

TITLE 8. Casino Tort Claims Ordinance

Section 1. Purpose

In accordance with Section 12.5(b) of the Amended and Restated 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. Sovereign Immunity

If the Claimant has exhausted the Tribal Dispute Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity with respect to the arbitration or the Tribal Court hearing of 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. This waiver shall not apply to:

1. Punitive damages.
2. The portions of claims that exceed either ten million dollars (\$10,000,000) or the Policy limits, whichever is greater.

Section 3. 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 arbitration. 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 arbitrate the Claim de novo before a retired judge. 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 arbitration or Tribal Court

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 arbitrated or heard in Tribal Court. The request must be in writing and submitted to the Risk Manager. The decision to choose either binding arbitration or the Tribal Court system shall be at the sole discretion of the Claimant. If the Claimant selects arbitration, he or she will be required to pay half of the cost. If the Claimant selects Tribal Court it will be at no cost to the Claimant. The demand for arbitration or Tribal Court Appeal 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.
- 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 cost, if any, incurred by the Claimant on their own, including Claimant’s attorney or expert witness fees).
- 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. The Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the Tribal Court’s jurisdiction and in any action to;
 - 1. Enforce the parties’ obligation to hear the matter in Tribal Court;
 - 2. Confirm, correct, modify, or vacate the judgment or award rendered in Tribal Court;
 - 3. Enforce or execute a judgment based upon the award.

Section 5. Resolution by Arbitration

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

- A. The Claim shall be heard by a single arbitrator, who is a retired judge (“JAMS arbitrator”).
- B. The arbitration shall be conducted in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent).

- C. Discovery shall be governed by section 1283.05 of the California Code of Civil Procedure.
- D. The cost and expenses of arbitration shall be initially borne equally by the Tribe and the Claimant. Each party shall pay their share of the cost at the time of Claimant's election of arbitration. The arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court.
- E. The decision of the arbitrator shall be binding on both parties.
- F. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the Appeal Procedure, regardless of the outcome.
- G. The Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to;
 - 1. Enforce the parties' obligation to arbitrate;
 - 2. Confirm, correct, modify, or vacate the arbitral award rendered in the arbitration;
 - 3. Enforce or execute a judgment based upon the award.

Section 6. Appeals

In the absence of a Tribal appellate court, any party dissatisfied with the award of the Tribal Court or JAMS arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent) within thirty (30) days of the Tribal Court/JAMS decision; provided that the party making such election must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the Appeal Procedure, regardless of the outcome.

Section 7. 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.