

**TRIBAL CODE**

**CHAPTER 85:**

**TRIBAL TORT CLAIMS ORDINANCE**

**CONTENTS:**

85.101 Purpose and Authority ..... 85-3

85.102 Findings and Declarations ..... 85-3

85.103 Definitions ..... 85-4

85.104 Waiver of Sovereign Immunity and Consent to Suit ..... 85-5

85.105 Liability for Tribal Vehicles ..... 85-5

85.106 Public Buildings ..... 85-6

85.107 Tribal Immunity From Tort Liability ..... 85-6

85.108 Actions Against Tribal Officers or Employees ..... 85-7

85.109 Liability Insurance ..... 85-7

85.110 Limitations of Actions ..... 85-8

85.111 Disposition of Claim Prerequisite to Suit ..... 85-8

85.112 Presentation of Claim ..... 85-8

85.113 Evidence Presented With Claim ..... 85-9

85.114 Adjustment of Claim ..... 85-11

85.115 Judgment as Bar ..... 85-11

85.116 Attorney Fees ..... 85-11

85.117 Exclusiveness of Remedy ..... 85-11

85.118 Exceptions ..... 85-12

85.119 Trial to the Court ..... 85-13

85.120 Damages for Noneconomic Loss ..... 85-13

85.121 Collateral Source Benefits ..... 85-13

85.122 Apportionment of Fault ..... 85-14

85.123 Contributory Fault No Bar to Recovery ..... 85-15

85.124	Effect of Impairment Due to Alcohol or Drugs .....	85-15
85.125	Reduction or Disallowance of Damages for Plaintiff's Fault .....	85-16
85.126	Specific Findings Required for Judgment .....	85-16
85.127	Order of Judgment .....	85-17
85.128	Subrogation and Contribution .....	85-17
85.129	Applicability and Effective Date .....	85-18

**HISTORY NOTE:**

Current Ordinance:

Adopted April 14, 1997 by Resolution No. 97-29, effective immediately.

Amendments:

Tribal Resolution 98-46 , adopted April 7, 1998, amended the code as follows “Various locations referring to the Risk Management Department is hereby amended to read the Sault Tribe Insurance Department”. Various locations referring to the Tribal Secretary shall read Sault Ste. Marie Tribe of Chippewa Indians Board of Directors Secretary.

## **TRIBAL CODE**

### **CHAPTER 85:**

#### **TRIBAL TORT CLAIMS ORDINANCE**

##### **85.101 Purpose and Authority.**

The purpose of this Chapter is to provide for a limited remedy for personal injury or property damage caused by tortious actions of Tribal officers or employees, and to provide for a limited waiver of sovereign immunity to accomplish this purpose. This Chapter is enacted under the authority contained in Article VII, Section 1 (d), (g), (k), (m), and (n) of the Tribal Constitution.

##### **85.102 Findings and Declarations.**

The Board of Directors finds and declares that:

(1) The Tribe and Tribal members benefit from commercial and governmental activities of the Tribe, and a large number of business invitees and other persons come in contact with persons acting on behalf of the Tribe or enter Tribal premises.

(2) Tribal sovereign immunity, as an aspect of tribal sovereignty, is an important protection of tribal assets and resources. The Tribe has the authority to waive its sovereign immunity, provided it does so knowingly in express terms. The Tribe may limit and restrict such a waiver in any manner it sees fit.

(3) The Tribe has inaugurated a Sault Tribe Insurance Department program, one component of which is an appropriate, effective, and affordable mechanism to compensate for personal injury or property damage caused by the tortious actions of tribal officers, employees, and others acting on behalf of the Tribe.

(4) The limited waiver of sovereign immunity contained in this Chapter is necessary to the implementation of the Sault Tribe Insurance Department program and is declared to be in the best interests of the Tribe and its members.

##### **85.103 Definitions.**

As used in this Chapter:

(1) "Noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, physical discomfort, or other noneconomic loss.

(2) "Personal injury" means bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.

(3) "Tort" means an claim for injury or loss of property or personal injury that is recognized at common law as embodied in the Restatement Second of Torts, as modified and updated from time to time, and any successor edition or version, subject to the exceptions and modifications set forth in this Chapter.

(4) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians. When used in this Chapter, the term includes all Tribal entities.

(5) "Tribal Court" means the Sault Ste. Marie Chippewa Tribal Court established by Tribal Code Chapter 80.

(6) "Tribal entity" means any entity created or owned by the Tribe for business, economic development or governmental purposes and any entity which is controlled by the Board of Directors. An entity shall be deemed to be controlled by the Board of Directors if a majority of the persons serving on the body which governs the entity are chosen by the Board of Directors or are required to be members of the Board of Directors; provided, that such entity is not a corporation or limited liability company organized under state law. Tribal entities include, but are not limited to, the Building Authority, Economic Development Commission, tribal enterprises, and other organizations entitled or denominated authority, enterprise, agency, commission, committee, corporation, task force or terms of like import, including all branches, programs and services of the Tribal government.

(7) "Tribal function" includes all functions performed for the Tribe, including all Tribal entities, as a part of or incidental to one's duties as employee, official, person acting in another capacity on behalf of the Tribe, regardless of whether the function is governmental or proprietary in nature. Activity which is conducted primarily for the purpose of producing a pecuniary profit is within the scope of and governed by this Chapter.

(8) "Tribal officer or employee" includes:

(a) any elected official of the Tribe;

(b) any employee of the Tribe;

(c) any volunteer acting on behalf of the Tribe in a recognized program for

volunteers;

(d) any police officer employed by another jurisdiction who at the time of the injury is exercising authority under tribal law by reason of a cross-deputization agreement, a mutual aid agreement, or similar agreement; and

(e) any member of a board, council, commission, authority, task force, or other body of the Tribe;

while such person is acting in the course of official duties, employment, authorization, service, or volunteer work for the Tribe. The term does not include independent contractors or the employees or agents of independent contractors.

#### **85.104 Waiver of Sovereign Immunity and Consent to Suit.**

(1) The sovereign immunity of the Tribe is hereby waived for tort claims brought in accordance with this Chapter. This waiver is subject to all of the restrictions, limitations and procedures set forth in this Chapter. This Chapter is to be strictly construed, and all procedures, restrictions and limitations are to be adhered to strictly. No waiver of any kind is made beyond the scope or outside the limitations and restrictions of this Chapter.

(2) The Tribe consents to suit in the Tribal Court for suits based on tort claims under this Chapter. The Tribe does not consent to suit in any other forum for such claims and specifically preserves and retains its sovereign immunity to any tort suit in any other forum. The Tribal Court shall have jurisdiction over all claims arising under this Chapter.

(3) Nothing in this Chapter shall limit the power or authority of the Tribal Board of Directors to waive by resolution the sovereign immunity of the Tribe and submit to the jurisdiction of a court for purposes of a particular suit or matter.

#### **85.105 Liability for Tribal Vehicles.**

(1) All motor vehicles owned, operated, maintained, or used by the Tribe shall be covered by insurance covering bodily injury and property damage under the Michigan No Fault Act, MCL §500.3101 *et seq.*

(2) The Tribe shall be liable for personal injury and property damage arising from the ownership, operation, maintenance, or use by any Tribal officer or employee, of a motor vehicle of which the Tribe is the owner or operator, to the extent and under the conditions of any insurance coverage on the vehicle, and to that extent and under those conditions only. The Tribe shall not be liable for any damages in excess of such insurance coverage, or under conditions not covered by such insurance.

### **85.106 Public Buildings.**

The Tribe has an obligation to repair and maintain public buildings under its control when open for use by the public. The Tribe is liable for personal injury and property damage resulting from a dangerous or defective condition of a public building owned or occupied by the Tribe if the Tribe had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinarily observant person for a period of 90 days or longer before the injury took place.

(2) As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the Tribe of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant. The notice shall be served on the Tribal Secretary, 523 Ashmun Street, Sault Ste. Marie, Michigan 49783, either personally or by certified mail, return receipt requested.

### **85.107 Tribal Immunity from Tort Liability.**

(1) Except as otherwise provided in this Chapter, the Tribe shall be immune from tort liability in all cases in which the Tribe is engaged in the exercise or discharge of a Tribal function. Except as otherwise expressly provided in this Chapter, this Chapter shall not be construed as modifying or restricting the immunity of the Tribe from tort liability as it existed on the date of enactment of this Chapter, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, the Tribe shall be liable for tort liability for injuries to persons or damage to property caused by any Tribal officer or employee if all of the following are met:

(a) The Tribal officer or employee is acting or reasonably believes he or she is acting in the scope of his or her duties or authority.

(b) The Tribal officer or employee is engaged in the exercise or discharge of a Tribal function.

(c) The Tribal officer or employee's conduct amounts to gross negligence that is the proximate cause of the injury or damage. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(3) Except as provided in sub. (2) or elsewhere in this Chapter, and without regard to the discretionary or ministerial nature of the conduct in question, the Tribe shall be immune from tort liability for injuries to persons or damage to property caused by any Tribal officer or employee of the Tribe or any other person.

#### **85.108 Actions Against Tribal Officers or Employees.**

(1) Every Tribal officer or employee shall be immune from tort liability for injuries to persons or damage to property for which the Tribe is liable under §85.107. The exclusive remedy is against the Tribe, as provided in §85.117.

(2) Whenever a claim is made or a civil action is commenced against a Tribal officer or employee for injuries to persons or property caused by negligence of the officer or employee while in the course of employment and while acting within the scope of his or her authority, the Tribe may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the claim and to appear for and represent the officer or employee in the action. The Tribe may compromise, settle, and pay the claim before or after the commencement of a civil action. Whenever a judgment for damages is awarded against a Tribal officer or employee as a result of a civil action for personal injuries or property damage caused by the officer or employee while in the course of employment and while acting within the scope of his or her authority, the Tribe may indemnify the officer or employee or pay, settle, or compromise the judgment.

(3) Whenever a criminal action is commenced against a Tribal officer or employee based upon the conduct of the officer or employee in the course of employment, if the employee or officer had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the Tribe may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action.

(4) This section shall not be construed as imposing any liability on the Tribe, nor does it waive or alter in any way the sovereign immunity of the Tribe.

#### **85.109 Liability Insurance.**

The Tribe may purchase liability insurance or reinsurance to indemnify and protect it against loss or to protect the Tribe and some or all of its agents or Tribal officers or employees against loss on account of any judgment secured against it, arising out of any claim for personal injury or property damage caused by the Tribe, its agents, or Tribal officers or employees. The existence of any policy of insurance indemnifying the Tribe against liability for damages is not a waiver of sovereign immunity to any extent or in any manner beyond the terms of this Chapter, a consent to suit in any forum other than that specified in this Chapter, or a waiver of any other defense otherwise available to the Tribe in the defense of the claim.

**85.110 Limitations of Actions.**

(1) A tort claim against the Tribe under this Chapter shall be forever barred unless it is presented in writing to the Tribe within 180 days after such claim accrues, or unless the action is begun within 180 days after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Tribe.

(2) The period of time for presentation of a claim shall be extended 180 days from the effective date of this Chapter for:

(a) any claim which accrued within 180 days prior to the effective date of this Chapter; or

(b) any claim filed in Tribal Court or another court of competent jurisdiction prior to the effective date of this Chapter.

**85.111 Disposition of Claim Prerequisite to Suit.**

(1) An action shall not be instituted upon a claim against the Tribe under this Chapter unless the claimant shall have first presented it to the Tribe and the claim shall have been finally denied by the Tribe in writing and sent by certified or registered mail. The failure of the Tribe to make final disposition of a claim within 180 days after it is filed shall at the option of the claimant any time thereafter be deemed a final denial of the claim for purposes of this Chapter.

(2) An action under this Chapter shall not be instituted for any sum in excess of the amount of the claim presented to the Tribe, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Tribe, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(3) Disposition of the claim by the Tribe shall not be competent evidence of liability or amount of damages.

**85.112 Presentation of Claim.**

(1) For purposes of this Chapter a claim shall be deemed to have been presented when the Tribal Secretary receives a written notification of an incident accompanied by:

(a) the evidence to be presented with the claim, as provided in §85.113; and

(b) a claim for money damages in a sum certain for injury to or loss of property or personal injury alleged to have occurred by reason of the incident; and

(c) if the claimant is represented by an attorney, the certification required by

§85.116; and

(d) a verification under oath signed by the claimant or the claimant's duly authorized legal representative. If the signer is a person other than the claimant, the claim shall be accompanied by evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other legal representative. The verification shall contain the following statement: "I execute this verification under penalty of perjury, and by executing this verification, I voluntarily submit myself to the jurisdiction of the Tribe and the Tribal Court for purposes of prosecution for perjury."

(2) The claim shall be presented personally or by certified mail, return receipt requested, to Sault Ste. Marie Tribe of Chippewa Indians Board of Directors Secretary, 523 Ashmun Street, Sault Ste. Marie, MI 49783.

### **85.113 Evidence Presented With Claim.**

(1) Death. In support of a claim based on death, the claimant shall submit the following evidence or information:

(a) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(b) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(c) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(d) Degree of support afforded by the decedent to each survivor dependent upon him or her at the time of death.

(e) Decedent's general physical and mental condition before death.

(f) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts for payment for such expenses.

(g) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(h) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the death or the damages claimed.

(2) Other personal injury. In support of a claim for personal injury not involving death, including pain and suffering, the claimant shall submit the following evidence or information:

(a) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Tribe.

(b) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(c) If the prognosis reveals the necessity of future treatment, a statement of expected expenses for such treatment.

(d) If the claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and the wages or salary actually lost.

(e) If the claim is for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(f) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the personal injury or the damages claimed.

(3) Property damage. In support of a claim for injury to or loss of property, real or personal, the claimant shall submit the following evidence or information:

(a) Proof of ownership.

(b) A detailed statement of the amount claimed with respect to each item of property.

(c) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(d) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(e) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the injury to or loss of property or the damages claimed.

(4) For claims involving less than \$10,000 the Tribe may, in its discretion, require less or less formal information or evidence than that required above. A claimant may contact the Tribe's Sault Tribe Insurance Department for information regarding such less formal procedures.

**85.114 Adjustment of Claim.**

The Tribe may consider, ascertain, adjust, determine, compromise and settle any claim presented under this Chapter. The offer of a compromise or settlement shall not be construed as or constitute evidence of an admission of liability or the amount of damages by the Tribe. The acceptance by a claimant of any such award, compromise or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the Tribe and against the agent, employee, or officer of the Tribe whose act or omission gave rise to the claim, by reason of the same subject matter.

**85.115 Judgment as Bar.**

The judgment in an action under this Chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the Tribal officer or employee whose act or omission gave rise to the claim.

**85.116 Attorney Fees.**

A judgment against the Tribe under this Chapter shall not include any award of attorneys fees. No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment rendered under this Chapter, or in excess of 20 percent of any award, compromise, or settlement made pursuant to this Chapter. An attorney representing a claimant shall certify at the time of presentation of the claim that the attorney's fee arrangement with the claimant complies with this section.

**85.117 Exclusiveness of Remedy.**

The remedy provided in this Chapter for injury or loss to property or personal injury arising or resulting from the negligent or wrongful act or omission of any Tribal officer or employee while acting within the scope of the office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the officer or employee whose act or omission gave rise to the claim or against the estate of such officer or employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the officer or employee or the officer or employee's estate is precluded without regard to when the act or omission occurred.

**85.118 Exceptions.**

The Tribe shall not be liable under this Chapter for:

(1) Any claim based upon an act or omission of a Tribal officer or employee exercising due care, in the execution of a tribal code or ordinance, whether or not such code or ordinance is valid.

(2) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; *provided*, that the Tribe shall be liable for acts or omissions of Tribal casino security personnel or Tribal investigative or law enforcement officers for any claim arising, on or after the date of enactment of this Chapter, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution.

(3) Any punitive damages.

(4) Any damages for loss of consortium.

(5) Any claim founded upon a provision of:

(a) a constitution, statute or regulation of the United States or any State; or

(b) an ordinance of any unit of local government;

(c) a code or ordinance of the Tribe that does not by its terms expressly provide for a remedy under this Chapter; or

(d) the Constitution and Bylaws of the Tribe.

(6) Any claim brought by an employee of the Tribe based upon injuries sustained by a Tribal employee arising out of and in the course of employment. In all such cases worker's compensation as provided in Tribal Code Chapter 45 shall be the sole and exclusive remedy.

(7) Any claim brought by a person for injuries sustained arising out of and in the course of that person's employment for which the person is covered by or eligible for benefits under a worker's compensation system of a state, another Indian tribe, a self-insurance plan, or any other entity.

(8) Any claim which is subject to the Federal Tort Claims Act, codified in part as 28 U.S.C. §2671 *et seq.*, because it resulted from the performance of programs carried out under Pub. L. 638 contracts or grants or was otherwise covered by the Act. In all such cases the Federal Tort Claims Act shall provide the sole and exclusive remedy.

(9) Any claim based upon the act or omission of an independent contractor or an employee or agent of an independent contractor.

### **85.119 Trial to the Court.**

Any action against the Tribe under this Chapter shall be tried by the Tribal Court without a jury.

**85.120 Damages for Noneconomic Loss.**

(1) In awarding damages in an action under this Chapter, the Tribal Court shall itemize damages into damages for economic loss and damages for noneconomic loss.

(2) The award for damages for noneconomic loss recoverable by a plaintiff in an action under this Chapter shall not exceed 75% of the cap on recovery for noneconomic loss recoverable in medical malpractice actions under MCL §600.1483, as adjusted for inflation under sub. (4) of that statute.

**85.121 Collateral Source Benefits.**

(1) In a personal injury action under this Chapter in which plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a collateral source shall be admissible to the Tribal Court. Subject to sub. (5), if the Tribal Court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source, the Tribal Court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to sub. (2). This reduction shall not exceed the amount of the judgment for economic loss or that portion of the findings of the verdict which represents damages paid or payable by a collateral source.

(2) The Tribal Court shall determine the amount of the plaintiff's expense or loss which has been paid or is payable by a collateral source.

(3) Within 10 days after findings for the plaintiff, plaintiff's attorney shall send notice of the judgment by registered mail to all persons entitled by contract to a lien against the proceeds of plaintiff's recovery. If a contractual lien holder does not exercise the lien holder's right of subrogation within 20 days after receipt of the notice of the judgment, the lien holder shall lose the right of subrogation.

(4) As used in this section, "collateral source" means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or Medicare benefits. Collateral source does not include life insurance benefits or benefits paid by a person or legal entity entitled by law to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages. Collateral source does not include benefits paid or payable by a person or legal entity entitled by contract to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages, if the contractual lien has been exercised

pursuant to sub. (3).

(5) For purposes of this section benefits from a collateral source shall not be considered payable or receivable unless the Tribal Court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

#### **85.122 Apportionment of Fault.**

(1) In an action under this Chapter involving fault of more than one person, including third-party defendants and nonparties, the Tribal Court, unless otherwise agreed by all parties to the action, shall make findings indicating both of the following:

(a) The total amount of each plaintiff's damages.

(b) The percentage of the total fault of all persons that contributed to the injury, including each plaintiff and each person released from liability under §85.128, regardless of whether the person was or could have been named as a party to the action.

(2) In determining the percentages of fault under sub. (1)(b), the Tribal Court shall consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed.

(3) The Tribal Court shall determine the award of damages to each plaintiff in accordance with the findings under sub. (1), subject to any reduction under §85.120, §85.121, §85.124 or §85.125, and shall enter judgment against each party, including a third-party defendant, except that judgment shall not be entered against a person who has been released from liability as provided in §85.128.

(4) Liability in an action to which this section applies is several and not joint. A person shall not be required to pay damages in an amount greater than his or her percentage of fault as found in sub. (1).

(5) As used in this section, "fault" includes an act, an omission, conduct, including intentional conduct, a breach of warrant, or a breach of a legal duty, or any conduct that could have given rise to the imposition of strict liability, that is a proximate cause of damage sustained by a party. this subsection shall not be construed as expanding the liability of the Tribe as provided elsewhere in this Chapter.

(6) Assessment of percentages of fault for nonparties are used only to accurately determine the fault of the named parties. If fault is assessed against a nonparty, a finding of fault does not subject the nonparty to liability in that action and shall not be introduced as evidence of liability in another action.

**85.123 Contributory Fault No Bar to Recovery.**

Subject to §85.124 and §85.125, in an action under this Chapter a plaintiff's contributory fault does not bar that plaintiff's recovery of damages.

**85.124 Effect of Impairment Due to Alcohol or Drugs.**

(1) It is an absolute defense in an action under this Chapter that the individual upon whose personal injury the action is based had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of the impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the personal injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.

(2) As used in this section:

(a) "Controlled substance" means that term as defined in MCL §333.7104.

(b) "Impaired ability to function due to the influence of intoxicating liquor to a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a standard prescribed by MCL §257.625a, a presumption would arise that the individual's ability to operate a vehicle was impaired.

**85.125 Reduction or Disallowance of Damages for Plaintiff's Fault.**

In an action under this Chapter, the Tribal Court shall reduce the damages by the percentage of comparative fault of the person upon whose personal injury the damages are based as provided in §85.127. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the Tribal Court shall reduce economic damages by the percentage of comparative fault of the person upon whose personal injury the damages are based as provided in §85.127, and noneconomic damages shall not be awarded.

**85.126 Specific Findings Required for Judgment.**

(1) Prior to the entry of judgment, the Tribal Court shall make specific findings of the following:

(a) Apportionment of fault, as provided in §§85.122 through 85.125.

(b) Any past economic and noneconomic damages, separately itemized as required by §85.120(1).

(c) Any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of future damages:

(i) Medical and other costs of health care.

(ii) Lost wages or earnings or lost earning capacity and other economic loss.

(iii) Noneconomic loss.

(d) Any collateral benefits, as provided in §85.121.

(2) The calculation of future damages for types of future damages described in sub. (1)(c) shall be based on the costs and losses during the period of time the plaintiff will sustain those costs and losses. In the event of death, the calculation of future damages shall be based on the losses during the period of time the plaintiff would have lived but for the injury upon which the claim is based.

(3) "Future damages" means damages arising from personal injury which the Tribal Court finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of body function, and pain and suffering.

### **85.127 Order of Judgment.**

(1) After making the specific findings as provided in §85.126, the Tribal Court shall enter an order of judgment. Subject to §§ 85.124 and 85.125, the order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following judgment amounts:

(a) All past economic damages, less collateral source payments as provided for in §85.121.

(b) All past noneconomic damages, subject to the cap imposed by §85.120.

(c) All future economic damages, less medical and other health care costs, and less collateral source payments determined to be collectible under §85.121(5), reduced to gross

present cash value.

(d) All future medical and other health care costs reduced to gross present cash value.

(e) All future noneconomic damages reduced to gross present cash value, subject to the cap imposed by §85.120.

(f) All taxable and allowable costs. Interest prior to entry of judgment shall not be allowed.

(2) As used in this section, "gross present cash value" means the total amount of future damages reduced to present value at a rate of 7% per year for each year in which those damages accrue, as found by the Tribal Court as provided in §85.126(1)(c).

(3) If the plaintiff was assigned a percentage of fault under §85.122, the total judgment amount shall be reduced, subject to §§85.124 and 85.125, by an amount equal to the percentage of plaintiff's fault. When reducing the judgment amount as provided in this subsection, the court shall determine the ratio of total past damages to total future damages and shall allocate the amounts to be deducted proportionally between the past and future damages. The cap for noneconomic damages imposed by §85.120 shall be imposed before the reduction of the judgment under this subsection.

#### **85.128 Subrogation and Contribution From Joint and Several Tort Feasors.**

If a judgment has been entered against the Tribe pursuant to this Chapter, the Tribe may seek subrogation where it is available by law or by contract and recover contribution from each co-defendant and joint and several tort feisor where appropriate as provided in sections 600.2925a through 600.2925d of the Michigan Compiled Laws. Nothing in this section shall be construed as a consent by the Tribe to suit in any forum other than the Tribal Court as provided in this Chapter.

#### **85.129 Applicability and Effective Date.**

This Chapter shall take effect on May 1, 1997. It shall apply to all claims accrued or pending on that date.