

PART VIII: PRIZE AND TORT CLAIMS

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PART VIII: PRIZE AND TORT CLAIMS

800 Tort Claims. The Enterprise shall ensure that patrons of Osage Nation Gaming Facilities are afforded due process in seeking and receiving just and reasonable compensation for a tort claim for personal injury or property damage arising out of incidents occurring at a Gaming Facility, hereinafter a "Tort Claim."

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801.1 Posting of Tort Claim Procedures.

- (a) Notices explaining the procedure and time limitations with respect to making a Tort Claim shall be prominently posted in all Osage Nation Gaming Facilities.
- (b) Such notices shall explain the method and places for making a Tort Claim, that this procedure is the exclusive method of making a Tort Claim, and that the Tort Claims of patrons who do not follow these procedures shall be forever barred.
- (c) The Enterprise shall make pamphlets containing the requirements in this Part readily available to all patrons of the facility and shall provide such pamphlets to a claimant within five (5) days of the filing of a Tort Claim.

801.2 Notice of Claims.

- (a) Any patron having a Tort Claim shall file a written Tort Claim Notice by delivery to the ONGC or the Enterprise.
- (b) Tort Claim Notices filed more than ninety (90) days after the date of the alleged claim shall be deemed to be timely filed, but any judgment thereon shall be reduced by ten percent (10%).
- (c) Tort Claim Notices must be filed within one (1) year of the date of the event which allegedly caused the claimed loss. Tort Claim Notices filed more than one year after the claimed loss shall be forever barred.
- (d) The date the Tort Claim Notice is filed with the ONGC or the Enterprise shall be considered the official date of filing the Tort Claim Notice.

801.3 Content of Notice.

- (a) The Tort Claim Notice shall state:
 - (1) The date, time, place and circumstances of the incident upon which the Tort Claim is based;

- (2) The identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident;
 - (3) The amount of compensation and the basis for said relief;
 - (4) The name, address and telephone number of the claimant; and,
 - (5) The name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant.
- (b) All Tort Claim Notices shall be signed by the claimant under oath and witnessed by a Notary Public.

801.4 Procedure upon Notice.

- (a) Within forty-eight (48) hours of the Tort Claim Notice being filed with the ONGC, the ONGC shall forward a copy of the Tort Claim to the Osage Nation Gaming Enterprise, the Osage Tribal Court, the Osage Nation Congress and the SCA. If the Tort Claim Notice is filed with the Osage Nation Gaming Enterprise, the Enterprise shall forward a copy of the Tort Claim to the ONGC and the SCA within forty-eight (48) hours of filing.
- (b) Within five (5) business days of the date the Tort Claim is filed the Enterprise shall:
 - (1) Initiate an investigation of the Tort Claim, to review, and make a determination regarding the validity of the Tort Claim; or
 - (2) Obtain the claimant's agreement to refer the matter for informal mediation; or
 - (3) Issue the claimant a "Right to Proceed" Notice denying the Tort Claim and directing the claimant to proceed in Osage Tribal Court.

801.5 Investigation of Claim by the Enterprise.

- (a) When the Enterprise investigates a Tort Claim, it shall promptly review, examine, and make a determination regarding the validity of Tort Claims that have been properly filed in accordance with this Part.
- (b) The Enterprise shall have ninety (90) days from the filing date, to resolve the Tort Claim, and notify the claimant in writing.
- (c) If no resolution is reached within ninety (90) days, a denial of the Tort Claim will be deemed to have issued; unless the parties by written agreement extend the date by which a denial shall be deemed issued if no other action is taken. Each extension shall be for no more than ninety (90) days, but there shall be no limit on the number of written agreements for extensions, provided that no written

agreement for extension shall be valid unless signed by the claimant and an authorized representative of the Enterprise.

801.6 Consent to Interview.

- (a) The claimant shall appear to be interviewed or deposed at least once under reasonable circumstances.
- (b) The claimant shall be entitled to have legal counsel present, if requested.
- (c) The Enterprise shall afford claimant at least thirty (30) days' written notice of the interview or deposition.
- (d) The claimant's failure to appear without cause for any interview or deposition properly noticed pursuant to this paragraph shall be deemed a voluntary withdrawal of the Tort Claim.

801.7 Judicial Proceedings. A judicial proceeding in Osage Tribal Court for any cause arising from a Tort Claim may be maintained in accordance with, and subject to the limitations contained in, this Part only if the following requirements have been met:

- (a) The claimant has followed all procedures required by this Part, including, without limitation, the delivery of a valid and timely written Tort Claim Notice to the Enterprise;
- (b) The Enterprise has denied the Tort Claim; and
- (c) The claimant has filed the judicial proceeding no later than the one-hundred-eightieth (180th) day after denial of the Tort Claim by the Enterprise; provided, that neither the claimant nor the Enterprise may agree to extend the time to commence a judicial proceeding.

801.8 Public Liability Insurance.

- (a) Public liability insurance with liability limits of not less than two hundred fifty thousand dollars (\$250,000.00) for any one person and two million dollars (\$2,000,000.00) for any one occurrence for personal injury, and one million dollars (\$1,000,000.00) for any one occurrence for property damage, hereinafter the "Limit of Liability", or the corresponding limits under the Governmental Tort Claims Act, whichever is greater, shall be maintained by the Enterprise.
- (b) Copies of all such insurance policies shall be forwarded to the SCA.

801.9 Limit of Liability.

- (a) No Tort Claim shall be paid, or be the subject of any award, in excess of the Limit of Liability.

- (b) Tort Claims are not assignable. Consent to suit only extends to the patron actually claiming to have been injured. If a Tort Claim is assigned or brought by any person other than the patron claiming injury, the Nation's consent to suit shall be deemed revoked.
- (c) However, claimant's rights to sue shall not be revoked if a tort action is filed by:
 - (1) A court appointed representative of claimant's estate,
 - (2) An indispensable party, or,
 - (3) A health provider or other party subrogated to claimant's rights by an insurance policy. Such party's claim must be identical to the claim that would have been made by the claimant directly but for appointment of the indispensable party or representative and is in lieu of, not in addition to, the claim of the patron and the claim of such party would have been subject to a consent to suit hereunder if it had been made by the claimant directly.

801.10 Sovereign Immunity.

- (a) The Enterprise's insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity in connection with any claim made within the Limit of Liability if the claim complies with the limited consent provisions of Subsection C of Part 6 of the Compact.
- (b) The Nation agrees to a limited waiver of sovereign immunity of the Enterprise, up to the limit of the public liability insurance policy, if the claimant:
 - (1) Properly followed the Tort Claims procedure as described within this Part.
 - (2) Files the Tort Claim with the Osage Tribal Court within one hundred and eighty days (180) from the date of the Tort Claim is denied by the ONGE.

802 Prize Claims. The Enterprise shall ensure that patrons of a facility are afforded due process in seeking and receiving just and reasonable compensation arising from a patron's dispute, in connection with his or her play of any game, the amount of any prize which has been awarded, the failure to be awarded a prize, or the right to receive a refund or other compensation, hereafter "Prize Claim," as described in this Part.

802.1 Posting of Prize Claim Procedures.

- (a) The Enterprise shall ensure that notices explaining the procedure and time limitations with respect to making a Prize Claim are prominently posted in all Osage Nation Gaming Facilities.
- (b) Such notices shall explain the method and places for making Prize Claims, that this procedure is the exclusive method of making a Prize Claim, and that Prize Claims of patrons who do not follow this procedure shall be forever barred.

- (c) The Enterprise shall make pamphlets containing the requirements in this Part readily available to all patrons of the Gaming Facilities and shall provide such pamphlets to a claimant within five (5) days of receipt of notice of the filing date of a Prize Claim. \

802.2 Notice.

- (a) Any patron having a Prize Claim shall file a written Prize Claim Notice by delivery to the Enterprise or to the ONGC.
- (b) The Prize Claim Notice shall be filed within ten (10) days of the event which is the basis of the Prize Claim.
- (c) The date the Prize Claim is filed with the Enterprise or the ONGC shall be deemed the official date of filing the Prize Claim Notice.
- (d) Failure to file the Prize Claim Notice during such period of time shall forever bar such Prize Claim.

802.3 Content of Notice.

- (a) The written Prize Claim Notice shall state:
 - (1) The date, time, place and circumstances of the incident upon which the Prize Claim is based,
 - (2) The identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident,
 - (3) The amount demanded and the basis for said amount,
 - (4) The name, address and telephone number of the claimant, and
 - (5) The name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant.
- (b) All Prize Claims Notices shall be signed by the claimant under oath and witnessed by a Notary Public.

802.4 Procedure upon Notice. Within forty-eight (48) hours of the Prize Claim Notice being filed with the ONGC, the ONGC shall forward a copy of the Prize Claim to the Enterprise and to the SCA. If the Prize Claim Notice is filed with the Enterprise, the Enterprise shall forward a copy of the Prize Claim to the ONGC and the SCA within forty-eight (48) hours of filing.

802.5 Investigation.

- (a) The Enterprise shall promptly review, investigate and make a determination regarding the Prize Claim.

- (b) Claimants shall cooperate in providing information, including personal sworn statements and agreeing to be interviewed, as the Enterprise shall reasonably request. The claimant is permitted to have counsel present during any such interview.

802.6 Time Lines for Resolution.

- (a) Seventy-two (72) hours from the filing of the claim:
 - (1) If the Prize Claim is not resolved the ONGC shall immediately notify the SCA in writing that the claim has not been resolved.
 - (2) In the event the claim is resolved, the ONGC shall not be obligated to report that fact to the SCA, but shall make ONGC reports available for review upon request.
- (b) Thirty (30) days from the filing date:
 - (1) Any portion of a Prize Claim which is unresolved shall be deemed denied if the Enterprise fails to notify the claimant in writing of its approval within thirty (30) days of the filing date unless the parties agree by written agreement to extend the date.
 - (2) Each extension shall be for no more than thirty (30) days, but there shall be no limit on the number of written agreements for extensions; provided, that no written agreements for extension shall be valid unless signed by the claimant and an authorized representative of the ONGC. The claimant and the Enterprise may continue attempts to settle a claim beyond an extended date; provided, settlement negotiations shall not extend the date of denial in the absence of a written extension required by this paragraph.

802.7 Judicial Proceeding. A judicial proceeding for any cause arising from a Prize Claim may be maintained in accordance with and subject to the limitations set forth in this Part only if the following requirements have been met:

- (a) The claimant has followed all procedures required by this Part, including without limitation, the delivery of a valid and timely written Prize Claim Notice to the ONGC;
- (b) The Enterprise has denied the Prize Claim; and
- (c) The claimant has filed the judicial proceeding in Osage Tribal Court no later than one hundred eighty (180) days after denial of the claim by the Enterprise. Neither the claimant nor the ONGC may extend the time to commence a judicial proceeding.

802.8 Limits on Claim.

- (a) The maximum amount of any Prize Claim shall be the amount of the prize which the claimant establishes he or she was entitled to be awarded, hereafter "Prize Limit."
- (b) No Prize Claim shall be paid, or be the subject of any award, in excess of the "Prize Limit" established by the claimant.
- (c) Prize Claims are not assignable. Consent to suit only extends to the patron actually claiming to have engaged in the play of the game on which the claim is based. If a claim is assigned or brought by any person other than the patron who played the game upon which the claim is based, the Nation's consent to suit shall be deemed revoked.
- (d) However, claimant's rights to sue shall not be revoked if a prize action is filed by:
 - (1) A court appointed representative of claimant's estate, or,
 - (2) An indispensable party.
- (e) Nothing herein is intended to, or shall constitute a consent to suit against the Enterprise as to such party except to the extent that such party's claim is identical to the claim that would have been made by the claimant directly but for appointment of said representative or indispensable party, and participation of such other party is in lieu of, not in addition to, pursuit of the claim by the patron, and the claim of such other party would have been subject to a consent to suit hereunder if it had been made by the claimant directly.

802.9 Sovereign Immunity. The Nation agrees to a limited waiver of sovereign immunity up to the "Prize Limit" if the claimant:

- (a) Properly followed the Prize Claims procedure as described within this Part.
- (b) Files the Prize Claim with the Osage Tribal Court within one hundred eighty days (180) from the date of the claim is denied by the Enterprise.

803 Other Patron Disputes. Except for Tort and Prize Claims covered by the Compact, any person who has any dispute, disagreement, or other grievance with the Enterprise that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute pursuant to the following procedures.

803.1 Chain of Authority: Any person who has any dispute, disagreement, or other grievance with the Enterprise that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons in the following order:

- (a) A member of the staff relevant to the Gaming Facility;

- (b) The supervisor in the area of the relevant Gaming Facility in which the dispute arose;
- (c) The manager of the relevant Gaming Facility; and
- (d) The Commission.

803.2 Patron Rights: When a person brings a dispute for resolution pursuant to ONGL § 11-108, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level of § 803.1 above, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level. Resolution of any dispute by the personnel of a Gaming Facility shall always involve two (2) or more staff members. All dispute whether resolved or not, shall be reported in detail by the staff members involved to their supervisor(s), or in the case of the general manager of the Gaming Facility, to the ONGC.

803.3 ONGC Action on Patron Disputes: All disputes which are submitted to the ONGC shall be decided by the Commissioners based on all relevant information pertaining to the matter. The decision of the Commission shall be:

- (a) In writing;
- (b) Issued within fourteen (14) days of submission of the matter to the Commission; and,
- (c) Provided to the general manager of the relevant Gaming Facility and to the complainant.

803.4 Review of Commission Decision: The decision of the Commissioners shall be final and shall not be subject to judicial review in the courts of the Osage Nation or in any other court claiming to have jurisdiction.