached railings, are distanced horizontally from one another such that the railings are out of reach of someone using the middle section of the stairs.

16. Plaintiff began descending the middle section of the staircase, lost his footing at the top and, because the railing which he could have used to catch himself was out of reach, tumbled airborne down the staircase, coming to a rest at ground level. Plaintiff lost consciousness and suffered injuries to several areas of his body, including his shoulder, arm and wrist.

17. Plaintiff was transported by ambulance to a medical facility in Livingston, TX, where he underwent X-rays and was given pain medication. He was then transferred by ambulance to a hospital in Houston, TX, where he underwent further testing and was diagnosed with an open displaced right humeral fracture and right radial nerve palsy. Both injuries required open surgery. As a result of the fall, Plaintiff also suffered impaired cognition and communication, impaired functional mobility and ADLs, impaired safety awareness, impulsivity, nausea, emesis and left medial leg pruritus. Plaintiff was kept at the hospital for almost a week. Plaintiff was then

transferred by ambulance to a clinic in Houston, TX for further monitoring and therapy, where he stayed for a week.

**The Tribe Has No Tribal Court Within Which
Injured Parties Can Adjudicate Their Claims.**

18. About one month after his injuries occurred, Counsel for Plaintiff (Counsel) filed an insurance claim with Defendant's insurer, "Tribal First" (the Insurer). The Insurer denied any negligence and liability for the accident, as well as Plaintiff's insurance claim. Counsel subsequently contacted the Court Clerk (the Clerk) for the Tribe's tribal court, who committed to sending Counsel materials and instructions for filing a claim with the court. The Clerk ultimately did not send Counsel the materials and instructions, so Counsel contacted the Clerk again. In their second conversation, the Clerk claimed that Defendant was not subject to suit in the tribal court. Clerk referred Counsel to Tribe's Deputy Administrator (the Administrator) for more information.

19. Counsel independently conducted further research in order to gather more information about filing a claim with the tribal court. Counsel discovered that, although the Tribe was listed as having a tribal court on the Tribal Court Clearinghouse (the Clearinghouse) website, the hyperlink for the tribal court's website located on the Clearinghouse website repeatedly produced an error message instead of leading to any functioning website. The tribal court website is still inaccessible and unfindable, and as far as Counsel can tell, does not exist.

20. Counsel then contacted the Administrator, who claimed that a tort remedy for Plaintiff's injuries did not exist under the Tribe's laws. She further claimed that because the Casino was operating as a "Class II gaming" facility (under the Indian Gaming Regulatory Act (IGRA)), a Tribal-State Compact does not exist.

21. The Administrator attempted to redirect Counsel to the Insurer. Counsel informed the Administrator that he had already contacted the Insurer, that the conversation resulted in a dispute

between them, and that Counsel sought to present the case to a tribunal to settle the dispute. The Administrator failed to address Counsel's concern, instead alleging that both the Casino and the Tribe "had sovereignty," and that there was no way to seek remedy for Plaintiff's injuries in tribal court. Counsel finally concluded, upon information and belief, that because there was no way to gather information about filing in tribal court, the tribal court was either dysfunctional or non-existent.

22. Following Counsel's conversation with the Administrator, the Insurer contacted Counsel in an attempt to deter Counsel from any further contact with Defendant and the Tribe regarding the matter.

23. Further research by Counsel yielded no trace of any available tribal code, any tribal constitution or bylaws other than the versions last amended in 1990, or any tort remedies provided by the Tribe.

24. In light of the foregoing, Plaintiff has been left without a tribal court in which to adjudicate his premises liability claim and, therefore, no mechanism for obtaining relief. Plaintiff therefore has no other choice but to seek relief from this court.

V. ARGUMENTS AND AUTHORITIES

25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24.

This Court Has Jurisdiction over Actions for Declaratory Relief Against Defendants.

26. As referenced in paragraph 3, the Tribe and/or the Casino is not entitled to tribal sovereign immunity against claims for declaratory or equitable relief. *Comstock Oil & Gas Inc. v. Alabama & Coushatta Indian Tribes of Texas*, 261 F.3d 567, 572 (5th Cir. 2001).

27. In *Comstock*, oil companies brought action against the Tribe, seeking a declaration that the oil and gas leases between them were in full effect. *Id.* The Tribe argued that it was entitled to

sovereign immunity against the oil companies' declaratory judgment action and could therefore not be sued in federal court. *Id.* at 568. The Fifth Circuit rejected this argument, holding that the Tribe was not entitled to sovereign immunity against suit for declaratory relief. *Id.* at 572. The circuit court made its decision relying heavily on the fact that the Supreme Court of the United States had never ruled that Indian tribes were immune from suits seeking declaratory relief. *Id.*

28. In the case at bar, Plaintiff's action for declaratory relief comes against the Tribe and/or the Casino, which is wholly owned by the Tribe. The circuit court in *Comstock* held that the Tribe was not immune from suit for declaratory relief and the court therefore had jurisdiction over the action, a holding which binds this Court. Therefore, because Plaintiff's declaratory judgment action seeks declaratory relief, Defendants do not enjoy immunity from such action, and this Court has jurisdiction over it.

Defendants Were Operating the Casino in Violation of Texas Gaming Laws and the RA at the Time of Plaintiff's Injuries, Because the Casino Offered Electric Bingo and Other Games Prohibited by Texas Gaming Laws.

29. When Plaintiff was injured at the Casino, Defendants were violating Texas gaming laws, the RA, and this Court's permanent injunction, because electronic bingo and other games which are prohibited by the same were being offered there.

30. Such other games which violate Texas' gaming laws that Defendants offered to patrons when Plaintiff was injured, and, upon information and belief, is still offering to patrons, are listed in paragraph 9.

31. Therefore, at the time of Plaintiff's injuries, Defendants were, and upon information and belief still are, operating a casino in violation of the law.

Defendants Waived Sovereign Immunity Against and Jurisdiction over Plaintiff's Premises Liability Claim Because Defendants' Illegal Operations Created the Circumstances Which Led to Plaintiff's Injuries.

32. Had Defendants abided by the permanent injunction and discontinued the gaming activities which gave rise to *Texas v. Alabama-Coushatta Tribe of Texas*, 298 F. Supp. 3d 909, Plaintiff would not have suffered his injuries.

33. Defendants profit through offering gaming activities to patrons at the Casino, in violation of the law. The Casino's existence is supported by the income it generates. Without such income, a gaming facility like the Casino would not be sustainable and would close down, thereby rendering inaccessible to Plaintiff the very setting in which he was injured.

34. Further, had Defendants not operated the Casino, they would not have promoted it via radio ads and on billboards in Harris County. After all, there would have been no casino to promote in such a case. Defendants' advertisements are precisely what drew Plaintiff to the Casino and, had he not heard such advertisements, he would not have been injured there because he would not have patronized it.

35. Therefore, Defendants' illegal operations created the circumstances which led to Plaintiff's injuries.

Defendants Waived Sovereign Immunity Against and Jurisdiction over Plaintiff's Premises Liability Claim Because Plaintiff Has Been Left with No Mechanism for Obtaining Relief.

36. Generally, a party can sue an Indian Tribe, thereby sidestepping sovereign immunity, if the Tribe expressly waives its sovereign immunity, or if Congress authorizes suit. *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). However, courts that have been faced with facts similar to those in the case at bar have held that exceptions can be made where justice requires it.

37. In *Wilkes v. PCI Gaming Auth.*, 287 So. 3d 330 (Ala. 2017), the Supreme Court of Alabama held that the doctrine of tribal sovereign immunity did not apply to shield an Indian tribe from tort claims brought by non-tribal plaintiffs. Plaintiffs, a motorist and passenger, originally brought suit for negligence against the casino in state court, seeking damages after sustaining injuries in a head-on automobile collision with an employee of the casino. *Id.* The casino argued that the state court did not have subject-matter jurisdiction over the claim, as the casino was protected by its tribe's sovereign immunity. *Id.* The trial court accepted the casino's argument and granted its motion for summary judgment. *Id.*

38. On appeal, the Supreme Court of Alabama reversed and remanded the trial court's decision, holding that the casino was subject to suit for the negligence claims because it was not entitled to tribal sovereign immunity based on the circumstances. *Id.* The court reasoned that affirming the trial court's decision, thereby shielding the casino from suit, would **be contrary to the interests of justice** because “[plaintiffs] [would] have no way to obtain relief if the doctrine of tribal sovereign immunity [was] applied to bar their lawsuit.” *Id.* at 334 (emphasis added).

39. The court also drew attention to the fact that SCOTUS had reservations about tribal sovereign immunity, explaining that SCOTUS “**expressly acknowledged that it has not ruled on the issue whether the doctrine of tribal sovereign immunity has a field of operation with regard to tort claims[.]**” *Id.* (emphasis added). Further, the court reasoned that SCOTUS had explained that “in our interdependent and mobile society... tribal immunity extends beyond what is needed to safeguard tribal self-governance...” and **in an “economic context [like gambling], immunity can harm those who....do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims.”** *Id.* at 333 (emphasis added).

40. The risk of being deprived of a mechanism for obtaining relief that the plaintiffs in *Wilkes* faced was the same risk that Plaintiff now faces in the case at bar. Because of the barriers to suit in federal or state court posed by the doctrine of tribal sovereign immunity, Plaintiff reached out to the Insurer and the Tribe for assistance but received none. As highlighted by the more detailed facts in paragraphs 18 through 25, the Tribe was dismissive of Plaintiff's concerns and failed to provide any useful information regarding suit in tribal court. In sum, the Tribe failed to conduct itself as a sovereign entity would and should. Further, Counsel's own investigation of the Tribe and its resources did not yield information regarding suit in tribal court, raising questions about its existence. By every measure then, affording Defendants sovereign immunity and jurisdiction where they have no tribal court to speak of, no intention of hearing Plaintiff's claim, and no enumerated tort remedies leaves Plaintiff with no mechanism for obtaining relief for his injuries.

41. Moreover, the "waiver" aspect of the rule in *Kiowa* speaks to scenarios wherein a mechanism for obtaining relief other than in federal or state court is available to plaintiffs. *Wilkes*, 287 So. 3d at 334. The *Kiowa* rule should therefore not be applied to a situation, such as in the case at bar, wherein a plaintiff has no mechanism for obtaining relief, as might be provided by an Indian tribe or otherwise.

42. In *Comstock*, 261 F.3d 567, the Fifth Circuit affirmed this Court's ruling that the Tribe's illegitimately formed tribal court could not exercise jurisdiction over an oil and gas lease dispute and, therefore, the plaintiffs did not have to exhaust their remedies before a non-existent tribal court.

43. The circuit court rejected the Tribe's argument that this Court could only review tribal court jurisdiction over a claim after the tribal court had received a full and fair opportunity to determine the question itself. *Id.* at 572. The circuit court instead held that such a question was

prudential, not jurisdictional, and, therefore, exhaustion of tribal remedies is not a condition precedent to review of tribal court jurisdiction over a claim. *Id.* In support of its holding, the circuit court stated that the Tribe's constitution and bylaws contained no provisions for the creation of a judiciary, and the tribal judicial code impermissibly created the tribal court. *Id.* The court therefore ruled that the tribal court was non-existent, and agreed with this Court in that, **"if no tribal court exists, exhaustion of remedies is inapplicable [and] would be futile."** *Id.* at 573 (emphasis added).

44. The ruling and reasoning in *Comstock* may be applied quite easily to the facts of the case at bar, as detailed by paragraphs 18 through 25. Plaintiff was both expressly and effectively denied suit in the tribal court, the existence or functionality of which is doubtful based on Counsel's research and inquiry. More specifically, Counsel's research yielded the same results as the circuit court's in *Comstock* did, in that Counsel could not locate a version of the Tribe's constitution and bylaws other than the one the court in that case used in support of its ruling that the tribal court did not exist. Further, where a tribal judicial code actually established a tribal court in that case, albeit impermissibly, a tribal judicial code could not be located at all in the instant case. Finally, that the Clerk was uninformed and evasive regarding the tribal court, the Administrator was dismissive and confrontational regarding Counsel's efforts, and the tribal court website is inaccessible or unfindable, all strongly support the notion that the Tribe has no tribal court in which Plaintiff's premises liability claim might be heard.

45. Accordingly, the Tribe has left Plaintiff, actually or effectively, without a mechanism for obtaining relief for his premises liability claim.

**The Casino and/or the Tribe Forfeited Tribal Status Through
Repeated Violation of Texas Gaming Laws and the Restoration Act.**

46. The RA, as previously codified in 25 U.S.C. §§ 732, 733, federally recognizes the Tribe, restores the trust relationship between it and the United States, and restores the rights and privileges of it and its members, including sovereign immunity and jurisdiction. The RA also specifically prohibits, on the reservation and lands of the Tribe, all gaming activities prohibited by the laws of Texas. *Id.* at § 737.

47. Because the RA enumerates these two ideas in the same piece of legislation, there is a relationship between what one grants and what the other restricts. Defendants have repeatedly violated the RA over the years by offering and promoting illegal gaming activities at the Casino and earlier iterations of it. These violations have spawned numerous disputes and cases brought by the State of Texas against the Tribe, seeking to put an end to its illegal activities. Despite the State's efforts, Defendants have continued to offer and promote such activities, in defiance of the laws of both Texas and the United States. In doing so, Defendants have expressed a blatant disrespect and disregard for the RA. Defendants would benefit from the RA where they can but disregard it where regarding it would hurt their financial interests. Defendants would read and interpret the RA as they wish it interpreted, as opposed to how this Court and others have interpreted it.

48. Defendants should not be permitted to invoke sovereign immunity and jurisdiction over Plaintiff's premises liability claim while violating the very same law which grants them those rights and privileges, and which violation thereof in fact created the very circumstances out of which such claim arose. Therefore, this Court should declare that the Tribe and/or the Casino have forfeited tribal status, as well as the rights and privileges of sovereign immunity and jurisdiction

that come with it, because they have repeatedly violated the RA, the very law which grants them such status.

VI. CLAIMS FOR RELIEF

A. Declaratory Judgment and Declaratory Relief

49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48.

50. This action seeks Declarations that:

a. At the time of Plaintiff's injuries, Defendants, ALABAMA-COUSHATTA TRIBE OF TEXAS and/or NASKILA GAMING, offered gaming activities in violation of Texas gaming laws under the RA and this Court's permanent injunction;

b. Defendants waived sovereign immunity against Plaintiff's premises liability claim, the Tribe does not possess jurisdiction over it, and Defendants may therefore be sued for such claim by Plaintiff in state or federal court because:

i. Defendants' illegal operations created the circumstances which led to Plaintiff's injuries, and/or

ii. the Tribe's failure to establish a functioning tribal court, refusal to hear Plaintiff's premises liability claim therein, and/or failure to provide for tort remedies, leaves Plaintiff without a mechanism for obtaining relief; and

c. The Tribe and/or the Casino forfeited tribal status, as well as the rights and privileges of sovereign immunity and jurisdiction that come with it, and may therefore be sued for Plaintiff's premises liability claim in state or federal court, because it/they repeatedly violated the RA, which grants it/them such status.

B. Premises Liability

51. Plaintiff incorporates and by reference re-alleges paragraphs 1 through 50.

52. At the time of the accident made the basis of this claim,

a. Plaintiff, who entered the Casino for the mutual benefit of all parties and was given an invitation to enter, was an invitee at the Casino. As a result, Defendants, ALABAMA-COUSHATTA TRIBE OF TEXAS and/or NASKILA GAMING, owed a duty of reasonable care to Plaintiff at the time of the incident made the basis of this claim;

b. Defendants had actual or constructive knowledge of an unreasonably dangerous condition on the premises in the form of improper design of the staircase at the Casino, in that

i. the staircase is too wide, and/or

ii. the railings on either side of the staircase are unreachable from a majority of its traversable area;

c. The **(i)** width of the staircase and/or the **(ii)** unreachable railings posed an unreasonable risk of harm to Plaintiff because it/they increased the likelihood that Plaintiff would fall down the stairs and suffer injury;

d. Defendants breached their duty by:

i. failing to maintain a reasonably safe premises;

ii. failing to have a properly designed staircase on the premises;

iii. failing to warn about **(1)** the width of the staircase and/or **(2)** the unreachability of the railings thereon;

iv. knowingly disregarding the inherent dangers of **(1)** a wide staircase and/or **(2)** unreachable railings thereon;

- v. recklessly disregarding the safety of Plaintiff;
 - vi. other acts deemed negligent.
- e. Defendants' failure to use such care proximately caused Plaintiff's injuries.

53. As a result of said occurrence, Plaintiff suffered a severely broken wrist and nerve damage, both of which required open surgery. Such occurrence resulted in not only physical pain, but also mental anguish and other medical problems, such as impaired cognition and communication, impaired functional mobility and ADLs, impaired safety awareness, impulsivity, nausea, emesis and left medial leg pruritus. In all reasonable probability, Plaintiff's physical pain, physical impairment and mental anguish will continue indefinitely. Plaintiff has incurred and will further incur pharmaceutical and medical expenses in connection with his injuries.

VII. DAMAGES

54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53.

55. As a direct and proximate result of Defendants' conduct, Plaintiff suffered the following injuries and damages:

- a. Plaintiff has been forced to incur reasonable and necessary medical expenses in the past, and in all reasonable medical probability, will continue to incur reasonable and necessary medical expenses in the future;
- b. Plaintiff has endured physical pain and suffering in the past, and in all reasonable medical probability will continue to endure physical pain and suffering in the future;
- c. Plaintiff has suffered mental anguish in the past, and in all reasonable medical probability, will continue to suffer mental anguish into the future;
- d. Plaintiff has suffered physical impairment in the past and, in all reasonable medical probability, will continue to suffer physical impairment into the future;

e. Plaintiff has suffered physical disfigurement in the past and, in all reasonable medical probability, will continue to suffer physical disfigurement into the future;

f. Plaintiff has suffered lost earnings in the past and, in all reasonable probability, will continue to suffer loss of earning capacity into the future.

56. To the extent that Plaintiff suffered from any pre-existing conditions, Plaintiff would show that such conditions, if any, were asymptomatic and were aggravated as a result of the incident made the basis of this claim.

VIII. JURY DEMAND

57. With respect to Plaintiff's premises liability claim, Plaintiff demands trial by jury. A jury fee is being paid contemporaneously with the filing of this Complaint.

IX. PRAYERS FOR RELIEF

A. Declaratory Judgment and Declaratory Relief

58. WHEREFORE, Plaintiff, BURREL JONES, prays that this Honorable Court render a judgment granting Plaintiff the following declaratory relief:

a. At the time of Plaintiff's injuries, Defendants, ALABAMA-COUSHATTA TRIBE OF TEXAS and/or NASKILA GAMING, offered gaming activities in violation of Texas gaming laws and the RA;

b. The Tribe's failure to establish a functioning tribal court, refusal to hear Plaintiff's premises liability therein, and/or failure provide for tort remedies, leaves Plaintiff without a mechanism for obtaining relief;

c. In light of subpoints (a) and (b) of this subsection, Defendants have waived sovereign immunity from and exclusive jurisdiction over Plaintiff's premises liability claim;

d. In light of subpoints **(a)** and/or **(b)**, and prior and subsequent violations of Texas gaming laws and the RA, the Tribe and/or the Casino forfeited tribal status and, thereby, the sovereign immunity and jurisdiction afforded by such status.

e. In light of prayers for relief **(a)**, **(b)**, **(c)**, and/or **(d)** of this subsection, Plaintiff may bring his premises liability claim against the Tribe and/or the Casino in federal or state court.

B. Premises Liability

59. Plaintiff further prays that, after trial on the merits, he have judgment against Defendants, ALABAMA-COUSHATTA TRIBE OF TEXAS and/or NASKILA GAMING, for the following:

- a.** Sum in excess of the minimum jurisdictional limits of this Honorable Court;
- b.** Actual damages;
- c.** Pre-judgment interest and post-judgment interest at the maximum legal rate;
- d.** Costs of court; and
- e.** Any and all further relief, be it general or special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

KOLODNY LAW FIRM, PLLC



Rashon Murrill
SBN: 24010622
1011 Augusta Dr., Suite 111
Houston, Texas 77057
Telephone: (713) 532-4474
Facsimile: (713) 785-0597
Email: rmurrill@fko-law.com

**ATTORNEY FOR PLAINTIFF
BURREL JONES**