

**ONEIDA INDIAN NATION  
AMENDED TORT CLAIMS RESOLUTION ORDINANCE**

**Ordinance No. O-18-01**

Pursuant to the authority vested in the Oneida Indian Nation by virtue of its sovereignty and inherent powers of self-government, the Nation hereby establishes the process through which a person may seek compensation for injury from the Nation. This Ordinance replaces Nation Ordinance 0-94-02B, which is hereby rescinded.

**Article I – Definitions**

1. “Compensation” means payment for past and future damages made to a petitioner by the Nation pursuant to the authority of this Ordinance.
2. “Damages” mean only medical expenses, lost earnings, property loss and other economic harms to the petitioner that are a direct consequence of an injury caused by the fault of the Nation. “Damages” do not include a non-economic injury.
3. “Medical Expenses” mean all necessary expenses incurred for: (i) medical, hospital, surgical, nursing, ambulance, x-ray, prescription drug and prosthetic services; (ii) medical supplies and equipment; (iii) psychiatric, physical and occupational therapy and rehabilitation; and (iv) any other professional health services.
4. “Lost Earnings” means loss of earnings from work which the person would have performed had he/she not been injured.
5. “Injury” includes any alteration or impairment of a temporary or permanent nature to a person or his or her property.
6. “Person” means any human being or group of human beings or any entity recognized as a person under the law of any jurisdiction. “Person” does not mean the Oneida Indian Nation, its enterprises, instrumentalities, or agents.

**Article II – Standard for Compensation**

The Nation will compensate a person for damages if the person demonstrates, pursuant to the procedures set forth in this Ordinance, that he or she, or a person he or she is authorized to represent, was injured due to the fault of the Nation or one of its agents acting within the scope of such agency. The Nation will pay for that amount of damage equal to the Nation’s or its agents’ equitable share of the relative fault of each person or entity, including the petitioner, in causing or contributing to the petitioner’s injury. Awards will reasonably compensate for past and future damages caused by the fault of the Nation, but will in no event exceed Five Million and 00/100 Dollars (\$5,000,000.00).

**Article III – Petition for Compensation: Procedure in Oneida Indian Nation Trial Court**

1. A person, directly or by counsel, may submit a petition for compensation under this Ordinance (a “petition”) in writing to the Trial Court of the Oneida Indian Nation. The petition shall set forth the full name, address, and telephone number(s) of the petitioner, and shall include a detailed factual statement of the incident which is claimed to have caused injury, and of the claimed injury and damages. The petition shall state the total amount of damages claimed, together with a description of how damages were

calculated. The petition shall also contain a statement of the purported legal basis for the claim, including a statement describing the manner in which the petitioner claims that the conduct of the Nation or its agents caused the petitioner's alleged injury.

2. The petition shall further include or append the petitioner's supporting evidence for the claim, including:

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

(b) sworn affidavits from any witnesses;

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

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

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

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

(g) a signed release from the petitioner permitting release by third parties, including health care providers, to the Nation Legal Department of records or information related to the petitioner and/or his or her claim;

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

(i) and any other information available to the petitioner and necessary for the Court to evaluate the claim.

Upon request by the petitioner, and after providing the Nation with notice and an opportunity to submit its argument in opposition to such request, and/or to request a hearing on the issue, the Court may, for good cause shown, waive a requirement that the petitioner submit certain evidence under this Section. If the petitioner requests a waiver of any requirement under this Section, the Nation's time to respond to the petition under Section 4 of this Article shall not begin to run until the day after the date it receives notice of the Court's determination on the request.

3. Any submission of a petition for compensation shall be filed with the Clerk of the Court within one (1) year of the date of enactment of this Ordinance or of the date of the injury claimed, whichever is later.

4. Upon commencement of a proceeding under this Ordinance, the Clerk of the Court shall promptly provide a copy of the petition and evidence to the Nation by mailing or hand-delivering a copy to the person designated by the Nation to receive such petitions. The Nation shall have sixty (60) days to

submit a response to the petition, by filing such response with the Clerk of the Court, and providing a copy of the response and evidence to the petitioner by mail at the address set forth in the petition. The Nation's response may consist of either:

- (a) an answer to the petition presenting the Nation's own arguments and evidence;
- (b) a motion to dismiss the petition for:
  - (i) any grounds enumerated in Rule 7(b) of the Oneida Indian Nation Rules of Civil Procedure;
  - (ii) failure to provide any of the information or documents required under Sections 1, 2, or 5 of this Article;
  - (iii) failure to submit the petition within the time set forth in Section 3 of this Article; or
  - (iv) any other basis that would be available to a party in a civil action under the Oneida Indian Nation Rules of Civil Procedure.

The court may extend the time for the Nation to respond to the petition for good cause. If the Nation responds by making a dispositive motion(s) under subsection (b) of this Section, and such motion is not granted, the Nation's answer to the petition will be due twenty-one (21) days after disposition of the motion(s) by the Court, or at such other later date as the Court designates for good cause shown. Upon application by the petitioner or by its own initiative, the court may grant the petitioner leave to file a reply to the Nation's response in the interest of narrowing and defining issues in the claim or as justice may require.

5. Prior to filing its response under Section 4 of this Article, the Nation may conduct inquiry into the merits of the petitioner's claim, including by requesting additional documents or information from the petitioner, and by making inquiry to health care providers and other third parties pursuant to the release provided by the petitioner pursuant to Section 2(g) of Article III of this Ordinance. Within ten (10) days of the receipt of any such request or inquiry from the Nation, the petitioner shall furnish the requested documents or information; provided, however, that the petitioner may apply to the Court for relief from compliance with any request or inquiry claimed to be improper, unfairly prejudicial, or unduly burdensome, and that the Nation shall be provided with notice and an opportunity to submit its argument in opposition to any such application, and/or to request a hearing on the issue. Notwithstanding any other rule to the contrary, no other discovery or investigation shall be permitted by either party in a petition brought under this Ordinance, except by leave of Court for good cause shown.

6. (a) The Court may, in its discretion, rule on a petition based on the papers and evidence submitted by the parties, or it may hold an evidentiary hearing at which either party may testify and produce witnesses and any other relevant evidence. The court may hold an evidentiary hearing on its own initiative or upon the request of either party. Upon directing the conduct of an evidentiary hearing, the Court may order the parties to produce any documents or other evidence that it deems relevant to its determination of the petition. The nature and scope of the evidence received at any such hearing is within the Court's sole discretion.

(b) In the event of such a hearing, the Court will provide reasonable advance notice to both parties of the date and time of the hearing. Failure of the petitioner to appear at a duly noticed hearing without good cause shown shall be an independent ground upon which to deny compensation.

7. The Court shall issue a written decision with respect to each claim set forth in the petition, stating with specificity the amount of compensation, if any, it is awarding to the petitioner under this Ordinance, and setting forth how it calculated such award. The decision shall set forth the Court's findings of fact with respect to the claim and its determination of the proportionate share of fault, if any, of the Nation (or its agents), the petitioner, and any other person or entity. The Clerk of the Court shall promptly provide both parties with a copy of the decision.

8. (a) Every petition, response, written motion, and other paper filed under this Ordinance by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address shall be stated on the first paper filed by that attorney in the action. A party who is not represented by an attorney shall sign their petition, motion, or other paper in that party's own name and state their address. The signature of an attorney or party to a paper constitutes a certificate by that person that (i) they have read the petition, motion, or other paper, (ii) to the best of their knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigating a petition. If a petition, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the filing party.

(b) An oral motion made by an attorney or party under this Ordinance constitutes a representation by that person that (i) to the best of their knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigating a petition.

(c) If a petition, motion, or other paper is signed or made in violation of this Section, the Court, upon motion or upon its own initiative, may impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the offending petition, motion, or other paper or making of the offending motion, including a reasonable attorney's fee.

9. A party aggrieved by a final decision of the Trial Court on a petition under this Ordinance may appeal such decision to the Oneida Indian Nation Appellate Court under the procedure set forth for appeals in Rule 48 of the Oneida Indian Nation Rules of Civil Procedure. The Appellate Court shall review the decision of the Trial Court to determine whether it was arbitrary and capricious, in that there is no rational basis for the decision; or, where the Trial Court conducted an evidentiary hearing, whether its decision is supported by substantial evidence. The decision of the Appellate Court shall be final, binding, and not subject to any further appeal, review, or modification in any court.

#### **Article IV – Interpretation**

1. The Nation does not by enacting this Ordinance waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, nor in any place.
2. Except as specifically set forth herein, this Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agencies, its officers or employees, or any other person.
3. This Ordinance is not subject to review, enforcement or modification in any state or federal court or by any authority outside the Nation.
4. Prior Ordinances Repealed. Prior Ordinances of the Nation and regulations of any Nation agency are superseded to the extent that they conflict with this Ordinance. Upon enactment of this Ordinance, Nation Ordinance 0-94-02B shall be repealed.

#### **Article V – Effective Date**

This Ordinance is effective upon enactment.

Enacted this 20<sup>th</sup> day of April, 2018.

  
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Ray Halbritter  
Nation Representative