

IN THE SUPREME COURT OF THE CHEROKEE NATION

SALLIE LUETHJE, )  
Claimant/Appellee )  
v. )  
CHEROKEE NATION, )  
Respondent/Appellant )  
HUDSON INSURANCE COMPANY, )  
Insurance Carrier )

Case No. SC-2018-02

2018 APR -5 AM 9:50  
CHEROKEE NATION  
SUPREME COURT  
RENDALL BIRD, COURT CLERK

FILED

**RESPONSE TO PETITION IN ERROR**

- A. Is Appellee willing to participate in a Settlement Conference?  
\_\_\_\_\_ YES                        X   NO
  
- B. Appellee's brief statement as to proceeding: See Exhibit "A" attached hereto.

Date: April 5, 2018

Respectfully submitted,



Brian R. Berry, OBA #14380, CNBA #148  
Berry & Otterson, PLLC  
2230 E 49<sup>th</sup> St, Suite A  
Tulsa, OK 74105  
(918) 742-3200 Telephone  
(918) 742-3772 Facsimile  
*Attorney for Claimant*

**CERTIFICATE OF SERVICE**

I, Brian Berry, do hereby certify that on this 5 day of April, 2018, I did cause to be filed with the Court Clerk of the Cherokee Nation Supreme Court a true, complete and correct copy of the above and foregoing Response to Petition in Error, and also mailed a true and correct copy with attachment, postage prepaid, to the following persons:

Jay Jones  
Attorney at Law  
501 N Walker, Ste 140  
Oklahoma City, OK 73102

  
\_\_\_\_\_  
Brian R. Berry

## EXHIBIT A

### STATEMENT AS TO PROCEEDING

Mrs. Luethje sustained an admitted injury to the left shoulder while employed by Cherokee Nation on 11/5/16 due to a fall on to her left shoulder. Mrs. Luethje had surgeries to the left shoulder by Dr. Clint Basener and continues under his care. Mrs. Luethje remains off of work and is receiving temporary total disability benefits.

On 3/23/17 Cherokee denied reimbursement of travel to physical therapy at Stilwell Memorial Hospital for dates of service 2/16/17, 2/21/17, 2/23/17, 3/1/17, 3/3/17, 3/6/17, 3/7/17, 3/8/17 and 3/10/17. Mrs. Luethje, unrepresented, appealed the denial by way of a Request for Arbitration on or about 3/31/17. Arbitration was held on 5/25/17. An Arbitration Award was mailed 5/31/17. The 5/31/17 Arbitration Award found that claimant provided Cherokee with a property tax assessment for the property located at 18282 S 585 Rd, Stilwell, OK which was issued by the Cherokee County Treasurer. The Arbitration Award reversed the decision of the Employer's Denial of Benefits for mileage reimbursement for travel to Stilwell for physical therapy from 2/16/17-3/10/17 (8 visits at 32 miles) and ordered payment to claimant for same in the amount of \$136.96. The Arbitration Award awarded Claimant an additional sum of \$500.00 as just and appropriate under the circumstances of the Arbitration proceeding, pursuant to §21(c) of the Uniform Arbitration Act.

Cherokee appealed to the Cherokee Nation District Court only paragraph 14 of the Arbitration Award for the additional sum of \$500.00. Both parties briefed the matter. The Court and Judge Luke Barteaux issued an Order on March 2, 2017. In that Order Judge Barteaux advised that the court file, briefs, transcript and exhibits were reviewed. Judge Barteaux found the Order of the Arbitrator was supported by competent evidence. Judge Barteaux affirmed and specifically adopted the Order of the Arbitrator. Cherokee filed a timely appeal to this Court.

Claimant respectfully requests that the Supreme Court affirm the decision of the District Court affirming the Arbitrator's award of \$500.00 as just and appropriate under the circumstances. Claimant additionally requests attorney fees and costs as the result of this appeal.

**RESPONSE TO REQUEST FOR ORAL ARGUMENT**

Claimant requests and Oral Argument and believes it is necessary in this appeal. The briefing process has been done extensively in this matter already and is included in the record.