

ONEIDA INDIAN NATION

AMENDED TORT CLAIMS RESOLUTION ORDINANCE

Ordinance No. 0-94-02A

Pursuant to the authority vested in the Oneida Indian Nation by virtue of its sovereignty and inherent powers of self-government, the Nation hereby establishes the office of the Claims Commissioner of the Oneida Indian Nation (hereafter referred to as the "Commissioner" or "Claims Commissioner"). This Ordinance replaces Nation Ordinance O-94-02.

Article 1 - Definitions

1. "Compensation" means payment for past and future damages made to a claimant by the Nation pursuant to the authority of this Ordinance.

2. "Damages" mean only medical expenses, lost earnings, property loss and other economic harms to the claimant that are a direct consequence of an injury caused by the fault of the Nation. "Damages" do not include non-economic injury.

3. "Medical expenses" mean all necessary expenses incurred for: (i) medical, hospital, surgical, nursing, ambulance, x-ray, prescription drug and prosthetic services; (ii) medical supplies and equipment; (iii) psychiatric, physical and occupational therapy and rehabilitation; and (iv) any other professional health services.

4. "Lost earnings" mean loss of earnings from work which the person would have performed had he/she not been injured.

5. "Injury" includes any alteration or impairment of a temporary or permanent nature to a person or his or her property.

6. "Person" means any human being or group of human beings or any entity recognized as a person under the law of any jurisdiction. "Person" does not mean the Oneida Indian Nation, its enterprises or agents.

Article 2 - Standard for Compensation

The Nation will compensate a person for damages if the person demonstrates to the Nation that he or she, or a person he or she is authorized to represent, was injured due to the fault of the Nation or one of its agents acting within the scope of such agency. The Nation will pay for that amount of damage commensurate with the

degree to which the fault of the Nation or its agents, who were acting within the scope of their agency, caused the injury. Awards will reasonably compensate for past and future damages caused by the fault of the Nation, but will in no event exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to a person.

Article 3 - Establishment of the Claims Commissioner

1. The Nation establishes the Office of the Claims Commissioner of the Oneida Indian Nation to resolve claims made against the Nation to recover damages arising out of injury.

2. This Commissioner shall be appointed by the Nation Representative(s).

3. The Commissioner shall have those powers and duties common to offices of its kind. In particular, the Commissioner is authorized to recommend that the Nation compensate a claimant who deserves relief in accordance with the standard and procedures set forth in this Ordinance. To determine whether a claimant should receive compensation, the Commissioner may investigate or cause the investigation of any claim and may convene an inquiry at which testimony and other evidence may be received. The Commissioner may in his or her discretion promulgate regulations to implement this Ordinance, providing that they are consistent with its terms.

4. The Commissioner shall recuse himself or herself from serving regarding a claim that would create for him or her an actual, or an appearance of a, conflict of interest.

5. In the event that the Commissioner is unable temporarily to serve, the Nation Representative(s) shall appoint a replacement for the Commissioner to serve in his or her stead during that time.

6. The Commissioner shall be paid by the Nation for his or her services and reasonable expenses and shall be assisted by such staff, other public bodies or offices of the Nation, and counsel from time to time as deemed necessary by the Nation Representative(s) to provide for prompt and fair resolution of claims made against the Nation.

Article 4 - Procedures

1. A person, directly or by counsel, may submit a claim for compensation in writing to the Claims Commissioner. The claim shall state prominently on its exterior packaging "NOTICE OF CLAIM".

2. The claim must identify the claimant and contain a complete written description of the claim of injury and damage, including a detailed statement of why

the Nation is at fault for the injury claimed. The claim must also be supported by evidence and state the name of the claimant and his or her address and telephone number for home and for business. With respect to each claimant, evidence shall include:

(a) a sworn affidavit from the claimant, which shall include his or her statement in detail of the relevant facts, a detailed statement concerning past and future lost earnings, and a detailed statement of all other sources of compensation regarding the claimed injuries, including insurance, third parties, and lawsuits;

(b) sworn affidavits from witnesses;

(c) photographs of any injured part of the claimant's body or property;

(d) a written list of the names of health care providers who, and hospitals which, have treated the claimant for the injury claimed, and all records from medical personnel who are treating or have treated the claimant for the injury claimed, with a written report and prognosis prepared and signed by each physician that has treated or is treating the claimant for the injury claimed;

(e) a written list of all health care providers, including doctors and hospitals, who have treated claimant during the preceding ten years; and a written summary that reasonably describes the conditions treated by each of these health care providers, the treatment provided, and the resolution if any, of each condition described;

(f) all records that show lost income to the claimant due to the injury claimed, including but not limited to income tax returns, if any, filed with any government in the last three (3) years;

(g) a signed release from the claimant permitting release by third parties, including health care providers, to the Nation of records regarding the claimant or his or her claim; and

(h) all bills and receipts for which the claimant seeks reimbursement;

(i) and any other information available to the claimant and necessary for the Commissioner to evaluate the claim.

Upon a showing of good cause, the Commissioner may waive a requirement that the claimant submit certain evidence.

3. Any submission of a claim for compensation shall be made to the Claims Commissioner within one year of the date of enactment of this Ordinance or of the

date of the injury claimed, which ever is later.

4. The Commissioner may conduct an investigation or an inquiry at which the claimant or the Nation, directly or through counsel, may give testimony and produce witnesses. In the event of such an inquiry, the Commissioner will provide reasonable advance notice to the claimant of the date, time and location of the inquiry. Failure of the claimant to respond completely to the requirements of the Commissioner in any regard shall be an independent ground upon which to deny compensation.

5. The Commissioner shall issue a written decision with respect to each claim, stating an evaluation of the claim and recommending an amount of compensation, if any. This decision shall provide the findings of the Commissioner with respect to the facts underlying the claim. The Commissioner may consider the existence of collateral sources of compensation which the claimant has and may consider the availability of insurance which the Nation may have to cover any award of compensation. If the Commissioner concludes that compensation is warranted, then he or she shall recommend to the Nation Representative(s) the amount and terms of that compensation. The Commissioner shall provide claimant with a copy of the decision.

6. The Nation Representative(s) may review the basis and size of a compensation recommendation to determine whether they are justified by the evidence in support of the claim and whether they are consistent with the best interests of the Nation. The Nation Representative(s) in his discretion may approve, amend or remand with instructions for further fact finding, any recommendation of the Commissioner. Upon approval or amendment of the recommendation of the Commissioner, the Nation Representative(s) shall initial the amount of compensation to be awarded and notify the claimant.

7. Upon receipt by the Nation Representative(s) of a sworn, written release by the claimant of any claim or other liability against the Nation or any joint tortfeasor, the Nation Representative(s) shall send a copy of such release with a copy of the initialed award to the Nation's Chief Financial Officer, who shall prepare and issue a check on behalf of the Nation to the claimant in the amount of the award approved by the Nation Representative(s).

Article 5 - Interpretation

1. Sovereign Immunity. The Nation does not by enacting this Ordinance waive in any respect its sovereign immunity, or that of its agents, in any manner, under any law, for any purpose, nor in any place.

2. No Right of Action. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agencies, its officers or employees, or any other person.

3. Appeal. Upon establishment of a Nation Court, appeal may be taken by a claimant from an adverse decision by the Commissioner in accordance with such procedures as the Nation shall then provide. This Nation remedy is not subject to review, enforcement or modification in any state or federal court or by any authority outside the Nation.

4. Prior Ordinances Repealed. Prior Ordinances of the Nation and regulations of any Nation agency are superseded to the extent that they conflict with this Ordinance. Upon enactment of this Ordinance, Nation Ordinance O-94-02 shall be repealed.

Article 6 - Effective Date

This Ordinance is effective upon enactment.

Enacted this 8th day of September, 1995.



Ray Halbritter
Nation Representative