



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 00-25

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; **and**

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of the tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; **and**

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education, and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; **and**

**WHEREAS**, the Squaxin Island Tribal Council has the opportunity to develop a workman's compensation plan uniquely suited to the Squaxin Island Tribe; **and**

**WHEREAS**, the Squaxin Island Tribal Council desires to provide its employees with workers insurance coverage; **and**

**WHEREAS**, the Squaxin Island Tribal Council, after reviewing both short-term and long-term options, assigned the task of developing a long-term program to the Director of Island Enterprises with the assistance and input from the General Manager of Little Creek Casino and Hercules Tobacco Company; and the Comptrollers from Squaxin Island Administration and Island Enterprises; **and**

**WHEREAS**, the Squaxin Island Tribal Council reviewed the final recommendation made by the above-mentioned group on January 13, 2000 and directed the group to move forward with the plan; **and**

**WHEREAS**, on January 27, 2000, the Squaxin Island Tribal Council approved the opening of a checking and savings account for the Squaxin Island Tribe Worker's Compensation Plan and designated the signatories on each account by the signing of Resolution 00-03; **and**

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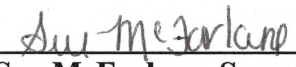
**WHEREAS**, the Squaxin Island Tribal Council desires to adopt the Squaxin Island Tribe's Unincorporated Divisions and Tribal Chartered Businesses Workers' Compensation Plan, which became effective on March 1, 2000.

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby adopts the Squaxin Island Tribe's Unincorporated Divisions and Tribal Chartered Businesses Worker's Compensation Plan, as attached hereto.

### CERTIFICATION

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 9<sup>th</sup> day of March, 2000, at which time a quorum was present and was passed by a vote of 4 for and 0 against with 0 abstentions.

  
Dave Lopeman, Chairman

Attested by:   
Sue McFarlane, Secretary

  
Cal Peters, Vice Chairman

**SQUAXIN ISLAND TRIBE, THE UNINCORPORATED DIVISIONS  
AND TRIBAL CHARTERED BUSINESSES  
WORKERS' COMPENSATION PLAN**

**SECTION 1 - DEFINITIONS**

- 1.01 - Squaxin Island Tribe, Unincorporated Divisions and Tribal Chartered Businesses referred to as the Employer, or its designee.
- 1.02 - Employer - Squaxin Island Tribe, Unincorporated Divisions and Tribal Chartered Businesses where it has obtained the labor services of a person for hire.
- 1.03 - Employee - Any person who performs labor services for the Squaxin Island Tribe, Unincorporated Divisions and Tribal Chartered Businesses or hire at an established wage or salary. On call Employees are those whose normal work is such that it requires a person to be available 24 hours per day. The job description of these workers clearly defines reporting requirements for "on Call" status and established reporting practices.
- 1.004 - Weekly Wage - For a full-time Employee, the Weekly Wage is the weekly salary normally earned in a normal full-time week. If the hours worked are irregular, the average weekly wage is determined by adding the total wages earned from all employment with the Employer in any twelve consecutive calendar months preceding the injury which fairly represents the injured worker's employment pattern and divide the total by fifty-two to obtain a gross weekly wage. If the employee has not worked for twelve consecutive calendar months for the Employer, the average weekly wage is determined by adding the actual time worked and dividing by the number of weeks presented. Overtime wages are not considered in determining Weekly Wage. If an Employee is employed in more than one capacity by the Employer, the earnings of the Employee in each capacity will be considered in determining Weekly Wage.
- 1.005- Compensation Rate - 60% of the Weekly Wage as determined under 1.004. An additional 2% of the weekly wage may be added for each dependent up to 5 dependents. The maximum is equal to 90% of average state wage as defined by the Department of Employment Security State of Washington under the schedule of benefits adopted by Labor and Industries State of Washington.

**For Example                      7-1-99 through 6-30-2000**

Daily Max Rate:                      \$109.54

Monthly Maximum Rate:              \$3,286.20

1.006 -Waiting Period - No workers' compensation benefits will be paid for the first 3 calendar days lost unless the injured employee is hospitalized or is off work more than 14 days due to the compensable injury.

1.007 Compensable or Compensable Injury - A Bodily Injury to an Employee, caused by an Accident when that Injury:

1. Arises out of a risk of the Employment,
2. Injury occurs during a period of employment, and
3. While performing the duties of the Employment in or on the premises of the Employer or wherever the Employer requires the Employee to perform the Employment activities.

### **Occupational Disease/Illness**

Such disease or infection or illness as arises naturally & proximately out of the risk of the Employment, the disease, infection, or illness must have been caused during the period of Employment and while performing the duties of the Employment in or on the premises of the Employer or where ever the Employer requires the Employee to perform the Employment activities. Injury due to repetitive or cumulative trauma is Compensable only if substantial medical evidence indicates the injury is due solely to verifiable employment activities and is not contributed to by any other activity, outside cause, or physical condition or ailment. EXCLUSIONS INCLUDE BUT ARE NOT LIMITED TO CONDITIONS CAUSED BY STRESS, MENTAL CONDITIONS AND CONDITIONS RISING FROM SECOND HAND SMOKE.

Injury caused by a third person or fellow Employee intended to injure the Employee for personal reasons unrelated to the work does not arise out of the Employment and is not Compensable under this Plan. Injuries sustained while participating in horseplay are not compensable under this plan.

1.008 - Bodily Injury or Injury - Actual physical injury to the body which arises by Accident under circumstances that constitute a Compensable Injury as defined in Section 1.007. Claims for mental or stress related conditions are not compensable under this plan.

1.009 - Accident - A specific occurrence or series of occurrences, neither expected nor intended, which causes injury to an Employee and arises under circumstances constituting a Compensable Injury. Accident does not include a self-inflicted injury; injury suffered while the Employee is under the influence of alcohol or non-prescription drugs and while overusing prescription drugs.

1.010 -Occupational Disease/Illness – such disease or infection or illness that arises naturally and proximately out of the employment

- 1.011 - Dependent Child - A natural or adopted unmarried child of the Employee including a posthumous child, under eighteen years of age, or under the age of twenty-three, if the child is regularly attending a high school, college, university, or vocational or technical school as a full-time student.
- 1.012 - Dependent Spouse - The wife or husband of the Employee, unless voluntarily living apart from the Employee at the time of the Employees injury or death. A "common law" spouse is not considered a dependent.
- 1.013 - Other Dependents - Stepchildren, grandchildren, nieces, nephews and elders may be considered dependent but only to the extent that actual dependency can be shown.
- 1.014 - Primary Physician - A licensed medical doctor located and practicing within 100 miles of the borders of the Reservation. A Primary physician is the medical doctor from whom the employee receives medical treatment for a compensable injury.
- 1.015 - Referral Physician - A licensed medical doctor or chiropractor to whom the Employee is referred by the Primary Physician or by the plan Administrators for further specialized treatment with the prior approval of the Administrator or the Employer.
- 1.016 - Independent Medical Examination - A medical examination and/or evaluation of the Employee scheduled by the Employer or Administrator, at the Employers' expense, for the purpose of obtaining medical information or opinion. Medical Examinations scheduled by the Employee for a second opinion are at the expense of the Employee.
- 1.017 - Administrator - Berkley Risk Administrators Company, LLC, whom the Employer has contracted with to act on behalf of the Employer in the administration of this Plan.

## **SECTION 2 - PURPOSE AND SCOPE**

- 2.001 - The purpose of this Plan is to provide a system of compensation and medical benefits for Employees of the Employer who suffer Compensable injuries in the Employment of the Squaxin Island Tribe, unincorporated divisions and tribal chartered businesses. Benefits under the Plan are the Employees exclusive remedy against the Employer.
- 2.002 - All Employees of the Squaxin Island Tribe are covered for Compensable Bodily Injuries whether the Accident and Bodily Injury occur on or off the Reservation. Benefits are limited as indicated in the following Sections.

## **SECTION 3 - REPORTING OBLIGATIONS**

- 3.001 – In conformance with the Safety Policy of the Employer, management or management representative must be notified as soon as the worker is injured. An Employee must report any injury or incident no matter how slight, to his/her supervisor by the end of the shift but at no time later than seventy-two hours of the Accident/Incident causing the Injury. An Injury must be reported within 7 calendar days of the Employee's first receiving medical treatment. Compensation or medical benefits will not be paid if a Injury is not reported within 7 calendar days of the Employee's first receiving medical treatment for the Injury or first losing time from work due to the Injury. If the Injury incapacitates the Employee, the 7 days will not begin to run until the incapacity ends. In such cases, an Injury may be reported by another person on behalf of the Employee.
- 3.002 – If after the initial medical care is rendered further treatment is required, the injured worker must notify their manager or designee within seventy-two hours of the subsequent treatment. Failure to notify promptly may result in termination of benefits.
- 3.003 - A Supervisor, receiving a report or notice of a Injury from the Employee or another acting in the Employees' behalf, must promptly report the claim to the Administrator or to the Employer's designee for reporting. This must be done within 3 working days.
- 3.004 – Occupational Disease/Illness – An Employee must report any occupational disease, infection, illness to his/her supervisor within 3 months of notification by a physician of said illness, disease or infection. No compensation or medical benefits will be paid if an occupational disease, infection or illness is not reported within 3 (three) months of notification by a medical physician.

## **SECTION 4 - MEDICAL BENEFITS**

- 4.001 - The Plan will pay the cost of all reasonable and necessary First Aid, Medical, Surgical and Hospital services incurred by the Employee as a direct result of a Compensable Bodily Injury.

All Non emergent workers' compensation injuries must be treated by the medical staff at the Squaxin Island Tribal Health Clinic (Sally Selvidge Health Center) if this facility is open at time of injury. Referrals to other providers will be made from this facility. Emergent care will be rendered at Mason General Hospital.

- 4.002 - An employee who has a Primary Physician may not change Primary Physicians without the approval of the Administrator or the Employer.
- 4.003 - The Plan will pay hospital and related charges only for services ordered by the Primary or Referral Physician.

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- 4.004 - The Plan will pay the cost of medicines and supplies and equipment of a therapeutic nature necessary to treat the Injury only if ordered by the Primary or Referral Physician.
- 4.005 - The Plan will pay the cost of diagnostic imaging such as CT and MRI scans only if prior approval is obtained from the Administrator or the Employer.
- 4.006 - The Plan will pay surgical charges only if the surgery is required on an emergency basis or if it has been previously approved by the Administrator or the Employer. The Administrator or the Employer may require a second opinion prior to approving any surgical procedure.
- 4.007 - The Plan will reimburse the Employee for the reasonable associated with receiving medical care. All reimbursement expenses must be pre approved. Mileage reimbursement will be at the current federal standard. Child care cost will be paid at a rate not to exceed \$25.00 per day per child. Reimbursement for cost for Hotel and Meals will be paid as negotiated by the Administrator.
- 4.008 - The Plan will pay reasonable and necessary medical care costs. Bills are subject to the Medical Fee Schedule adopted by the Department of Labor and Industries State of Washington.
- 4.009 - If the Employee unreasonably fails to appear for a scheduled Independent Medical Examination, the responsibility of the Employer for payment of medical expenses ceases.
- 4.010 - The Administrator or Employer may contract for the services of a rehabilitation consultant to assist the Employee in rehabilitation and return to work efforts. If the Employee fails to cooperate in rehabilitation efforts, the responsibility of the Employer for payment of benefits under this Plan will cease.
- 4.011 - The Employee must provide written authorization for present and past medical records when requested by the Administrator or the Employer. If the Employee fails to provide authorization within 20 days of a written request to do so, the responsibility of the Employer for payment of benefits under this Plan will cease.

## **SECTION 5 - DISABILITY BENEFITS**

- 5.001 - Temporary Total Disability-(TTD) - That time, after the Waiting Period, when, solely as a direct result of the Bodily Injury/Occupational Disease/Illness, the Employee is totally disabled from performing the normal duties of the Squaxin Island Tribe employment engaged in at the time of the Injury, or of other transitional restricted or modified work, which the Employer offers. Total Disability must be evidenced by medical opinion based on examination and



treatment rendered at the time of the claimed disability. The weekly benefit for Temporary Total Disability is limited to the applicable Compensation Rate under 1.004 and 1.005 above.

- 5.002 - Temporary Partial Disability-(TPD) - Loss of actual earnings suffered after the waiting period by an Employee who has returned to transitional duty, restricted or modified work offered by the Employer solely because of the ongoing effects of the Bodily Injury/Occupational Disease/Illness and the Employees physical inability to return to the normal Employment engaged in at the time of the Bodily Injury. The weekly benefit for Temporary Partial Disability is 60% of the difference between the Weekly Wage at the time of the Injury as determined under 1.004 and the wage the Employee is able to earn in the transitional duty, restricted or modified work. Temporary Partial Disability benefits are limited to the maximum Compensation Rate under 1.005.
- 5.003 - If an Employee refuses transitional, restricted or modified work offered by the Employer or becomes voluntarily unemployed, all benefits, except medical benefits, will cease.
- 5.004 - Payments of Temporary Total benefits will be paid until reaching maximum medical improvement, or rating of permanent partial disability and payment of Permanent Partial Disability benefits, which ever comes first.

Temporary Partial Benefits will be paid until such time the employee is released for full duty or until reaching maximum medical improvement, or rating of permanent partial disability and payment of Permanent Partial Disability benefits, which ever comes first.

- 5.005 - Permanent Partial Disability -(PPD)-This benefit is intended to compensate the injured Employee for any permanent loss of or loss of use to the body as a whole suffered directly as a result of a Compensable Injury. Preexisting disabilities are not to be considered in rating Permanent Partial Disability. A rating of Permanent Partial Disability must represent only that loss resulting solely from the Compensable Bodily Injury. All ratings of Permanent Partial Disability shall be based on the Permanent Disability Schedules adopted by the Squaxin Island Tribe and attached to this Plan. Compensation for loss of function of unscheduled body areas is based on category system as used by The State of Washington Department of Labor and Industries.

In cases of Permanent Partial Disability due to injury to a member, resulting in less than total loss of the member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the member which the extent of the injury to the member bears to its total loss. The amount payable to the Employee shall be paid on a monthly basis at a rate equal to the weekly rate times four weeks. Payment will be made as soon as reasonably possible after receipt of the rating by the Administrator, but no later than 30 days after receipt unless the Administrator has scheduled an Independent Medical Examination. Benefits paid

for permanent partial disability are computed at 45% of the State Average weekly wage.

- 5.006 - Permanent Partial Disability benefits are not payable concurrently with Temporary Total, Temporary Partial, or Dependency benefits. Benefits are not paid concurrently with health and accident benefits policies of the Squaxin Island Tribe.
- 5.007 - The Employer or the Administrator may, at their option, pay disability benefits in two week increments.
- 5.008 - If any Injury/Occupational Disease/Illness results in disability which is partially due to a congenital condition or a prior disease or injury, the benefits payable for the disability will be reduced by the proportion of the disability which is due to the preexisting disability.
- 5.009 - If the Employee unreasonably fails to appear for a scheduled Independent Medical Examination, the liability of the Employer for payment of disability benefits ceases.
- 5.010 - Receipt by the Employee of Social Security Retirement Benefits will be considered conclusive evidence of retirement and the liability of the Employer for payment of further disability benefits will cease.

## **SECTION 6 - DEPENDENCY BENEFITS**

- 6.001 - In the event of the death of an Employee due to a Compensable Injury, payment of all disability and medical benefits shall cease, and a maximum of 520 weeks will be payable to the Dependents of the deceased Employee. Dependents will receive weekly payments equal to the indicated percentage of the Weekly Wage as determined under 1.004. Weekly payments are subject to the maximum Compensation Rate under 1.005, and will be paid as described in 6.002 through 6.011.
- 6.002 - Dependent Spouse alone - 50% of the Weekly Wage t time of injury.
- 6.003 - Dependent Spouse and one or more Dependent Children - 60% of the Weekly Wage.
- 6.004 - One Dependent Child, but no Dependent Spouse - 40% of the Weekly Wage.
- 6.005 - Two or more Dependent Children, but no Dependent Spouse - 60% of the Weekly Wage. These benefits will be divided between the dependents.
- 6.006 - Other Dependents will receive benefits in the percentage that their provable dependency on the deceased bears to the maximum benefit available and to the

dependency of other Dependents. Regardless of the number of Dependents, the maximum benefit will not exceed 60% of the Weekly Wage at the time of the Injury.

- 6.007 - If a Dependent Spouse remarries, no further benefits shall be payable to that Spouse. If one or more Children remain Dependent, benefits will continue to be paid for the benefit of the Child or Children, pursuant to 6.004 or 6.005 above until they cease to be Dependent.
- 6.008 - Benefits payable to Dependents shall be paid to them or to any guardian or other responsible party as directed by the Employer for the use and benefit of the Dependents.
- 6.009- If a Dependent Child, upon reaching the age at which that Child would cease to be Dependent, is totally disabled due to a physical or mental impairment, benefits will continue to be paid under the appropriate provision above until the disability ends or the maximum is paid, whichever comes first.
- 6.010 - The Employer or the Administrator may, at their option, pay Dependency benefits in 2 week increments.
- 6.011 - In all cases where an Employee's death results from a Compensable Injury, the reasonable expenses of burial, not to exceed \$3,500.00 will be paid.

## **SECTION 7 - RECURRENCE**

- 7.001 - If, within one year from the date on which an Employee has returned to full-time, transitional, restricted or modified work, the Employee suffers a Recurrence of the original Compensable Bodily Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to any monetary and time limitations of the initial claim. A request to reopen a claim must be substantiated with objective medical evidence. Reopens are prohibited after 5 years from date of injury or two years following 1st closure date. All reopens are limited only to employees who continue to be employed at the Squaxin Island Tribe. Leaving that employment of the Squaxin Island Tribe waives the right of reopening.

## **SECTION 8 - ELECTION OF REMEDIES**

- 8.001 - If an Employee's Compensable Bodily Injury is contributed to by a party other than the Employee or the Employer and the Employee or Dependents choose to file a claim or lawsuit against the other party, the Employee or Dependents may not present claims under this Plan and against the other party.
- 8.002 - If the Employee or Dependents elect to claim benefits under this Plan, the Employee or Dependents must assign their cause of action against the other party to the Squaxin Island Tribe and cooperate with the Squaxin Island Tribe and the Administrator in the pursuit of that action. If the Employee or the Dependents fail to assign the cause of action or fail to cooperate in the pursuit of that action, all

benefits under this Plan will cease and the Employee or Dependents will be required to reimburse the Squaxin Island Tribe for any benefits paid to or on behalf of the Employee or the Dependents.

8.003 - If the Employee or Dependents elect to pursue a cause of action against the other party, no benefits will be payable under this Plan unless within 180 days of the injury, the Employee or Dependents assign their claim to the Squaxin Island Tribe and agree to cooperate in pursuit of the action. In that event, only benefits accruing or medical expenses incurred after the date of the assignment will be paid under this Plan.

8.004 - If an Employee or Dependents have assigned a cause of action to the Squaxin Island Tribe under this Section and if the recovery from that cause of action exceeds the amounts paid or payable to the Employee or Dependents, any excess, after reimbursement to the Squaxin Island Tribe of the benefits paid or payable under this Plan and deduction of the costs of collection, will be paid over to the Employee or Dependents.

## **SECTION 9 - ADMINISTRATOR**

9.001 - The Administrator will act on behalf of the Employer in receiving and processing Workers' Compensation claims under this Plan. The responsibility of the Administrator to make determinations and decisions will include, but not be limited, to the following areas.

- A) Based upon investigation and available medical information, the Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim. Within 30 days of receipt of a First Report of Injury, the Administrator will advise the Employee and Employer of its determination.
- B) The Administrator will determine the reasonableness and necessity of medical care and charges under Section 4, and will determine amounts payable under this Plan. The Administrator will approve or disapprove any change of Primary Physician, referral to a Referral Physician, or Surgical Procedure.
- C) Based on information supplied by the Employer and/or Employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, and Permanent Partial Disability, and for Dependency.
- D) The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability Benefits are payable.
- E) The Administrator will determine the amount of Permanent Partial Disability Benefits payable.
- F) The Administrator will determine the eligibility of Dependents and the term of

any Dependency Benefits payable.

- G) In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise of the deceased.
- H) The Administrator will, on behalf of the Employer, vigorously pursue any cause of action assigned to the Employer under Section 8.

## **SECTION 10 - APPEALS**

- 10.001 - The Employer may utilize the Workers Compensation Review Board to hear any issues and make any necessary final determination relative to compensability of a Injury, Medical care or charges, extent of Disability, Dependency or any other issues that may arise under this Plan.
- 10.002 -The designated members of the Workers Compensation Review Board will include the liaison for the Little Creek Casino, a member from tribal personnel and a community member appointed by the Council.
- 10.003 -The Workers Compensation Review Board will consider evidence, hear witnesses, and receive exhibits in keeping with its goal of making a just and final determination.
- 10.004 - The Workers Compensation Review Board will weigh the evidence, testimony of witnesses and exhibits, and will make its decision on the basis of the preponderance of evidence and credibility of the evidence and witnesses.
- 10.005 -The burden of proof in any hearing before the Workers Compensation Review Board will be on the Employee or Dependents.
- 10.006 -The Employee or Dependents may have legal representation at any hearing before the Workers Compensation Review Board. The cost of representation will be borne solely by the Employee or Dependents.
- 10.007 -Any Employee or Dependent who disagrees with a determination made by the Administrator may request a hearing before the Workers Compensation Review Board. Any such request must be submitted in the form of a "Request For Hearing", the employee or dependent must accept the jurisdiction of the Workers Compensation Review Board and must disavow any alleged rights under the workers compensation law of any state. If such a request is made by the Employee or Dependent, the Workers Compensation Review Board may, within 30 days, set a date on which the parties or their representatives may meet with one member of the Workers Compensation Review Board to discuss and attempt to resolve the issues. The Workers Compensation Review Board member will moderate the discussion and may offer opinions and advice to the parties but will not reach any decision on the issues. If the Employee or Dependents and the

representative of the Employer reach an agreement on any of the issues, such agreement will be reduced to writing by the parties and will be binding on the parties.

10.008 -If no meeting is requested under 10.007 or if a meeting under 10.007 fails to resolve the issue, the matter will be scheduled for a hearing before the full Workers Compensation Review Board within 90 days of the receipt of the request for a hearing from the Employee or Dependents. The Employee or Dependents may request an extension of up to 90 days, which must be granted by the Workers Compensation Review Board.

10.009 -Any final Decision of the Workers Compensation Review Board must represent the concurrence of a majority of two of the Workers Compensation Review. All Decisions of the Workers Compensation Review Board are final.

10.010 -A decision of the Workers Compensation Review Board must be issued in writing, and copies must be mailed to all interested parties. The Decision need not recite nor review the evidence or testimony nor need it compare the merits of the evidence or testimony of the opposing parties. The Decision need only set out the final determination of the Workers Compensation Review Board on all Issues before it.