

## **Gaming Facility Tort Liability**

### **CHAPTER 15. SAN MANUEL GAMING FACILITY TORT LIABILITY ACT<sup>1</sup>**

#### **SMTC 15.1 Title**

This Chapter shall be known and cited as the San Manuel Gaming Facility Tort Liability Act.

#### **SMTC 15.2 Statement of Purpose**

This Act is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe, in compliance with Section 10.2(d) of the Compact, as that term is defined herein. This Act does not constitute a general waiver of tribal sovereign immunity. The Act shall be strictly construed to provide a process for the consideration and evaluation of Claims brought by a Visitor alleging 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.

#### **SMTC 15.3 Definitions**

15.3.1 **“Actual Damages”** means the ascertainable loss of money or property sustained as a result of an Injury covered under this Act.

15.3.2 **“Business Committee”** means the seven member committee established under the Tribe's Articles of Association.

15.3.3 **“Claim”** means a timely filed written request, together with supporting documentation as required by section 15.7 of this Act that alleges an Injury to a Visitor that occurred as a result of activities undertaken by the Gaming Operation or its employees acting in the course and scope of their employment at the Gaming Facility.

15.3.4 **“Claim Filing Date”** means the date a Claim is received by the Claims Administrator.

15.3.5 **“Claimant”** means a person by or on whose behalf a Claim is filed.

15.3.6 **“Claims Administrator”** means the person or entity appointed by the Tribe to administer all claims filed under this Act, which initially shall be the Gaming Operation Claims Administration Department.

15.3.7 **“Clerk”** means the clerk of the San Manuel Tribal Court.

15.3.8 **“Compact”** means the Class III Tribal-State Gaming Compact between the Tribe and the State of California executed on or about August 15, 2016, with an effective date of April 10, 2017, which supersedes the prior Tribal-State Gaming Compact executed September

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<sup>1</sup> Adopted by the General Council on June 13, 2000 and as amended on December 12, 2000; May 22, 2001; February 12, 2008, with an effective date of January 18, 2008; November 11, 2008; July 14, 2015; and November 8, 2016, with an effective date of April 10, 2017.

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10, 1999 as amended on August 28, 2006, further amended by letter of agreement dated September 25, 2007.

15.3.9 **“Determination Letter”** means a letter issued by the Claims Administrator notifying the Claimant of the disposition of their Claim.

15.3.10 **“Employee”** means a part or full time employee of the Gaming Operation, when acting during the course and within the scope of his or her employment, and includes volunteers, as well as officials of the Gaming Operation when they are acting to fulfill their duties to the Gaming Operation. The term does not include agents or representatives of the United States or of the State of California or any of their political subdivisions.

15.3.11 **“Gaming Facility”** means any building in which Gaming Activities or any Gaming Operations occur, or in which business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation and Facility rather than providing them with an incidental benefit.

15.3.12 **“Gaming Operation”** means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

15.3.13 **“General Council”** means the governing body of the Tribe established under the Tribe’s Articles of Association.

15.3.14 **“Injury”** means death, harm to a person, or damage to or loss of property which, if inflicted by a person, according to California tort law standards or the Tribe’s laws would constitute a tort expressly covered by the Policies.

15.3.15 **“Act”** means this San Manuel Gaming Facility Tort Liability Act.

15.3.16 **“Insurance Policies”** means those certain commercial general liability insurance policies consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher that provides coverage of no less than ten million dollars (\$10,000,000.00) per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the Gaming Operation or activities occurring in the Gaming Facility.

15.3.17 **“Tribal Appellate Court”** means the Appellate Court of the Tribal Court, as that term is defined in SMTTC 15.3.18.

15.3.18 **“Tribal Court”** means the San Manuel Tribal Court, a judicial body established by the Tribe.

15.3.19 **“Tribal Dispute Resolution Process”** means the Tribe’s administrative process for resolving a Claim.

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15.3.20 **“Tribal Gaming Agency”** means the San Manuel Gaming Commission.

15.3.21 **“Tribe”** means the San Manuel Band of Mission Indians, a federally recognized Indian tribe.

15.3.22 **“Third Party Administrator”** means the third party designated by the Tribe to administer certain Claims under this Act.

15.3.23 **“TDRP Notice”** means notice delivered by personal service or certified mail, return receipt requested, that the Claimant is required within one hundred and eighty (180) days of such notice to file a Claim commencing the Tribal Dispute Resolution Process.

15.3.24 **“Visitor”** means a person who is not an Employee and enters onto the Tribe’s land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Operation.

### **SMTC 15.4 Availability of this Act**

The Tribal Gaming Agency shall cause this Act to be made available to Visitors or their legal representatives, either in hard copy upon request or by publication on the Gaming Operation’s website.

### **SMTC 15.5 Limited Waiver of Sovereign Immunity**

15.5.1 The Tribe grants a limited waiver of its right to assert sovereign immunity only with respect to the Tribal Court’s jurisdiction to adjudicate Claims filed pursuant to this Act but only up to the limits of the Insurance Policies; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe’s sovereign immunity beyond the limits of the Insurance Policies.

15.5.2 Such limited waiver shall not be deemed to waive the sovereign immunity of the Tribe, nor of the Gaming Facility’s sovereign immunity with respect to any assets of the Gaming Facility beyond the limits of the Insurance Policies, nor shall it apply to, or permit claims or actions of any type against the Tribe, other Tribal entities or agencies, any individual members of the General Council, the Gaming Commission, the Business Committee, all tribal officials, officers, Employees, contractors, agents, interns, or volunteers of the Gaming Operation or the Tribe for actions taken during the course and within the scope of their official duties without regard to the policy making, discretionary, or ministerial nature of their duties.

15.5.3 Neither the Business Committee, the Gaming Commission, nor any official, officer, or Employee thereof shall be authorized, and shall not attempt, to otherwise waive the Gaming Facility’s or the Tribe’s sovereign immunity for Claims arising under this Act.

### **SMTC 15.6 Governing Law**

California tort law shall govern all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the

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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, except that any and all laws governing punitive damages shall not be applicable to any Claim raised under this Act.

### **SMTC 15.7 Tribal Dispute Resolution Process**

15.7.1 **TDRP Notice.** Upon notice that a Claimant alleges to have suffered an injury or damages resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, the Claims Administrator shall provide notice by personal service or certified mail, return receipt requested, that the Claimant is required within one-hundred eighty (180) calendar days of receipt of the written notice to proceed with the Tribal Dispute Resolution Process and, if dissatisfied with the resolution, is entitled to request review in the Tribe's tribal court system.

15.7.2 **Statute of Limitations.** A Claimant must bring his or her claim within one-hundred eighty (180) days of receipt of the written notice of the Tribal Dispute Resolution Process as long as the notice specified in SMTC 15.7.1 has been satisfied.

15.7.3 **Filing a Claim.** Claims must be made in writing and must be filed with the Claims Administrator by the Claimant or the Claimant's representative, or, if the Claim is one for death by negligent act or omission, by either the personal representative, the surviving spouse, or next of kin of the deceased Claimant.

a. **Contents of a Claim.** The Claim shall contain the following:

1. the Claimant's name and address, and the name and address of the Claimant's attorney, if any;
2. a concise statement of the facts giving rise to the claim, including the date, time, place, and circumstances of the act or omission giving rise to the Injury;
3. a concise statement of the nature and the extent of the Injury claimed to have been suffered;
4. a statement of the amount of monetary damages requested;
5. the name(s) of any Gaming Operation Employee(s) to which the Injury was reported, if known; and
6. copies of any and all documentation supporting the Claim.

b. **Notice of Defective Claim.** If the Claim is defective for failure to include any of the required documentation, the Claims Administrator shall deliver written notice to the Claimant describing such defect(s). The Claimant must cure any defects contained in the notice within the later of:

1. thirty (30) days from receipt of notice of a defective claim; or

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2. one hundred and eighty days (180) from receipt of the TDRP Notice.

c. Request for Additional Information. The Claims Administrator, or representatives acting on his or her behalf, may request additional information at any time including, without limitation, medical bills, invoices, reports, test results, checks, or other materials they may deem necessary to evaluate or settle the Claim.

15.7.4 Tribal Court proceedings may be stayed until the completion of the Tribal Dispute Resolution Process or one-hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.

15.7.5 Investigation of a Claim. Upon receipt of a Claim filed pursuant to this Section, the Claims Administrator shall investigate the Claim to determine its validity and the amount of any legitimate damages, and shall attempt in good faith to resolve the Claim.

15.7.6 Issuance of Determination Letter. Within sixty (60) days of the Claim Filing Date, the Claims Administrator shall issue a reasoned Determination Letter to the Claimant.

15.7.7 Settlement Offers.

a. If the Claims Administrator determines the Claim should be allowed, the Claims Administrator shall also include an offer to settle the Claim in the Determination Letter.

b. The settlement offer shall state with specificity the amount of damages to be awarded to the Claimant and shall be contingent upon a release of all Claims by Claimant.

c. Any settlement proposed by the Claims Administrator and approved by the Tribe exceeding the deductible amount of the applicable Insurance Policies shall be contingent upon the applicable insurance company's prior written consent, if required. In no event shall any settlement award exceeding the deductible amount be satisfied out of or attach to any assets of the Tribe or the Gaming Facility.

15.7.8 Denial of a Claim. If no Determination Letter is issued within sixty (60) days of the Claim Filing Date and no extension has been granted to the Claims Administrator by the Claimant, the Claim will be deemed to have been denied.

### **SMTC 15.8 Tribal Court Adjudication**

15.8.1 The Tribe consents to adjudication of Claims in the Tribal Court, subject to the terms of the limited waiver of sovereign immunity set forth in SMTC 15.5, except that no Claims shall be heard in the Tribal Court until the Claimant has exhausted the Tribal Dispute Resolution Process set forth in SMTC 15.7.

15.8.2 A Claimant must file a request for review with the Tribal Court within thirty (30) days of receipt of a Determination Letter or a deemed denial of a Claim.

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15.8.3 In adjudicating Claims under this Act, the Tribal Court may not award damages in excess of the limits of the Insurance Policies.

15.8.4 Discovery in the Tribal Court proceedings shall be governed by the San Manuel Rules of Civil Procedure, which shall be made available on the Tribe's website.

15.8.5 Adjudication of Claims in the Tribal Court shall proceed at no cost to the Claimant, but the Tribal Court may award reasonable costs to the prevailing party.

15.8.6 Any party dissatisfied with the award of the Tribal Court may appeal to the Tribal Appellate Court.

### **SMTC 15.9 Covered Claims**

For a Claim to be compensable under this Act, the Claim:

a. Must allege an Injury resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility and that was proximately caused by negligent activities undertaken by the Gaming Operation or its Employees acting within the scope of employment;

b. Must be filed in compliance with section 15.7 of this Act;

c. Must not be an excluded claim listed in section 15.10 of this Act; and

d. Must not be beyond the limitations on damages set forth in section 15.11 of this

Act.

### **SMTC 15.10 Excluded Claims**

Claims hereunder do not include, and this Act does not provide any remedy or forum for, injuries or disputes beyond the scope provided for under this Act including, but not limited to the following categories of claims or disputes described below:

a. disputes arising from actual or prospective contractual agreements regardless of the parties or prospective parties thereto.

b. claims for punitive or exemplary damages, attorney's or expert witness fees, claims based on strict liability theories, or damages that would not be compensable under California tort law standards.

c. injuries, whether based on tort, contract, statutory or other grounds, allegedly sustained by a tribal official, officer, member or potential member, Employee, volunteer, intern, or agent, whether in connection with his or her employment or performance of official duties or otherwise. Any claims for Employee workplace injuries shall be subject to either the San Manuel Gaming Facility Workers' Compensation Act or the San Manuel Workers' Compensation Act and shall in no case be cognizable under this Act.

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d. employment-related claims of any kind by Employees or former employees of the Gaming Operation, or any other instrumentality, entity or department of the Tribe.

e. injuries proximately caused by a negligent or intentional act or omission that was committed outside the course and scope of employment and/or authority of a tribal official, officer, member, Employee, volunteer, intern, or agent.

f. injuries proximately caused by an act or omission of any person who is not an official, officer, Employee, or agent of the Tribe or the Gaming Facility or who is not otherwise directly subject to the Tribe's or Gaming Operation's direction, supervision, or control.

g. any injury allegedly caused by the issuance, denial, suspension, or revocation of any tribal gaming license or any other license or permit. Such claims may only be brought under the San Manuel Gaming Act, as amended, and shall in no case be cognizable under this Act.

h. any purported claim by any third party, including without limitation any injury allegedly arising from a claim for loss of consortium or any third-party claim, or equitable indemnity or contribution arising from third-party litigation.

i. any injury allegedly arising from an act or an omission committed by any Visitor of the Gaming Facility.

j. any claim concerning gaming transactions or promotions, such as, but not limited to the operation or play of gaming machines, claims for winnings, claims for machine malfunction, claims for promotions or prizes, or claims for points. Such claims may only be brought under the San Manuel Gaming Act of 1989, as amended, and shall in no case be cognizable under this Act.

k. any claim filed later than one hundred eighty (180) days after receipt of the TDRP Notice with respect to such claim.

l. any claim filed later than two (2) years from the date of the incident giving rise to the alleged Injury which is the subject of the claim, regardless of receipt or non-receipt of the TDRP Notice.

m. any claim for which a concurrent or alternative action seeking damages for an injury arising from the same incident has been filed in any other forum or venue. If such an action is filed in any other forum or venue during the pendency of a Claim pursuant to this Act, that Claim shall be considered to have been abandoned and shall not be eligible thereafter for an award of any kind. Abandoned claims shall not be eligible for Tribal Dispute Resolution, arbitration or Tribal Court proceedings. This provision shall not be construed to confer any right to bring an action in any other forum, nor as acquiescence by the Tribe or its Gaming Operation to a claim of jurisdiction by a court or agency of any other sovereign.

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### **SMTC 15.11 Limitation on Damages**

15.11.1 No damages resulting from an intentional tort may be awarded in any Claim under this Act unless expressly covered by the Gaming Operation's liability insurance coverage and within the limits of its Policies.

15.11.2 No punitive or exemplary damages may be awarded in any Claim under this Act under any circumstances whatsoever.

15.11.3 No award for costs may exceed those costs that would be allowable in a suit before a California Superior Court, regardless of whether such court could assert jurisdiction over the Claim or the parties.

15.11.4 If a Claimant's contributory negligence is determined to be equal to or greater than fifty (50) percent, the Claimant shall be barred from recovering any damages. If a Claimant's contributory negligence is determined to be less than fifty (50) percent, any award for damages shall be reduced in proportion to the Claimant's contributory negligence.

15.11.5 In no event shall any award of damages be applied for or made under this Act in excess of the limits of any Policy, and then only to the extent that such damages are expressly covered by the Gaming Operation's Policies. No tribal or Gaming Operation assets, excluding proceeds of the Policies, may be the subject of, or used to satisfy, an award of damages under this Act in excess of the deductible amount of said Policies.

15.11.6 In any Claim concerning a single occurrence, the maximum total amount of any award under this Act, including, as the case may be, damages, arbitration and/or court costs, interest, and any other costs, shall be the terms and policy limits of the Gaming Operation's Policies applicable to the Claim.

### **SMTC 15.12 Execution Prohibition**

Neither execution, attachment, seizure, forfeiture, garnishment, nor any other method or form of collection or enforcement of award of judgment shall issue against the Gaming Operation, the Gaming Commission, the Tribe, any Tribal entity or agency, any tribal member, official, officer, Employee, contractor, or agent in any Claim for Injury or proceedings initiated under this Act.

### **SMTC 15.13 Severability**

If any provision of this Act is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions that can be implemented without the invalid provision and, to this end, the provisions of this Act are declared to be severable.

### **SMTC 15.14 Conflict of Law**

To the extent that this Act is inconsistent with any other tribal law governing tort claims against the Gaming Operation, the terms of this Act shall govern.

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### **SMTC 15.15 Tribal Court Operation**

If the Tribal Court system is not available or ceases to operate, all claims of bodily injury, property damage, or personal injury covered under this section will be resolved pursuant to the procedures for the JAMS Streamlined Arbitration and the JAMS Optional Arbitration Appeal Procedure as provided in section 10.0 of the Compact.

### **SMTC 15.16 Amendments and Regulations**

This Act may be revised, amended or repealed from time to time by the General Council as the Tribe shall deem appropriate. Any revisions, amendments, or repeal shall be consistent with the terms of the Compact.

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