

1 STATE OF WISCONSIN : CIRCUIT COURT : JEFFERSON COUNTY

2

3 DAVID J. WOLF,

Case No. 12-CV-906

CLERK OF THE CIRCUIT COURT
Jefferson County, Wisconsin

FILED

4

Plaintiff,

SEP 20 2013

5

-vs-

MOTION HEARING

____ O'CLOCK ____ M.
CARLA J. ROBINSON, Clerk

6

ARLAND CLEAN
FUELS, LLC,

7

ORIGINAL

8

Defendant.

9

June 4, 2013

10

HONORABLE WILLIAM F. HUE
Circuit Court Judge
Branch II

11

12

13 A P P E A R A N C E S

14

15 TRAVIS WEST, Attorney at Law, appeared on behalf
16 of the Plaintiff.

17 JOSEPH A. CAMILLI, Attorney at Law, appeared on
18 behalf of the Defendant, and ERIC DECATUR appeared in
19 person.

20

21

22

* * * *

23

24 Sandra K. Taylor, RMR, CRR
Official Court Reporter

25

INDEX OF WITNESSES

Page

JACOB OSOJNAK

Direct Examination by Mr. West.....25

Cross-Examination by Mr. Camilli.....34

Redirect Examination by Mr. West.....39

ERIC DECATUR

Direct Examination by Mr. West.....41

Cross-Examination by Mr. Camilli.....43

MICHAEL BERTOLLI

Direct Examination by Mr. West.....46

Cross-Examination by Mr. Camilli.....54

* * * *

1 TRANSCRIPT OF PROCEEDINGS

2 THE COURT: This is David J. Wolf versus
3 Arland Clean Fuels, LLC, Case No. 12-CV-906.

4 Could you state appearances, please.

5 MR. WEST: Plaintiff appears by counsel
6 Travis West of Solheim, Billing and Grimmer.

7 MR. CAMILLI: And defense appears by Joseph
8 A. Camilli, attorney representing Arland Clean Fuels.
9 Mr. Eric Decatur is seating -- seated to my left as
10 well representing the defendant.

11 MR. DECATUR: Well --

12 MR. CAMILLI: Not representing. Excuse me,
13 Your Honor.

14 MR. DECATUR: I'm actually the general
15 counsel and chief financial officer of the defendant,
16 but I'm not admitted in Wisconsin so I can't serve as
17 counsel here.

18 THE COURT: Okay. I read the parties'
19 submissions, and so I think in hearing oral argument
20 I just want to make sure that I've got the situation
21 in my mind straight.

22 So, Mr. West, what's the nature of the claim?

23 MR. WEST: The underlying claim is
24 essentially a breach of contract claim.

25 THE COURT: Okay.

1 MR. WEST: Mr. Wolf lent a significant
2 amount of money to Mr. Decatur's company. There was
3 an agreement that that money would be paid back and
4 then some by a particular date or by a particular
5 series of dates. The money wasn't paid back. And
6 after the parties were unsuccessful at negotiating a
7 payment plan for the future, Mr. Wolf filed suit, and
8 that resulted in the default judgment that the Court
9 has entered.

10 THE COURT: Okay. So it's a private loan
11 from an individual to a company?

12 MR. WEST: It was an investment in
13 Mr. Decatur's company.

14 THE COURT: And then, Mr. Camilli, what I'm
15 looking for on an 806.07 argument in the interest of
16 justice or just within my general discretion to
17 extend periods for filing an answer, there are two
18 different standards. The first standard would be if
19 you come to me before the time limit expires, it's
20 easier to get an extension under Wisconsin law, as
21 you know.

22 Once you let the time expire, then I have to
23 look at certain things in order to permit the
24 default, so to speak, to be reopened. And, you know,
25 the Wisconsin Supreme Court has even been hard on an

1 insurance company in San Francisco which shuffled
2 paperwork and couldn't file an answer, and three
3 million bucks, and they said, too bad for you, and
4 then there was a judgment and there was no reopening.

5 So generally what I'm looking for is just what
6 is the defense, what is the argument, because if
7 there's an argument in the interest of justice, I
8 think that we ought to proceed to adjudicate the
9 argument, but saying that, if the plaintiff has
10 suffered in some way, even coming here and paying an
11 attorney or whatever, as a precondition to going
12 ahead to reopening, we're going to have to make the
13 plaintiff whole. Just in my court that's the way it
14 works.

15 They had a default judgment; they're entitled to
16 rely on the procedures. If there's some dispute
17 about what happened, I guess I probably wouldn't be
18 able to resolve this on paper. I'd have to take some
19 sort of evidence on that. But shooting through to
20 the end, if there's a defense, I'm willing to listen.
21 If there's no defense and we're just delaying the
22 inevitable, it doesn't make sense, and you know what
23 I'm saying, so.

24 MR. CAMILLI: Absolutely. And you're
25 speaking to the defense of the initial claims of

1 breach of contract?

2 THE COURT: Yeah. Yeah.

3 MR. CAMILLI: Your Honor, first, speaking
4 directly to those defenses, we believe that the
5 contract at issue was un -- it was an unconscionable
6 contract. We believe that it was a contract that was
7 impossible to perform. We also believe that the
8 actions of the plaintiff directly affected the per --
9 the ability of the defendant to perform towards the
10 terms of the contract, and we also believe that --
11 let's see --

12 THE COURT: I guess the question I would
13 have is, they actually loaned a sum of money, so he
14 gave them some money, and if it's a usurious interest
15 rate -- for example, if somebody had paid back the
16 principal, but wants to argue about the interest
17 rate, that would be something that we could take a
18 look at, but from what I'm hearing, Mr. West, not
19 even principal was paid back. There's been nothing.

20 MR. WEST: Not one dime, Your Honor.

21 THE COURT: Okay. And then if there was a
22 counterclaim against the plaintiff; for example, he
23 loaned us money, but for some reason he worked
24 against his own interest by interfering with a
25 contract or something else, then we shouldn't have to

1 repay him because what happened to us is his fault.
2 I'd like to hear about that. I can't, in my own mind
3 I can't conjure up that kind of scenario why somebody
4 would loan somebody money and then goof that person
5 up so that they couldn't pay it back, unless they
6 were malicious in some way.

7 So I guess I am interested in hearing the
8 defense.

9 MR. DECATUR: And I can address that. I'm
10 prepared to testify to that, if you'd like.

11 THE COURT: I'm just trying to sort through
12 it.

13 MR. DECATUR: If you don't object. I know
14 I'm not admitted, but if I can explain what happened,
15 Your Honor.

16 THE COURT: Well, I'll let Mr. Travis sort
17 of -- Mr. West monitor this, because I wasn't sure if
18 we were going to take evidence today or not.

19 MR. DECATUR: Yeah.

20 THE COURT: It may be necessary that we
21 take evidence, but I wouldn't spring that on you, I'm
22 just going to start taking evidence, so.

23 MR. WEST: We had been prepared, Your
24 Honor, to take evidence on the personal jurisdiction
25 issue and on whether the arguments that were actually

1 set forth by the defendants in their briefing,
2 whether there was any merit to those arguments. So
3 we --

4 THE COURT: Yeah, I guess if we revert back
5 to that, really the only thing that was attractive
6 about that is whether or not you would be estopped,
7 which if somebody's saying, okay, Mr. West did
8 something, we relied on that to our detriment and we
9 didn't answer and we took judgment, but I wasn't
10 really seeing that in the brief at all, so.

11 MR. WEST: And that's the biggest problem
12 that we have, Your Honor, is that the Court's -- no
13 offense to the Court, of course, but the Court's,
14 from our perspective, is essentially inviting the
15 defendant to make an argument that they had the
16 opportunity to brief already and elected not to.

17 THE COURT: Yeah.

18 MR. WEST: In fact, I -- in re-reading the
19 brief this morning, they argue that the meritorious
20 defense prong of the Wisconsin case law related to
21 default judgments essentially says that they don't
22 have to prove that there was a meritorious defense,
23 and that the fact that there was excusable neglect in
24 the first place itself constitutes a meritorious
25 defense.

1 THE COURT: Yeah, I don't agree with that.

2 MR. WEST: I don't either, Your Honor.

3 THE COURT: That's why the first thing I
4 said was what's the defense here, because if I were
5 to just go ahead and say, okay, you're stuck with
6 your briefs and now you lose, then, of course, if
7 that were tested, the test would be, well, why wasn't
8 the Judge interested, especially since 806.07 was at
9 least mentioned, and what justice might require here.

10 If the Judge is too narrow or too draconian,
11 they're more than willing to write up some sort of a
12 50-page manifesto about what a bad guy I am, and I'm
13 just not interested in that anymore. Their
14 editorials are completely annoying to me. So what I
15 tend to do is to try to focus in on, like, what the
16 issue is. If there's a defense, I'll think about it.
17 I'm not saying, okay, there's a defense, I buy it,
18 but I'm interested in seeing what the story is here,
19 because I think I understand the underlying scenario.

20 MR. WEST: We understand that, Your Honor,
21 and we just ask that if the Court does take evidence
22 from the defense today on that issue and finds it
23 compelling, that we be at least provided with the
24 opportunity to come back at a later time and present
25 contrary evidence.

1 THE COURT: I used a bad word here, but I'm
2 not going to disadvantage you in any way. If I find
3 something interesting and think about it, then I'm
4 not going to say, oh, too bad, you came here
5 unprepared for that. I will try to figure it out.

6 MR. WEST: Thank you.

7 THE COURT: Right now I start with the
8 proposition that I'm disinclined in the absence of
9 some sort of a more compelling showing that's
10 happened now to allow there to be a reopening. So we
11 start with that proposition. We see what happens.
12 So I'll --

13 MR. CAMILLI: Your Honor, I would just like
14 to remind that in our motion to the Court we also
15 raised the issue of personal jurisdiction over this
16 case, and we believe that the service of process was
17 ineffective both under the statutes of Wisconsin and
18 under the statutes of Illinois.

19 THE COURT: Yeah, the only way to resolve
20 that would be to take evidence. So if you guys are
21 prepared to take evidence on that, then we can go
22 ahead and do that today.

23 MR. CAMILLI: Absolutely. And I believe
24 that that was Mr. West's understanding as well, that
25 that's what we would be here today to litigate.

1 THE COURT: If that's what you want to do,
2 I'll take evidence on that, and then if I conclude
3 that evidence was appropriate, I've got to get to the
4 back end anyway. And it all goes to, no matter what
5 happens here, how we shake this out, how much time
6 and money that we spend, when it's all said and done
7 is there a defense in justice that I should be
8 considering.

9 Now, of course, your first argument would be
10 that it's ineffective under Illinois law, it's
11 ineffective under Wisconsin law. Service took place
12 in Illinois so we're probably applying Illinois law,
13 I would think. If that happened then and service was
14 ineffective in the first place, then that would kill
15 the issue, and we wouldn't have to deal with anything
16 else.

17 If you want to do that first, that's fine with
18 me, but if -- if we assume that service is okay, then
19 I still want to figure out what the back end is,
20 because if the back end is attractive to me in some
21 way, then I say to Mr. West, I understand all of
22 this, and if I've convoluted your process, then
23 you'll appeal it and they'll talk about what a bad
24 guy I am, write 50 pages on it.

25 But if there's nothing on the back end of it, if

1 there's just no defense, if there's nothing that I
2 can consider, then it doesn't make any difference
3 anyway. You know, Hillary Clinton was yelling about
4 that, what difference does it make. I'm trying to
5 get to the end first, which is because I'm a
6 different breed of cat; it's just the way that I do
7 it. That's what I kind of want to figure out first.

8 So why don't you tell me, Mr. Camilli, what you
9 think it is that there's a defense to this. I mean,
10 I heard you saying the contract's unconscious --
11 unconscionable, and I want to figure out what that's
12 all about. Not even the principal was repaid. So if
13 it's unconscionable in terms of an unreasonable
14 interest rate, not even principal was repaid, and
15 then if plaintiff is somehow responsible for
16 defense's inability to execute or effectuate the
17 contract, I need to know what that is, too, so that I
18 can think about that.

19 MR. CAMILLI: Absolutely.

20 THE COURT: And I think about the other
21 gentlemen was going to talk and was afraid that he'd
22 be practicing law in Wisconsin, getting in trouble.
23 I mean, I'm wholly uninterested in that. But if it's
24 in the form of testimony, then I've got to give
25 Mr. West an opportunity to examine, too.

1 MR. DECATUR: Your -- your choice as to
2 what you'd like to do. I'm happy to tell you the
3 story.

4 THE COURT: I just -- if you whisper to
5 him, it takes longer than if you tell it to me.

6 MR. DECATUR: Takes longer if I write it
7 out.

8 MR. CAMILLI: Your Honor, so if it's your
9 prerogative, would you like me to call Mr. Decatur to
10 the stand and swear him in?

11 MR. DECATUR: Or can I be admitted pro hac
12 vice?

13 THE COURT: I can't do pro hac vice without
14 the formalities of pro hac vice. As an offer of
15 proof, as a quasi-witness, tell me what this is
16 about, and then I'm going reserve for Mr. West
17 whatever he'd be entitled to.

18 MR. DECATUR: That's fair.

19 THE COURT: Go ahead.

20 MR. DECATUR: Your Honor, the contract that
21 is at issue was a loan that was made to gen -- it's
22 listed as Arland Clean Fuels. The name of the
23 company has since been changed, so when they go back
24 in the name it's now Generation Claim Fuels; it was a
25 loan of \$250,000 that was to be used to build a

1 specific piece of equipment. That piece of equipment
2 is described in a contract -- in a contract that's an
3 exhibit to the contract. Part of the -- of the
4 repayment involved royalties from the building --
5 from the operations of this piece of equipment.

6 The plaintiffs have alleged that the piece of
7 equipment was built and is operating; in fact, that's
8 not true. The piece of equipment was never built.
9 It's not operating. In addition, to build this piece
10 of equipment, which was a scale-up from a prototype
11 that existed, the prototype had to be used to do
12 certain measurements and other things to be able to
13 design the bigger unit that was to be built and
14 financed by the plaintiff's investment.

15 Unfortunately, on August the 2nd of 2012 our
16 facilities were broken into and the prototype machine
17 was stolen from our premises. We believe that
18 Mr. Wolf was involved in that theft. In addition, we
19 understand that Mr. Wolf is currently involved in a
20 company that is actually using that piece of
21 equipment that belongs to us for their own benefit.

22 THE COURT: You could sue him
23 independently. You don't have to sue him here in
24 this Court, nor do I have to entertain that; even if
25 that's a defense to the loan of money, it would be

1 separate in the form of a counterclaim, which could
2 still be pursued if you're timely, and it could be
3 pursued in Illinois or Federal Court in Wisconsin or
4 Illinois so I think --

5 MR. DECATUR: Yeah, we didn't want to lose
6 a mandatory counterclaim.

7 THE COURT: We don't have mandatory in
8 Wisconsin, so.

9 MR. DECATUR: Okay. The other issue is
10 that part of the judgment is an injunction related to
11 royalties on a machine, and, frankly, we have an
12 absolute defense to that. That machine was never
13 built.

14 THE COURT: Okay.

15 MR. DECATUR: And so we can't --

16 THE COURT: If I give them an injunction so
17 that they can collect royalties on the machine, and
18 there is no machine from which royalties are
19 generated, that injunction wouldn't hurt you, right?

20 MR. DECATUR: Well, except if they try to
21 enforce it, then we've got to do another proceeding
22 to prove that there is nothing there.

23 THE COURT: But that happens all the time.

24 MR. DECATUR: Yeah.

25 THE COURT: It's execution on a judgment.

1 MR. DECATUR: We're trying to avoid that.

2 THE COURT: Any other defense?

3 MR. CAMILLI: There's --

4 MR. DECATUR: Yeah, that's what I said.

5 Yeah. No, those are our defenses and our
6 counterclaim. I think we'd be happy to go to the
7 evidentiary portion on service of process.

8 THE COURT: Yeah, I'm just thinking, okay,
9 so I am not permitted to collect upon my contractual
10 right after the loan to get my money back because
11 I --

12 MR. DECATUR: Because you prevented us from
13 being able to perform -- to do what we were -- what
14 the contract contemplated, which was build the
15 machine that was going to generate the revenues to
16 pay you back.

17 THE COURT: Okay. So if I grant that
18 judgment though, notwithstanding the potential for a
19 counterclaim to offset the judgment, and if we don't
20 have mandatory counterclaim in Wisconsin, which we
21 don't. It's a Federal Court concept. It may be an
22 Illinois concept. I actually think it's a good idea,
23 but nobody made me boss of Wisconsin. So I don't
24 have mandatory counterclaim here.

25 If I grant them the judgment, you still could

1 pursue offset by pursuing your claim somewhere else,
2 so it's not really compelling to me that I have to
3 deal with that. Now, if they were foreclosing on
4 your home, there would be some equitable principle
5 that I would be applying where maybe I would wait for
6 a counterclaim before I let them have your house, but
7 this is just a money judgment.

8 MR. DECATUR: Yeah, except that they are --
9 you know, conceivably if the judgment stands, they
10 have the ability to foreclose on our assets, which
11 would put us out of business.

12 THE COURT: Do you have a foreclosure
13 claim, too, or just a money claim?

14 MR. WEST: Just a money claim, Your Honor.

15 MR. DECATUR: Right, just at this point.

16 THE COURT: So it would be execution, and
17 once you get your judgment, you can choose to execute
18 it, and that would be a judgment somewhere else. I
19 suppose if it derived as some sort of violation of
20 Illinois, you would do it in Illinois or you would
21 come here and talk to me about executing
22 postjudgment.

23 MR. WEST: The process has been started in
24 Cook County, Illinois, Your Honor, on the judgment,
25 but we have been holding off on it, largely waiting

1 to see the results of this hearing. We've been
2 holding off on it. *** check that.

3 THE COURT: It makes sense to sort of get
4 everything folded in in one Court, in one place to
5 figure it out, but that would be detrimental to you
6 having a default judgment and wanting to execute on
7 it. All of that is sort of extraneous --

8 MR. WEST: We agree.

9 THE COURT: -- to what we're actually
10 trying to accomplish here or what we're supposed to
11 be accomplishing. I guess I could, under an 806.07
12 motion in the interest of justice, which is the
13 general subsection there is to say that we should
14 really do all of this before people start disrupting
15 somebody else's business or whatever, you know, and
16 that's sort of attractive to me. It's a concept of
17 why don't we just take care -- why don't we just take
18 care of it you know.

19 Okay. So I think I can see that there's
20 somewhat of a defense. There isn't -- the defense
21 lies in a counterclaim, which would be an offset to
22 the amount owed. If there's some actual claim that
23 there was conversion by way of theft, which is an
24 intentional tort, and you can get punitive damages
25 and all of that jazz, you know, what stops us here is

1 that we don't have to do that here, but really if we
2 could do that here, and if it did offset that
3 judgment, then why don't we do all of that stuff. I
4 think I get that. That's really the only compelling
5 argument that I'm seeing right now.

6 So I can go ahead and test whether service was
7 appropriate, and we'll have to figure out which date
8 it was, but if I figure that service was appropriate,
9 then on the end of that discussion I'm going to have
10 to decide whether we reopen it and try to do
11 everything here; and if we do, shouldn't it be on a
12 tight time line, because sinced it there was a
13 request for extensions of time, which was not
14 granted, to answer would seem to me that you wouldn't
15 really be negotiating terms of how payment would be
16 made if you really thought somebody was stealing
17 something. But I guess I just see that in the back
18 end if that's what we do.

19 Do we have a dispute as to what happened in
20 terms of the service factually? Some guy came out,
21 somebody was serving them, said do you have -- I need
22 to serve this paper, who do I serve. People
23 disappeared, came back said, okay, I can take
24 service. It seems clear that from a practical
25 standpoint service was accomplished in that the

1 parties started to talk to each other about the terms
2 of this lawsuit, but the concept behind service is,
3 is that if service is inappropriate, the Court
4 doesn't have jurisdiction. If the Court doesn't have
5 jurisdiction, then the Court can't do anything else.

6 So what are the factual disputes?

7 MR. CAMILLI: I think the factual disputes,
8 Your Honor, are fairly minor. Simply to recap the
9 events of that day of service, a process server was
10 hired on the 20th of December to serve Arland Clean
11 Fuels. He appeared at -- on -- excuse me, on
12 December 24th at the -- an office building at 630
13 Davis Street, Evanston, Illinois, in the lobby of
14 that building. The sign in the lobby states that the
15 offices of Suite 300 are the offices for Arland
16 Energy Systems, not Arland Clean Fuels. The offices
17 on Suite 300, on the third floor states Arland Energy
18 Systems, not Arland Clean Fuels.

19 The process server entered these -- this office.
20 The office was near empty. The only individual there
21 was an analyst working during the holidays who
22 approached the process server. There was some
23 discussion as you mentioned about giving some legal
24 documents to Mr. Decatur. The individual, Michael
25 Bertolli, who was interacting with the process

1 server, didn't know what these legal documents
2 involved. He, in fact, asked the process server
3 whether he was authorized or permissible to accept
4 these documents. He walked away briefly to get more
5 information about this issue, but he never received
6 any information.

7 Had he received any information -- the office is
8 very small, very quiet. The process server would
9 have heard if any direction had been given to
10 Mr. Bertolli. Mr. Bertolli came back and ultimately
11 accepted the process -- the service of process, and
12 our contention is that under Wisconsin statute which
13 governs this, the analysis is whether it was
14 reasonable to the process server that Mr. Bertolli
15 was apparently in charge of the office.

16 Our contention is that it was unreasonable for
17 him to believe that in light of all these situations,
18 particularly because Mr. Bertolli is not an officer,
19 agent or director of Arland Clean Fuels or Arland
20 Energy Systems, he is not an employee or agent of
21 Arland Clean Fuels. The process server never asked
22 him what his role is, whether he was authorized to
23 accept it, whether he was an agent of A -- of Arland
24 Clean Fuels.

25 He ultimately asked Mr. Bertolli his title after

1 accepting -- after Mr. Bertolli accepted the service,
2 and then in the affidavit submitted to this Court --
3 he also didn't ask what company he worked for in the
4 affidavit submitted to this Court by the process
5 server, Mr. Osojnak. He references getting
6 additional information in March when he was rehired
7 on other affairs involving the offices at Suite 300.

8 That information gleaned in March is completely
9 irrelevant to what was reasonable to him on December
10 24th. In that -- with that said, I don't think there
11 are large discrepancies between the plaintiff and
12 defendant. But under both Wisconsin and Illinois
13 statutes, which Wisconsin allows either the
14 procedures of Wisconsin to govern or the state where
15 service of process is allowed, Mr. -- it was
16 unreasonable for the process server to assume that
17 Mr. Bertolli was apparently in charge of the offices
18 of the agent of Arland Clean Fuels.

19 Now Illinois --

20 THE COURT: Do we all agree that we can
21 apply Wisconsin law or is there some issue? If we're
22 going to apply Illinois law, I will need a copy of
23 the Illinois law.

24 MR. WEST: It's an either/or. Wisconsin or
25 Illinois can apply.

1 THE COURT: I would prefer to apply
2 Wisconsin. I don't know anything about Illinois.
3 But if I were to test under Illinois, I could do
4 that, but I'd need the Illinois law. So if we all
5 agree, okay, let's apply Wisconsin law, it's easier
6 for me. That's my preference. I don't know what
7 other legal determination has to be made.

8 MR. WEST: We actually briefed both, Your
9 Honor, but I think maybe the most efficient way to
10 approach it is let's take the testimony, undertake
11 the analysis under Wisconsin law, and perhaps we can
12 avoid the analysis under Illinois law --

13 THE COURT: Okay.

14 MR. WEST: -- if the Court is able to reach
15 a conclusion.

16 THE COURT: If we would agree with that,
17 what would be the Wisconsin law and do we agree that
18 I should apply it?

19 MR. CAMILLI: The Wisconsin law to apply
20 would be 801.11(5), I believe. Five, Your Honor.

21 THE COURT: Okay.

22 MR. CAMILLI: (5)(a).

23 THE COURT: And do we agree that that's the
24 law that I can apply by stipulation, or if I tell the
25 parties, given the choice between applying Wisconsin

1 law and Illinois law, that this Court would apply
2 Wisconsin law, is that sufficient? Is there an
3 argument I should do something different?

4 MR. WEST: The statute, Your Honor, says
5 that the service need only be appropriate under one
6 or the other, so I don't think that the Court needs
7 to --

8 THE COURT: So if we test and it's
9 appropriate under Wisconsin, it's fine. If I say
10 it's not appropriate under Wisconsin, then maybe I'd
11 move to Illinois --

12 MR. WEST: Correct.

13 THE COURT: -- to see if it's appropriate
14 there. Then let's start with that proposition that
15 I'd be applying Wisconsin law to see if it's
16 appropriate.

17 Mr. West, you could call your witness, if he's
18 here, and then we can examine the witness.

19 MR. WEST: Is it the Court's preference to
20 have the non-moving party call first?

21 THE COURT: Yeah, I don't care how you
22 examine them. As far as I'm concerned, you can
23 both --

24 MR. WEST: Okay.

25 THE COURT: -- adversely examine him. It

1 doesn't make any difference. But I need to hear from
2 him to see if there's some dispute as to what
3 happened.

4 MR. WEST: Then the plaintiff calls
5 Mr. Osojnak.

6 THE COURT: You should stand to be sworn by
7 the clerk.

8 THE CLERK: If you want to pause to be
9 sworn in.

10 MR. OSOJNAK: I'm sorry?

11 THE CLERK: Just pause and raise your right
12 hand, please.

13 JACOB OSOJNAK,
14 called as a witness herein, being first duly sworn on
15 oath, was examined and testified as follows:

16 THE CLERK: You may be seated.

17 DIRECT EXAMINATION

18 BY MR. WEST:

19 Q And, Jacob, I apologize. I slaughter your name every
20 time that I say it, but if you could start out by
21 telling us your full name and spelling your last name
22 for the court reporter.

23 A Sure. My name is Jason Osojnak. Last name is
24 spelled O-s as in Sam -o-j-n as in Nancy -a-k.

25 Q Jacob, where are you employed?

1 A I'm the owner of a Illinois private detective agency,
2 Great Lakes Professional Investigation, LLC. I also
3 act as a independent contractor for a couple other
4 detective agencies in the Illinois area, including
5 ATG Legal Serve.

6 Q What does ATG Legal Serve primarily do?

7 A They provide service of process.

8 Q And what's the relationship between you and ATG to
9 this -- to this case?

10 A I work for ATG as an independent contractor, and I
11 was called upon to serve papers on Arland Clean
12 Fuels.

13 Q And how long have you been engaged in the business of
14 service of process?

15 A I've been serving legal papers in Illinois since
16 1999.

17 Q So that's about 14 years, moving on 14 years?

18 A Yes, mm-hmm.

19 Q Okay. And during that 14-year -- roughly 14-year
20 time span how many times has -- have any of your
21 process serves been challenged?

22 A Never.

23 Q So this is the first?

24 A This is the first time ever.

25 Q Okay. You had mentioned that you were retained to

1 serve process in this case. What day did you serve
2 the defendants?

3 A December 24th.

4 Q Tell us what happened that day.

5 A I went to the defendant's business address on Davis
6 Street in Evanston. It's a multi-story office
7 building. My work order said that I was to be
8 serving the defendants at Suite 300, so I went to
9 Suite 300 --

10 MR. WEST: If you could hold on just a
11 second.

12 THE WITNESS: Sure.

13 MR. WEST: I think this might be helpful.
14 Your Honor, if I can approach.

15 THE COURT: Yeah.

16 MR. WEST: I don't suppose the Elmo's fired
17 up so I can let the Court show --

18 THE COURT: Yeah, all you have to do is
19 turn it on.

20 MR. WEST: One copy short; otherwise, I'd
21 have one for you as well.

22 Q Jacob, do you recognize the pack of papers that I set
23 in front of you?

24 A Yes, I do.

25 Q Could you tell us what they are?

1 A It is a picture that was taken during a subsequent
2 business inspection.

3 MR. CAMILLI: Objection, Your Honor.
4 These -- these pictures were taken after December
5 24th. They're irrelevant to what Mr. Osojnak knew --
6 well, knew on December 24th, if they were taken in
7 March.

8 THE COURT: Well, if there was some dispute
9 as to whether or not the grass was green as opposed
10 to the white, then I could do that, but if there's no
11 dispute as to that this is what the building looks
12 like, I'd just overrule the objection, and if it
13 becomes necessary for me to discern some of that
14 stuff, we'll just go back to it.

15 Go ahead.

16 MR. WEST:

17 Q What are we looking at in this first picture, Jacob?

18 A This is the office building where the company is
19 located.

20 Q Okay. How did you know this was the office building?

21 A Well, the address was printed on the work order that
22 I was presented from ATG Legal Services.

23 Q And is the address listed somewhere on the outside of
24 the building?

25 A Yes, I believe somewhere in the front.

1 Q Is that reflected anywhere in the packet of pictures?
2 A Yes, it is.
3 Q Tell me which page. I will get to it and put it up.
4 A It should be the next page in the packet.
5 Q So after you arrived at the building, what did you
6 do?
7 A I then entered and took the elevator to the third
8 floor.
9 Q And maybe I should go back. I did flip one more page
10 in the packet. What are we looking at in this
11 picture?
12 A This is the front end -- excuse me, front entrance to
13 the building.
14 Q And just so we have a record with the court reporter,
15 what does the picture show, as far as the address?
16 A The Chandler's Building, 630 Davis Street.
17 Q So you just testified that you went to the third
18 floor?
19 A Yes, that is correct.
20 Q And if I could ask you to flip to the very last page
21 in the packet, does that photograph show what you saw
22 when you got to the third floor?
23 A Yes. This is the business placard that was outside
24 of the front door to their offices.
25 Q Okay. So what happened when you went inside the

1 offices?

2 A I went inside, and the office was relatively empty.

3 I was approached by a gentleman. I told the

4 gentleman that I had service of process for Arland

5 Clean Fuels, and I asked if he was authorized to

6 accept service. The gentleman I talked to said he

7 was not sure if he could accept or not, but would go

8 and confer with a co-worker. He left the general

9 vicinity.

10 Q If I could stop you one second, Jacob. Do you know

11 what that gentlemen's name was?

12 A It was Mr. Michael Bertolli.

13 Q Okay. So Mr. Bertolli told you he wasn't sure

14 whether he could accept service of process. What did

15 he do?

16 A He said he was going to check with someone. He left

17 my field of view. It appeared that he was off

18 around -- roughly, around a corner talking to another

19 person who I didn't know. He came back probably less

20 than a minute later and stated that he was able to

21 accept service of the documents.

22 Q Did he sign for the documents?

23 A No. I gave him the documents. I asked him for his

24 name and title with the company and asked if he could

25 sign for the paperwork. He gave me his the name and

1 title but did not sign the documents.

2 Q Have you reviewed the affidavit that Mr. Bertolli
3 signed in this matter?

4 A Yes, I have.

5 Q Do you recall whether in that affidavit Mr. Bertolli
6 testified under oath as to whether he signed for the
7 documents?

8 A I believe that he said that he did.

9 Q Jacob, I'm handing you a document, and without
10 telling me what the specifics are, do you recognize
11 what the form is?

12 A Yes, I do.

13 Q What is the form?

14 A This is a field sheet provided from ATG Legal Service
15 to the process server.

16 Q And what is that form generally used for?

17 A That gives us the details of the case, who we are to
18 serve, where we are to serve the documents, and also
19 spaces to fill in, when, where the documents are
20 served, to whom we've served them, to get their
21 physical placement description, and at the bottom to
22 ask for their signature.

23 Q And this -- is this a form that's generally used in
24 the service of process industry in the state of
25 Illinois?

1 A Yes, it is.

2 Q And is this a form that you in fact and your company
3 has used in your service of process business in
4 Illinois?

5 A Yes, it is.

6 Q And is the specific form in front of you one that you
7 have used in the course of your business in Illinois?

8 A Yes, I have.

9 Q And do you maintain that as a business record in the
10 course of your business?

11 A Yes.

12 Q Okay. I'm going to put a copy of it up now. Could
13 you walk us through what we're seeing on this form.
14 And let me see if I can zoom in here. You had
15 mentioned earlier that this is a form from ATG Legal
16 Service. Who were they asking you to serve in this
17 form?

18 A Arland Clean Fuels, comma, LLC.

19 Q Okay. And I see there's a handwritten portion near
20 the center. Who filled out that handwritten portion?

21 A I filled it out once the paperwork had been served.

22 Q Okay. And who does it indicate was served?

23 A Michael Bertolli.

24 Q All right. And near the bottom of the form there's
25 an X with a signature block?

1 A Mm-hmm.

2 Q What does it state there?

3 A I wrote in, refused to sign.

4 Q And why did you write that?

5 A Mr. Bertolli said he was not able to sign the
6 documents.

7 Q Does that in fact contradict Mr. Bertolli's sworn
8 affidavit to this Court?

9 A Yes, it does.

10 Q Did anything else of note happen during your visit
11 with Mr. Bertolli or at Arland Clean Fuels?

12 A No.

13 Q Mr. Bertolli has testified that -- in his affidavit
14 that, quote, this individual, referring to you,
15 flatly stated that someone had to sign for the
16 document. Did you say that to Mr. Bertolli?

17 A No, I did not say that.

18 Q Did Mr. Bertolli ask you whether he could sign for
19 the document?

20 A Did he ask me? I asked him if he could sign for the
21 document.

22 Q Okay. Did you inform Mr. Bertolli that he was
23 authorized to sign for the document?

24 A No. I had asked him if he was authorized to sign for
25 the document.

1 Q At any point did you bully or pressure Mr. Bertolli
2 into signing the document?

3 A No, I did not.

4 MR. WEST: With that, I don't have any
5 further questions for Mr. Osojnak, but I would
6 reserve the right to ask rebuttal questions after --

7 THE COURT: Cross.

8 MR. WEST: -- cross.

9 THE COURT: Mr. Camilli, any questions?

10 MR. CAMILLI: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CAMILLI:

13 Q Mr. Osojnak, the work order did not specifically list
14 an individual to be served?

15 A That is correct.

16 Q But the work order stated that the person accepting
17 service must be authorized to accept?

18 A That is correct.

19 Q You saw a sign in the lobby of 630 Davis Street
20 listed Arland Energy Systems as being located at
21 Suite 300?

22 A I would have to refer back to my exhibit, see what
23 was on the sign. May I?

24 Q Yeah, feel free.

25 A Sign on the door to the suite says Arland Energy.

1 Q Did you see a sign in the lobby to the building on
2 the first floor?
3 A No, I did not.
4 Q Once you were at the third floor, you were confronted
5 by a placard for Arland Energy, correct?
6 A Yes, mm-hmm.
7 Q Did you knock on the door?
8 A I believe the door was open, so I walked in.
9 Q This young man, did you ask him what his name was?
10 A Not initially, no. I let him know that I had papers
11 to serve and asked if he was authorized to accept
12 service.
13 Q He didn't immediately introduce himself?
14 A I do not recollect. I don't believe I --
15 Q He didn't state his job title?
16 A No, he did not.
17 Q You didn't ask him his name? Initially.
18 A No, not initially.
19 Q You didn't initially ask him his job title?
20 A I did not initially ask him his job title.
21 Q You didn't ask him what company he worked for?
22 A No, I did not.
23 Q You didn't ask him whether Arland Energy and Arland
24 Clean Fuels shared the same office space?
25 A No, I did not.

1 Q You asked for Eric Decatur?

2 A No, I did not.

3 Q You told Mr. Bertolli you had paperwork for

4 Mr. Decatur?

5 A No. I said I have papers for Arland Clean Fuels,

6 LLC. Mr. Decatur's name was not mentioned anywhere

7 in my work order.

8 Q At any time did you inquire into Mr. Bertolli's

9 qualifications to accept service of process?

10 A Yes. I asked if he was authorized to accept service

11 for Arland Clean Fuels, LLC.

12 Q And Mr. Bertolli told you that he didn't know?

13 A Yes, and then he came back and replied that he was

14 authorized to accept.

15 Q Mr. Bertolli walked away from you briefly?

16 A Yes.

17 Q And the offices of Arland Clean Fuels or Arland

18 Energy Systems on that day were quiet?

19 A Relatively quiet, yes.

20 Q You didn't hear Mr. Bertolli speak with anyone?

21 A No. He was out of earshot.

22 Q Do you recall how big the offices of Arland Energy

23 are?

24 A Well, I would take a guess at maybe the size of this

25 courtroom, you know, the size of the benches,

1 possibly the size of this courtroom.

2 Q Would you say that the person at the back of this
3 courtroom can hear what you're saying right now,
4 absent the use of the microphone?

5 A I would guess so. I couldn't say for sure.

6 Q So you couldn't see Mr. Bertolli speaking with
7 anyone?

8 A He was, you know, roughly out of my eyesight, you
9 know, my field of vision. I mean, I might have seen
10 a portion of him. I believe he went to someone's
11 desk to confer with them.

12 Q But you couldn't hear anything he said?

13 A Nothing specific.

14 Q So you never observed anyone giving Mr. Bertolli
15 authority to accept service on behalf of Arland Clean
16 Fuels?

17 A No, I did not.

18 Q While you were waiting for Mr. Bertolli, were there
19 any signs indicating that you were in the offices of
20 Arland Fuels?

21 A Well, the work order had indicated the address to go
22 to, and the placard on the front of the suite also
23 had a -- had the name Arland on it.

24 Q But you would admit that Arland Energy is not the
25 same thing as Arland Clean Fuel?

1 A They are not the same name, correct.

2 Q And while you were waiting for Mr. Bertolli to

3 return, there was nothing in the office area that

4 listed Arland Clean Fuel as the name of the office?

5 A Not that I recollect.

6 Q Mr. Osojnak, in your job as -- in your job you're

7 required to successfully serve a party you're

8 assigned to serve, correct?

9 A Yes.

10 Q And if you fail to serve a party, you have to try to

11 serve that party again at a later time?

12 A Correct.

13 Q You were hired to serve Arland Clean Fuels on

14 December 20th?

15 A Right.

16 Q And you didn't attempt to serve them on the 22nd or

17 23rd?

18 A Correct.

19 Q And that was because that was the weekend?

20 A I don't recollect what the days of the week were, so

21 I cannot --

22 Q So if I were to tell you that December 23rd and 24th

23 were a Saturday and Sunday, do you attempt to serve

24 businesses on the weekends?

25 A No, I do not.

1 Q So you arrived at Arland -- what you believe was
2 Arland Fuels on December 24th?
3 A Right.
4 Q It'd be further safe to assume that the offices would
5 be closed on December 25th, the very next day?
6 A Correct.
7 Q And that's because of the holiday?
8 A Correct.
9 Q So if you didn't properly deliver service on the
10 24th, you would have had to return at some point
11 during the holiday season?
12 A Correct.
13 Q And this would have delayed service of process?
14 A Yes, it would have.
15 MR. CAMILLI: No further questions, Your
16 Honor.
17 THE COURT: Anything else?
18 REDIRECT EXAMINATION
19 BY MR. WEST:
20 Q Jacob, you were sitting in the gallery here during
21 the earlier discussion that myself and Mr. Camilli
22 had with the Court regarding whether there's a
23 meritorious defense, correct?
24 A Yes, I did.
25 Q And at some point did you see me turn around and

1 motion to Mr. Wolf to come up and talk to me?

2 A Yes, I did.

3 Q Okay. And did you observe me talking with him?

4 A Yes, I did.

5 Q And about how far away from me were you?

6 A Less than 10 feet.

7 Q Did you hear what I said to Mr. Wolf?

8 A No, I did not.

9 MR. WEST: I don't have any further
10 questions for this witness, Your Honor.

11 THE COURT: Okay. Thanks. You can step
12 down. Watch your step.

13 Is Mr. Bertolli here?

14 MR. CAMILLI: Yes he is, Your Honor.

15 MR. WEST: He is, Your Honor, but if you're
16 going to give us the deference to call witnesses as
17 we wish, we would prefer to call Mr. Decatur next.

18 THE COURT: Oh, sure. Go ahead.

19 MR. DECATUR: Sure.

20 THE COURT: If you would stand to be sworn
21 by the clerk, then take the witness stand to my left,
22 please.

23 THE CLERK: Please raise your right hand.

24 ERIC DECATUR,

25 called as a witness herein, being first duly sworn on

1 oath, was examined and testified as follows:

2 THE CLERK: You may be seated.

3 DIRECT EXAMINATION

4 BY MR. WEST:

5 Q Mr. Decatur, where does Arland Clean Fuels, LLC
6 maintain its offices?

7 A It has a number of offices. It has -- its primary
8 location is in -- it's outside of Green Bay,
9 Wisconsin. I believe it's Hobart, Wisconsin. It
10 has -- a couple of its executives are located at 630
11 Davis Street in Evanston, and it also has offices in
12 Bakersfield, California.

13 Q Okay. You are the company's CFO, correct?

14 A That's correct.

15 Q And its general counsel?

16 A Yes.

17 Q And you maintain an office at the 630 Davis Street
18 location, correct?

19 A Yes, although I was not the CFO on December 24th.

20 Q Okay. I am handing you a copy of a letter from you
21 to me dated February 11, correct?

22 A Yes.

23 Q Okay. And would you read the title of the business
24 noted in the header, please?

25 A Arland Clean Fuels, LLC. Is that what you mean by

1 the header, the gray line? Oh, up here. Arland
2 Clean Fuels.

3 Q And the address located in the bottom?

4 A 630 Davis Street.

5 Q Okay. Who is Arland Clean Fuels -- excuse me. Where
6 does Arland Clean Fuels list its address with the
7 Illinois Secretary of State?

8 A Its address in Illinois is 630 Davis Street in
9 Evanston, Illinois.

10 Q Do you dispute that it would have been proper to
11 serve Arland Clean Fuels at the 630 Davis Street
12 location?

13 A I think that's a conclusion of law. I'm here as a
14 fact witness.

15 Q You're an attorney?

16 A I'm an attorney. I'm not familiar with Wisconsin
17 law, I don't think.

18 Q Do you think that under Illinois law that it would
19 have been reasonable to serve --

20 MR. CAMILLI: Objection, Your Honor. What
21 is -- this is irrelevant questioning in the fact that
22 we're here to determine what the process server
23 believed was reasonable on the date of December 24th,
24 not what Mr. Decatur thinks today about Wisconsin
25 law.

1 MR. WEST: Your Honor, a question of
2 reasonableness is a factual determination, not a
3 legal determination.

4 THE COURT: The Court wouldn't be confused
5 by any conclusion that he reaches, unlike a jury, so.

6 MR. DECATUR: Okay. Well, I am not a
7 litigator. I have absolutely no idea of what the
8 law -- other than what Mr. Camilli has told me as to
9 what the law is in service of process in either
10 Illinois or Wisconsin. I have no personal knowledge.

11 THE COURT: So at that time were you an
12 officer or director or manager of a corporation or
13 limited liability company?

14 MR. DECATUR: On December 24th, yes, I was.
15 I was an officer.

16 THE COURT: And did you have an office at
17 630 Davis Street, Suite 300?

18 MR. DECATUR: Yes, I did.

19 MR. WEST: I don't have any other questions
20 for Mr. Decatur.

21 THE COURT: Cross or direct or however you
22 want to handle it.

23 REDIRECT EXAMINATION

24 BY MR. CAMILLI:

25 Q Mr. Decatur, on December 24th what was your role with

1 Arland Clean Fuels?

2 A I was the general counsel and director of corporate
3 development.

4 Q Okay. And do you practice any other law out of that
5 office?

6 A Yes. I have a private practice. It's Eric R.
7 Decatur, LLC, which is wholly unrelated to this
8 business, and I do with the permission of the company
9 run a portion of my practice out of that office. I
10 also run -- serve as the, and at that time was, the
11 general counsel and director of corporate development
12 of Arland Energy Systems, which I operated out of
13 that office, as well as general counsel and managing
14 director of Equity Asset Finance, which I also do out
15 of that office.

16 Q Was Mr. Bertolli your secretary or clerk?

17 A No. He didn't work -- well, he did not work for me
18 at -- well, yes, he was not in any of those roles for
19 me. He actually didn't work directly for me.

20 Q You're familiar with the personnel records of Arland
21 Clean Fuels and Arland Energy Systems, correct?

22 A Yes, I am.

23 Q And is Mr. Bertolli an employee of Arland Clean
24 Fuels?

25 A No, he is not.

1 Q And does Mr. Bertolli assist you in your private
2 practice that you conduct out of 630 Davis Street?
3 A No, he does not.
4 Q Has he ever been authorized to accept service in any
5 way, shape or form with any company that was
6 discussed?
7 A No, not off -- he's an analyst; he's not an officer,
8 a director.
9 Q Mr. Decatur, have you ever given Mr. Bertolli
10 instruction on what to do if any of the companies
11 were served that we just discussed?
12 A No, I didn't. None of our companies had attempted to
13 be served before, at least since I was with the
14 company.
15 MR. CAMILLI: No further questions right
16 now of Mr. Decatur.
17 THE COURT: Anything else?
18 MR. WEST: Not for this witness.
19 MR. DECATUR: Should I leave this or what
20 do you want with this?
21 THE COURT: Yeah, just leave it.
22 Does anybody have a copy of the Illinois law?
23 Can I just see it?
24 MR. CAMILLI: Yes, Your Honor, I do.
25 THE COURT: Mr. West, do you agree that

1 that's the Illinois law, before he shows it to me?

2 MR. WEST: That is my -- I believe that's
3 my only copy of this.

4 THE COURT: She can shoot a copy.

5 MR. WEST: It is a portion of the law, Your
6 Honor.

7 THE COURT: Okay. I suppose at this point,
8 Mr. West, if it were your responsibility, you would
9 just rest here? I'm just trying --

10 MR. WEST: We would call Mr. Bertolli as
11 well.

12 THE COURT: Okay.

13 MR. WEST: Largely to impeach his prior
14 testimony.

15 THE COURT: Okay. If you could stand to be
16 sworn by the clerk, then take the witness stand here
17 to my left.

18 MICHAEL BERTOLLI,
19 called as a witness herein, being first duly sworn on
20 oath, was examined and testified as follows:

21 THE CLERK: You may be seated.

22 DIRECT EXAMINATION

23 BY MR. WEST:

24 Q Mr. Bertolli, how long have you worked at the Arland
25 offices located at 630 Davis Street?

1 A Since last --

2 MR. CAMILLI: Objection, Your Honor. It's
3 an ambiguous question. Which Arland company?

4 MR. WEST: I didn't ask him about which
5 company he worked. I asked him how long he worked in
6 that physical office. That's a legitimate question.

7 THE COURT: I will overrule the objection.
8 You can answer.

9 THE WITNESS: All right. Since last
10 August.

11 MR. WEST:

12 Q Since last August?

13 A Yeah.

14 Q So just shy of a year?

15 A Yeah. Yes.

16 Q We had -- I noticed you sitting in the gallery
17 earlier, and we had talked about your affidavit. Is
18 it still your testimony today that you signed the
19 service return form or service worksheet that
20 Mr. Osojnak had with the process documents on
21 December 24th?

22 A I believed at the time I did sign something, so, yes.
23 Or, no. I mean, I probably signed that form that you
24 showed here earlier.

25 Q I'm going to hand you a copy of what's been marked as

1 Plaintiff's Exhibit No. 2. Is that the form?

2 A I -- I wouldn't -- I don't know.

3 Q Have you ever seen that form before?

4 A I have not. It was in his clipboard, so I didn't see

5 what form he was filling out. I mean, I saw it here

6 today.

7 Q Do you have a memory of signing that form?

8 A I did. Yes.

9 Q You do have a memory of signing that form?

10 A I did, but I obviously did not, so.

11 Q Okay.

12 THE COURT: So he's saying he remembers,

13 but he looks at the form and he sees he didn't do it.

14 That happens to me all the time.

15 Go ahead.

16 Q Do you have a memory of -- well, strike that. Have

17 you ever performed any work for the benefit of Arland

18 Clean Fuels?

19 A Yes, sometimes I -- I make models for them, market

20 research, sometimes order plane tickets, that kind of

21 stuff, so.

22 Q Okay. Do you do work for the other companies in that

23 office as well?

24 A Well, I work for Arland Energy Systems. My boss is

25 the CO of the company Arland Energy Systems, Lewis

1 Stern, so with his permission, I work on projects for
2 Arland Clean Fuels.

3 Q And how many different companies work out of that
4 office?

5 A I don't know.

6 Q At least five?

7 A I don't know.

8 Q Would you say it's more or less than five?

9 A I don't know.

10 Q What companies are you aware of that work out of that
11 office?

12 A I'm aware of three, Arland Energy Systems, Equity
13 Asset Finance, which is Lewis Stern's company, and
14 Eric Decatur's practice, personal practice, so.

15 Q Would it be four with Arland Clean Fuels?

16 A Excuse me?

17 Q Would it be four companies if you included Arland
18 Clean Fuels? You listed Arland Energy Systems,
19 Equity Assets Finance and Mr. Decatur's private law
20 practice?

21 A Right.

22 Q Would Arland Clean Fuels be a fourth company?

23 A Yes.

24 Q Are you -- I'm sorry. I'm not trying to trick you.
25 I just want to make sure I have an accurate count.

1 A Okay.

2 Q So you're not aware of -- it would be fair to say
3 that you don't know whether or not there are
4 additional companies beyond that four that work in
5 that office?

6 A Yes. No, I don't know. I don't know. I don't know.
7 I'm not exactly sure what your question is, so
8 what's -- can you repeat it?

9 Q My question is, would it be a fair statement on my
10 part to say that you don't know whether there are
11 more than just those four companies that work out of
12 that office?

13 A I would say that is correct.

14 Q Okay. Are there any other misstatements in your
15 affidavit that you would, as you think it's
16 appropriate, that we correct at this time?

17 A No.

18 Q Is Mr. Camilli's assertion that Mr. Osojnak bullied
19 you into signing the form -- or, excuse me, into
20 accepting service of process a correct
21 characterization?

22 A My recollection of the day was that he needed someone
23 to accept these forms, and I was the person there at
24 the office working on a project, so I took those
25 forms because I was there. I didn't realize that you

1 could -- he was kind in nature, but he assumed that I
2 knew to take these forms, 'cause I was the only one
3 there.

4 Q Did you read the documents after you had taken them?

5 A No, 'cause they were for -- I gave them to Eric
6 Decatur on the 20 -- the day after Christmas, so the
7 26th.

8 Q Are packages or is mail commonly delivered to the
9 offices of -- to the Arland offices at 630 Davis
10 Street?

11 A I'm guessing business related, right?

12 Q Sure.

13 A Yes.

14 Q Okay. And what do you do with those when they come
15 in?

16 A Well, usually I don't accept them. I mean, usually
17 I'm not the person dealing with the mail, so.

18 Q Okay.

19 A Yeah.

20 Q How did you know to give the documents to
21 Mr. Decatur?

22 A 'Cause he was our -- he's our general counsel so I --
23 I mean, he -- during our conversation Mr. Osojnak --
24 I don't know if I said that right.

25 Q Let's just call him Jacob.

1 A Jacob. Okay. You know, he came in, asked, you know,
2 he's serving and, I guess, you know, the person that
3 would accept those would be Eric Decatur. And I told
4 him that he was not there. So what was your
5 question?

6 Q How did you know to give the documents to
7 Mr. Decatur?

8 A 'Cause he's our general counsel.

9 Q Okay.

10 MR. WEST: I don't have any further
11 questions.

12 THE COURT: I've got to take a telephone
13 conference real quick. It will only take me five
14 minutes, and then we'll get back to this. Before you
15 do that, I have some questions and you both can
16 follow-up to my questions.

17 Who else was in the office? Who were you
18 talking to, if anybody?

19 THE WITNESS: Well, so actually Lewis
20 Sternner, CO, was in the office, but he was on a phone
21 call, so I went back there to see if I could accept
22 the documents, and he kind of -- his door was shut,
23 so he kind of shoo -- gestured me away. So I went
24 back to the front where he was, where I left him and
25 said, you know, can I accept these, and so then I

1 took them, so.

2 THE COURT: Okay. All right. I'm going to
3 have you step down then.

4 Mr. West, when we come back, I'll have you
5 follow up, and then, Mr. Camilli, you can ask him
6 some questions, too. This will take me about five
7 minutes to do, or less, so we'll just reconvene in
8 another five minutes.

9 (Recess taken.)

10 THE COURT: Okay. Back on the record then
11 for David Wolf and Arland Clean Fuels.

12 And then you can come back to the stand. You're
13 still under oath. You understand that?

14 THE WITNESS: Yeah.

15 THE COURT: Okay.

16 THE WITNESS: Yes.

17 THE COURT: Then when he gets there,
18 Mr. West, if you want to follow up to what I did, and
19 then, Mr. Camilli, you're allowed to follow up to
20 what I said and then anything Mr. West says.

21 MR. WEST: Your Honor, I don't know that I
22 need to follow up with regard to the Court's
23 question, although we think that the fact that he
24 conferred with the CO -- CEO of the company only
25 bolsters the fact that service was appropriate.

1 The --

2 MR. CAMILLI: Your Honor --

3 MR. WEST: -- standard that we have to look

4 at here is whether it was reasonable from the

5 perspective of the process server, and I'm not sure

6 that follow-up questions are necessary to --

7 THE COURT: All right. Mr. Camilli, you

8 can follow up or ask questions as you see fit.

9 MR. CAMILLI: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. CAMILLI:

12 Q Michael, did -- did you speak with Mr. Stern that

13 day?

14 A I did not --

15 Q So you were never --

16 A -- during that time.

17 Q You were never authorized to accept service of

18 process?

19 A No.

20 Q Okay. Michael, I'm just going to ask some background

21 questions from you since that hasn't been established

22 at this point. Okay. Let's see. Can you please --

23 what's your date of birth?

24 A September 17th, 1988.

25 Q So how old would that make you?

1 A Twenty-four.

2 Q Can you, please, describe your educational
3 background?

4 A I graduated from the University of Illinois 2011,
5 double major in economics and history.

6 Q And what about your -- your work background?

7 A Well, before this I worked for Bosch, an automotive
8 company from Germany.

9 Q What did you do for Bosch?

10 A Market research.

11 Q Have you ever received any legal training?

12 A No.

13 Q In your employment with Arland Energy Systems --
14 excuse me. Who do you work for?

15 A Arland Energy Systems.

16 Q In your employment with this company have you ever
17 received any legal training?

18 A No.

19 Q Have you received any instruction as to what to do if
20 someone were to serve Arland Energy with a summons
21 and complaint?

22 A No.

23 Q Have you ever been authorized to accept a summons and
24 complaint?

25 A No.

1 Q Once again, just for clarification, on December 24th
2 when Mr. Osojnak came to the offices, you left
3 Mr. Osojnak by himself to attempt to confer with your
4 CEO, correct?

5 A I did.

6 Q And where was your CEO at the time?

7 A He was in his office, which is in the back of the
8 office, with his door shut, so. He was on the phone.

9 Q His door was shut?

10 A Yeah.

11 Q And how far away were his offices, the office door
12 from where you left Mr. Osojnak?

13 A Like 30 feet, I would say. He couldn't see me
14 though. I left him in the front area, so.

15 Q Did you ask Mr. Stern any questions?

16 A No, I didn't get a chance to ask him anything.

17 Q How did you know that Mr. Stern waved you away?

18 A 'Cause on one side of the door there's a window. He
19 gestured me away 'cause he was on the phone.

20 Q So he didn't tell you to accept service or go away?

21 A Didn't speak anything.

22 Q Okay.

23 A So.

24 Q In your time at Arland Energy Systems have you ever
25 been employed by any other company other than Arland

1 Energy Systems?

2 A I have not.

3 Q What's a typical day like for you at Arland Energies?

4 A Okay. So, well, I make models on Excel Wizard. I do

5 marketing analysis research. Yeah, that's pretty

6 much what I do during the day.

7 Q Who do you mostly work with?

8 A I mostly work with Lewis Stern, our CEO, so.

9 Q Have you ever received packages delivered to the

10 office?

11 A Yes. I mean, we do -- we do get shipments from,

12 like, Office Max or Amazon or...

13 Q Sure. And the people that deliver those shipments,

14 can you tell me what they were wearing when they

15 shipped those to you, when they arrived at the

16 office?

17 A Their uniforms, yes.

18 Q Do you remember exactly what they looked like on the

19 day they arrived at the office?

20 A Not exactly.

21 Q Why -- why is that?

22 A 'Cause it's a very small portion of my day and time.

23 I don't know.

24 Q That's --

25 A Yes.

1 MR. CAMILLI: Your Honor, permission to
2 approach Mr. Ber -- the witness.

3 THE COURT: Yes.

4 Q Mr. Bertolli, do you have a copy of the document that
5 Mr. West provided?

6 A Yeah, he gave it to me.

7 Q Okay. Mr. Bertolli, did you fill out this form?

8 A I did not fill out this form.

9 Q Okay. Looking on this form, is all of the
10 information on this form correct?

11 A I'm not sure exact -- about the exact time, the date.
12 Well, I'm a little less than a hundred 80 pounds,
13 but, yeah, I would say most of it.

14 Q Mr. Bertolli, how old are you?

15 A Twenty-four.

16 Q And under the age column what does it say your age
17 is?

18 A Twenty-five.

19 Q And you didn't fill out this form?

20 A No.

21 Q Did Mr. Osojnak ask you how old you were?

22 A I don't recall.

23 Q But this form is incorrect?

24 A Yes.

25 Q And by the recipient's signature it says that -- what

1 does it say?

2 A Refused to sign.

3 Q Have you ever been served with a summons and

4 complaint before?

5 A No, I have not.

6 Q Had the offices that you worked at -- had Arland

7 Energy Systems ever been served with a summons and

8 complaint while you worked there?

9 A Not to my knowledge.

10 Q In your personal -- let's see. I'm sorry. In your

11 personal life have you had the experience with being

12 served a summons and complaint?

13 A No.

14 Q In your affidavit, you reference that there were

15 legal documents that you received, correct?

16 A Yes.

17 Q How did you know they were legal documents?

18 A 'Cause he told me. I mean, that's what he was there

19 for, so.

20 Q And did you -- did you understand the importance of

21 those documents?

22 A Uh, no? No.

23 Q You understood that you were -- you delivered them to

24 Mr. Decatur, correct?

25 A Right. I delivered it to him on the 26th.

1 Q And you didn't read the document?

2 A No, I didn't even open it, so. It was a package
3 thing, so.

4 Q Okay.

5 MR. CAMILLI: No further questions at this
6 time, Your Honor.

7 THE COURT: Redirect?

8 MR. WEST: I don't have any redirect of
9 this witness, although if the Court is going to ask
10 additional questions, I'd ask to reserve the right to
11 follow up.

12 THE COURT: No. Go ahead. You can step
13 down.

14 THE WITNESS: Do I just leave these?

15 THE COURT: Yeah, leave everything.

16 THE WITNESS: Sounds good.

17 THE COURT: Any other witnesses?

18 MR. WEST: I would be inclined to recall
19 Mr. Osojnak to have him explain that the information
20 filled out in the center of the form is based on his
21 best estimate, largely based on his 14 plus years as
22 a process server, but if the Court doesn't think it's
23 important.

24 THE COURT: I'll accept that as an offer of
25 proof, unless you want to cross-examine.

1 MR. CAMILLI: No, Your Honor.

2 THE COURT: I'll just accept that as an
3 offer of proof.

4 MR. WEST: Then I have no further
5 witnesses, Your Honor.

6 THE COURT: Any independent witnesses,
7 Mr. Camilli, on your behalf?

8 MR. CAMILLI: No, Your Honor, not at this
9 time.

10 THE COURT: Okay. All right. Then let's
11 talk about Wisconsin law. I had them pull this case
12 called Bar Code Resources v. Ameritech, which is at
13 one -- which is at 229 Wis.2d 287, and that's the
14 case I think that we should look at. It establishes
15 that Mr. West has the burden of proof and that he has
16 to show that he has complied with the statutory
17 service requirements, and then they also say here
18 that Wisconsin requires strict compliance with the
19 rules of statutory service, even though the
20 consequences may appear to be harsh.

21 So we start with that proposition. We don't
22 have direct service on an officer or director or a
23 managing agent of the limited liability company, so
24 we go to the alternate service set forth in the
25 statute. Their -- the service processor is in the

1 right place, in my opinion, because it's admitted
2 that the offices of the limited liability corporation
3 at issue in this lawsuit include that Illinois office
4 at 630 Davis Street in Suite 300 because an officer,
5 director or managing agent of the limited liability
6 company exists there. So they're in the right place.

7 So where we really funnel down to here is under
8 the case law, which was also established in this
9 Keske v. Square D Company, which is at 58 Wis.2d 307,
10 which it all whittles down to whether the server
11 reasonably believes that the person whom he is
12 serving process is apparently in charge of the
13 office. I mean, that's what the whole case comes
14 down to.

15 And I guess we should talk about that, because
16 the process server says, okay, I inquire of
17 Mr. Bertolli, I ask him if he's authorized to accept
18 service, but that really isn't the test, Mr. West,
19 because in that Ameritech case somebody said that
20 they were authorized to accept service but they
21 weren't in the right place, and the Court says that
22 that wasn't enough.

23 So here we've got the opposite. We're in the
24 right place and he, Bertolli, says ultimately, I
25 believe by the greater weight of the credibility of

1 evidence that he is authorized to accept service.
2 But is he, apparently, in charge of the office?
3 Would a reasonable person in asking that question
4 establish that the answer to that question being yes
5 puts the person reasonably in charge of the office.
6 I'll hear from Mr. West.

7 MR. WEST: I think that the Court largely
8 cites to the correct cases, although I think that one
9 case in particular is being overlooked by the Court
10 right now in looking at the distinctions between the
11 Bar Code case, which is the Ameritech case that you
12 were just referring to, Your Honor, and the Horrigan
13 case are -- would be particularly insightful into the
14 very question that Your Honor is raising.

15 THE COURT: So what's that case?

16 MR. WEST: The cite, Horrigan v. State
17 Farm. It's 106 Wis.2d 675.

18 THE COURT: Okay. And what were the facts
19 of that case?

20 MR. WEST: In that case the process server
21 went to -- not -- unlike in the Bar Code case, where
22 the process server went to the ground floor of a high
23 rise building and tried to serve the clerk in the
24 lobby, in that case the process server actually went
25 to the office suite in whatever building they were

1 in, asked the clerk or receptionist whether he or she
2 was authorized to accept service of process.

3 The receptionist left the area, telling this
4 process server that they needed to find out whether
5 they had the authority, and in -- and while that
6 person was still looking, a second person -- in this
7 case a contractor or security guard, who was not an
8 employee of the company, but was somehow affiliated
9 with it -- appeared in the lobby and informed the
10 process server that he could accept on behalf of the
11 company.

12 And in that case the Court found that under
13 those circumstances, which are spot on with what's
14 going on in this case, that it was reasonable for the
15 process server to believe that he had the authority
16 to serve that person, and that person was,
17 apparently, authorized to accept service on behalf of
18 the company.

19 THE COURT: All right. So I guess what the
20 difference in this case would be would be that the
21 original person that the process server was talking
22 about says that he's going to check with somebody and
23 come back.

24 MR. WEST: Two big distinctions, Your
25 Honor. One is we've got a circumstance like here,

1 where instead of trying to serve at some remote
2 location that may -- that --

3 THE COURT: Right, I've got him in the
4 right place. I understand that.

5 MR. WEST: -- he is in the actual offices
6 that everybody agrees is where Arland was operating
7 out of. So that's a business distinction between the
8 Bar Code case and the Horrigan case, and, in fact,
9 this case. The second distinction is in the Bar Code
10 case you don't have the employee, who we'll concede
11 it's questionable whether it would be reasonable for
12 them to accept or not, leaving the vicinity to go and
13 check to see whether they're authorized to accept
14 process. Here, like the Horrigan case, we have an
15 employee who left to check, and like the Horrigan
16 case, here we've got somebody coming back and
17 informing whether they were actually authorized or
18 not, informing the process server that they were
19 authorized.

20 THE COURT: Do you have any case where
21 somebody who, obviously, is like a receptionist, so
22 you go to the right place, you talk to the
23 receptionist, somebody says, are you authorized to
24 accept service, and the receptionist says, yes, and
25 is there any case like that? Because there -- you

1 know --

2 MR. WEST: The Bar Code case is the closest
3 one, but there it's not a receptionist of the
4 company, it's a receptionist on the ground floor in
5 the building.

6 THE COURT: Right. Here they're in the
7 right place. Mr. Bertolli is asked if he can accept
8 service; he says, I'm going to check with somebody,
9 which leads me to believe that Mr. Bertolli isn't in
10 charge of the office, but then Mr. Bertolli comes
11 back by the greater weight of the credible evidence
12 and says that he's authorized to accept service.

13 Is that strict compliance. Is that enough. And
14 the test is whether a reasonable process server would
15 be satisfied that this person, Mr. Bertolli, is in
16 charge of the office. I think that's --

17 MR. WEST: And in Horrigan the Court says
18 it is enough.

19 THE COURT: Not really though. It's got to
20 be the precise case, because if you're somewhere
21 other than the office, the Court finds that to be
22 compelling. Or if you're in the office, but you're
23 not apparently in charge of the office, then that
24 isn't reasonable. So none of the cases are going to
25 hit this case on all squares -- on all fours.

1 MR. WEST: It --

2 THE COURT: It's just what they say in the
3 case that's important. Number one, it's not
4 anybody's disagreement necessarily with the
5 conclusions that were reached by the server, but is
6 the server's conclusions reasonable. So, I mean, you
7 know, the cases tell us these things. I think I'm
8 articulating what they are.

9 I guess I'd hear from Mr. Camilli, because on
10 one hand, he is obtaining authority from somebody
11 else in the office, leading you -- one to believe
12 that maybe that's the person that's in charge of the
13 office because that's the person giving permission or
14 not giving permission to this person. So if you just
15 said, okay, the only reasonable conclusion here is
16 that the process server should have rejected him as
17 one would reject a receptionist, whether or not they
18 would take process or not, go find that person who
19 the receptionist Bertolli is talking to and go serve
20 him. Had that have been done, we wouldn't have a
21 problem here, but that isn't what was done.

22 So you've got the tension between a reasonable
23 person concluding who's in charge of the office, and
24 there's no prohibition against the boss giving
25 permission to somebody to accept service and,

1 therefore, serving in their capacity to accept
2 process, so the boss, I think, can tell the
3 receptionist that they have the authority to be in
4 charge of the office and thus accept process. That's
5 the tension that I'm in. That's the argument.

6 Do you want to make further argument? Because I
7 can see the -- I could see your point. I could see
8 his point, too. I just have to make a call.

9 MR. CAMILLI: Yes, Your Honor. I mean,
10 that's exactly the analysis. I would say that the
11 Bar Code case stands for the proposition that a
12 process server has to make some minimum thread effort
13 to verify that the person who accepts process is
14 actually authorized.

15 THE COURT: But he asked the question. He
16 just doesn't thrust it at him, thanks for being here,
17 Bertolli, here's the paperwork. The process server
18 is asking a question, okay, I'm in no position to
19 ascertain or to determine on your face who you are, I
20 know it's Christmas Eve. I know nobody else is
21 apparently around, but I still don't just give you
22 the paper. I'm asking you if you have authority to
23 accept the paper. That's what he's doing that's
24 different than what you just said.

25 MR. CAMILLI: Fair enough. The fact still

1 remains though that Mr. Osojnak was in the office --
2 in an office where he didn't verify that Mr. Bertolli
3 was an employee of Arland Clean Fuels. He never
4 asked Mr. Bertolli who he worked for. He didn't hear
5 Mr. Bertolli gain any authorization from anyone. And
6 unlike the case in Horrigan, a different person
7 didn't come back, and the Court in Horrigan
8 specifically referenced the demeanor with which the
9 person exited the office to accept the process as one
10 of the defining factors that would weigh in that
11 party's favor.

12 THE COURT: So what happened in that case,
13 the secretary's disappearing, and some guy who's not
14 even affiliated comes in and accepts service, right?

15 MR. CAMILLI: No. Your Honor, in Horrigan,
16 if I recall properly, in Horrigan the secretary left;
17 she told him, I will get someone to accept service.

18 THE COURT: Right, right. So, you know --

19 MR. CAMILLI: So she walked away.

20 THE COURT: -- if every receptionist that's
21 in charge of an office could accept service, we would
22 say, just give it to somebody there, right?

23 MR. CAMILLI: Correct. So she's leaving
24 and I believe --

25 THE COURT: I think some other guy shows up

1 and they serve him; he's not even an employee.

2 MR. CAMILLI: I didn't think it was a
3 security officer, but some other individual came
4 forward, and the Court recognized that with his
5 demeanor and authoritative -- it's not a quote, but
6 just the persona that he projected to the process
7 server that he was in charge.

8 THE COURT: And that's going to what the
9 process server --

10 MR. CAMILLI: Reasonably believes.

11 THE COURT: -- reasonably believes. But
12 even though this guy is a total joke, it might be
13 related to me or you as the corporation. If they can
14 pull it off -- and it's reasonable for the process
15 server to believe that they are in charge of the
16 office and thus could accept service -- then it's
17 okay. This enures probably to your detriment.

18 The better argument is that there has to be
19 strict compliance; in other words, find the person
20 who's in charge of the office. If you're talking to
21 a guy and he has to talk to somebody else, then in
22 strict compliance go find the other guy. That's the
23 better argument, you know. And the facts in this
24 case just -- they flow -- they flow differently,
25 because it's -- is it reasonable for then a person to

1 be asked a question to say, I'm going to go check
2 with somebody else; then they disappear for awhile,
3 they come back and they say, yes, I can accept
4 process. Is it reasonable for the process server to
5 believe then that they're in charge of the office and
6 thus could accept process.

7 And what we miss when we're talking is we keep
8 talking about accepting process. Well, I could
9 accept process if I tell you I can, but if I'm not in
10 the right place, that's not good enough. That's what
11 the case law tells us. So it's got to be the person
12 who is -- is it reasonable to believe that they're in
13 charge of the office and can accept process. Your
14 best argument is, is that it comes to the attention
15 of the process server that somebody else is calling
16 the shots here, and that in strict compliance with
17 the alternate method of service under Wisconsin law,
18 they ought to really go find that person. That's the
19 best argument.

20 And if I say, yeah, that's true, even though it
21 might be harsh, then that's the way it is. And I
22 don't even think that -- well, I guess probably an
23 Appellate Court could say as a matter of law he just
24 goofed up, but I think if they did that, that would
25 be a disservice, I think, to everybody.

1 But, on the other hand, if I accept the
2 proposition that somebody is asking a question, which
3 is a legitimate question, dealing with the legitimacy
4 of the service, if a person goes, do they not then as
5 they assert when they come back that they are
6 authorized to accept service and that they are then
7 apparently in charge of the office and some doing,
8 and that's Mr. West's best argument. So what I do is
9 check which one I believe to be more accurate under
10 the circumstances as applied to the law.

11 So I think that's where I am, is I just have to
12 make a choice. So I think my call would be that a
13 reasonable process server in asking the question to a
14 person on Christmas Eve, who's the only one that
15 they're seeing, okay, I'm not just going to hand you
16 the paper, I'm going to ask you, are you in charge of
17 this office, will you accept service; that person
18 disappears for a while, testifies that he didn't
19 really get actual permission from the person who sort
20 of waved him away, but what he did when he came back
21 was he asserted to the process server that he had the
22 authority.

23 The process server reasonably can rely on that,
24 even though the person is a young person, and then as
25 a result of those circumstances, effectuate good

1 process under Wisconsin law by leaving that with the
2 individual who is then apparently in charge of the
3 office by way of some permission from a superior, at
4 least in the viewpoint of the process server. That's
5 what I conclude.

6 So if Wisconsin law is different under these
7 circumstances, an Appellate Court would say, no,
8 huh-uh, once this guy's getting permission from
9 somebody, bypass that whole thing no matter what's
10 asserted to you and go serve that other person. I
11 would say that that's good enough and certainly
12 definitive, and this is an alternate way of doing it,
13 and I think a reasonable process server would
14 reasonably believe that as a result of all of this,
15 that service upon Mr. Bertolli was appropriate upon a
16 person, apparently, in charge of the office, thus
17 authorized under Wisconsin law to accept service of
18 process. That's my conclusion.

19 So I think service is fine here, but it's a
20 closer call than I thought it might be. And then so
21 then that happens and we've got jurisdiction, so now
22 that we have jurisdiction we really do have to look
23 at the second half of the issue. If the second half
24 of the issue is, look, I was happy that I got this
25 judgment, and if he's got a problem with his

1 counterclaim, he can go somewhere else and assert it,
2 but I can execute it, but I've got a problem because
3 I didn't wait under the five-day rule because I
4 wasn't aware of the circumstances surrounding the
5 request for default, and what I did in the case is I
6 was authorized to immediately sign upon the affidavit
7 to examine my own file to see that no answer was
8 filed, that the affidavit was accurate in that regard
9 and go ahead and sign it.

10 Now I'm not bound by the five-day rule; the
11 attorneys are. But I play a part in this situation
12 as well, because I was given the oar and I
13 immediately signed the order. If I had waited under
14 the five-day rule, I may have drawn an objection. If
15 I had drawn an objection, we would have this hearing
16 as to whether or not we are going to grant a default
17 judgment or let somebody file an answer. If that had
18 been the procedure, I would have made plaintiff whole
19 and allow defendant to file an answer.

20 And I think, Mr. West, that's the way I'm going
21 here, because I don't like you guys to witness me
22 dropping the ball. I look like some sort of a
23 fumbling fullback here, but really I'm not serving
24 anybody here. My mea culpa is I have 1400 cases, but
25 I could have done a better job --

1 MR. WEST: If I could point out one link in
2 the chain that's missing in which Your Honor just
3 described, and that is under Wisconsin law there is
4 no service requirement when it comes to filing
5 motions for default judgment.

6 THE COURT: No, I don't think it's your
7 fault.

8 MR. WEST: Well.

9 THE COURT: I'm saying you were not
10 required to notify them, and I was utilizing that to
11 examine my file and then sign it right away. What I
12 should probably have done, which I think you probably
13 anticipated as well, was to wait the -- I don't know
14 how we define five days, eight, 11, 15, whatever it
15 is that the Court of Appeals has said; in that time
16 they could have done what they're doing here, and we
17 would have had a hearing anyway to try to resolve it.

18 I -- in no way should this record reflect that
19 you played a role in what I decided to do. You did
20 exactly what the law permits you to do and had no
21 other obligation.

22 MR. WEST: And I appreciate that, Your
23 Honor, although we would -- we would at least suggest
24 that if the Court were to adopt the five-day rule
25 with respect to motions for default, it would

1 certainly be an obligation that is taking onto itself
2 that we don't see in most other counties in
3 Wisconsin, certainly not where my office practices.

4 THE COURT: Yeah, I think that I was okay
5 in doing it. I had lawful authority in doing it, but
6 what I would typically do is just wait, because that
7 would avoid this whole rigamarole. And even then,
8 after I wait, the clerk will be aware, I'm sure, that
9 I sign the order and then somebody says, why did you
10 sign that order, and I say because I waited 18 days
11 under the five-day rule and signed it, and then they
12 say, well, we've got a beef with it, you know, so I'm
13 still encountering that.

14 MR. WEST: Sure.

15 THE COURT: So we start with the
16 proposition that the -- that it was appropriate, but
17 I think we would have drawn an objection here --

18 MR. WEST: Even if that were the case, Your
19 Honor, I still don't see that they have met -- so
20 that may be a ground under the catchall interest of
21 justice ground, and although we would argue against
22 it, we understand the Court's position. We --

23 THE COURT: Then there's the meritorious
24 defense.

25 MR. WEST: Then there's the meritorious

1 defense issue, and as Mr. Decatur set forth before,
2 we don't have any defenses here to the actual
3 contract.

4 THE COURT: Other than a counterclaim,
5 which may serve as an offset. And then do I jump
6 back to the interests of justice to try to adjudicate
7 all of that together or just give you a judgment,
8 allow you to execute, then require him to serve his
9 lawsuit in some other Court to try to offset that
10 judgment. That's --

11 MR. WEST: And there's a bigger distinction
12 here. That -- in order to pursue that counterclaim,
13 at least if it's -- you know, we don't have all the
14 facts here from Mr. Decatur that relate to it, but my
15 suspicion here is that it relates to equipment that
16 may have been stored down at O'Hare Airport in
17 Chicago or right outside of Chicago that involves
18 other Wisconsin corporations; in fact, we did hear
19 from Mr. Decatur that it involves not just some crazy
20 allegations against Mr. Wolf, but also allegations
21 against other corporate entities either in Wisconsin
22 or Illinois.

23 So now if we reopen the instant case we're not
24 just asking the Court to look at whether Mr. Wolf may
25 have owned an interest in a company that may have

1 engaged in a tortious act that might entitle
2 Mr. Decatur's company to damages, because now we're
3 talking about parties that extend far beyond the two
4 parties that are in this case right now.

5 Now we're going to end up -- it looks like we're
6 going to end up having a third party in a company
7 called Alliance, which is up in the DePere area,
8 which I believe Mr. Decatur is referring to, the
9 individuals who may have engaged in that tortious
10 act. Because when you start getting into intentional
11 torts such as theft, you have personal liability in
12 addition to corporate.

13 There is a potential here that we may have to
14 bring in a company called Generation Clean Fuels,
15 which is, according to the filings of Mr. Camilli, is
16 now a company that has somehow become the successor
17 to Arland Clean Fuels. But when I look at the --

18 MR. CAMILLI: Your Honor, it's the same
19 entity, just a name change was effected.

20 THE COURT: Why don't we just focus in on
21 this.

22 MR. WEST: And that's the problem, Your
23 Honor.

24 THE COURT: You're entitled to a judgment
25 in a case in which a counterclaim has been properly

1 filed; once you obtain the summary judgment, you can
2 go ahead and act on your summary judgment unless I
3 stay it, right? So, I mean, I'm just talking about
4 summary judgment not because this is summary
5 judgment, but maybe that you're entitled to a default
6 on this claim, and really it's the offset and where
7 it's tried and how it's try. So if it's done
8 appropriate in a case, are you then required to
9 re-plead and re-prove the fact that you're owed the
10 money that you're claiming. It could be that I don't
11 make you do that, that you simply do have a judgment,
12 and I keep this case open for the opportunity to go
13 ahead and file the counterclaims for purposes of an
14 offset and we see where we go in terms of what the
15 Court would do and tell you, no, you can't execute on
16 your judgment till I figure out the offset, and that
17 also would be a juggling act for the Court to try to
18 figure.

19 So maybe there's a hybrid here that I allow the
20 case -- the answer to be filed for purposes of filing
21 a counterclaim as it relates to an offset and
22 bringing in other parties, but the penalty for
23 defaulting here and reopening the judgment and the
24 penalty is not appropriate, but the correct response
25 by the Court in justice is to declare that as to the

1 claim that has been made there has been offered no
2 meritorious defense and, therefore, the judgment that
3 the plaintiff has obtained by way of default would
4 stand, but that the defendant would be given an
5 opportunity to make his counterclaim within this suit
6 and bring in other parties to establish an offset.
7 Then where you go from there, I don't know, because
8 sometimes people come in, they obtain this kind of
9 judgment, I'm considering the counterclaim, and I
10 tell them, well, just wait to execute it. Or I tell
11 them, you can do whatever you want, this is a
12 separate issue and we'll just litigate it here.

13 MR. WEST: And I think that's one of the
14 big concerns that we've got here, Your Honor. The
15 plaintiff has been trying to collect on this debt for
16 a significant period of time and engaged in efforts
17 to do that non-judicially for a while. Those were
18 unsuccessful, and now this case has been pending six
19 months and we haven't been able to pursue it. And
20 the track that is at least being considered by the
21 Court would require substantially more delay without
22 having anything in front of us that would show that
23 there -- that there's a right to offset other than
24 the theory that the Court and the two attorneys have
25 been discussing here today.

1 And none of us have undertaken -- or maybe
2 that's presumptuous on my part; perhaps the Court has
3 undertaken, but I certainly have not undertaken any
4 of the research that would allow me to know whether
5 there is a right to offset certainly against Mr. --

6 THE COURT: They'd have to establish the
7 right to offset. And Mr. Camilli may not agree as a
8 Wisconsin attorney to sign any pleadings, because
9 when he signs the pleadings, he says, I've done an
10 adequate investigation and that this is good response
11 both in law and in fact. That's up to him. And
12 attorneys who have come to this Court who have
13 violated that rule have been on the back end of stuff
14 because I don't really tolerate that.

15 That there's a minimum requirement that I think
16 is truly minimum, and that's that attorneys in
17 Wisconsin who sign their name to documents do so
18 having asserted that they did the research on the law
19 and the facts. And if Mr. Camilli were to seek to
20 stop you under these circumstances from executing on
21 the judgment in default, he would have to bring that
22 to my attention, too, but until he does so, you're
23 free to pursue whatever you want.

24 Because, Mr. Camilli, I'm not seeing a
25 meritorious defense at this point to the judgment

1 that has already been granted. If you do so in your
2 pleadings, in conjunction with your pleadings, you're
3 going to have to ask me to do something, which would
4 be to say this is more than offset. This is directly
5 related to that, and I want you to stop execution on
6 that until we adjudicate these issues. And, in
7 addition, because an answer wasn't timely filed,
8 we're still going to have to calculate, contingent
9 upon my allowing you to file an answer here in this
10 Court for an offset, would be to calculate what the
11 cost was to plaintiff to have to deal with all of
12 this stuff, which could have been avoided simply by
13 timely filing a response.

14 So my inclination for a decision would be to
15 allow you to file an answer which constitutes offsets
16 and claims an offset that you may have against the
17 plaintiff deriving from the same circumstances and
18 events that give rise to the plaintiff's claim here,
19 and also to sue any other parties that you think may
20 be responsible as well and to bring them into this
21 lawsuit, that I would allow you to do that and give
22 you 20 days to do that.

23 Having said that, I am still not satisfied that
24 I should stop in any way the judgment in money that's
25 been granted to the plaintiff, finding that there has

1 been no meritorious defense that's been offered to my
2 satisfaction that would allow that judgment to be
3 reopened. I'm reopening pleadings on your behalf to
4 do counterclaim offset, but if you say something in
5 your pleadings that establishes something other than
6 an offset and if you sign those pleadings and ask me
7 to hear it, you'll also be asking me to stay
8 execution on the default judgment that's already been
9 granted to the plaintiff. And I'll look at it then.
10 I'm not seeing it now, but I'll look at it then.

11 So default judgment that's been granted on the
12 plaintiff's claim will stand. Defendant will be
13 allowed to assert on the same set of circumstances a
14 claim and counterclaim against this plaintiff or
15 anyone else. I'm seeing that as being a requested
16 offset, but if it's directly related to the judgment
17 that's already been granted, then you'll bring that
18 to my attention in a request for stay, and, Mr. West,
19 you will not be required to show proofs of your claim
20 that's already been granted in default judgment. So
21 you don't have to present those proofs. That's a
22 judgment that exists.

23 And then also as a condition, because you may
24 choose not to do this, you may choose to go to
25 Federal Court and do that, or you may choose an

1 Illinois Court, if you can get jurisdiction there,
2 that's all up to you, and if you choose to do that,
3 then you certainly may. If you don't file anything
4 here in 20 days, I assume you're going elsewhere to
5 do it, and I've got no problem with it. If you go
6 elsewhere, you will not have to pay Mr. West's
7 attorney fees or other costs that are associated with
8 coming here and doing this, but if you choose to file
9 in this Court, you're going to have to make them
10 whole for going through this whole process and then
11 we have to figure out what that is.

12 MR. WEST: Does the Court prefer us to go
13 ahead and submit the affidavit in support of fees
14 now, or do you want us to wait until after we see
15 whether there's going to be --

16 THE COURT: No. I mean, if they don't file
17 an answer in 20 days, it means they're not going to
18 be here. Maybe you'll get your own process server
19 serving you guys somewhere and it says now we're in
20 Federal Court somewhere and you respond to this
21 lawsuit.

22 MR. WEST: I guess what I'm asking is, is
23 it okay if we wait to see whether they submit that
24 before we --

25 THE COURT: Definitely.

1 MR. WEST: Okay.

2 THE COURT: Part of what I'm saying is I
3 don't want you to do more work than you should have
4 to do, and this would be work to put that together,
5 and as we know, the work in putting that together is
6 not reimbursable --

7 MR. WEST: Correct.

8 THE COURT: -- so you can wait on that. I
9 don't want you to spend more money doing that if you
10 don't want to.

11 MR. WEST: As a second follow-up, Your
12 Honor, if a counterclaim is filed, will the plaintiff
13 also be permitted leave to amend its pleadings to
14 include additional parties --

15 THE COURT: Definitely.

16 MR. WEST: -- if it deems it appropriate?

17 THE COURT: Definitely, because you'll have
18 to respond. You can file a cross-counterclaim. You
19 can file claims against others.

20 MR. WEST: The only reason I ask, Your
21 Honor, is because I believe we're approaching the
22 six-month window that we would need to get your
23 leave, so I just want to make sure that we get your
24 okay.

25 THE COURT: No, you're wide open in your

1 ability to respond to whatever it is Mr. Camilli -- I
2 assume it would be Mr. Camilli decides to file here.

3 MR. WEST: Thank you, Your Honor.

4 THE COURT: So when he does, you may file
5 whatever you deem necessary. All right. Have I
6 covered any questions?

7 MR. CAMILLI: No, Your Honor. No questions
8 at this time.

9 THE COURT: All right. Well, I've taken
10 this one and torqued it around for you, so you can go
11 home and figure out what it is that I've done.

12 Anything else, Mr. West?

13 MR. WEST: We're good, Your Honor. Thank
14 you.

15 THE COURT: Then we're in recess. Thank
16 you.

17 (The proceedings were concluded.)

18
19
20 * * * *

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF JEFFERSON)

4 I, SANDRA K. TAYLOR, RMR, CRR, Official Court
5 Reporter for Branch II, Jefferson County, do hereby
6 certify that I reported the foregoing proceedings;
7 that the same is true and correct as reflected by my
8 original machine shorthand notes taken on said date
9 at said place before the HONORABLE WILLIAM F. HUE,
10 Circuit Court Judge, Branch II, Jefferson,
11 Wisconsin.

12
13 Dated this 20th day of September, 2013 at
14 Jefferson, Wisconsin.

15
16
17
18 
19 Sandra K. Taylor, RMR, CRR
20
21
22
23
24
25