

42258

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

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

Plaintiffs,)

-v-)

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

Defendants.)

No. 14 L 2768 (Y)

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DOROTHY BROOKS
CLERK OF CIRCUIT COURT
LAW DIVISION

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**PLAINTIFFS' RESPONSE IN OPPOSITION TO THE
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

NOW COME Plaintiffs ACF LEASING, LLC, ACF SERVICES, LLC and GENERATION CLEAN FUELS, INC. (collectively, "ACF"), by and through their attorneys, Sanchez Daniels & Hoffman LLP, and for their Response in opposition to the Defendants, ONEIDA SEVEN GENERATIONS CORPORATION ("OSGC") and THE ONEIDA TRIBE OF INDIANS OF WISCONSIN'S ("the Tribe") Motion to Dismiss for Lack of Personal Jurisdiction, state as follows:

FACTUAL BACKGROUND

The relationship between ACF and the Tribe/OSGC began in August of 2012. (See Affidavit of Michael Galich attached as Ex. 2, ¶2.) On or about August 7, 2012, Kevin Cornelius (CEO of OSGC, President of GBRE and Tribe member) and Bruce King (CFO of OSGC, Treasurer of GBRE and Tribe member) gave a presentation regarding energy projects related to the Tribe at a Department of Energy conference in Wisconsin. (Ex. 2, ¶2.) After the conference, Michael Galich (ACF operations executive) met with William Cornelius, (OSGC



Board President), Kevin Cornelius (OSGC CEO) and Bruce King (OSGC CFO), who held themselves out as representatives of the Tribe, to discuss energy projects for the Tribe. (Ex. 2, ¶2.) Shortly thereafter, Michael Galich met with Kevin Cornelius and Bruce King in Illinois to discuss pursuing a specific plastic to energy project (the “Project”) with the Oneida Tribe. (Ex. 2, ¶2; *see also* the Tribe’s and OSGC’s Responses to Plaintiffs’ First Request to Admit attached hereto as Exs. 3 and 4, respectively, ¶7.)

After this first meeting in Illinois, Eric Decator, ACF counsel, drafted a Joint Venture Agreement between OSGC and an ACF entity for the development and operation of the Project with the Tribe. (*See* a copy of the Affidavit of Eric Decator attached hereto as Ex. 5, ¶2; *see also* a copy of the Joint Venture Agreement attached thereto as Ex. 5-A; Ex. 2, ¶4.) In or about October, 2012, Eric Decator (ACF) and Michael Galich (ACF) participated in numerous weekly telephone calls in Illinois utilizing ACF’s conference call number with Kevin Cornelius (OSGC CEO) and Bruce King (OSGC CFO) to discuss the Project. (Ex. 2, ¶4; Ex. 5, ¶3.) On or about October 22, 2012, Kevin Cornelius and Bruce King, who again introduced themselves as representatives of OSGC/the Tribe, met again in Illinois with Michael Galich, Eric Decator, and Louis Stern (ACF member) regarding the Project. (Ex. 2, ¶6; Ex. 5, ¶4.)

At this second meeting in Illinois, Kevin Cornelius and Bruce King advised ACF that the Tribe needed to revise the structure of the initial agreement for political reasons and would utilize an entity known as GBRE to lease the equipment for the Project. (Ex. 2, ¶6; Ex. 5, ¶6.) ACF agreed to contract with GBRE for the Project given that Kevin Cornelius and Bruce King led ACF to believe that OSGC/the Tribe were utilizing GBRE for tax purposes. (Ex. 5, ¶6.)

On or about October 26, 2012, Equity Asset Finance, LLC (“EAF”) and GBRE entered into a Commitment Letter for EAF to provide financing for the Project. (Ex. 5, ¶5.) Pursuant to

the Commitment Letter, Bruce King arranged for \$50,000 to be wired from OSGC's bank account to the bank account of EAF on November 6, 2012. (Ex. 5, ¶5.) After OSGC wired the initial funds, Michael Galich, Eric Decator, Louis Stern (an ACF member), Matt Eden (OSGC's financial advisor), and Joseph Kavan (OSGC's counsel) participated in numerous weekly telephone conferences utilizing ACF's conference call number to negotiate the agreements and discuss the Project. (Ex. 2, ¶7; Ex. 5, ¶6.)

On or about January 31, 2013, Louis Stern (ACF), Michael Galich (ACF), Kevin Cornelius (OSGC) and Bruce King (OSGC) attended a meeting with the Tribe's Business Committee to give a presentation and answer questions regarding the Project. (Ex. 2, ¶8; *see* a copy of the Deposition of Patricia Hoeft attached as Ex. 6, p. 43 L. 1-8.) Between January and April of 2013, Eric Decator and Michael Galich continued to participate in weekly calls in Illinois with Kevin Cornelius and Bruce King regarding the details and financing of the Project and obtaining a Bureau of Indian Affairs loan guarantee for the Project, a guarantee only given to a tribe as a borrower. (Ex. 2, ¶¶9, 11; Ex. 5, ¶7, 9; *see also* a copy of the Deposition of Gene Keluche attached as Ex. 7, p. 47 L. 9-20.) On March 11, 2013, Kevin Cornelius and Bruce King came to Illinois for a third meeting with Louis Stern, Michael Galich and Eric Decator to review the approval letter issued by the Wisconsin Bank & Trust related to financing the Project. (Ex. 2, ¶10; Ex. 5, ¶8.)

In April, 2013, Kevin Cornelius advised Eric Decator that 3 of the OSGC Board members approved the loan commitment letter and that he needed one more Board member's approval before he could sign it. (Ex. 5, ¶10.) Kevin Cornelius repeatedly stated during the negotiations for the Project that he did not do anything without approval of the OSGC Board. (Ex. 5, ¶10.) In fact, the elected Secretary of the Tribe testified that "OSGC would have to approve anything

that its entities did” and had control over the approval process of any contract of GBRE. (Ex. 6, p. 46 L. 1-5, 6-11, 20-23.) On or about May 3, 2013, Kevin Cornelius informed ACF that 4 out of 5 OSGC Board members approved the Commitment Letter. (Ex. 2, ¶13; Ex. 5, ¶10; *see also* May 3, 2013 email attached as Ex. 5-C.)

On or about May 6, 2013, Michael Galich held a conference call with Kevin Cornelius and Bruce King to discuss financing, the agreements and the Project. (Ex. 2, ¶14.) Around the same time, OSGC’s attorney, Joseph Kavan, advised Eric Decator that he needed in-house legal and Board approval before the Master Lease Agreement and the Operations and Maintenance Agreement (collectively, “Agreements”) could be signed. (Ex. 5, ¶11.) Louis Stern and Kevin Cornelius signed the Agreements in May and June, 2013. (Ex. 2, ¶14; Ex. 5, ¶12.)

From the beginning, the proposed agreements with the Tribe and OSGC contained choice of law and jurisdictional clauses waiving sovereign immunity. (See a copy of the Joint Venture Agreement attached as Ex. 2-A, ¶¶7.15 and 7.17.) The Master Lease Agreement provides, “THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN ILLINOIS AND SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH ILLINOIS LAW. LESSEE AND LESSOR AGREE THAT ALL LEGAL ACTIONS SHALL TAKE PLACE IN THE FEDERAL OR STATE COURTS SITUATED IN COOK COUNTY, ILLINOIS. (See a copy of the Master Lease Agreement attached as Ex. 1-A, p. 13, ¶14(h).) The Operations and Maintenance Agreement provides, “This Agreement shall be construed and governed by the laws of the State of Wisconsin. Any disputes pertaining to this Agreement shall be determined exclusively in a court of competent jurisdiction in the County of Cook, State of Illinois.” (See a copy of the Operation and Maintenance Agreement attached as Ex. 1-B, p. 13, ¶15.)

Throughout the negotiation of the Agreements for the Project, Kevin Cornelius, Bruce King, William Cornelius (OSGC Board President), Kathy Delgado (OSGC Board member) and Brandon Stevens (Oneida Business Committee member) repeatedly represented to ACF that they were acting on behalf of OSGC/the Tribe and referred to the Tribe, OSGC and GBRE as though they were one and the same. (Ex. 2, ¶20; Ex. 5, ¶17.) Kevin Cornelius and Bruce King repeatedly corresponded with ACF regarding the Project utilizing OSGC email addresses and OSGC letterhead and utilized OSGC's office. (Ex. 2, ¶21; Ex. 5, ¶17; Ex. 4, ¶11.) Kevin Cornelius and Bruce King represented to ACF that GBRE was only a vehicle for tax purposes, that the Agreements were with the Tribe and OSGC and that Kevin Cornelius had authority to enter into the Agreements and agree to waive sovereign immunity on behalf of the Tribe, OSGC and GBRE. (Ex. 2, ¶22; Ex. 5, ¶17, 18.)

In reliance on the representations of Kevin Cornelius, Bruce King, and William Cornelius that they had the permission of the Tribe and OSGC to enter into the Agreements, ACF continuously performed a variety of tasks to meet its obligations under the Agreements once they were executed. (Ex. 2, ¶23; Ex. 5, ¶19.) In fact, Kevin Cornelius and Bruce King sent numerous documents related to the Project to Eric Decator in Illinois, but none of these documents referred to GBRE, which was consistent with ACF's understanding that the actual parties to the Project were OSGC/the Tribe. (Ex. 5, ¶13.)

In August, 2013, Bruce King advised Eric Decator that OSGC's Board wanted to review the Project again to determine whether to proceed and sent Eric Decator his slide presentation for the OSGC Board, which included a warning that OSGC "may have additional liability to [ACF] partners in project" if it did not proceed. (Ex. 5, ¶15.) On or about August 15, 2013, ACF sent a

letter to OSGC's Board at the request of Bruce King regarding the Project. (Ex. 2, ¶17; Ex. 5, ¶16; *see also* the August 14, 2013 Letter attached as Ex. 5-E.)

On August 30, 2013, Bruce King (CFO of OSGC/Treasurer of GBRE), Kathy Delgado (OSGC Board member), William Cornelius (OSGC Board President), Brandon Stevens (Oneida Business Committee member) and Michael Galich went to ACF's plant in Bakersfield, California to examine the type of machines that would be utilized in the Project. (Ex. 2, ¶19.) Based on all of the foregoing meetings, telephone conferences and visits to ACF's plant by the Tribe and OSGC, ACF believed it was negotiating the Project with the Tribe and OSGC. (Ex. 2, ¶21; Ex. 5, ¶19.) ACF relied on the representations of Kevin Cornelius, Bruce King, William Cornelius, Kathy Delgado, and Joseph Kavan that they were acting on behalf of the Tribe/OSGC. (Ex. 2, ¶20-23; Ex. 5, ¶17-19.) In December of 2013, the General Tribal Council of the Tribe voted to dissolve OSGC. (Exs. 3 and 4, ¶27.)

ARGUMENT

This Court may exercise personal jurisdiction over the Tribe and OSGC under the Illinois long-arm statute. 735 ILCS 5/2-209. In determining whether plaintiffs have established a *prima facie* case of personal jurisdiction, a court may receive and weigh affidavits and must resolve any conflicts that exist in the affidavits and pleadings in the plaintiff's favor. *Aasonn, LLC v. Delaney and Performance Management Strategies, LLC*, 2011 IL App (2d) 101125, 961 N.E.2d 939, 945 (2011).

I. Specific Jurisdiction under the Illinois Long-Arm Statute

Pursuant to section 2-209(a) of the Illinois long-arm statute, any person, who in person or through an agent, (1) transacts business in Illinois, (2) commits a tortious act in Illinois or (7) makes or performs a contract or promises substantially connected with Illinois, thereby submits

such person to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts. 735 ILCS 5/2-209.

A. 2-209(a)(1) Transaction of Business within Illinois

For purposes of section 2-209(a)(1), the transaction of business means business in a commercial aspect. *Kalata v. Healy*, 312 Ill. App. 3d 761, 767, 728 N.E.2d 648, 654 (1st Dist. 2000). The focus is upon the defendant's activities within this State and whether those activities are sufficient to subject the defendant to the personal jurisdiction of Illinois courts. *Id.* The determination of whether a defendant sufficiently transacted business in Illinois requires consideration of several factors including, who initiated the transaction; where the contract was entered into; and where the performance of the contract was to take place. While none of these factors is controlling, each has been held to be significant. *Id.* at 768.

In *Kalata*, the court held that the defendant's telephone calls with and mail communications to the Illinois plaintiff to negotiate and execute the joint venture agreement satisfied the long-arm statute. *Id.* Specifically, the court found that the defendant telephoned the plaintiff in Illinois at least 20 times to discuss the agreement. *Id.* Further, the defendant mailed bank documents in connection with the joint venture agreement to the plaintiff in Illinois. *Id.*

Likewise, Kevin Cornelius (OSGC CEO) and Bruce King (OSGC CFO) called ACF representatives in Illinois on approximately seventeen (17) occasions to negotiate an agreement for the Project. (Ex. 2, ¶¶5,7, 9, 11, 13, 14; Ex. 5, ¶¶3, 6, 7, 9, 11, 14, 15.) Furthermore, Kevin Cornelius and Bruce King came to Evanston, Illinois on three occasions to negotiate the agreement for the Project. (Ex. 2, ¶¶3, 6, 10; Ex. 5, ¶¶4, 8.) Moreover, Kevin Cornelius and Bruce King mailed ACF in Illinois numerous documents in connection with the Project, none of which referred to GBRE. (Ex. 5, ¶13.) As in *Kalata*, the Defendants' conduct in this case was

sufficient commercial activity to constitute the transaction of business within Illinois and to confer personal jurisdiction.

B. 2-209(a)(2) Tortious Act

The jurisdictional requirement under the tortious act provision of the Illinois long-arm statute, section 2-209(a)(2), is satisfied if the defendant performs an act or omission that causes an injury in Illinois and the act was tortious in nature. *Kalata* at 766 (finding jurisdiction when the defendant obtained money from the plaintiff in a scheme designed to defraud the plaintiff such that the injury occurred in Illinois). In determining whether a tortious act has been committed, the court's focus is not on the ultimate question of whether the defendant's acts or omissions were tortious, but rather on whether the plaintiff has alleged that the defendant is the author of the acts or omissions. *Id.*

As in *Kalata*, the jurisdiction requirements of the long-arm statute are completely satisfied as the Defendants' conduct was tortious in nature and caused a significant injury in Illinois. Specifically, the Tribe voted to dissolve OSGC which then caused the Wisconsin Bank & Trust to withdraw the application for the Bureau of Indian Affairs guarantee and its commitment to finance the Project. (See a copy of the Complaint attached as Ex. 1, ¶¶40-42.) The dissolution of OSGC caused GBRE to breach its agreement with ACF, which in turn caused ACF an injury in Illinois. (Ex. 1, ¶¶80-91.) As such, the conduct alleged in the Complaint is sufficient to satisfy the jurisdictional requirements of section 2-209(a)(2).

C. 2-209(a)(7) Making or Performance of Any Contract or Promise

Here, the Agreements were the "making or performance of a contract or promise substantially connected with this State." *Kalata* at 766 (finding that the defendant entered into a contract substantially connected with Illinois when the defendant initiated telephone calls with

plaintiff in Illinois, mailed bank documents to the plaintiff in Illinois and conceded to entering into a contract with the plaintiff). OSGC/the Tribe's conduct, not GBRE's, in wiring \$50,000 to Equity Asset Finance LLC in Illinois per the terms of GBRE's Commitment Letter to provide financing for the Project, clearly confers jurisdiction in Illinois under section 2-209(a)(7) of the long-arm statute. (Ex. 5, ¶5.)

II. Due Process

The Illinois long-arm statute further contains a catch-all provision providing that a “court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” *See* 735 ILCS 5/2-209. With the enactment of subsection (c), the long-arm statute has been held to be coextensive with the due process requirements of the Illinois and United States Constitutions. *Aasonn, LLC* at 946. It is generally true that when federal due process concerns regarding personal jurisdiction are satisfied, so are Illinois due process concerns. *Id*

A. Federal Due Process

Federal due process requires that the defendant must have “certain minimum contacts with [Illinois] such that ... maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Morgan, Lewis, Bockius LLP v. The City of East Chicago*, 401 Ill. App. 3d 947, 952, 934 N.E.2d 23 (1st Dist. 2010), *quoting International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

1. OSGC/the Tribe had sufficient minimum contacts with Illinois.

In determining if the federal due process standard has been satisfied when asserting personal jurisdiction over a nonresident defendant, the courts consider whether: (1) the nonresident defendant had sufficient “minimum contacts” with Illinois such that there was “fair

warning” that the defendant may be haled into an Illinois court; (2) the action arose out of or related to the defendant’s contacts with Illinois; and (3) it is reasonable to require the defendant to litigate in Illinois. *Morgan, Lewis, Bockius, LLP* at 954.

The requirements of “minimum contacts” and “fair warning” are satisfied if the defendant has “purposefully directed” its activities at Illinois residents, reached out beyond one state to create continuing relationships with citizens of another state or purposefully derived benefits from its interstate activities. *Morgan, Lewis, Bockius, LLP* at 952. So as long as the contact, whether or not it is physical contact, creates a substantial connection with Illinois, even a single act can support jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Innovative Garage Door Co v High Ranking Domains, LLC*, 2012 IL App (2d) 120117, 981 N.E.2d 488, 495 (2nd Dist. 2012). Furthermore, while jurisdiction over a parent company may not be based merely on its subsidiary’s contacts with the forum state, a subsidiary’s contacts will be imputed to the parent when: (1) there is a basis for piercing the corporate veil, or (2) the subsidiary is conducting the parent’s business rather than its own. See *Old Orchard Urban Limited Partnership*, 389 Ill. App. 3d at 69; *Burnhope v. Nat’l Mortgage Equity Corp.*, 208 Ill. App. 3d 426, 433, 567 N.E.2d 356, 360 (1st Dist. 1990).

a. GBRE’s contacts with Illinois should be imputed to OSGC/the Tribe when GBRE is the Alter Ego of OSGC/the Tribe.

In Illinois, courts will disregard a corporate entity and pierce the veil of limited liability where the corporation is merely the alter ego or business conduit of another person or entity. *Old Orchard Urban Limited Partnership* at 69; *Fontana v. TLD Builders, Inc* , 362 Ill. App. 3d 491, 500, 840 NE 2d 767 (2nd Dist. 2005). The legal separation between a parent corporation and its wholly owned subsidiary will be disregarded where the subsidiary is so controlled, and its affairs

so conducted by a parent that the observance of the fiction of separate identities would sanction a fraud or promote injustice. *Old Orchard Urban Limited Partnership* at 70.

The corporate veil of the Tribe should be pierced because OSGC is so controlled and its affairs so conducted by the Tribe that observance of the fiction of separate identities would promote injustice. Here, OSGC has declared in court that “OSGC is controlled by the Oneida Business Committee, on behalf of the Tribe, its sole shareholder.” (See attached copy of *Kroner v. Oneida Seven Generations Corp* , Case No. 02-14-2011, Response brief of OSGC as Ex. 8 at p. 2.) In addition, OSGC declared that “...since the board of directors [of OSGC] is answerable to the Tribe, the decisions ... ultimately rest with the Tribe.” (Ex. 8, p. 2) OSGC has further admitted that, “[t]he Tribe’s involvement in OSGC, both from a control and operational standpoint, is so pervasive, ...” (Ex. 8, p. p. 8.) These declarations regarding the control and unity between OSGC and the Tribe are further bolstered by the testimony in this case.

Namely, Patricia Hoeft, the elected Secretary of the Tribe’s Business Committee, testified that OSGC was essentially created to make money for the Tribe and was expected to share its profits with the Tribe. (Ex. 6, p. 56 L. 13-17; p. 67 L.22-24; p. 68 L. 1.) The Tribe provides funds to OSGC to be used for projects and has loaned money to OSGC due to a cash flow problem, but OSGC has never paid back those funds to the Tribe. (Ex. 6, p. 85 L. 15-23, p. 86 L. 9-14.) Specifically, the Tribe, as the parent, gave OSGC, its wholly-owned subsidiary, \$2 million, which was not to be repaid and tendered an additional \$2 million loan. (Ex. 7, p. 43 L. 9-16.) Further, the Tribe has the power to dissolve OSGC. (Ex. 7, p. 23 L. 11-19.) All of these facts demonstrate a clear unity between OSGC and the Tribe. Accordingly, any apparent distinction between the two is fictional and should be disregarded.

Moreover, the evidence in this case shows that OSGC/the Tribe controlled the day-to-day operations of GBRE. Testimony has established that while OSGC is ultimately the owner of GBRE, both the Tribe and OSGC have the power to dissolve GBRE. (Ex. 6, p. 52 L. 4-8; p. 37 L. 5-11; Ex. 7, p. 23 L. 21-24; p. 34 L. 17-20.) Moreover, “OSGC would have to approve anything that its entities did,” and had control over the approval process of any contract of GBRE. (Ex. 6, p. 46 L. 1-5, 20-23.) In this case, Kevin Cornelius, as OSGC CEO and GBRE President, only corresponded by OSGC’s email and letterhead and repeatedly represented that he did not do anything without the approval of the OSGC Board. (Ex. 5, ¶10, 17; Ex. 5-C; Ex. 2 ¶¶13, 21.) In addition, OSGC/the Tribe guaranteed loans and extensions of credit to GBRE for the Project. (Ex. 5, ¶¶5, 7; Ex. 7, p. 47 L. 9-20.) As the alter ego, the telephone calls to and meetings in Illinois to negotiate the Agreements by Kevin Cornelius and Bruce King (Ex. 2, ¶¶ 3, 5-7, 9-14; Ex. 5, ¶¶ 3-10) are imputed to OSGC and the Tribe so as to confer personal jurisdiction in Illinois.

b. GBRE’s contacts in Illinois are imputed to OSGC/the Tribe because Kevin Cornelius was the agent of OSGC/the Tribe and conducting OSGC/the Tribe’s business rather than GBRE’s.

Under the Illinois long-arm statute, if a person acts as an agent on behalf of another, the agent's jurisdictional contacts with Illinois are imputed to his principal. *Burnhope* at 433; *Allerion, Inc. v. Nueva Icacos, S.A. de C.V.*, 283 Ill. App. 3d 40, 48, 669 N.E.2d 1158, 1164 (1st Dist. 1996). Likewise, if a subsidiary corporation is acting as the parent corporation’s Illinois agent in the sense of conducting the parent’s business rather than its own, then it is appropriate to assert jurisdiction over the parent. *Alderson v. Southern Company*, 321 Ill. App. 3d 832, 747 N.E.2d 926 (1st Dist. 2001) (holding that subsidiary plant in Illinois acted as parent corporation’s agent such that subsidiary’s activities in Illinois would constitute minimum contacts in Illinois).

sufficient to exercise personal jurisdiction over the parent corporation). The question of agency generally is one of fact. *Burnhope* at 433.

One context in which implied authority arises is where the facts and circumstances show that the defendant exerted sufficient control over the alleged agent so as to negate that person's status as an independent entity, at least with respect to third parties. *Petrovich v. Share Health Plan of Illinois, Inc.* 188 Ill. 2d 17, 42, 719 N.E.2d 756, 770 (1999). To prove the existence of apparent authority, the proponent must show: (1) the principal consented to or knowingly acquiesced in the agent's exercise of authority; (2) based on the actions of the principal and agent, the third person reasonably concluded that the party was an agent of the principal; and (3) the third person justifiably relied on the agent's apparent authority to his detriment. *Letsos v. Century 21-New W. Realty*, 285 Ill. App. 3d 1056, 1064, 675 N.E.2d 217, 224 (1st Dist. 1996).

Here, as in *Alderson*, the Tribe's subsidiaries, OSGC and GBRE, were conducting the Tribe's business in Illinois rather than their own. As in *Alderson*, OSGC is merely a holding company for the Tribe and has established many subsidiaries to carry out its business and for tax purposes. (Ex. 1, ¶¶9, 10, 11, 12, 13; Ex. 5, ¶6; *see also* Affidavit of Patricia Hoeft attached to Defendants' Motion, ¶10,16.) Likewise in *Alderson*, GBRE required the approval of OSGC Board to enter into the Agreements. (Ex. 1, ¶73; Ex. 6, p. 46 L. 1-5, 20-23; Ex. 5, ¶¶10-11.) In addition, OSGC provided funds and the Tribe's Business Committee was involved in meetings and a plant visit for the Project. (Ex. 2, ¶19; Ex. 5, ¶5.) As such, the evidence establishes that GBRE's contacts in Illinois were for the purpose of conducting OSGC/the Tribe's business. Accordingly, personal jurisdiction in Illinois is proper.

Alternatively, Kevin Cornelius was an implied and apparent agent of OSGC/the Tribe. OSGC/the Tribe knowingly acquiesced in Kevin Cornelius' exercise of authority in negotiating

and executing the Agreements when the OSGC Board and in-house counsel were required to approve the Agreements and 4 out of 5 OSGC Board members approved the commitment letter for the Project. (Ex. 5, ¶¶10, 11; Ex. 5-C.) Furthermore, OSGC/the Tribe and Kevin Cornelius made representations in which ACF reasonably concluded that Kevin Cornelius had authority to execute the Agreements and waive sovereign immunity. (Ex. 2, ¶20; Ex. 5, ¶¶13, 17.) ACF believed it was negotiating the Project with the Tribe and OSGC, and relied on Kevin Cornelius' implied and apparent authority to its detriment. (Ex. 2, ¶¶20-23; Ex. 5, ¶¶17, 19.) Hence, jurisdiction over OSGC/the Tribe is proper based on the activities of their subsidiary, GBRE, and their implied and apparent agents, Kevin Cornelius and Bruce King, acting in Illinois.

2. Fair Play and Substantial Justice

In this case, requiring the Defendants to litigate in Illinois does not offend fair play and substantial justice. First, when Kevin Cornelius and Bruce King entered Illinois to negotiate the Agreements on behalf of GBRE, OSGC and the Tribe, it is not unreasonable or unduly burdensome to require the Defendants to return to litigate here. *Morgan, Lewis, Bockius LLP* at 956. Second, ACF, an Illinois resident, has an interest in convenient and effective relief when it suffered financial harm from the Defendant's alleged conduct. (Ex. 1, ¶42.) Thus, Illinois has an interest in providing a means of redress for its injured resident. Third, Plaintiff has a place of business in this state and chose to seek relief in this state, which indicates that Plaintiff has a vested interest in litigating in Illinois. Moreover, the Defendants cannot satisfy their burden to present a compelling case that an exercise of jurisdiction would be unreasonable. *Id.* Accordingly, the exercise of personal jurisdiction over the Defendants comports with federal due process standards.

B. Due Process under Illinois Law

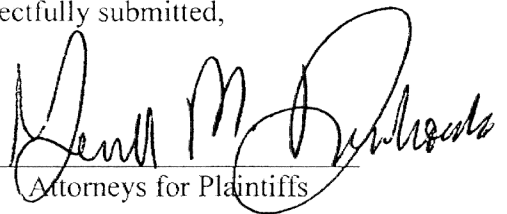
Due process in Illinois requires that jurisdiction is to be asserted only when it is fair, just and reasonable to require a non-resident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or affect interests located in Illinois. *Alderson* at 858. Illinois due process requires that a court exercise jurisdiction over a nonresident defendant only "when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interest located in Illinois." *Aasonn, LLC* at 946. Here the Defendants, through their subsidiary GBRE and their agents, Kevin Cornelius and Bruce King, have engaged in economic activities, namely the negotiation of the Agreements in Illinois with Illinois limited liability companies. In light of these substantial connections by the Defendants in Illinois, it is "fair, just and reasonable" to require them to defend this action in Illinois. As such, Illinois due process standards have been satisfied.

WHEREFORE, Plaintiffs respectfully request that this Court deny OSGC and the Tribe's Motion to Dismiss for Lack of Personal Jurisdiction with prejudice in its entirety, and grant all such other and further relief as is just and necessary.

Heather D. Erickson
Gerald M. Dombrowski
SANCHEZ DANIELS & HOFFMAN LLP
333 W. Wacker Dr., Ste. 500
Chicago, Illinois 60606
312/641-1555
Firm Id. #42258

Respectfully submitted,

By:



Attorneys for Plaintiffs