

TITLE 8. Casino Tort Claims Ordinance

Section 1. Purpose

In accordance with Section 12.5(b) of the 2020 Tribal State Compact between The State of California and the Shingle Springs Band of Miwok Indians, this Ordinance is created to provide a fair process for Claimants to resolve Tort Claims alleged to have happened while visiting the Tribe's Gaming Facility.

Section 2. Claims

Claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's Land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility may be filed against the Tribe in accordance with this Ordinance. :

Section 3. Waiver of Sovereign Immunity

If the Claimant has exhausted the Tribal Dispute Resolution Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity with respect to the resolution of claims outlined in Section 2 in the Tribal Court and Tribal Claims Commission, provided that that this waiver shall not apply to:

1. Punitive damages; and
2. The portions of claims that exceed ten million dollars (\$10,000,000).

Furthermore, the Tribe expressly waives its right to assert sovereign immunity in connection with the jurisdiction of the Tribal Court, Tribal Claims Commission, and JAMS Optional Arbitration Appeal Procedure, and in any suit to;

1. Enforce an obligation under this Ordinance;
2. Enforce or execute a judgment based upon the award of the Tribal Court, Tribal Claims Commission, or the JAMS Optional Arbitration Appeal Procedure.

This waiver shall not apply to claims made against individual Tribal officials or employees.

Section 4. Tribal Dispute Resolution Process

The Claimant must first exhaust the Tribal Dispute Resolution Process before he or she may bring a Claim under this Ordinance to Tribal Court or the Tribal Claims Commission. The process for Tribal Dispute Resolution shall be;

Step 1. When a Claimant believes they have suffered an injury or damage covered by this Ordinance they must inform the Risk Manager of the Casino.

Step 2. Upon notice that a Claimant claims to have suffered an injury or damage covered by this Ordinance, the Risk Manager shall provide notice by personal service, FedEx signed receipt, or certified mail, return receipt requested, that the Claimant is required within one hundred eighty (180) days to first exhaust the Tribal Dispute Process and if dissatisfied with the resolution, entitled to file his or her Claim in Tribal Court or the Tribal Claims Commission. The Risk Manager shall also provide the Claimant with an Administrative Claim Form.

Step 3. The Claimant must file the Administrative Claim Form with Risk Management within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process, as long as the notice complies with Step 2 above and the 180 day limit is prominently displayed on the front page of the notice. Any other dispute resolution hearings shall be stayed until the completion of the Tribal Dispute Process or one hundred eighty (180) days from the date the Claim is filed in the Tribal Dispute Process, whichever first occurs, unless the Claimant receives written notice from the TPA exercising an extension of time. If the Claim is not being processed by the TPA, an extension of time may be exercised by mutual agreement of both parties.

Step 4. The Risk Manager shall investigate the Claim and inform the Claimant in writing, within twenty (20) days of receipt of the request, whether the Claim has been accepted, rejected, denied, or submitted to the TPA for claims handling.

Step 5.

- a) If the Risk Manager and/or TPA rejects the claim, the Claimant will be advised of any errors, in writing, and shall be allowed to resubmit the Administrative Claim Form within ten (10) days of the notice date; or
- b) If the Risk Manager denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, that the Risk Manager submit the Claim for review by the TPA, otherwise the Claim will be forever barred.

Step 6. If requested by the Claimant, the TPA shall investigate the Claim and inform the Claimant, in writing whether the Claim has been accepted or denied. Any forms Claimant may receive from the TPA must be returned within fourteen (14) days of receipt.

Step 7. If the TPA denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, to the Risk Manager that the Claim be reviewed by the Tribe's Legal Department, otherwise the Claim will be forever barred.

Step 8. If requested by the Claimant, the Tribe’s Legal Department shall investigate the Claim and inform the Claimant in writing, within twenty (20) days of receipt of the request, whether the Claim has been accepted or denied.

Step 9. If the Tribe’s Legal Department denies the Claim, or the Claimant is dissatisfied with the resolution, the Claimant has twenty (20) days from the date of the notice of denial to request that it be either heard in Tribal Court or by the Tribal Claims Commission. The request must be in writing and submitted to the Risk Manager. The decision to choose either Tribal Court or the Tribal Claims Commission shall be at the sole discretion of the Claimant. The demand for Tribal Court or Tribal Claims Commission review must be filed within six (6) months from the Legal Department’s response or be forever barred.

Section 4. Resolution by Tribal Court

If the Claimant requests the dispute be settled in Tribal Court, the Tribe shall consent provided the following apply:

- A. Unless otherwise stated in this Ordinance, all Tribal Court rules and procedures shall apply. Discovery proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure.
- B. The title of the filed court claim shall be “Claimant v. Red Hawk Casino,” and all service shall go through the Risk Manager.
- C. The Claimant must file a copy of the denial letter from the Tribe’s Legal Department along with the appeal petition.
- D. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding any Claimant’s attorney’s and other professional fees and costs).
- E. The decision of the Tribal Court shall be final and binding on both parties.
- F. The decision of the Tribal Court shall be issued within thirty (30) days of the Tribal Court hearing. If there is no Tribal Court hearing, then the Tribal Court shall issue its decision within thirty (30) days of the date that the Casino files its response.
- G. Under no circumstances shall there be any awards for attorney’s fees or costs.

Section 5. Resolution by Tribal Claims Commission

If the Claimant requests the dispute be settled by the Tribal Claims Commission, the Tribe shall consent provided the following apply:

- A. Unless otherwise stated in this Ordinance, all Tribal Claim Commission rules and procedures shall apply. Discovery proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure.
- B. The title of the filed court claim shall be “Claimant v. Red Hawk Casino,” and all service shall go through the Risk Manager.
- C. The Claimant must file a copy of the denial letter from the Tribe’s Legal Department along with the appeal petition.
- D. Resolution of the dispute before the Tribal Claim Commission shall be at no cost to the Claimant (excluding any Claimant’s attorney’s and other professional fees and costs).
- E. The decision of the Tribal Claims Commission shall be final and binding on both parties.
- F. The decision of the Tribal Claims Commission shall be issued within thirty (30) days of the Tribal Claims Commission hearing. If there is no Tribal Claims Commission hearing, then the Tribal Claims Commission shall issue its decision within thirty (30) days of the date that the Casino files its response.
- G. Under no circumstances shall there be any awards for attorney’s fees or costs.

Section 7. Appeals

Any party dissatisfied with the award of the Tribal Court or Tribal Claims Commission may, at the party’s election, appeal the matter to a tribal court of appeal, if one is established, or invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent).

- A. JAMS Appeal – The Tribe consents to the jurisdiction of the JAMS Appeal provided that the James Appeal meet the following requirements:
 - 1. Take place in El Dorado County; and
 - 2. Use one (1) arbitrator, agreed upon by the parties, and shall not be a de novo review, but shall be based solely upon the record developed in the Tribal Court or Tribal Claims Commission proceeding; and
 - 3. Review all determinations of the Tribal Court or Tribal Claims Commission on matters of law, but shall not set aside any factual determinations of the Tribal Court or Tribal Claims Commission if such determination is supported by substantial evidence; and

4. Not overturn the decision of the Tribal Court or Tribal Claims Commission if there is a conflict in the evidence such that a reasonable fact-finder could have found for either party.
 5. If there is no tribal court of appeal, the cost and expense of the JAMS Optional Arbitration Appeal Procedure (“JAMS appeal”) shall be initially borne equally by the Tribe and the patron and both parties shall pay their share of the JAMS appeal costs at the time the JAMS appeal option is elected, but the JAMS arbitrator shall award costs and expenses to the prevailing party (but not attorney’s fees). If a tribal court of appeal is available, the party electing the JAMS appeal option shall bear all costs and expenses of the JAMS appeal, regardless of the outcome, and each party will bear their own attorney’s fees.
- B. Tribal Court of Appeals – The Tribe consents to the jurisdiction of the Tribal Court of Appeals provided that the Tribal Court of Appeals shall:
1. Be governed by the Tribal Court of Appeal’s rules and procedures; and
 2. Review all determinations of the Tribal Court or Tribal Claims Commission on matters of law, but shall not set aside any factual determinations of the Tribal Court or Tribal Claims Commission if such determination is supported by substantial evidence; and
 3. Not overturn the decision of the Tribal Court or Tribal Claims Commission if there is a conflict in the evidence such that a reasonable fact-finder could have found for either party.
 4. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding the patron’s attorney’s and other professional fees and costs).

Section 8. Applicable Law

California tort law shall govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe’s Land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, with the exception that California law providing for punitive damages shall not apply.