



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

## **Oneida Tribe of Indians of Wisconsin BUSINESS COMMITTEE**



**P.O. Box 365 • Oneida, WI 54155  
Telephone: 920-869-4364 • Fax: 920-869-4040**

**BC Resolution 12-20-06-I**



**UGWA DEMOLUM YATEHE**  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

### ***Pension Protection Act (PPA) Compliance Amendment to the Oneida Tribe of Indians of Wisconsin Employee Welfare Benefits Plans***

**WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Oneida Business Committee previously adopted various employee welfare benefit plans for the benefit of the Tribe's employees (the "Plans"); and

**WHEREAS,** Congress recently passed the Pension Protection Act of 2006, changing the law which governs tribal welfare benefit programs such as the Plans; and

**WHEREAS,** legal counsel has recommended that the Business Committee adopt a Compliance Amendment to the Plans to address the different requirements now applicable to the Tribe's "governmental" employees and the Tribe's "commerce" employees.

**NOW THEREFORE BE IT RESOLVED,** that the Compliance Amendment to the Oneida Tribe of Indians of Wisconsin Employee Welfare Benefit Plans, together with Exhibit A, is hereby adopted, confirmed and ratified by the Oneida Business Committee, in the form presented for its approval this date; and

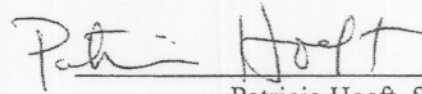
**BE IT FURTHER RESOLVED,** that the appropriate officer or Business Committee member is authorized and directed to execute the Compliance Amendment on behalf of the Oneida Tribe of Indians of Wisconsin, together with such legal and technical changes as may be recommended by legal counsel and deemed to be in the best interests of the Tribe; and

**BE IT FINALLY RESOLVED,** that the actions taken by Tribal officers and personnel in

connection with the matters addressed in these resolutions be, and hereby are, ratified, confirmed and adopted as actions of the Oneida Tribe of Indians of Wisconsin.

### CERTIFICATION

I, the undersigned, as Secretary fo the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 8 members were present at a meeting duly called, notices and held on the 20th day of December, 2006; that the foregoing resolution was duly adopted at such a meeting by a vote of 6 members for; 0 members against; and 1 members not voting; and that said resolution has not been rescinded or amended in any way.



Patricia Hoelt, Secretary  
Oneida Business Committee

**COMPLIANCE AMENDMENT**  
**TO ONEIDA TRIBE OF INDIANS OF WISCONSIN**  
**EMPLOYEE WELFARE BENEFIT PLANS**  
**[Good Faith Compliance for Pension Protection Act of 2006]**

**Preamble:**

The Oneida Tribe of Indians of Wisconsin (the "Tribe"), a federally recognized tribal government, sponsors various employee welfare benefit plans for the benefit of its employees, and in certain cases, dependants of its employees, as set forth in the eligibility and participation provisions of each individual welfare benefit plan (the "Welfare Benefit Plans").

On August 17, 2006, the Pension Protection Act of 2006 (the "PPA") was signed into law, making certain changes applicable to welfare benefit plans sponsored by tribal governments, beginning as of the first year following its date of enactment.

As of the writing of this Amendment, there is no guidance from the Department of Labor with regard to those changes necessary for compliance with the PPA. The purpose of this Amendment is to adopt only those changes necessary to preserve the Tribe's government status to the fullest extent permitted under the PPA, based upon a good faith interpretation of the newly enacted statutory provisions pending further guidance.

**Amendments:**

1. **EFFECTIVE DATE / LISTING OF PLANS:** This Compliance Amendment shall be effective as of the first day of the first plan year for each respective Welfare Benefit Plan beginning on or after August 17, 2006 (the "Effective Date"). The Welfare Benefit Plans covered by this amendment, along with a listing of their respective plan years, is attached hereto as **EXHIBIT A**.

2. **SEPARATION OF PLANS:** By this Amendment, the Tribe hereby divides each of its Welfare Benefit Plans into two separate and distinct plans hereafter known as the Governmental Plan and the Commerce Plan. A separate Governmental Plan and Commerce Plan shall be established with regard to each Welfare Benefit Plan in place immediately preceding the Effective Date of this amendment for that particular Welfare Benefit Plan.

3. **DIVISION OF PARTICIPANT GROUPS:** The Compliance Amendment shall be implemented in a manner to ensure that all Participants who would otherwise

satisfy the Welfare Benefit Plan participation rules immediately preceding that plan's Effective Date, will continue to participate in either the Governmental Plan or the Commerce Plan upon the Effective Date of this Compliance Amendment with no loss or gap in plan coverage. In determining whether an employment group within the Tribe (regardless of whether structured as a division, enterprise, authority, tribal corporation or otherwise) shall participate in the Governmental Plan or the Commerce Plan version of each Welfare Benefit Plan, the Tribe shall be guided by the following:

- (a) Governmental Plan Eligibility: The Governmental Plan version of each Welfare Benefit Plan shall include those employees substantially all of whose services are in the performance of Essential Government Functions but not in the performance of Commercial Activities.
- (b) Commerce Plan Eligibility: The Commerce Plan version of each Welfare Benefit Plan shall include only those employees who fail to satisfy the eligibility criteria for government plan status as set forth in (a) above.
- (c) Definitions: The terms "Essential Government Functions" and "Commerce Activities" are not defined in the PPA. Nor, as of the writing of this amendment, has there been any guidance from DOL promulgated under the PPA. Until further guidance is issued, the Tribe shall categorize each employee under a good faith interpretation of the above terms, taking into account such factors as:
  - (1) the historic functions performed by the Tribal government;
  - (2) the Tribe's role as defined in its Constitution, Bylaws, Ordinances, Resolutions, Judicial decisions, customs and traditions;
  - (3) the functions carried on by other governmental employers, including the federal government, states, counties, cities and other local governments;
  - (4) the use of revenues generated by activities in question (whether inuring to the benefit of the Tribe and the provision of public services, or whether inuring to private interests); and
  - (5) whether the entity or division is treated as a non-profit or for-profit entity for tax or other purposes.

4. PLAN DOCUMENTATION: Until separate Welfare Benefit Plan restatements can be adopted or until further guidance on additional PPA documentation requirements is issued, the Governmental Plan and the Commerce Plan version of each Welfare Benefit Plan shall be documented by reference to separate copies of the Welfare Benefit Plan document in effect immediately preceding the Effective Date, with

the following changes applicable to that version representing the Commerce Plan and Governmental Plan respectively:

(a) Commerce Plan changes:

- (1) Eligibility provisions are modified to reflect Section 3(a) above.
- (2) All references to government status under ERISA Section 3(32) are deleted.
- (3) The plan shall hereafter incorporate by this reference all mandatory provisions (including ERISA, COBRA, and HIPAA) which apply as a matter of law to non-governmental plans.
- (4) The Tribe does not waive tribal court exhaustion to the extent applicable to claims asserted under ERISA, COBRA or HIPAA. The Tribe also reserves the right to implement binding arbitration in lieu of state or federal court litigation.
- (5) All contributions, claim payment and administration expenses attributable to Commerce Plan Participants shall be segregated and separately accounted for from contributions, claim payment and administration expenses attributable to Governmental Plan Participants.

(b) Governmental Plan changes:

- (1) Eligibility provisions are modified to reflect Section 3(a) above.
- (2) All contributions, claim payment and administration expenses attributable to Governmental Plan Participants shall be segregated and separately accounted for from contributions, claim payment and administration expenses attributable to Commerce Plan Participants.
- (3) A provision is added to clarify that the Tribe and its Governmental Plan remain exempt, to the fullest extent permitted under the PPA, from federal and state law requirements applicable to non-governmental plans. Provisions to the contrary are hereby deleted.

5. UNDERWRITING AND SERVICE CONTRACTS: The PPA effective date does not provide sufficient time to evaluate the economic impact or options with regard to separate underwriting or negotiation of separate service contracts. Until further amendment or guidance and to the extent applicable, the Governmental Plan and Commerce Plan shall be underwritten on a control group basis. All service providers shall administer the Governmental Plan and the Commerce Plan as separate and distinct legal plans with mirrored provisions except as otherwise provided in Section 4 above.

6. CONFORMING AMENDMENTS / ANCILLARY DOCUMENTS: To the extent required for PPA compliance and consistency with this Compliance Amendment, all ancillary documents, including Welfare Benefit Plan service agreements and business associate agreements, are hereby amended to reflect the plan separation as called for hereunder.

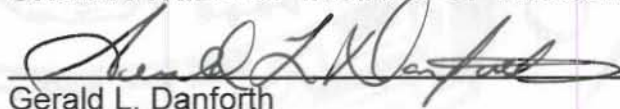
7. RECORDKEEPING and FUNDING: Plan recordkeeping practices, bank accounts, trusts and other operational functions used in the administration of the Welfare Benefit Plan shall be modified for operational compliance with the terms of this Compliance Amendment.

8. LIMITED IMPACT: Nothing in this amendment shall be construed to make federal or state law requirements applicable to the Tribe except to the extent required under the PPA. The Tribe expressly reserves all rights of sovereignty and government status to which it is entitled at law or in equity.

9. FURTHER CHANGES: The Tribe reserves the right to make further changes to the Welfare Benefit Plans as permitted under the PPA through any applicable transition date(s), as the same may be modified with further guidance from the Department of Treasury, the Internal Revenue Service, the Department of Labor and other federal agencies as may have jurisdiction over specific changes at hand. Nothing herein shall be construed as a limitation on the Tribe's right to further amend the Welfare Benefit Plans through said transition date(s).

**IN WITNESS WHEREOF**, the Tribe has caused this Compliance Amendment to be executed by its duly authorized representative on this 29<sup>th</sup> day of December, 2006.

**ONEIDA TRIBE OF INDIANS OF WISCONSIN**

  
Gerald L. Danforth

Title: Oneida Tribal Chairman