

**PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL**

RESOLUTION 22-71

WHEREAS: The Ponca Tribe of Nebraska is a federally recognized Indian Tribe (P.L. 101-484) whose business affairs are conducted by the Ponca Tribal Council as defined in the Constitution approved July 22, 1994 by the Acting Deputy Commissioner of Indian Affairs; and

WHEREAS: Pursuant to the Constitution of the Ponca Tribe of Nebraska, the Ponca Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances subject to all express restrictions upon such powers contained in the constitution; and

WHEREAS: The Ponca Tribal Council has reviewed the proposed amendment to the Law & Order Code Title VI - Judicial Remedies; and

WHEREAS: The revisions were considered because the Tribal Council wants to create laws that will allow people to file a suit against insurance companies instead of the Tribe directly to deal with any suit where the Tribe has insurance. It keeps the Tribe from having to be in Court or pay out damages, but also helps ensure people have a remedy when insurance won't pay; and

WHEREAS: The proposed Title VI Judicial Remedies proposed revision was placed on the November 1, 2022 Tribal Council Agenda to allow comments from the public and on November 8, 2022 and November 15, 2022 for first and second readings respectively. A notice of intent to amend the Law & Order Code Title VI - Judicial Remedies was mailed to all heads of household at least 14 days prior to any final action satisfying the requirements for the adoption, amendment, or abolishment of Ordinances.


THEREFORE BE IT RESOLVED that the Ponca Tribal Council does approve the amendment to the Ponca Tribe of Nebraska Law & Order Code Title VI – Judicial Remedies.

BE IT FURTHER RESOLVED that these amendments shall take effect immediately.

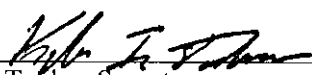
CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM that the above and foregoing resolution was duly authorized and passed by the Tribal Council of the Ponca Tribe of Nebraska at a duly called meeting held in Niobrara, Nebraska on the 15 day of November, 2022 by a vote of 7 Ayes; 0 Nays; 0 Abstained; 0 Absent. Chairperson _____ voting ✓ not voting. A Quorum of 8 was present.

ATTEST



Rebecca Sullivan, Vice Chairwoman
Ponca Tribe of Nebraska



Kyle Taylor, Secretary
Ponca Tribe of Nebraska

PONCA TRIBE OF NEBRASKA
TITLE VI
JUDICIAL REMEDIES

CHAPTER 1
GENERAL PROVISIONS

CHAPTER 2
GARNISHMENT AND EXECUTION

CHAPTER 3
INJUNCTIONS

CHAPTER 4
PROTECTION ORDERS

CHAPTER 5
DECLARATORY RELIEF

CHAPTER 6
WRIT OF MANDAMUS

CHAPTER 7
WRIT OF PROHIBITION

CHAPTER 8
CERTIFICATIONS OF QUESTIONS OF LAW

CHAPTER 9
CHALLENGE TO TRIBAL LAW

CHAPTER 10
CIVIL FINE ENFORCEMENT

CHAPTER 11
CLAIMS INVOLVING INSURANCE

Section 6-11-1. Power of Court. The Court shall have authority to review an insurer's denial of a claim in accordance with this Chapter.

Section 6-11-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Claimant" means a person who has a claim for injury or damages and includes a claimant's heirs, devisees, successors, and assigns.

2. "Insurance policy" means a contract whereby a person or entity, for consideration, undertakes to indemnify the Tribe or to pay a specified or ascertainable amount or benefit on behalf of the Tribe upon determinable risk contingencies and includes a self-insurance plan, but does not include:

a. Workers' compensation insurance;

b. Health insurance; or

c. An agreement or provision in an agreement providing for indemnification of the Tribe by another party which is not otherwise a contract for insurance.

3. "Insurer" means a person or entity whom the Tribe has engaged by contract in the form of an insurance policy.

Section 6-11-3. Applicability and Exclusivity.

1. This Chapter does not apply to:

a. Claims or reviews of claims involving a health care plan or program; or

b. Claims or reviews of claims where applicable law provides another remedy or procedure for the particular claim.

2. Except for claims set forth in subsection 1 of this Section:

a. The remedy and procedures provided in this Chapter are exclusive of any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy; and

b. Any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy is precluded without regard to when or where the act or omission occurred.

Section 6-11-4. Invalidity of Contract Provisions.

1. No term, clause, provision, or endorsement of any contract, insurance policy, or self-insurance program shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

2. Any term, clause, provision, or endorsement of a contract, insurance policy, or self-insurance program which conflicts with or purports to alter any of the provisions of this Chapter shall be void and unenforceable and severed from the contract, insurance policy, or self-insurance program.

Section 6-11-5. Payment of Claim as Bar. The payment of any claim by an insurer and acceptance thereof by the claimant shall constitute a complete bar to any action by the claimant, by reason of the same occurrence or subject matter, against the insurer or the Tribe and shall require dismissal of any action commenced prior to or subsequent to such payment and acceptance.

Section 6-11-6. Subject Matter Jurisdiction.

1. The Court shall have original and exclusive subject matter jurisdiction over all matters arising under this Chapter.

2. In any matter arising under this Chapter, if a prior action on the same matter has been or was commenced in the court of another jurisdiction involving the same claim, cause of action, or occurrence:

a. The Court shall assert original subject matter jurisdiction under this Chapter, but shall require the prior action to be dismissed prior to proceeding with the claim under this Chapter;

b. The filing of the prior action shall not toll any limitations period or other time limit applicable to the claim or cause of action; and

c. The cause of action shall not be deemed commenced under this Chapter unless and until the prior proceeding is

dismissed, including for purposes of any time limit or limitations period.

Section 6-11-7. Personal Jurisdiction. The Court shall have personal jurisdiction over any insurer for a claim brought in accordance with this Chapter. Notwithstanding any provision of law or the applicable insurance policy to the contrary, an insurer shall be deemed to have consented to the personal jurisdiction of the Court for matters related to such insurance policy by accepting payments from the Tribe for the insurance policy.

Section 6-11-8. Initiation of Proceedings.

1. Except as otherwise provided in this Chapter, a claimant may seek review of an insurer's denial of a claim in the Court by filing a complaint in the manner provided for civil causes of action in the Rules of Civil Procedure.

2. In addition to any other requirements of the laws of the Tribe, a complaint seeking review of an insurer's denial of a claim shall:

a. Name the appropriate insurer as the party against whom relief is sought;

b. Be captioned: "(name(s) of claimant(s)), Plaintiff(s) vs. (name of insurer(s), Defendant(s))";

c. State that it is a review of an insurer's denial of a claim;

d. State the date of filing or initiating the claim with the insurer or that such filing has not occurred and the reasons therefor;

e. Include a short, plain statement of information regarding the insurer's denial of the claim or the fact the insurer has not denied the claim or otherwise remains pending with the insurer;

f. Make only claims and request only relief covered and permitted in the applicable insurance policy; and

g. Request no more monetary compensation than is permitted in the amounts or limits of the insurance policy,

provided that the complaint need not specify a precise amount of damages or money compensation sought.

Section 6-11-9. Proper Parties.

1. Relief may be sought only against the insurer in any action under this Chapter. The Tribe shall not be named or considered a necessary or indispensable party to any claim or cause of action under this Chapter.

2. In the event a claimant names or otherwise purports to join the Tribe to a claim or cause of action under this Chapter without the Tribe's express and unequivocal consent, the Court shall, upon the Court's own motion or the motion of the Tribe, prior to any other proceedings in the matter, including discovery:

a. Dismiss the Tribe from the action and complaint; and

b. If necessary, substitute the insurer for the Tribe as the proper party.

3. A cause of action shall not be deemed filed under this Chapter for any purpose, including the periods of time in which an answer, reply, or other pleading or response of any kind is required or discovery may be sought, until the insurer has been properly named as a party and served in accordance with the Rules of Civil Procedure.

Section 6-11-10. Summons and Service of Process. The summons shall be issued by the Court to and served, with a copy of the complaint, upon the insurer in accordance with the Rules of Civil Procedure governing the issuance of summons and service of process.

Section 6-11-11. Stay Pending Insurer Review.

1. If a claim subject to a complaint filed under this Chapter has not been presented to the insurer for review or action:

a. The proceedings shall be stayed for fifteen (15) days to permit the claimant to present his or her claim to the insurer;

b. Upon presentation of the claim to the insurer, the claimant shall file notice with the Court and the Court shall extend the stay for at least thirty (30) days to permit the insurer to make a determination of the claim; and

c. If the claimant fails to present his or her claim to the insurer by the expiration of the stay, the Court shall dismiss the complaint with prejudice unless the claimant shows good cause for the failure.

2. If a claim subject to a complaint filed under this Chapter has been presented to the insurer for review or action, but the insurer has not denied or otherwise responded to or determined the claim:

a. The proceedings shall be stayed for at least thirty (30) days to permit the insurer to make a determination of the claim; and

b. Upon determination of the claim, the insurer shall file its determination with the Court and the Court shall lift the stay.

3. If an insurer fails to make a determination on a claim by the expiration of any stay made under this Section for such purpose, the Court shall treat the failure as a denial of the claim and lift the stay, unless the insurer shows good cause for the failure or the parties agree to extend the stay.

4. During a stay under this Section, nothing limits or prevents:

a. The parties from agreeing to a separate stay or extension of the stay in order to negotiate a settlement or otherwise resolve the claim or other issues raised in the complaint;

b. The claimant from voluntarily dismissing the complaint in accordance with the Rules of Civil Procedure;

c. The insurer paying the claim and the claimant accepting such payment; or

d. The parties from entering into a settlement agreement or otherwise resolving the claim and agreeing to dismissal of the complaint.

Section 6-11-12. Proceedings on Complaint.

1. Except as modified by this Chapter, the Court shall hear a review of an insurer's denial of a claim as it hears other civil matters.

2. Except where provided otherwise in this Chapter, the laws of the Tribe, including the Rules of Civil Procedure, governing the conduct of Court proceedings shall apply to any review of an insurer's denial of a claim under this Chapter, provided that the provisions of the Rules of Civil Procedure applicable to the Tribe in any civil cause of action governing the awarding of costs, stays, and periods of time shall apply and be available to the insurer in an action brought under this Chapter.

3. Any matter or information relevant and material to the subject matter of the proceeding is admissible and may be received in evidence. Hearsay evidence will not be excluded as long as it is reasonably reliable.

Section 6-11-13. Obtaining Evidence. In any proceeding under this Chapter, by order upon motion and showing of sufficient relevancy and admissibility, and subject to applicable laws related to privilege and confidentiality, the Court may:

1. Require the appearance and testimony of any official, officer, agent, or employee of the Tribe with personal and first-hand knowledge necessary to the proper resolution of the claim; and

2. Require any official, officer, agent, or employee of the Tribe to deliver to the Court documentary or physical evidence necessary to the proper resolution of the claim, provided that any such documentary or physical evidence shall be kept under seal and not made available to the public and shall be returned to the Tribe upon termination of the proceedings before the Court.

Section 6-11-14. Defenses of Insurance Carrier.

1. In any action or proceeding under this Chapter, an insurer may assert any defense that would be available to the Tribe if the Tribe were the defendant in the action or proceeding, except that an insurer shall not be permitted to assert:

a. The Tribe's sovereign immunity with respect to any claim, judgment, damages, or other relief within the terms, coverage, or limits of the applicable insurance policy;

b. Any lack of personal jurisdiction of the Court over the Tribe; or

c. Any lack of subject matter jurisdiction of the Court over an action or proceeding involving the Tribe.

2. Notwithstanding anything to the contrary in this Title, an insurer shall have the right and authority to waive any and all defenses available to it under this Chapter or other law of the Tribe, provided any such waiver shall not extend to the Tribe directly.

Section 6-11-15. Decision of Court.

1. After hearing a review of an insurer's denial of a claim, the Court may determine all issues properly before it, including fault, and enter judgment as it enters judgment in other civil proceedings, subject to the following:

a. The Court may award damages, enter judgment, or grant other relief only against or in favor of the insurer and/or the claimant;

b. The Court shall not have jurisdiction over the Tribe or any cause of action brought against the Tribe or to award damages, enter judgment, or grant any other relief against the Tribe, regardless of any fault or conduct of the Tribe;

c. The Court shall not have jurisdiction to award damages, enter judgment, or grant other relief for events, occurrences, acts, or omissions not covered by the applicable insurance policy;

d. The Court shall not have jurisdiction to award any damages or other monies in an amount in excess of the amounts of coverage in the applicable insurance policy; and

e. Any award of damages, judgment, or other relief granted a claimant shall be enforceable only against the insurer and only for events, occurrences, acts, and

omissions, and in such amounts, established by the applicable insurance policy.

2. Nothing in this Section shall limit or prohibit the Court from construing the insurance policy as necessary to properly resolve the proceedings.

Section 6-11-16. Limitations of Actions.

1. An action brought under this Chapter must be commenced within the limitations period applicable to the underlying cause of action as if the Tribe were a party.

2. For purposes of determining whether a cause of action under this Chapter has been timely filed:

a. The cause of action shall not be deemed to have been commenced unless and until any prior proceeding not brought under this Chapter in any jurisdiction, including the Court, is dismissed or, for an action in the Court, the complaint amended to comply with this Chapter;

b. The cause of action shall not be deemed to have been commenced unless and until the insurer has been joined as a party and, if named, the Tribe dismissed as a party; and

c. The failure to properly name the insurer or bring the cause of action under, pursuant to, and in accordance with this Chapter shall not toll any period of limitations.

3. If no complaint is filed under this Chapter within the time allowed, any decision or determination of the insurer is final and not subject to any challenge or appeal in any court, provided that the insurer may, in its sole discretion, pay a claim notwithstanding the expiration of any limitations period applicable to the claim.