

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jul 13, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHANE WILLIAMS.

Plaintiff,

v.

ORRSCO, an Oregon Corporation, and  
OIL RE-REFINING COMPANY, a  
Washington Corporation,

Defendants.

No. 4:20-cv-05039-SMJ

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS**

Before the Court, without oral argument,<sup>1</sup> is Defendants ORRSCO and Oil Re-Refining Company's Motion to Dismiss, ECF No. 7. Plaintiff alleges he was injured in an unprotected fall from a tanker truck he drove in Defendants' employ because, despite clear regulatory requirements and prior employee injuries, Defendants failed to provide him with a safety harness. Because the allegations in the Complaint fall short of alleging Plaintiff's injury resulted from Defendants' "deliberate intention," the Court finds Plaintiff's claim is barred by Washington's Industrial Insurance Act ("IIA") and thus dismisses the Complaint.

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<sup>1</sup> Though Defendants' motion was originally noted for oral argument, the Court finds a hearing unnecessary because, having reviewed the record and the relevant legal authorities, the Court is fully informed. *See* LCivR 7(i)(3)(B)(iii).

1 **BACKGROUND**

2 Plaintiff Shane Williams brought suit against Defendants, by whom he was  
3 employed as a truck driver, to recover for personal injuries he suffered after falling  
4 off a tanker truck that was owned by Defendants, onto which he had climbed  
5 without a harness or other restraint. ECF No. 1 at 2. Plaintiff asserted a single cause  
6 of action for negligence, alleging Defendants understood the risks associated with  
7 having employees climb onto tanker trucks unrestrained, yet required them to do so  
8 without providing a safety harness. *Id.* at 3.

9 On June 18, 2020, Defendants moved to dismiss the Complaint, arguing  
10 Plaintiff’s claim of negligence is foreclosed by Washington’s IIA, which provides  
11 the exclusive remedy for an on-the-job injury like Plaintiff’s. ECF No. 7. In  
12 response,<sup>2</sup> Plaintiff argues his allegations state a cognizable legal theory entitling  
13 him to relief under an exception to the IIA’s exclusivity provisions for employee  
14 injuries resulting from the deliberate action of an employer. ECF No. 16.

15 **LEGAL STANDARD**

16 **A. Motion to Dismiss**

17 Under Rule 12(b)(6), the Court must dismiss a complaint if it “fail[s] to state

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19 <sup>2</sup> The Court notes Plaintiff’s response was filed more than six weeks after the  
20 deadline, though Plaintiff did not seek leave to make the untimely filing nor so much  
as recognized his tardiness. LCivR 7(c)(2)(B). Even so, the Court declines to  
sanction this failure to comply with the Local Rules because nothing in Plaintiff’s  
untimely response is sufficient to save the Complaint from dismissal.

1 a claim upon which relief can be granted,” including where the plaintiff’s claims  
2 either fail to allege a cognizable legal theory or fail to allege sufficient facts to  
3 support a cognizable legal theory. *Kwan v. SanMedica Int’l*, 854 F.3d 1088, 1093  
4 (9th Cir. 2017). To survive a Rule 12(b)(6) motion, a complaint must contain  
5 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
6 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*  
7 *Twombly*, 550 U.S. 544, 570 (2007)).

8 Facial plausibility exists where a complaint pleads facts permitting a  
9 reasonable inference that the defendant is liable to the plaintiff for the misconduct  
10 alleged. *Id.* Plausibility does not require probability but demands something more  
11 than a mere possibility of liability. *Id.* While the plaintiff need not make detailed  
12 factual allegations, unadorned accusations of unlawful harm and formulaic or  
13 threadbare recitals of a claim’s elements, supported only by mere conclusory  
14 statements, are insufficient. *Id.*

15 In deciding a Rule 12(b)(6) motion, the Court construes a complaint in the  
16 light most favorable to the plaintiff, assumes the facts as pled are true, and draws  
17 all reasonable inferences in his or her favor. *Ass’n for L.A. Deputy Sheriffs v. County*  
18 *of Los Angeles*, 648 F.3d 986, 991 (9th Cir. 2011); *Iqbal*, 556 U.S. at 678. Even so,  
19 the Court may disregard legal conclusions couched as factual allegations. *See id.*

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1 **B. Washington’s IIA**

2 Washington’s IIA struck a “grand compromise” between the interests of  
3 Washington businesses and their workers: employees may avail themselves of “a  
4 swift, no-fault compensation system” for on-the-job injuries while Washington  
5 employers are generally immune from civil suit by workers for such injuries. *Birklid*  
6 *v. Boeing Co.*, 904 P.2d 278, 282 (Wash. 1995); Wash. Rev. Code § 51.04.010.

7 This broad immunity does not, however, apply where an employee is injured  
8 as the result of the employer’s “deliberate intention.” Wash. Rev. Code § 51.24.020.  
9 Washington courts have narrowly construed this exception to require “a specific  
10 intent to injure.” *Birklid*, 904 P.2d at 283 (citing *Nielson v. Wolfkill Corp.*, 734 P.2d  
11 961, 963 (Wash. 1987)). This is a demanding standard, defined primarily by what  
12 it is not: an employee may not sue to recover for injuries resulting from his  
13 employer’s gross negligence, from its failure to “observe safety procedures and  
14 laws governing safety,” nor even from its actions that have “a substantial certainty  
15 of producing injury.” *Id.* (citing *Biggs v. Donovan-Corkery Logging Co.*, 54 P.2d  
16 235, 236 (Wash. 1936); *Peterick v. State*, 589 P.2d 250, 266–67 (Wash. Ct. App.  
17 1977); *Higley v. Weyerhaeuser Co.*, 534 P.2d 596, 597–98 (Wash. Ct. App. 1975)).  
18 Instead, to maintain a private civil action for a workplace injury, an employee must  
19 show “the employer had actual knowledge that an injury was certain to occur and  
20 willfully disregarded that knowledge.” *Id.* at 285.

1 **DISCUSSION**

2 Accepting all allegations in the Complaint as true, and drawing all reasonable  
3 inferences from those facts in Plaintiff’s favor, the Court finds he has failed to plead  
4 that his injury resulted from Defendants’ “deliberate intention,” and his claim is  
5 therefore barred by the IIA. *See* Wash. Rev. Code §§ 51.04.010, 51.24.020.

6 The Complaint alleges Defendants “knew of the requirement” that employees  
7 wear a safety restraint if working at heights exceeding four feet yet still  
8 “required . . . [them] to load and remove oil and climb on top of [Defendants’]  
9 tanker trucks” without furnishing the required safety equipment. ECF No. 1 at 2.  
10 Plaintiff’s response to Defendant’s motion to dismiss clarifies this requirement is  
11 codified in Washington’s Administrative Code. *See* ECF No. 16 (citing Wash.  
12 Admin. Code § 296-869-20045). But an employer’s disregard for laws governing  
13 safety, such as the provision on which Plaintiff relies, is insufficient to constitute  
14 deliberate intention. *Birklid*, 904 P.2d at 283. Equally insufficient is Plaintiff’s  
15 claim that Defendants disregarded the known risk that unrestrained workers *could*  
16 fall from their trucks. *See* ECF No. 1 at 2; *Birklid*, 904 P.2d at 283 (holding  
17 deliberate intention claim sufficient where defendant “knew in advance its workers  
18 *would* become ill” from exposure to chemical (emphasis added)).

19 Though the analysis of Defendants’ motion to dismiss is confined to the  
20 allegations in the Complaint, the Court notes Plaintiff has sought a specialized

1 subpoena for records establishing that Washington administrative agencies  
2 “conducted inspections, reached findings, and made proposals for safety corrections  
3 that [Defendants] failed to follow which resulted in Plaintiff’s injuries.” ECF No. 9  
4 at 2. Yet as set out above, such records—even if they established a grossly negligent  
5 failure to observe the most basic safety precautions—would not establish the  
6 requisite deliberate intention necessary for Plaintiff to bring suit against Defendants.  
7 *Birklid*, 904 P.2d at 283.

8       Instead, to prevail, Plaintiff would be required to establish Defendants had  
9 “actual knowledge” that his injury was “*certain* to occur and willfully disregarded  
10 that knowledge.” *Id.* at 285 (emphasis added). Even construed with the utmost  
11 liberality, nothing in the Complaint alleges as much. Plaintiff claims Defendants  
12 had actual knowledge of the requirement that they furnish safety restraints, but not  
13 that they had actual knowledge Plaintiff was *certain* to fall from the truck if he  
14 climbed atop it without a harness. *See* ECF No. 1 at 2. Nothing in the Complaint,  
15 nor in Plaintiff’s response to Defendants’ motion to dismiss, suggests this  
16 deficiency could be cured by amendment—indeed, rather than seeking leave to  
17 amend to plead additional facts, Plaintiff argued the existing Complaint is legally  
18 sufficient. *See* ECF No. 16. Because the Court concludes it is not, and Plaintiff has  
19 failed to articulate a cognizable legal theory, his Complaint must be dismissed. Fed.  
20 R. Civ. P. 12(b)(6); *Kwan*, 854 F.3d at 1093.

1 **CONCLUSION**

2 Because the allegations in Plaintiff’s Complaint allege no more than that  
3 Defendants were grossly negligent in failing to provide him necessary safety  
4 equipment resulting in his on-the-job injury, his claim is barred by the exclusive  
5 remedy provisions of Washington’s IIA. As such, he is precluded from seeking  
6 relief in this Court, and the Complaint must be dismissed.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 **1.** Defendants ORRCO and Oil Re-Refining Company’s Motion to  
9 Dismiss, ECF No. 7, is **GRANTED**.
- 10 **2.** Plaintiff’s Complaint, ECF No. 1, is **DISMISSED WITH**  
11 **PREJUDICE** for failure to state a claim upon which relief may be  
12 granted.
- 13 **3.** All pending motions are **DENIED AS MOOT**, and all scheduled  
14 hearings are **STRICKEN**.

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1           4.     The Clerk's Office is directed to **ENTER JUDGMENT** in favor of  
2                    Defendants and thereafter **CLOSE** this file.

3           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,  
4 provide copies to all counsel.

5           **DATED** this 13<sup>th</sup> day of July 2020.

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                  SALVADOR MENDUZA, JR.  
                  United States District Judge