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Ellenbast v. Watkins N.Y.A.D. 2 Dept., 2006.
 Supreme Court, Appellate Division, Second
 Department, New York.
 Michael ELLENBAST, appellant,
 v.
 Jesse WATKINS, etc., et al., defendants,
 Unkechaug Indian Nation of Poospatuck Indians,
 respondent.
 Sept. 26, 2006.


Background: Action was brought against Indian tribe to recover for personal injuries. The Supreme Court, Suffolk County, [Cohalan, J.](#), granted tribe's motion to dismiss the complaint, and plaintiff appealed.

Holding: The Supreme Court, Appellate Division, held that tribe had tribal status which entitled it to assert sovereign immunity from personal injury suit.

Affirmed.
 West Headnotes

[\[1\] Indians 209](#)  2

[209](#) Indians
[209k2](#) k. Status of Indian Nations or Tribes. [Most Cited Cases](#)

[Indians 209](#)  27(1)

[209](#) Indians
[209k27](#) Actions
[209k27\(1\)](#) k. Rights of Action. [Most Cited Cases](#)

Indian tribe which had been recognized by New York pursuant to Indian Law, and whose history appeared in both case law and plaintiff's submissions, had tribal status which entitled it to assert sovereign immunity from personal injury suit. [McKinney's Indian Law § 150](#).

[\[2\] Indians 209](#)  27(1)

[209](#) Indians
[209k27](#) Actions
[209k27\(1\)](#) k. Rights of Action. [Most Cited](#)

[Cases](#)

It is not necessary for an Indian tribe to have attained federal recognition in order to successfully assert its sovereign immunity from suit, so long as the tribe has tribal status.

*275 Stanley E. Orzechowski, P.C., St. James, N.Y., for appellant.

[Eric I. Prusan](#), Mineola, N.Y., for respondent.

[GABRIEL M. KRAUSMAN](#), J.P., [WILLIAM F. MASTRO](#), [ROBERT A. SPOLZINO](#), and [JOSEPH COVELLO](#), JJ.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated February 4, 2004, which granted the motion of the defendant Unkechaug Indian Nation of Poospatuck Indians to dismiss the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

[\[1\]\[2\]](#) Contrary to the plaintiff's contention, it is not necessary for an Indian tribe to have attained federal recognition in order to successfully assert its sovereign immunity from suit, so long as the tribe has "tribal status" ([Native Village of Tyonek v. Puckett](#), 957 F.2d 631, 634-635; see [Mashpee Tribe v. Secretary of the Interior](#), 820 F.2d 480, 482-483; [Bottomly v. Passamaquoddy Tribe](#), 599 F.2d 1061, 1065 n. 5; [New York v. Shinnecock Indian Nation](#), 400 F.Supp.2d 486). The Poospatuck Indian tribe has been recognized by the State of New York pursuant to [Indian Law § 150](#), and its history appears in both case law and the plaintiff's submissions (see [Matter of Nelson](#), 68 Misc.2d 614, 616, 327 N.Y.S.2d 774; [New York v. Shinnecock Indian Nation](#), *supra*).

The Poospatuck Indian tribe meets the definition of a tribe set forth in [Montoya v. United States](#), 180 U.S. 261, 266, 36 Ct.Cl. 577, 21 S.Ct. 358, 45 L.Ed. 521, and therefore cannot be sued in New York courts without its consent (see [Kiowa Tribe of Oklahoma v. Manufacturing Tech.](#), 523 U.S. 751, 754, 118 S.Ct. 1700, 140 L.Ed.2d 981; [Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g](#), 476 U.S. 877, 891, 106 S.Ct. 2305, 90 L.Ed.2d 881; [Matter of Ransom v. St. Regis Mohawk Educ. and Comm. Fund](#), 86 N.Y.2d 553, 560, 635 N.Y.S.2d 116, 658

[N.E.2d 989](#)). No waiver of sovereign immunity occurred here, and the Supreme Court properly dismissed the complaint insofar as asserted against the tribe for lack of subject matter jurisdiction (*see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106; *Matter of Ransom v. St. Regis Mohawk Educ. and Comm. Fund*, *supra* at 561, 635 N.Y.S.2d 116, 658 N.E.2d 989).

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32 A.D.3d 991, 821 N.Y.S.2d 275, 2006 N.Y. Slip Op. 06826

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- [2006 WL 3358637](#) (Appellate Brief) Brief for Defendant-Respondent Unkechaug Indian Nation of Poospatuck Indians (Mar. 13, 2006)
- [2005 WL 4909619](#) (Appellate Brief) Brief for Plaintiff-Appellant (Aug. 22, 2005)

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