

29558

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ACF LEASING, LLC, ACF SERVICES,
LLC, GENERATION CLEAN FUELS, LLC,

Plaintiffs,

v.

GREEN BAY RENEWABLE ENERGY,
LLC, ONEIDA SEVEN GENERATIONS
CORPORATION and THE ONEIDA TRIBE
OF INDIANS OF WISCONSIN,

Defendants.

Case No. 14 L 002768

2800

FILED-9
2014 MAY -5 PM 12:15
DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION



**AFFIDAVIT OF GENE KELUCHE
IN SUPPORT OF MOTION TO DISMISS**

STATE OF Colorado)
COUNTY OF El Paso) ss.

Gene Keluche states under oath and on personal knowledge:

1. I am the Managing Agent of Oneida Seven Generations Corporation ("OSGC").
The Business Committee of the Oneida Tribe of Indians of Wisconsin ("Tribe") passed a resolution to dissolve OSGC. I am responsible for overseeing the dissolution of OSGC.
2. True and correct copies of OSGC's Charter and Bylaws are attached to the Affidavit of Patricia Ninham Hoeft in Support of Motion to Dismiss ("Hoeft Aff.") as Exhibits 3 and 4, respectively.
3. In accordance with its Charter, OSGC's business offices are located on the Tribe's Reservation.

4. OSGC manages thirteen commercial properties located in Brown and Outagamie Counties, Wisconsin. Of those thirteen properties, the Tribe owns eleven properties: six properties are held in trust by the federal government for the benefit of the tribe and five properties are held in fee title by the Tribe. One of the properties managed by OSGC is owned by North Packerland, LLC. OSGC is the owner of only one of the thirteen commercial properties that it manages.

5. OSGC was given the power to “set up separate corporate business systems and processes, *i.e.*, LLC’s and LLP’s, etc.” Hoelt Aff. Exh. 3, Art. VI(O). Pursuant to this power, OSGC created, and is the sole owner of, Oneida Energy, Inc. (“Oneida Energy”), a Wisconsin corporation. Oneida Energy Blocker Corporation (“OEB”) is a Delaware corporation, which was created by Oneida Energy, and Oneida Energy is the 100% owner of OEB. OEB created and is the sole member and 100% owner of Green Bay Renewable Energy, LLC (“GBRE”), a Delaware limited liability company. GBRE was set up as a single asset LLC for purposes of development of the project described in the next paragraph.

6. I am aware that GBRE and ACF Leasing, LLC executed: a) a Master Lease Agreement, dated May 24, 2013, (“Lease”) for the lease of three, forty-ton liquefaction machines and pretreatment equipment for purposes of processing waste plastic to generate electricity and create oil-based fuel products at locations in Monona, Wisconsin and Cheboygan, Michigan (the “Project”); and b) a First Amendment to Schedule 1 of the Lease, dated June 10, 2013. OSGC is not a party to the Lease and, therefore, did not sign the Lease.

7. I am also aware that GBRE and ACF Services, LLC executed: a) an Operation and Maintenance Agreement, dated May 24, 2013, (“O&M Agreement”) for the operation and maintenance of the Project; and b) a First Amendment to the O&M Agreement, dated June 10,


2013. OSGC is not a party to the O&M Agreement and, therefore, did not sign the O&M Agreement.

8. I am aware that the Tribe has a Sovereign Immunity Ordinance § 14 that prescribes who has the authority to waive immunity and the process for waiver. I am aware that the Sovereign Immunity Ordinance § 14.6-2(c) provides that OSGC may waive immunity as follows:

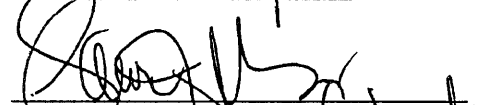
(c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity.

9. I have reviewed the resolutions maintained by the OSGC's board of directors meetings from 2010 to the present. The OSGC did not pass a resolution authorizing the waiver of OSGC's (or the Tribe's) sovereign immunity in connection with the Lease, the O&M Agreement or the Project.

Dated this 30th day of April, 2014.


Gene Keluche

Sworn to and subscribed before me this 30 day of April, 2014


Notary Public, State of Colorado

LAURA K. MARQUEZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124073580
My Commission Expires November 14, 2016