

TITLE 48. MASHANTUCKET PEQUOT TRIBAL INDEMNIFICATION LAW

CHAPTER 1. DEFINITIONS

48 M.P.T.L. ch. 1 § 1

§ 1. Title

The title of this Law shall be the Mashantucket Pequot Tribal Indemnification Law.

48 M.P.T.L. ch. 1 § 2

§ 2. Purpose

Public Officials, Employees, and Board Members of the Mashantucket Pequot Tribe who are sued for actions taken within the scope of their authority on behalf of the Tribe, whether sued in their official or individual capacity, are immune from suit to the same extent as the Tribe. In the event that a suit is brought against a Public Official, Employee, or Board Member, this Law provides that the Tribe will indemnify and defend such Public Official, Employee, and/or Board Member against Claims based on actions within his/her Official Functions and Duties or Scope of Employment.

48 M.P.T.L. ch. 1 § 3

§ 3. Definitions.

In construing the provisions of this Law, the following words or phrases shall have the meanings designated unless a different meaning is expressly provided, or the context clearly indicates otherwise:

a. "Act" or "Acts" means conduct, actions, the failure to act, omissions, deprivations, or breaches of duty, by any Public Official, Employee, or Board Member while acting within his/her Scope of Employment or within his/her Official Functions and Duties on behalf of the Tribe.

b. "Board Member" means any person who is or was an appointed member of a Board or Authority established by the Mashantucket Pequot Tribe who was acting in that capacity at the time that the alleged Act giving rise to the Claim occurred.

c. "Claim" means any claim, demand, suit, judgment, arbitration, or award directed to or served upon any Public Official, Employee, or Board Member, as defined in this Law, for an Act within his/her Scope of Employment or within his/her Official Functions and Duties .

d. "Employee" means any person who is an employee or was an employee of the Mashantucket Pequot Tribe at the time that the alleged Act giving rise to the Claim occurred.

e. "Mashantucket Pequot Tribe" or "Tribe" means the Mashantucket (Western) Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation, a federally recognized Indian tribe, including all of its departments, agencies, subdivisions and arms, including the Mashantucket Pequot Gaming Enterprise and any wholly owned Tribal entity created under Tribal law.

f. "Official Functions and Duties" means all Acts made or taken in the exercise of a Public Official's or Board Member's responsibilities for or on behalf of the Mashantucket Pequot Tribe, or any wholly owned entity of the Tribe.

g. "Prompt Written Notice" means prompt delivery of the original or a true copy of a Claim in person or by certified mail, or any other service which tracks deliveries to provide proof of delivery, to the Chairman of the Tribe and to the Tribe's General Counsel in such time so as not to diminish or prejudice the Tribe's rights in any manner and no later than within twenty (20) days of receipt of such Claim.

h. "Public Official" means any person holding an official position for the Tribe, whether that person is elected within the tribal system or appointed by the Mashantucket Pequot Tribal Council, pursuant to the laws of the Mashantucket Pequot Tribe.

i. "Scope of Employment" means any Act taken in the course and within the scope of an Employee's employment.

48 M.P.T.L. ch. 1 § 4

§ 4. Indemnification.

If a Public Official, Employee, or Board Member gives the Mashantucket Pequot Tribe Prompt Written Notice of any Claim, the Mashantucket Pequot Tribe shall indemnify such Public Official, Employee, or Board Member from reasonable financial loss and expense, including the reasonable cost of defense, arising out of such Claim based on Acts resulting in damage or injury, if such Acts are found not to have been wanton, reckless or malicious; further provided that such Public Official, Employee, or Board Member was acting within the Scope of his/her Official Functions and Duties or within his/her Scope of Employment.

48 M.P.T.L. ch. 1 § 5

§ 5. Defense.

a. If a Public Official, Employee, or Board Member gives the Mashantucket Pequot Tribe Prompt Written Notice of any Claim, the Mashantucket Pequot Tribe shall provide for the defense of any such Public Official, Employee, or Board Member in any civil action or proceeding in any tribal, state or federal court or arbitral panel arising out of any alleged Act which occurred or is alleged to have occurred while the Public Official, Employee, or Board Member was acting in the scope of his/her Official Functions and Duties or within his/her Scope of Employment, except that the Mashantucket Pequot Tribe

shall not be required to provide for such a defense whenever the Mashantucket Pequot Tribe, based on its investigation of the facts and circumstances of the case, determines that the Public Official, Employee, or Board Member has acted outside the scope of his/her Official Functions and Duties or outside his/her Scope of Employment or has acted wantonly, recklessly or maliciously.

b. The responsibility of the Tribe to provide a defense for its Public Official, Employee, or Board Member is separate from its duty to indemnify. The Mashantucket Pequot Tribe may provide a defense without prejudicing any right to refuse to indemnify.

48 M.P.T.L. ch. 1 § 6

§ 6. Jurisdiction.

a. The Mashantucket Pequot Tribal Court is hereby granted exclusive jurisdiction over all claims or causes of action for indemnification as provided herein, provided that the Acts alleged occurred within the Employee's, Board Member's, or Public Official's Official Functions and Duties or Scope of Employment.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the Mashantucket Pequot Tribal Court for the limited purpose of permitting actions filed by a Public Official, Employee, or Board Member for indemnification as provided herein, provided that the Acts alleged occurred within the Employee's, Board Member's or Public Official's Official Functions and Duties or Scope of Employment.

c. Limitation on Jurisdiction.

- i. Nothing provided in this law shall be deemed to be a waiver of the sovereign immunity of the Tribe except as provided in Section 6(b) of this law. Nothing contained in this law shall be construed to be a waiver of the sovereign immunity of the Tribe from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.
- ii. Nothing in this law shall be construed as consent to any suit against any Public Official, Employee, or Board Member of the Tribe except as provided under the Laws of the Mashantucket Pequot Tribe.

§ 7. Notice; Limitations on Actions and Remedies.

a. The Mashantucket Pequot Tribe shall notify the Public Official, Employee, or Board Member in writing of any determination not to provide defense as provided in section 5 above at any point in any proceeding based on its determination that the Public Official, Employee, or Board Member was not acting within the scope of his/her Official Functions and Duties or within his/her Scope of Employment and of the individual's option to retain separate legal counsel.

b. The Mashantucket Pequot Tribe shall notify the Public Official, Employee, or Board Member in writing of any determination not to indemnify as provided in section 5 above at any point in any proceeding based on its determination that the Public Official, Employee, or Board Member was not acting within the scope of his/her Official Functions and Duties or within his/her Scope of Employment.

c. No action against the Tribe may be brought but within ninety (90) days of notice of denial as provided in 7(b) above.

d. The only remedy that the Mashantucket Pequot Tribal Court may consider is an order to indemnify as provided herein.

§ 8. Contribution.

a. The Mashantucket Pequot Tribe shall be entitled to contribution, indemnification, or reimbursement from a Public Official, Employee, or Board Member for legal fees and expenses incurred by the Mashantucket Pequot Tribe, if a court finds that the Act of the Public Official, Employee, or Board Member was not in the scope of his/her Official Functions and Duties or was outside the Scope of Employment.

Historical and Statutory Notes

Derivation.

Effective December 13, 2018, TCR121318-06 of 11, enacted the "Mashantucket Pequot Tribal Indemnification Law."