

ORIGINAL

ACF Leasing vs. Green Bay Renewable Energy, LLC.

14 L 2768

Deposition of: Gene A. Keluche

Taken on: July 17, 2014

JENSEN LITIGATION SOLUTIONS
180 North Lincoln Street
E. 4th Floor
Chicago, IL 60601
312.763.8776
www.jensenlitigation.com

JENSEN
Litigation Solutions

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, LAW DIVISION

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

Plaintiffs,

v.

Case No. 14 1 2768 (Y)

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

Defendants.

DEPOSITION OF

GENE A. KELUCHE

Milwaukee, Wisconsin

July 17, 2014

1:18 p.m. to 2:23 p.m.

Kathy A. Halma

Registered Professional Reporter

A P P E A R A N C E S

SANCHEZ, DANIELS & HOFFMAN, LLP

MR GERALD M. DOMBROWSKI

333 West Wacker Drive

Suite 500

Chicago, Illinois 60606

Phone (312) 641-1555

E-Mail gdombrowski@sanchezdh.com

On behalf of Plaintiffs

WHYTE, HIRSCHBOECK & DUDEK, S C

MR THOMAS M. PYPER

33 East Main Street

Suite 300, P.O Box 1379

Madison, Wisconsin 53701

Phone (608) 255-4440

E-Mail tpyper@whdlaw.com

On behalf of Oneida Seven Generations Corporation
and The Oneida Tribe of Indians of Wisconsin.

REINHART BOERNER VAN DEUREN, S C

MR. GUY R TEMPLE

1000 North Water Street

SUITE 1700

Milwaukee, Wisconsin, 53202

Phone: (414) 298-1000

E-Mail: gtemple@reinhardtllaw.com

On behalf of Green Bay Renewable Ennergy, LLC

ALSO PRESENT. MR. JAMES BITTORF, Oneida Tribe, General
Counsel, and MR. GENE A. KELUCHE

I N D E X

GENE A. KELUCHE

By Mr. Dombrowski.....4

E X H I B I T S

Exhibit H Affidavit 4

C E R T I F I E D Q U E S T I O N S

1 Now it is the contention of this lawsuit in part
2 that the Wisconsin Bank & Trust withdrew from the
3 plastics to oil project because of the dissolution
4 of OSGC? Is that your understanding of why the
5 Wisconsin Bank & Trust withdrew its commitment to
6 this particular project? (Page 47)

7
8
9 (The original exhibit was retained by the court
10 reporter and attached to the original transcript
11 Copies were attached to all ordered transcripts)

12
13 (The original transcript was sent to Attorney
14 Dombrowski)

PROCEEDINGS

(Exhibit H was marked.)

GENE A. KELUCHE, called as a witness herein by the Plaintiffs, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DOMBROWSKI:

Q Sir, can you state your full name for us?

A Gene, G-E-N-E, initial A, Keluche, K-E-L-U-C-H-E.

Q Please let the record reflect that this is the discovery deposition of Gene Keluche taken pursuant to notice and pursuant to agreement of parties and pursuant to all applicable court rules in the State of Illinois and the County of Cook.

Mr. Keluche, as you know, my name is Jerry Dombroski. I represent the plaintiffs in this case. It's my understanding that you signed an affidavit related to the case. Is that true?

A Yes, I did.

Q Okay. Sir, what is your date of birth?

A 7/8/33.

Q And where do you live?

- 1 A Colorado Springs, Colorado.
- 2 Q And do you have a residence in Oneida, Wisconsin
- 3 or near Oneida, Wisconsin now?
- 4 A No, I don't. I live in Colorado Springs.
- 5 Q And how are you employed today?
- 6 A I'm self-employed. I have my own company called
- 7 Sagestone Management. It's a consulting firm.
- 8 Q And can you spell Sagestone for us?
- 9 A S-A-G-E-S-T-O-N-E, one word, Management.
- 10 Q And where is Sagestone Management based?
- 11 A In Colorado Springs.
- 12 Q Do they have separate offices there?
- 13 A No, it's a single office.
- 14 Q Is it at your home?
- 15 A Pardon me? No, 2640 West Colorado Avenue in
- 16 Colorado Springs.
- 17 Q And what is your position with Sagestone
- 18 Management?
- 19 A I'm chairman, CEO, owner.
- 20 Q And what does Sagestone Management do?
- 21 A Sagestone has provided consulting services to
- 22 both commercial and Indian tribes in their
- 23 economic development efforts.
- 24 Q And how long has Sagestone Management been in

1 existence?

2 A Sagestone is fairly recent, it's a successor to
3 earlier companies, but it's been in existence
4 about between one and two years. I forget the
5 date.

6 Q And what was it known as before Sagestone
7 Management?

8 A It is only Sagestone. I'm just saying I had
9 provided consulting services previously and
10 formed this company to continue.

11 Q Okay. Did you join Sagestone?

12 A No, I formed it.

13 Q You formed it. And that was one to two years
14 ago?

15 A Yes I can't really give you -- I'm sorry. I
16 just don't remember the date.

17 Q How about before Sagestone? What did you do?

18 A Oh, I have various other businesses that I'm
19 involved with. They have been ongoing and
20 parallel with it. You are asking for other
21 enterprises?

22 Q Yes, within the last ten years.

23 A Within the last ten years. Okay. One is called
24 Zentana Conference Resorts.

1 Q And how do you spell that?

2 A Z-E-N-T-A-N-A.

3 Q What is that?

4 A LLC. We design, develop and operate conference
5 resorts. In fact, we used to have one down in
6 your neck of the woods in Chicago.

7 Q Any other companies or LLCs that you have been
8 involved with in the last ten years?

9 A Let me think. Ten years. Yes. There's one
10 called Native Resource Management, LLC.

11 Q And what is that?

12 A It's a consulting -- Again, it's a management and
13 consulting company providing advice to tribes in
14 oil and gas, energy development.

15 Q Do those two entities that you just mentioned
16 still exist?

17 A Yes.

18 Q Okay. And are you involved with them?

19 A Yes.

20 Q And what is your position with each?

21 A I'm chairman in each case and founder

22 Q And what is your educational background?

23 A Undergraduate degree in applied engineering
24 science, California State University, and an MBA

1 from Harvard Business School.

2 - Q When did you receive your undergraduate degree?

3 A Oh, that's ancient. It had to be '52. Does that
4 sound right? That's about right.

5 Q Sounds good to me. How about your MBA from
6 Harvard?

7 A '62. Class of '62.

8 Q And are you a member of an Indian tribe?

9 A Yes. The tribe is Wintun, W-I-N-T-U-N, and it's
10 a Northern California tribe.

11 Q And are you a member of any other tribes?

12 A No.

13 Q It's my understanding that you were brought in to
14 or by the Oneida Tribe to help dissolve a
15 corporation called Oneida Seven Generations
16 Corporation, is that right?

17 A Yes, I was brought in to be the managing agent,
18 and it was -- That's right. Actually, it was
19 restructure and transition that asset following
20 this dissolution you are talking about.

21 Q And have you ever done work with the Oneida Tribe
22 prior to this?

23 A Yes.

24 Q Oh. And how many times were you retained by the

1 Tribe?

2 A One time previously for six years.

3 Q And when was that?

4 A When?

5 Q Yes.

6 A Let's think. It was up until two years ago, so
7 that would be '12. So that would be '06 to '12.

8 Q So 2006 to 2012?

9 A Yep.

10 Q And what did you do for the Tribe then?

11 A Okay. I was a member of a board of the OEDA,
12 which is the Oneida Economic Development
13 Authority, and their mission was part of a land
14 claim settlement with the State of New York, and
15 they were attempting to build a casino in the
16 Catskills. I was a member of a three-man board
17 that had that task to work on that project.

18 Q How are the Oneida Indians of Wisconsin related
19 to the Oneida Indians of New York? Are they
20 separate tribes or one tribe?

21 A Well, legally they are separate, but they all
22 originated in Upstate New York. They were
23 forcibly relocated to Canada and to Wisconsin,
24 and then a smaller tribe stayed back, so now you

1 have two tribes.

2 Q Prior to your coming on with the Oneida Tribe of
3 Indians of Wisconsin, did you do any work with
4 the Wisconsin tribe specifically?

5 A No.

6 Q Okay. Do you have a contract with the Oneida
7 Tribe of Wisconsin regarding the OSGC dissolution
8 vote?

9 A Did you say dissolution?

10 Q Dissolution vote.

11 A I have no relationship to the dissolution vote.
12 I'm retained under a consulting agreement with
13 the Tribe currently. Is that your question?

14 Q Yes.

15 A And it's to perform the duties of the managing
16 agent.

17 Q Okay. And is one of your duties as a managing
18 agent to help dissolve OSGC or are you to
19 reorganize OSGC?

20 A Well, you have got two questions there, and I
21 will try to answer them for you.

22 Q Okay.

23 A My specific assignment was to assess the asset,
24 evaluate and propose a restructuring so that it

1 would minimize the adverse financial impact on
2 the Tribe, and then dissolve So it's
3 restructure and dissolve, because they have a
4 portfolio of assets that OSGC is managing.

5 Q And what does that portfolio of assets consist of
6 today?

7 A They are mostly commercial real estate properties
8 on the reservation, buildings, strip malls and
9 office buildings

10 Q Does the OSGC own LLCs?

11 A Own?

12 Q Yes.

13 A Well, there's a sequence of assets or
14 corporations that I think you are aware of. I'd
15 like to refer to something to make sure I get the
16 sequence right.

17 MR. PYPER. Just to the best of your
18 recollection.

19 THE WITNESS: To the best of my
20 recollection, OSGC is a sole shareholder of I
21 think it's a C corp, Oneida Energy, that owns
22 Oneida Blocker and Oneida Blocker owns the LLC.
23 I believe that's the sequence.

24 BY MR. DOMBROWSKI.

1 Q And how does Green Bay Renewable Energy, GBRE,
2 fit into the structure?

3 A I believe that's a Delaware LLC. That's the last
4 one I described. It's owned by Onedia Blocker.

5 Q Well, is it fair to say that GBRE is a
6 wholly-owned subsidiary of OSGC?

7 A Well, it's through that sequence of ownership.
8 It's not direct.

9 Q Is it fair to say that GBRE -- Strike that.

10 Is it fair to say that OSGC -- Strike
11 that.

12 Is it fair to say that GBRE is an
13 indirect, wholly-owned subsidiary of OSGC?

14 A Through that chain of ownership that I described,
15 I guess you could characterize it that way. I
16 don't know how you would really describe that.

17 Q Are there any other lawsuits that you are aware
18 of related to the dissolution vote that was had
19 by the Tribe in December 2013 regarding OSGC
20 pending right now?

21 A You are saying pending against OSGC?

22 Q Right, or the Tribe or any tribal entity related
23 to your work regarding OSGC.

24 A I'm not aware of anything.

- 1 Q And the status of OSGC today is that it still
2 exists as an entity?
- 3 A Yes.
- 4 Q Is it in the process of reorganization or
5 dissolution? How you would describe what OSGC is
6 going through today?
- 7 A Well, we had an approved plan to restructure and
8 to dissolve, and this lawsuit that we are
9 discussing today put everything on hold. I think
10 that there was a discussion about not wanting to
11 divert assets, so we just stopped.
- 12 Q And as far as the assets of OSGC today, these
13 consist of commercial properties?
- 14 A Yes
- 15 Q And I take it bank accounts and things like that?
- 16 A Yes.
- 17 Q And GBRE as an entity, does that exist today?
- 18 A As far as I know, yes.
- 19 Q Do you know what the assets are or are there
20 assets of GBRE?
- 21 A Well, I know in your earlier discussion they were
22 on their letterhead. I believe they have a
23 counterclaim against the City of Green Bay of
24 unknown value, and I have been listening to an

1 assumption that there are some contracts in
2 existence or discussed. That was my best guess.

3 Q Other than that, are you aware of any assets that
4 GBRB holds today?

5 A Not substantial.

6 Q And when you say "not substantial," what do you
7 mean?

8 A Well, I couldn't place a value on it. Nothing
9 comes to mind.

10 Q Have you placed a value on OSGC?

11 A No, I have not, but the Tribe had paid for an
12 evaluation before I became involved.

13 Q And was that valuation completed?

14 A Yes.

15 Q And what was the conclusion of that valuation?

16 A That was the McGladrey report that you were
17 referring to earlier in the testimony and the
18 examination of Patty, and it was a going value
19 valuation, as I recall, and I believe the rough
20 order of magnitude of the real estate assets of
21 going values was on the order of 30 to
22 50 million.

23 Q Any other value to OSGC that you are aware of?

24 A Not really.

- 1 Q Are there any officers or employees right now of
2 OSGC?
- 3 A Just Becky Demuth that I think was read into the
4 record, she's the business manager, and she's
5 been actively employed there for some time.
6 She's keeping in place existing transactions,
7 leases, collecting, maintaining.
- 8 Q Is she the -- Other than your involvement, is she
9 the only employee that you are aware of of OSGC?
- 10 A Yes. There's a part-time lady who comes in, and
11 I'm not sure, I think she's employed probably
12 hourly part time, I believe
- 13 Q How about GBRE? Are you aware of any officers or
14 employees of GBRE today?
- 15 A No, but I believe GBRE has its own separate
16 managing agent.
- 17 Q And who is that?
- 18 A Shawn Barringer.
- 19 Q Is that B-E-R-R --
- 20 A B-A-R-R-I-N-G-E-R, I believe.
- 21 Q And is he with Sagestone?
- 22 A No.
- 23 Q Who is he affiliated with?
- 24 A I think he's an independent professional.

1 Q Okay. And do you know what his title is?

2 A Managing agent.

3 Q Of GERE?

4 A I believe, yes.

5 Q Is he a managing agent of any other entity that
6 you're aware of?

7 A Not to my knowledge.

8 Q Just going back, a few more background questions
9 for you. Have you ever been in the military?

10 A Been where?

11 Q In the military.

12 A Yes, I served in the Navy. I was a naval aviator
13 for five years.

14 Q From when to when?

15 A Oh, gosh. This is ancient history. '50 to '55,
16 right in there.

17 Q Sorry about this question. Have you ever been
18 convicted of a felony or a misdemeanor?

19 A Actually, I think I missed that by four years. I
20 think it was '54 to '59.

21 Q Okay. That's all right. So that follow-up
22 question. Have you ever been convicted of a
23 felony or a misdemeanor?

24 A No.

- 1 Q Do you have a team that helps you today with the
2 management of OSGC?
- 3 A I have a financial advisor, a gentleman that's
4 been involved that I have worked with and known
5 over the years. He's very good at restructuring
6 real estate transactions.
- 7 Q And who is that?
- 8 A Steve Colins, C-O-L-L-I-N-S.
- 9 Q And who is he affiliated with?
- 10 A He's an independent professional. He has a
11 background in investment banking and a lot of
12 real estate restructuring.
- 13 Q When were you first contacted regarding the OSGC
14 situation?
- 15 A December 24th. It was the day before Christmas.
- 16 Q And who contacted you?
- 17 A It was first a phone call by the chief financial
18 officer, Jo Anne House, of the Tribe
- 19 Q Is she chief counsel of the Tribe?
- 20 A She's the director of the legal department staff,
21 but she's an attorney, yes
- 22 Q She informed you of the situation?
- 23 A She called and briefed me on the circumstances of
24 the -- very briefly of the tribal action, the

1 action by the BC that removed the board and the
2 desire to appoint a managing agent.

3 Q And when did you formally come on board as
4 managing agent of OSGC?

5 A That same day. I was sworn in a matter of hours
6 later.

7 Q Did you fly to Wisconsin?

8 A At that time?

9 Q Yes.

10 A No. It was over the telephone We exchanged
11 documents.

12 Q And the contract that you spoke of, is that a
13 contract between the Tribe itself and Sagestone?

14 A Sagestone and the BC, the Business Committee.

15 Q And when you are paid, are you paid through the
16 Business Committee or the Business Committee pays
17 Sagestone and Sagestone pays you? How is that
18 set up?

19 A I'm paid by the Seven Gens Corporation.

20 Q Okay. So OSGC cuts you a check for your services
21 as managing agent?

22 A Yes.

23 Q And that's a monthly thing?

24 A Yes. It has been, yes.

1 Q And how long is that scheduled to last?

2 A Well, we're right now in a tolling condition
3 awaiting this procedure we're in. We thought we
4 were good to go on restructuring, but that's
5 being held. So it's the duration of this
6 lawsuit, and if I were to guess, it might be 6 to
7 12 months.

8 Q So is it fair to say it's on a month-to-month
9 basis at this point?

10 A No, I think it was just renewed and I think I
11 renewed it 120 days.

12 Q And when was that renewal?

13 A It was about a week ago. I think I'm about
14 right.

15 Q And does this contract have to be okayed by the
16 Business Committee of the Tribe?

17 A Yes. They were employing me to take the place of
18 the Board of Director in a sense as managing
19 agent, and as a 100 percent shareholder, I
20 presume that's their authority.

21 Q Who do you report to regarding OSGC?

22 A My agreement itself requires -- required a
23 reporting to the BC, a status report every two
24 weeks, and now because of the Tolling Agreement

1 we're in now, it's monthly or on request.

2 Q When you report to the Business Committee, do you
3 do that orally? In writing? Both?

4 A Both. We submit a written report, which is
5 normally a one to two page document of the status
6 of the transactions we are pursuing on behalf of
7 the BC, and we present and there are questions.

8 Q If you wanted to, for instance, sign a contract
9 on behalf of OSGC with any entity, would you have
10 to get permission from the Business Committee?

11 A Yes. In fact, my contract says that I cannot
12 sign without their specific approval.

13 Q Okay. And if you wanted to hire an adviser or an
14 outside attorney or anything like that, you would
15 have to get the okay from the Business Committee?

16 A Yes

17 Q Now are you familiar with the organizational
18 chart of the Tribe and OSGC and the entities
19 under OSGC?

20 A I believe so, yes.

21 Q Okay. And did you just learn of that during your
22 tenure as managing agent or did you know that
23 prior to being retained?

24 A No, since my tenure.

1 Q Okay. So you learned that there's the General
2 Tribal Council and then the Business Committee is
3 elected by the General Tribal Council?

4 A No, no, I knew that part, I just didn't know the
5 Christmas tree of corporations under it.

6 Q Okay. So in 2013 there were LLCs underneath
7 OSGC, correct?

8 A Say that again now.

9 MR DOMBROWSKI: Off the record.

10 (A discussion was had off the record.)

11 THE WITNESS: Excuse me. You were
12 asking?

13 MR DOMBROWSKI: Yes. What was my
14 question?

15 COURT REPORTER "Okay. So in 2013
16 there were LLCs underneath OSGC, correct?"

17 THE WITNESS: Well, I later learned that
18 the LLC is the third one in the daisy chain. I
19 think you have got OSGC and then you have got
20 two -- I think they are different jurisdictions.
21 I don't even know what state they are in.
22 There's two C corps and an LLC.

23 BY MR. DOMBROWSKI:

24 Q Now at some point in 2013 is it your

1 understanding that Kevin Cornelius was the CEO of
2 OSGC and the president of GBRE?

3 THE WITNESS: I have subsequently
4 learned that, yes.

5 BY MR. DOMBROWSKI:

6 Q And did you also learn that at some point in 2013
7 Bruce King was chief financial officer of OSGC
8 and treasurer of GBRE?

9 A Actually, I learned that from Patty's affidavit,
10 yes.

11 Q Okay. Now do you know Kevin Cornelius?

12 A I don't believe I have ever met him.

13 Q Did you have any contact with him at all
14 regarding this case or OSGC?

15 A No.

16 Q How about Bruce King? Do you know him?

17 A I knew him a long time ago because he used to be
18 CFO of the Tribe back when I was working for the
19 Tribe earlier. I have met him, but I don't know
20 him well.

21 Q Have you ever had any contact of any type with
22 Bruce King regarding this litigation or the
23 contracts or OSGC?

24 A No.

1 Q So it's your understanding that in 2012 and 2013
2 the Tribe itself was the sole owner of OSGC or
3 was it --

4 A Say it again. The time period what?

5 Q In 2012 and 2013, is it your understanding that
6 the sole owner of OSGC was the Tribe or is it
7 more accurate to say it's the Business Committee
8 that is the sole owner of OSGC?

9 A I can't make that distinction, but I believe it
10 was owned by the Tribe.

11 Q And it's also your understanding that the Tribe
12 had the power to vote to dissolve OSGC, right?

13 A Yes, on behalf of the Tribe Excuse me I said
14 it to you backwards Say it again

15 MR. DOMBROWSKI. Could you read it back?

16 COURT REPORTER: "And it's also your
17 understanding that the Tribe had the power to
18 vote to dissolve OSGC, right?"

19 THE WITNESS. Yes. Okay.

20 BY MR. DOMBROWSKI:

21 Q Now in 2012 and 2013 did the Tribe, in your
22 understanding, have the power to dissolve GBRE?

23 A At the instruction of the General Tribal Council,
24 yes.

1 Q Now if OSGC dissolves after your work is done,
2 would all of the entities under OSGC dissolve, as
3 well?

4 A As part of the restructuring task I have ahead of
5 me, and we were just about at this point when
6 this lawsuit occurred and everything stopped, and
7 I don't have a clear answer for that.

8 Q Did GBRE, to your knowledge, in 2012 or 2013 have
9 any assets?

10 A GBRE?

11 Q Yes, the LLC.

12 A Yes, we just talked about that. It was just, you
13 know, like letterhead. I won't call it an
14 unenforceable contract, but some contract actions
15 and potentially some claims against the City of
16 Green Bay.

17 Q Are you able to answer questions regarding the
18 structure of GBRE in 2012 and 2013 before you
19 were named managing agent of OSGC?

20 A No, I had no knowledge of it.

21 Q Okay. So if I ask you questions about separate
22 records kept by GBRE or dividends or salaries or
23 stock or meetings, these are questions you would
24 not have knowledge of, is that fair?

1 A Except the fact that it's an LLC and it doesn't
2 follow all those corporate forms, yes. There's
3 an operating agreement.

4 Q And have you examined the operating agreement of
5 GBRE?

6 A Yes, I have read it.

7 Q Okay. Now as CEO of OSGC, as Kevin Cornelius
8 was, and simultaneously he was president of GBRE,
9 did Kevin Cornelius, prior to his resignation or
10 leaving OSGC and GBRE, did he, to your knowledge,
11 have the authority to contract for GBRE?

12 A His authority at that level -- Say it for me one
13 more time.

14 Q Prior to August 2013, to your knowledge did Kevin
15 Cornelius as CEO of OSGC and president of GBRE
16 have the authority to contract on behalf of GBRE?

17 A I believe, yes, but it seems to me like there was
18 a dollar limit on that ability.

19 Q Do you know what that limit was?

20 A I'm vaguely remembering that it was around a
21 \$15,000 limit on the ability to contract without
22 the ability of the Board of Directors of the
23 governing agency.

24 Q So that would hold true for Kevin Cornelius

1 regarding contracts on behalf of GBRE and OSGC?

2 A I believe, yes.

3 Q So, for instance, if Kevin Cornelius wanted to
4 enter into a contract with a value of more than
5 \$15,000, either on behalf of OSGC or on behalf of
6 GBRE, he would have to get approval from the
7 Board of Directors of OSGC?

8 A Of that entity, whichever one he's transacting.
9 You have two different entities in there.

10 Q Now GBRE did not have a Board of Directors,
11 correct?

12 A It was owned by -- Well, this is a little vague
13 in my mind. It was owned by Oneida Blocker that
14 owned 100 percent of it, so how it derived its
15 authority to transact I presume would be by its
16 shareholder.

17 Q And the shareholder being OSGC?

18 A The shareholder being Oneida Blocker.

19 Q But Oneida Blocker is owned by OSGC.

20 A Through another intermediary corporation, yes.

21 Q So just going back to the original, prior to
22 August 2013, did Kevin Cornelius have to get
23 permission from the OSGC Board of Directors, the
24 parent company, to enter into contracts on behalf

1 of GBRE over 15,000?

2 A I presume, but it's through that chain of
3 command. I can't tell you the documentation
4 sequence, but the answer is yes, I believe.

5 Q So the ultimate authority as far as contracting
6 on behalf of GBRE would have to come from the
7 Board of Directors, if the contract was over
8 15,000?

9 A That's my belief, but I don't have any facts to
10 support that.

11 Q Okay. Is it your contention today that Kevin
12 Cornelius did not have proper authority to enter
13 into the contracts that are the subject of this
14 litigation?

15 A I would guess to the extent they exceeded the
16 value of 15,000, without prior approval I would
17 say, yes, he did not have authority.

18 Q And that authority would have to come from OSGC's
19 Board of Directors, even though the contract
20 states GBRE?

21 A Again, you are back to that point of the
22 ownership chain, but the answer is, yes, I
23 believe the authority would have to come by
24 resolution of the Board of OSGC.

1 Q And what do you base that on?

2 A Well, a lot of this is my own estimate and behalf
3 of the sequential ownership sequence, and I'm not
4 an attorney and I cannot really dissect that for
5 you, but that's my belief

6 Q Okay. And is that based on documents that you
7 reviewed?

8 A No, just the ownership chain.

9 Q And how were you made aware of the ownership
10 chain?

11 A Well, as we were putting together by affidavit
12 and I reviewed Patty's, that sequence is one of
13 the questions that's answered in there.

14 Q All right. I wanted to go over some of the
15 exhibits that we went over with Ms. Hoeft. I'm
16 going to first show you Exhibit A, the Master
17 Lease Agreement. I take it you have taken a look
18 at that prior to today's date?

19 A I have not -- could not recite it line and verse.

20 Q Right. Me, neither. Now at one point you have
21 reviewed that contract, correct?

22 A Yes.

23 Q Okay. Now are you familiar with waivers of
24 sovereign immunity regarding tribal -- tribes or

1 tribal entities?

2 A Yes, I am.

3 Q Okay. If you could go to Page 13 of Exhibit A,
4 Paragraph H. That language there, do you see
5 that?

6 A Yes, I see that.

7 Q In your experience would this be fairly standard
8 language regarding a waiver of tribal immunity or
9 tribal entity immunity?

10 MR. PYPER Objection, calls for a legal
11 conclusion. You can answer.

12 THE WITNESS. I don't think this has any
13 reference at all to tribal immunity

14 BY MR. DOMBROWSKI.

15 Q Okay. If it states that all actions in
16 connection with this agreement shall take place
17 in federal or state court situated in Cook
18 County, is it your understanding, and I
19 understand you are not a lawyer, have you ever
20 dealt with clauses like in contracts involving
21 tribes or tribal entities?

22 A Yes, but that doesn't relate to tribal immunity.

23 Q Okay. And what do you base that opinion on?

24 A Well, that's standard contractual terms in

1 anything where you establish jurisdiction on a
2 commercial contract.

3 Q Are you of the understanding that if a Tribe or
4 tribal entity waives tribal immunity, those words
5 do not have to be in the waiver?

6 MR. PYPER: Objection, calls for a legal
7 conclusion.

8 THE WITNESS: Like I said, I don't know
9 in that language has anything to do with tribal
10 immunity. I'm confused by your question.

11 BY MR. DOMBROWSKI:

12 Q Okay. I'm going to move on, because we are
13 getting into legal details. All right?

14 A Okay.

15 Q And, as you said, you are not giving legal
16 opinions today, is that right?

17 A I hope so. We're all in deep trouble, if that's
18 true.

19 Q Okay. We will move on from A. Now if we look at
20 Exhibit B, this is the Operation and Maintenance
21 Agreement. Have you ever taken a look at Exhibit
22 B before today's date?

23 A Yes. I am aware of this, yes.

24 Q And you are of the understanding that A and B are

1 the contracts or proposed contracts or agreements
2 that are the subject of this lawsuit, correct?

3 A Yes.

4 Q Have you ever attended a General Tribal Council
5 meeting of the Oneida Tribe of Wisconsin in 2014,
6 2013 or 2012?

7 A No, I have never.

8 Q Okay. And, sir, before your deposition today in
9 preparation for your deposition, other than
10 meeting with your attorney, did you look at any
11 specific documents or pictures, videos or
12 anything like that?

13 A No It was just documents produced from the
14 files with the Business Manager of Seven Gens.

15 Q And what documents were those?

16 A Well, I believe they have been produced and
17 provided, because she was very busily providing
18 them to our legal counsel, and they are mostly
19 resolutions and charters of the corporations
20 involved, and they are attached to our
21 affidavits.

22 Q Okay. So as far as the resolutions, that would
23 be within the document entitled, "Defendants'
24 Oneida Tribe of Indians of Wisconsin and Oneida

1 Seven Generations Corporation Response to Rider
2 for Deposition of Gene Keluche." Let me show it
3 to you.

4 A You have to help me with that one.

5 Q Sure. Are those the documents that you are
6 talking about?

7 A Oh, yes. These documents, plus the documents I
8 think that appeared in Patty's affidavit, also.
9 There were some documents produced for her, I
10 believe.

11 Q Do you recall what those were?

12 A Well, no, they were given to counsel. She worked
13 on those and drafted those, so I couldn't
14 comment, but I know that we were sharing a lot of
15 documents trying to get ready for this
16 presentation.

17 Q Okay. All right. What I'm going to do is we
18 will move on. You can have those in front of
19 you. We're going to move on to your affidavit.
20 As far as your affidavit is concerned, we have
21 marked that as Exhibit H, and I'm going to show
22 that you to. Is Exhibit H your affidavit?

23 A Yes.

24 Q And you were requested to sign off on the

1 affidavit related to this case, correct?

2 A Yes. We consulted in putting it together, and
3 then I reviewed and signed it.

4 Q Let's go first to Paragraph 3 of your affidavit.
5 It says, "In accordance with its charter, OSGC's
6 business offices are located on the Tribe's
7 reservation." Do you see that?

8 A Yes.

9 Q In 2012 and 2013 did GBRE and OSGC have the same
10 business address?

11 A I don't know that. I'm not sure GBRE had a
12 business address, but there were some files and
13 some records in that building I know.

14 Q Let's go to Paragraph 8 of your affidavit. In
15 Paragraph 8 you are quoting the Sovereign
16 Immunity Ordinance of the Tribe itself, correct?

17 A Yes.

18 Q And within that ordinance it appears that a
19 tribal entity would be able to waive tribal
20 entity immunity such as it exists on its own
21 behalf, is that right?

22 A By resolution of its -- Yes, by resolution I
23 believe it can.

24 Q Is it your understanding in 2013 that GBRE, the

1 LLC, could waive its own tribal entity immunity
2 on its own behalf?

3 A No.

4 Q Why?

5 A Well, because it's not a tribal -- it's not an
6 instrumentation of the Tribe. It is not a tribal
7 entity.

8 Q Why would you say it's not a tribal entity?

9 A Because it's an LLC chartered in Delaware. I
10 don't know what it is.

11 Q So now you would consider OSGC a tribal entity?

12 A Yes, because it was chartered by the Tribe.

13 Q And then OSGC actually set up GBRE, is that
14 correct?

15 A Through that chain of command that I went through
16 with you.

17 Q But even taking into consideration the chain of
18 command, OSGC ultimately would be the owner of
19 GBRE, correct?

20 A Yes.

21 Q Now in Paragraph 9 you state, "I have reviewed
22 the resolutions maintained by the OSGC Board of
23 Directors meetings from 2010 to the present,"
24 correct?

1 A Yes.

2 Q Did you review every resolution by the OSGC Board
3 of Directors from 2010 to the present?

4 A I believe I did. I don't have any way to know if
5 it was a complete list. I believe I have seen
6 them.

7 Q Who provided those for you?

8 A It would be my business manager at OSGC, Becky
9 Demmuth.

10 Q And what did Becky do to gather these OSGC Board
11 of Director meetings?

12 A To my knowledge, she maintained that whole set of
13 records. They were in files at the office.

14 Q Okay. How many were there?

15 A Again, I couldn't guess. Twenty, 30. Pick a
16 number

17 Q Okay. So as far as your rider is concerned, the
18 rider which I believe is in front of you now, is
19 every resolution that Ms. Demmuth accumulated for
20 you attached or is that a partial list?

21 A I believe it to be a complete list.

22 Q Okay. So believe every resolution passed by
23 OSGC's Board of Directors is affixed to your
24 rider?

1 A To the best of my knowledge, yes.

2 Q Okay. Now is there any qualifications on those
3 resolutions like a subject matter or you believe
4 all resolutions are there?

5 A Well, I have no way to distinguish. I don't know
6 what your question is.

7 Q Okay. Well, this is a contract case, it's an
8 intentional tort case. Were the attachments
9 limited to resolutions regarding contracts or
10 were they broad to encompass all resolutions?

11 A I believe they are chronologically sequential and
12 they are complete as she has. That's what I
13 believe.

14 Q And as far as those resolutions are concerned,
15 what do they generally address?

16 A With the business of Seven Generations? You are
17 saying generally?

18 Q Right. Are they all related to contracts or what
19 is the general tenor of all the resolutions that
20 have affixed to the rider?

21 A It would tend to be business transactions. I
22 don't know if they would all be contracts.

23 Q Okay. Is it your understanding in 2012 and 2013
24 that any contract that was to be signed or signed

1 by an officer of OSGC would have to be approved
2 by resolution of the OSGC Board?

3 A Certainly if they exceeded 15,000, that's one
4 part of my condition, and if they raised any
5 issues of sovereign immunity, I know they would
6 be

7 Q Okay. Well, if there were contracts over 15,000
8 that OSGC, an officer OSGC or a member of the
9 OSGC board wanted to enter into that did not
10 involve sovereign immunity, but was still over
11 \$15,000, would they have to go before the Board
12 and have the Board of Directors of OSGC pass a
13 resolution?

14 A I don't believe so I think within the normal
15 course of business he was authorized to transact
16 with those limitations That's the only thing
17 I'm aware of.

18 Q When you say "he," we're talking about Kevin
19 Cornelius?

20 A The CEO or CFO. Whoever it is in their normal
21 course of business

22 Q And as far as these contracts are concerned that
23 we are here for today, Exhibits A and B, they
24 talk about a value of over 15,000, and arguably

1 there is language that can be interpreted as a
2 form of a waiver of sovereign immunity. Given
3 those two caveats to Exhibits A and B, is it your
4 contention that Kevin Cornelius or Bruce King
5 needed to get a resolution from the Board of
6 Directors of OSGC to approve the signing of those
7 contracts?

8 MR. PYPER: I'm going to object on the
9 grounds of it calls for a legal conclusion and an
10 inaccurate representation of them, but you can go
11 ahead.

12 THE WITNESS: You started out by
13 excluding two conditions, 15,000 and excluding a
14 waiver of sovereign immunity. What was your
15 question then?

16 BY MR. DOMBROWSKI:

17 Q If, for instance, these contracts, we know that
18 they are of a value of more than 15,000?

19 A So we are talking about these contracts?

20 Q Right.

21 A Okay. Gotcha.

22 Q And we know by some interpretation that there is
23 sovereign immunity waivers. I'm speaking
24 specifically of these contracts A and B. Is it

1 your contention that Kevin Cornelius or Bruce
2 King needed to get permission by way of
3 resolution from OSCG's Board of Directors to
4 execute or sign these contracts?

5 A That's my belief.

6 Q And what do you base that on?

7 A Well, hold it. Are we excluding the dollar limit
8 and we are excluding sovereignty?

9 Q No.

10 A Well, because of those two conditions alone I
11 would say they were not authorized to sign, if
12 that's the question

13 Q That is the question.

14 A Okay.

15 Q So based on my representations of the contracts,
16 it's your contention that Kevin Cornelius, when
17 he was CEO of OSCG and president of GBRE did not
18 have the authority to sign Exhibits A and B?

19 A That's my contention.

20 Q And even though the contract does not refer to
21 OSCG, Kevin Cornelius would still need permission
22 from OSCG's Board of Directors to sign off of
23 Exhibits A and B?

24 MR. PYPER: Objection, calls for a legal

1 conclusion. Go ahead and answer.

2 THE WITNESS: Again, this goes to our
3 chain of ownership and how far up the ownership
4 chain you go to get approval of shareholders. I
5 can't tell you the mechanism or the correct
6 procedure at this level, at the LLC level. That
7 would have to be executed in order to authorize.
8 I just don't know.

9 BY MR. DOMBROWSKI:

10 Q Okay. So is it fair to say you are not sure
11 whether Kevin Cornelius was acting outside the
12 scope of his authority when he signed contracts A
13 and B or he was acting outside his scope of
14 authority?

15 A I believe he's acting outside the scope, but as
16 far as the approval process that might have
17 theoretically existed, I can't comment.

18 Q So it's your belief that he acted outside the
19 scope of his authority in signing A and B?

20 A Yes.

21 Q Even though he was CEO of OSGC and president of
22 GERE at the time?

23 A Yes, because he could not have done it in either
24 roles.

1 Q As far as GBRE is concerned, even though it was
2 an LLC, the officers of the LLC needed permission
3 to act even on behalf of the LLC being GBRE from
4 OSGC?

5 MR. FYPER: Objection calls for a legal
6 conclusion.

7 THE WITNESS: From the shareholder, and
8 I believe the shareholder is Oneida Blocker, and
9 I don't know how you get are there from here.

10 BY MR. DOMBROWSKI:

11 Q Okay. Other than a resolution by the Board of
12 Directors of OSGC regarding contracts over 15,000
13 or tribal immunity, is there any other way to get
14 approval from the OSGC Board of Directors other
15 than by resolution?

16 A Not to my knowledge, and that's an interesting
17 thing. A resolution, you will see that provision
18 in the Tribe itself, and it's in the
19 instrumentality of the Tribe, namely a
20 corporation run by the Tribe, and the resolution
21 form seems to be the approval form.

22 Q And you are not aware of any other form of
23 approval?

24 A I'm not aware of any other variant.

1 Q Now in your role as managing agent of OSGC, do
2 you have any other roles right now related to the
3 Oneida Tribe or any other tribal entity?

4 A None. I have none. Oh, any other tribal entity?
5 Is that what you just said?

6 Q Yes.

7 A Oh, any other Tribe anywhere?

8 Q No, tribal entity.

9 A Meaning this Tribe?

10 Q Right.

11 A Okay. No.

12 Q Have you or someone at your direction reviewed
13 the Tribe's financial statements or bank
14 statements from 2011 to 2014 in relation to OSGC?

15 A I have had no access to tribal documents at that
16 level.

17 Q But you do have access to the OSGC documents?

18 A Yes. Like I said, we report regularly on the
19 status, and I have been -- since I have become a
20 managing director, I have been submitting -- I
21 think there's an annual report that was submitted
22 during that time interval.

23 Q Is it your understanding that in 2011, 2012 and
24 2013 that the Tribe itself loaned money to OSGC?

1 A No, they seemed to -- the transactions between
2 the Tribe, they have tried to maintain the
3 independence of the Seven Gens to operate They
4 have been loans mostly, and Seven Gens has been
5 authorized to borrow money on its own behalf,
6 because it has its own asset base, so there's
7 been very few other than there was an investment
8 I think that related to the waste to energy Green
9 Bay project That was the only time I saw in the
10 records moneys being moved from the parent to the
11 subsidiary.

12 Q And what type of transaction was that? Was that
13 a loan from the Tribe to OSGC?

14 A As I recall, it was a \$2 million investment
15 Funds came down that were not to be repaid and a
16 \$2 million loan.

17 Q Do you know where that money sits today?

18 A Where it sits? I would guess it's been absorbed.
19 The waste to energy assets are up around
20 \$4 million I would think they were all expended
21 on the waste to energy project.

22 Q Have you ever seen any documentation or has
23 anyone from the Tribe or the Business Committee
24 or OSGC or any tribal entity told you that that

1 money that you spoke of regarding the Green Bay
2 project was in any way transferred or promised to
3 the plaintiffs here regarding their plastics to
4 oil project?

5 A Not to my knowledge at all, because I had the
6 impression when it came in it was spent, and it
7 was before the whole plastic to oil discussion
8 even occurred.

9 Q Is it your understanding that GBRE and OSGC are
10 both parties in this Green Bay litigation?

11 A I believe GBRE is, because they have got the
12 claim against -- what you are calling litigation
13 is just a claim -- against the city for
14 rescinding the PUC inappropriately the CUP
15 inappropriately. I don't know that anybody else
16 is involved in that transaction.

17 Q Okay. Regarding these contracts that we have
18 talked about, Exhibits A and B, and discussions
19 that Bruce King and Kevin Cornelius had before
20 the General Tribal Council, there were funds
21 sought by the parties from the Bureau of Indian
22 Affairs. Are you aware of that?

23 A I'm aware that in the original project, which was
24 the municipal waste to energy, that they had

1 received a conditional commitment from the bank
2 to fund that project conditional upon a BIA
3 guarantee, but the guarantee was never finalized
4 and the bank, I don't know if they withdrew their
5 commitment or if it was just null and void.

6 Q Is that your understanding regarding the plastics
7 to oil project or the Green Bay project?

8 A Just the Green Bay. I know nothing about
9 financing for plastic to oil.

10 Q Have you had experience with the Bureau of Indian
11 Affairs loan guarantees regarding projects?

12 A Yes.

13 Q How does that work as far as if a Tribe or a
14 tribal entity wants to fund an energy project
15 such as this one, plastics to oil, how does that
16 process work, if you want the Bureau of Indian
17 Affairs to essentially guarantee loans to begin a
18 project?

19 A Well, it goes through an underwriting process
20 very much like a commercial bank. There's
21 typically a feasibility study. It has to be
22 shown to be a viable project. And they are
23 always looking for methods of repayment, just
24 like any other lender would, and it's part of a

1 loan application approval that you send or a
2 banking institution would send to the Bureau on
3 behalf of the Tribe or the Tribe would send
4 directly in order to induce the BIA to use their
5 loan guarantee, they have got about a \$200
6 million fund, to guarantee that project
7 specifically.

8 Q These type of Bureau of Indian Affairs loan
9 guarantees can only be sought and granted if
10 there is an Indian Tribe involved in the
11 transaction?

12 A It's specifically only for federally recognized
13 Indian tribes.

14 Q So if in this case there was an application
15 regarding a Bureau of Indian Affairs loan, the
16 Oneida Tribe or a tribal entity must be the one
17 that is seeking that loan, correct?

18 A Yes. Well, I can't give you line and verse on
19 how the application form works, but if the Tribe
20 is applying for the guarantee, but it's a joint
21 application from the lending institution and the
22 Tribe because they are guaranteeing a loan. So
23 it's almost a three-part-type transaction.

24 Q But such as a case as this, this type of energy

1 project, it would have to be the Tribe, the
2 Oneida Tribe itself, who was seeking the loan
3 guarantee to back the project, correct?

4 A Well, it works this way. They are seeking a loan
5 from a bank. The bank is the one that's going to
6 receive the guarantee from the federal government
7 in order to make that loan. It's a 90 percent
8 guarantee and 10 percent is exposed.

9 Q But that seeking of the Bureau of Indian Affairs
10 loan guarantee would have to be sought by the
11 Oneida Tribe itself?

12 A I'm not positive of that, because the bank acts
13 like they are involved in that application
14 because it's their guarantee

15 Q But it would have to be at least an entity
16 related to the Tribe, correct?

17 A Certainly the borrower has to be a Tribe

18 Q Okay. The borrower itself has to be an Indian
19 tribe?

20 A Yes.

21 Q Now it is the contention of this lawsuit in part
22 that the Wisconsin Bank & Trust withdrew from the
23 plastics to oil project because of the
24 dissolution of OSGC? Is that your understanding

1 of why the Wisconsin Bank & Trust withdrew its
2 commitment to this particular project?

3 MR. PYPER: I'm going to object, assume
4 facts not in evidence, and you are outside the
5 scope of the sovereign immunity or the personal
6 jurisdiction.

7 THE WITNESS. Am I to answer?

8 MR. PYPER: If you can convince me that
9 the withdrawal -- if there was a commitment, the
10 withdrawal by the bank of that commitment relates
11 to personal jurisdiction or sovereign immunity, I
12 will let him answer.

13 MR. DOMBROWSKI: We have already
14 discussed in detail the dissolution. This refers
15 to the dissolution of the -- the dissolution vote
16 of OSGC, and it's all actually related, the
17 financing, and it's all in the complaint. I
18 understand that the affidavit is somewhat
19 limited, but we have already been into what
20 Mr. Keluche's duties and responsibilities are as
21 it relates to OSGC, and I think that's related to
22 the ultimate issue in the case, and I think his
23 affidavit actually touches on it.

24 MR. PYPER. I don't agree. Don't answer

1 the question.

2 MR. DOMBROWSKI: So you are instructing
3 him not to answer?

4 MR. PYPER: Because it's outside the
5 scope of what we agreed to, and it invades the
6 nation's sovereignty, if we don't stick with the
7 jurisdictional issues. What the bank did or did
8 not do upon dissolution has nothing to do with
9 sovereign immunity nor with personal
10 jurisdiction.

11 BY MR. DOMBROWSKI:

12 Q So, Mr. Keluche, Mr. Pyper is instructing you not
13 to answer the question. Are you going to take
14 his advice and not answer the question?

15 A Yes.

16 MR. DOMBROWSKI: Based on that
17 representation, I'm going to certify that
18 specific question.

19 BY MR. DOMBROWSKI:

20 Q In your role as agent, managing agent of OSGC,
21 have you ever had any contact related to your
22 duties with Wisconsin Bank & Trust?

23 A Yes.

24 Q In what context?

1 A Well, the Consulting Agreement I have with the
2 Tribe was to try and stabilize business
3 relationships, and they have a business
4 relationship there, so I called on them with
5 Mr. Colins to understand the situation of loans
6 and their desire to work with the Tribe on loans.
7 So we really met with them just to introduce
8 ourselves, to let them know that the Tribe's
9 proceeding in an orderly way to restructure their
10 assets and go through potentially a dissolution,
11 as it had already showed up in popular press, and
12 so that was the nature of our relationship, was
13 just to meet with them and understand the nature
14 of their relationship.

15 MR. DOMBROWSKI. Okay. Thank you. I
16 don't have anything further.

17 THE WITNESS: Thank you.

18 MR. DOMBROWSKI. I appreciate it.

19 (At 2:23 p.m. the deposition concluded.)
20
21
22
23
24