

# NY Thruway Uses Cayuga Land Without Permission, Suit Says

By **Law360 Staff**

Law360 (December 13, 2023, 3:47 PM EST) -- The Cayuga Nation has filed suit against New York state seeking a cut of the tolls collected on the New York State Thruway where it passes through the 64,000-acre reservation promised to the nation in a 1794 treaty.

In a suit filed in New York federal court Dec. 11, the Cayuga Nation — based in the state's Finger Lakes region — alleges that the New York State Thruway Authority and state officials, including Gov. Kathy Hochul, are in violation of federal law because they did not obtain the U.S. Secretary of the Interior's permission to construct the toll highway on the nation's reservation.

The Cayuga Nation says under the 1948 Indian Right-of-Way Act this permission can't be granted without fair compensation, as determined by the Secretary of the Interior.

The nation is seeking an injunction requiring state officials to obtain a valid right-of-way for the thruway on its reservation and to reach terms that will fairly compensate the nation for the future use of its reservation, or to stop collecting tolls on that portion of the thruway until it obtains a right-of-way.

The suit centers on the portion of the toll highway, Interstate 90, that runs through that reservation — a 64,015 acre area in the Finger Lakes region that was granted to the nation by the 1794 Treaty of Canandaigua.

Although New York State has claimed to acquire the nation's lands in a pair of treaties formed in 1795 and 1807, Congress never approved those treaties and thus they are void, according to the suit.

The nation has moved in recent years to reacquire its land by buying it from its current owners, according to the nation's website.

The Cayuga Nation is bringing the suit against Hochul, Attorney General Letitia James, Department of Transportation Commissioner Marie Therese Dominguez and Comptroller Thomas P. DiNapoli under the Ex parte Young doctrine, a limited exception to Eleventh Amendment immunity that allows suits for injunctions against state officials for violations of federal law.

The Second Circuit earlier this year found that this doctrine applied in a similar suit brought against New York by the Seneca Nation.

The Seneca Nation, one of the Cayuga Nation's confederates in the Haudenosaunee, or Iroquois Confederacy, filed that suit in 2018. In that suit, the Seneca Nation — whose Cattaraugus Reservation lies south of Buffalo, New York — also argues that the state is violating the Right-of-Way Act and seeks a cut of the tolls collected where the Thruway passes through the nation's lands.

At issue in that suit is a 1954 agreement between the Seneca Nation and the New York State Thruway Authority that gave New York a 300-acre easement over the Nation's reservation to build a portion of the New York State Thruway in exchange for a one-time payment of \$75,500.

In January of this year, the **Second Circuit affirmed** the Seneca Nation's ability to sue to renegotiate that easement under the Ex parte Young doctrine, upholding a lower court's decision

denying the state's motion to dismiss.

That suit is currently pending before U.S. District Judge Lawrence J. Vilaro in Buffalo, who has set a deadline of January 24, 2024 for the parties to complete fact discovery, and ordered them to file dispositive motions or request a trial date in September of next year.

An attorney for the Cayuga Nation and a representative of Hochul's office did not immediately respond to questions on Wednesday.

The Cayuga Nation is represented by David W. DeBruin and Jacob Alderdice of Jenner & Block LLP.

Counsel information for New York was not immediately available on Wednesday.

The case is Cayuga Nation v. Kathleen C. Hochul et al., case number 1:23-cv-01283 in the U.S. District Court for the Western District of New York

– Additional reporting by Ali Sullivan.