

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

LAWRENCE TYNES,

Plaintiff,

vs.

BUCCANEERS LIMITED PARTNERSHIP,
d/b/a Tampa Bay Buccaneers, a Delaware
Limited Partnership, and TAMPA
BAY MALL LIMITED PARTNERSHIP,
a Delaware Limited Partnership,

Defendants.

COMPLAINT

Plaintiff LAWRENCE TYNES brings this action against Defendants BUCCANEERS LIMITED PARTNERSHIP, d/b/a Tampa Bay Buccaneers, a Delaware Limited Partnership, and TAMPA BAY MALL LIMITED PARTNERSHIP, a Delaware Limited Partnership, for damages, and alleges the following based on personal knowledge as to allegations regarding Plaintiff and on information and belief as to other allegations.

Introduction

1. As a direct and proximate result of Defendants' negligence and negligent misrepresentations, Plaintiff Lawrence Tynes, a former kicker for the Tampa Bay Buccaneers, contracted a Methicillin-resistant Staphylococcus Aureus ("MRSA") infection from the Tampa Bay Buccaneers' Training Facility, which, among other things, ended his career and cost him

over \$20 million in expected future earnings. In this action, Plaintiffs seek compensatory damages for, among other things, Mr. Tynes's lost salary and his substantial pain and suffering.

Jurisdiction, Venue, and Parties

2. This is an action for damages in excess of \$15,000.00, exclusive of costs and attorneys' fees.

3. Venue is proper in Broward County, Florida, pursuant to §§ 47.021 and 47.051, Florida Statutes; Defendants are foreign partnerships and Tampa Bay Mall Limited Partnership resides in Broward County because its Registered Agent is located in Broward County.

4. Plaintiff Lawrence Tynes, winner of multiple Super Bowl championships and the 19th most accurate placekicker in NFL history, resides in Overland Park, Kansas.

5. Defendant Buccaneers Limited Partnership is a limited partnership organized under the laws of Delaware and holds the franchise for and does business as the Tampa Bay Buccaneers (the "Bucs"). Defendant Buccaneers Limited Partnership maintains its headquarters and principal place of business in the city of Tampa, Florida.

6. In addition to owning and operating the Bucs, Defendant Buccaneers Limited Partnership owns and/or operates the Bucs's practice facility and administrative complex known as "One Buccaneer Place," located in Tampa, Florida (also referred to as "Bucs Training Facility").

7. Defendant Tampa Bay Mall Limited Partnership is a limited partnership organized under the laws of Delaware and owns and/or operates the Bucs's practice facility and administrative complex known as "One Buccaneer Place," located in Tampa, Florida (also referred to as "Bucs Training Facility").

8. This Court has personal jurisdiction over Defendants, pursuant to § 48.193, because Defendants have in the past and continue to engage in substantial and not isolated business activity on a continuous and systematic basis in the State of Florida; this action arises out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; and this action arises out of Defendants committing a tortious act in this state.

General Allegations

9. Defendants represented to Bucs players, prospective Bucs players, including Mr. Tynes, Bucs employees, and the general public that the Bucs Training Facility is a world-class facility at which “state-of-the-art” physical training, medical care and treatment, and other rehabilitative services are provided. Indeed, the team’s website continues to represent that the “gleaming new team headquarters,” which it calls “One Buccaneer Palace,” “is the largest facility in the NFL. Equipped with every modern tool to help produce a successful team on the field, the facility is also a major draw for potential free agents.”

10. As Defendants intended, Mr. Tynes relied on these representations in July 2013 when he agreed to join the Bucs as a free agent. At that time, Mr. Tynes signed a one-year, \$905,000 contract with the Bucs. Earlier in the off-season, he turned down a multi-year, multi-million-dollar contract offer from the New York Giants, his prior team with which he had won two Super Bowls.

11. The Bucs Training Facility is available year-round to Bucs players for the care and treatment of both football-related health matters and non-football related health matters.

12. The Bucs Training Facility also is available year-round for use by members of the public, including but not limited to, media members, who are permitted to conduct interviews in

the locker room, family members of Bucs players and selected high school students and staff members, who are not and have never been professional football players. Members of the general public also visit the Bucs Training Facility year-round.

13. On July 23, 2013, prior to the start of training camp, Mr. Tynes passed his team physical examination and did not have MRSA. Prior to the events giving rise to this action, Mr. Tynes had never had a MRSA infection.

14. After passing his physical, Mr. Tynes began his typical pre-season physical regimen, which included, on July 30, 2013, having a podiatrist perform a toe-nail procedure on his great kicking toe.

15. Mr. Tynes had the same or a similar toe-nail procedure performed on the same toe every prior year during his nine-year NFL career without any complications and without ever contracting an infection.

16. The Bucs were aware that Mr. Tynes had this procedure performed on July 30, 2013.

17. The rehabilitation regimen for the toe-nail procedure, of which the Bucs were aware, required Mr. Tynes to use hot tubs, cold tubs, and a soak bucket for his toe, and included dressing changes to the open wound on his toe.

18. Nothing required Mr. Tynes to undergo his post-procedure rehabilitation regimen at the Bucs Training Facility. Indeed, Mr. Tynes could have elected to undergo his post-procedure rehabilitation regimen at any number of facilities, other than the Bucs Training Facility.

19. Nonetheless, Mr. Tynes elected to undergo his rehabilitation regimen at the Bucs Training Facility based on Defendants' representations concerning the world-class, state-of-the-art nature of the facility.

20. For example, in making his decision, Mr. Tynes relied upon representations from Bucs officials as to the high quality of the facility, of the services, and of the other modalities available at One Buccaneer Place. In an effort to induce Mr. Tynes to choose to undergo his rehabilitation regimen at One Buccaneer Place as opposed to any other facility offering similar services, Todd Toriscelli, the Bucs's Head Athletic Trainer at the time, specifically made representations to Mr. Tynes that One Buccaneer Place was a world class facility with a strong track record for rehabilitation, citing examples such as star offensive lineman Carl Nicks. Likewise, Mark Dominik, the Bucs's General Manager at the time, made representations to Mr. Tynes's agent with the intent to induce Mr. Tynes's reliance, that the Bucs had the "best of everything" and similarly conveyed that they had a strong track record for successfully rehabilitating others. Bucs officials further represented that appropriate precautions and procedures designed to prevent the spread of infection were in place and being followed at the Bucs Training Facility.

21. In reality, however, despite the publicized fact that MRSA infections and the spread of MRSA have been a major problem in NFL locker rooms for numerous years, a fact of which the Bucs were or should have been aware, appropriate precautions and procedures designed to prevent a MRSA infection, and the spread of MRSA, were neither in place nor being actively followed at the Bucs Training Facility in 2013.

22. Unlike the Bucs, several other teams, including the St. Louis Rams, Washington Redskins, Buffalo Bills, and Cleveland Browns, have instituted rigorous sanitization/cleanliness protocols in an effort to minimize the risk of their players contracting MRSA.

23. Further, while encouraging Mr. Tynes to use One Buccaneer Place as the site for his voluntary rehabilitative course, Defendants failed to disclose, and actively concealed, ongoing separate incidents of infection amongst individuals who used and visited One Buccaneer Place.

24. Additionally, Defendants failed to disclose and actively concealed from Mr. Tynes that: (a) sterile techniques were not used at all times at One Buccaneer Place; (b) therapy devices routinely used by multiple individuals, including at least one other Bucs player were not properly maintained, disinfected, or cleaned, if at all, at One Buccaneer Place; and (c) equipment and surfaces with which multiple individuals, including Bucs players, were routinely in contact were not properly maintained, disinfected, or cleaned, if at all, at One Buccaneer Place.

25. At the same time that Mr. Tynes was undergoing his rehabilitation regimen at One Buccaneer Place, several other players and people connected to the team were undergoing rehabilitation at the facility and were battling bacterial infections, including Special Teams Coach Dave Wannstadt, offensive linemen Davin Joseph and Carl Nicks, punter Michael Koenen, and head trainer Todd Toriscelli, who had undergone several knee surgeries related to an infection and was treating the infection with a Peripherally Inserted Central Catheter (a ‘PICC line’’).

26. Prior to the start of training camp in 2013, and for a near-daily period of at least six months, at least one Bucs player rehabilitating at the Bucs Training Facility and interacting with Mr. Toriscelli daily also required a PICC line to treat his MRSA infection.

27. Mr. Torriscelli and the other players and coaches battling infections used the same hot and cold tubs, soak buckets, and other therapy devices, equipment, and surfaces used by Mr. Tynes. Defendants failed to properly and reasonably maintain, sterilize, disinfect, and/or clean this and other equipment used by those who were rehabilitating at the facility.

28. In early August 2013, Mr. Tynes noticed that his toe wound was not improving in the same manner it had in previous years. Instead, he began to feel severe pain in the toe, which prevented him from practicing, the toe turned red and swollen with puss oozing out, and Mr. Tynes began to feel feverish with chills.

29. On August 9, 2013, Mr. Tynes's toe was cultured. The culture results returned positive for MRSA.

30. Mr. Tynes contracted the MRSA infection during his rehabilitation regimen at the Bucs Training Facility.

31. As a result of the MRSA infection, Mr. Tynes underwent three surgeries to remove the infected tissue, two of which were performed in New York at the Hospital for Special Surgery. Following the surgeries, Mr. Tynes returned to his home in Kansas to rehabilitate and receive additional treatment.

32. Mr. Tynes's pain continued, however, and subsequent tests revealed that the MRSA infection was still present. As a result, Mr. Tynes underwent six weeks of intravenous antibiotic therapy via a PICC line under the supervision of a doctor in Kansas.

33. Although the intravenous antibiotic therapy resolved Mr. Tynes's MRSA infection, it did not reduce the debilitating pain that the infection and subsequent surgeries caused. After consulting with several physicians, Mr. Tynes underwent months of physical

therapy in Kansas to address the pain, but the pain has persisted, precluding Mr. Tynes from kicking a football in the manner required to continue his professional football career.

34. Mr. Torricelli, who had a MRSA infection before Mr. Tynes did and used the same hot and cold tubs, soak buckets, and other therapy devices, equipment, and surfaces that Mr. Tynes used, has admitted to close friends that his own MRSA infection was the source of Mr. Tynes's infection.

35. Mr. Tynes contracted MRSA because, *inter alia*: (a) sterile techniques were not at all times used at the Bucs Training Facility; (b) therapy devices routinely used by multiple individuals, including other Bucs players, were not properly maintained, disinfected, or cleaned, if at all, at the Bucs Training Facility; (c) equipment and surfaces with which multiple individuals, including Bucs Players, were routinely in contact were not properly maintained, disinfected, or cleaned, if at all, at the Bucs Training Facility; and (d) Mr. Tynes reasonably relied on Defendants' misrepresentations and omissions concerning the safety and state-of-the-art nature of the Bucs Training Facility.

36. In addition to Mr. Tynes, other Bucs players and staff contracted career-threatening, serious bacterial infections on the staph-spectrum in the fall of 2013, as a result of Defendants' failure to take reasonable precautions at the Bucs Training Facility.

37. As a direct and proximate result of Defendants' wrongful conduct, Mr. Tynes's kicking foot has sustained permanent damage and he remains unable to play professional football, despite interest from several teams in signing him. But for Defendants' negligence and negligent misrepresentations, Mr. Tynes would have continued playing professional football for at least six or seven additional seasons, and given his championship experience and accuracy, would have earned at least \$3 million per year.

38. The Bucs have denied that Mr. Tynes contracted MRSA from the Bucs Training Facility, and are estopped from asserting the defense of workers' compensation immunity because the Bucs's workers' compensation carrier denied coverage for Mr. Tynes's injuries on the grounds that the injuries sustained were not work-related, which must be imputed to the Bucs.

Count I
Negligence and Premises Liability
Against Buccaneers Limited Partnership and Tampa Bay Mall Limited Partnership

39. Plaintiff incorporates and re-alleges the general allegations in paragraphs 1-39 of this Complaint as if fully set forth herein.

40. At all times material, Mr. Tynes was a business invitee and/or employee-invitee of Defendants at the Bucs Training Facility.

41. At all times material, Defendants were the owners and operators, controllers, managers, and/or maintainers of the Bucs Training Facility.

42. At all times material, Defendants possessed and controlled the Bucs Training Facility.

43. At all material times, Defendants owed Mr. Tynes a non-delegable duty to use reasonable care in maintaining the Bucs Training Facility in a reasonably safe condition, and to have given Mr. Tynes timely notice and warning of latent and concealed perils, known to Defendants, or which by the exercise of due care should have been known to Defendants.

44. At all material times, Defendants owed Mr. Tynes a non-delegable duty of reasonable and ordinary care to Mr. Tynes to, among other things:

- a. maintain the Bucs Training Facility in a reasonable safe condition so as to prevent injuries and infections to business or employee invitees, including Mr. Tynes;
- b. inspect the Bucs Training Facility to ensure the premises were safe and free of infectious diseases;
- c. inspect the Bucs Training Facility to discover any hazards, such as infectious diseases; and
- d. timely correct and/or warn of hazards and/or dangers of which they were or should have been aware.

45. At all material times, as described in the General Allegations, Defendants breached the aforementioned duties and/or negligently and carelessly failed to discharge the aforementioned duties.

46. At all material times, Defendants knew or should have known of the hazardous presence of MRSA and hazardous conditions that encouraged the spread of MRSA in the Bucs Training Facility.

47. Defendants knew or should have known that their acts and/or omissions would result in serious injuries and other damages to business and employee invitees of Defendants, including Mr. Tynes.

48. As a direct and proximate result of Defendants' negligent acts and/or omissions, Mr. Tynes sustained damages that include but are not limited to bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; past and future expenses for hospitalization and medical care and/or treatment; and lost

wages and benefits. These losses are either permanent or continuing, and Mr. Tynes will suffer these losses in the future.

49. Defendants are vicariously liable for the negligent conduct of any of their employees, agents, apparent agents, servants, officers, and/or representatives.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants for compensatory damages, post-judgment interest, costs, and attorneys' fees, and all other relief the Court deems just and proper.

Count 2
Negligent Misrepresentation
Against Buccaneers Limited Partnership

50. Plaintiff incorporates and re-alleges the general allegations in paragraphs 1-39 of this Complaint as if fully set forth herein.

51. Defendant supplied false information to Mr. Tynes regarding the purportedly “world-class,” “state-of-the-art” nature of the Bucs Training Facility, and the precautions and procedures designed to prevent the spread of infection that were purportedly in place and being followed at the Bucs Training Facility. Defendant supplied this false information to induce Mr. Tynes, and other free agents, to sign with the Bucs and to undergo their rehabilitation regimens at the Bucs Training Facility.

52. Defendant knew or should have known that the information it supplied regarding the Bucs Training Facility would induce Mr. Tynes to sign with the Bucs and undergo his rehabilitation regimen at the Bucs Training Facility, and Defendant knew or in the exercise of reasonable care should have known that this information was false and/or misleading.

53. Defendant was negligent in obtaining and/or communicating false information regarding the Bucs Training Facility to Mr. Tynes.

54. Mr. Tynes relied on this false information regarding the Bucs Training Facility to his detriment by deciding to undergo his rehabilitation regimen at the Bucs Training Facility and consequently contracting MRSA from the Bucs Training Facility.

55. Mr. Tynes was justified in his reliance on the false information supplied by Defendant regarding the Bucs Training Facility.

56. As a direct and proximate result of Defendants' wrongful conduct, Mr. Tynes sustained damages that include but are not limited to bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; past and future expenses for hospitalization and medical care and/or treatment; and lost wages and benefits. These losses are either permanent or continuing, and Mr. Tynes will suffer these losses in the future.

57. Defendants are vicariously liable for the wrongful conduct of any of their employees, agents, apparent agents, servants, officers, and/or representatives.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for compensatory damages, post-judgment interest, costs, and attorneys' fees, and all other relief the Court deems just and proper.

Demand For Jury Trial

Plaintiff demands a trial by jury of all issues triable as right by a jury.

Dated this 6th day of April, 2015.

Respectfully submitted,

PODHURST ORSECK, P.A.
25 West Flagler Street, Suite 800
Miami, Florida 33156
Telephone: (305) 358-2800
Fax: (305) 358-2382

By: /s/ Stephen F. Rosenthal
Stephen Rosenthal, Esq.
Florida Bar No. 01993
srosenthal@podhurst.com
Matthew Weinshall, Esq.
Florida Bar No. 84789
mweinshall@podhurst.com

THE BRAD SOHN LAW FIRM, PLLC
1172 S. Dixie Highway
No. 268
Coral Gables, FL 33146
Tel.: 310-866-0001
Fax: 305-397-0650

By: /s/ Bradford Sohn
Bradford Sohn
Florida Bar No. 98788
Brad@sohn.com

Counsel for Plaintiff