

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

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

Plaintiffs,)

v.)

Case No. 14 L 2768

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

Defendants.)

FILED B-15
2014 AUG 28 AM 11:33
Clerk of the Circuit Court
of Cook County, Ill.

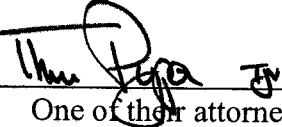
NOTICE OF FILING

TO: Gerald M. Dombrowski, Esq.
Sanchez Daniels & Hoffman LLP
333 West Wacker Drive, Suite 500
Chicago, Illinois 60606

Bryan K. Nowicki, Esq.
Reinhart Boerner Van Deuren S.C.
22 East Mifflin Street
Madison, Wisconsin 53703

PLEASE TAKE NOTICE that on August 28, 2014, the undersigned caused to be filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Law Division, the attached (1) **Affidavit of Bruce King**, (2) **Affidavit of Joseph O. Kavan**, and (3) **Affidavit of Kevin Cornelius**, copies of which are hereby served upon you.

ONEIDA SEVEN GENERATIONS
CORPORATION; and THE ONEIDA
TRIBE OF INDIANS OF WISCONSIN

By: 
One of their attorneys

James B. Vogts, Esq.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon:

Gerald M. Dombrowski, Esq.
Sanchez Daniels & Hoffman LLP
333 West Wacker Drive, Suite 500
Chicago, Illinois 60606

Bryan K. Nowicki, Esq.
Reinhart Boerner Van Deuren S.C.
22 East Mifflin Street
Madison, Wisconsin 53703

U.S. Mail, proper postage prepaid, before the hour of 5:00 p.m., this 28th Day of August, 2014, from the law offices of Swanson, Martin & Bell, LLP, 330 North Wabash Avenue, Suite 3300, Chicago, Illinois 60611.

☒ Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and accurate.



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

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

Plaintiffs,

v.

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

Defendants.

Case No. 14 L 002768

FILED
2014 AUG 28 AM 11:33
CLERK OF THE COURT
OF COOK COUNTY, ILL.

AFFIDAVIT OF BRUCE KING

Bruce A. King states under oath and on personal knowledge:

1. From January, 2012 through August, 2013, I was the Vice-President and Treasurer of Green Bay Renewable Energy, LLC ("GBRE"). I was also the Chief Financial Officer ("CFO") of the Oneida Seven Generations Corporation ("OSGC"). While I was one of over sixteen thousand members of the Oneida Tribe of Indians of Wisconsin ("Tribe"), I held no official position with the Tribe and had no authority to speak on behalf of the Tribe. As a member of the Tribe, I can be likened to a citizen of the State of Wisconsin, who could no more speak on behalf of, or bind, the State of Wisconsin than could I speak on behalf of, or bind, the Tribe.

2. I met Michael Galich and Eric Decator of ACF Leasing, LLC and ACF Services, LLC (collectively "ACF") in August, 2012. I had several meetings with Mr. Galich and Attorney Decator in connection with a potential project to convert plastic waste into oil products

EXHIBIT

1

and to generate energy (the "Project"). Many of my discussions with Mr. Galich and Attorney Decator also included Kevin Cornelius, who was the President of GBRE and the Chief Executive Officer ("CEO") of OSGC. Like me, while Mr. Cornelius was a member of the Tribe, he was not in any position of authority with the Tribe and had no authority to speak on behalf of, or to bind, the Tribe to any agreements.

3. I have read the Affidavits of Mr. Galich and Attorney Decator and dispute much of what they say I represented during my meetings with them. I never represented that the Tribe or OSGC would be parties to any contracts or otherwise be direct participants in the Project between GBRE and ACF if one were ever agreed upon. Nor did Mr. Cornelius make any such representation in my presence. I never represented to either Mr. Galich or Attorney Decator that I had the authority to waive sovereign immunity on behalf of the Tribe, because I had no such authority. Only the Tribe can waive its sovereign immunity, and there is a specific mechanism for doing so that must be followed. I never approached the Business Committee for the Tribe with a request that it waive sovereign immunity because the Tribe was never a direct participant in the Project.

4. During our discussions with Mr. Galich and Attorney Decator, Kevin Cornelius and I explained to them that the Bureau of Indian Affairs ("BIA") would need to guarantee the loan on behalf of GBRE to finance the project expressly because the Tribe was not backing the Project and OSGC did not have sufficient collateral to guarantee GBRE's loan. The loan document from the Wisconsin Bank & Trust ("WBT") indicated that the borrower was not the Tribe but rather GBRE, and that 90 percent was to be a "DOI Guarantee Term Loan." See Exhibit A attached hereto. "DOI" stands for the Department of the Interior, which includes the BIA. Exhibit A is the WBT letter for financing the Project referred to by Mr. Galich in paragraphs 10 and 13 of his Affidavit.

5. During the Spring of 2013, Attorney Joseph Kavan from Kutak Rock LLP represented GBRE in negotiations that led to a Master Lease Agreement and an Operation and Maintenance Agreement (collectively "Agreements") between GBRE and ACF. The negotiations were primarily between Attorneys Kavan and Decator; however, Kevin Cornelius and I also participated in such negotiations on occasion. Because OSGC was going to be a partial guarantor of the WBT loan to GBRE for the Project, Mr. Cornelius and I did tell Attorney Decator that we needed OSGC's Board's approval to enter into an agreement on behalf of OSGC to be a partial guarantor of the loan. I did not, however, tell him that we needed OSGC's Board's approval to enter into the Agreements with ACF because OSGC was not going to be a party to those Agreements.

6. In paragraph 15 of his Affidavit, Attorney Decator references a presentation I made to OSGC's Board in which I included the statement: "may have additional liability to partners in project." The "potential" liability to which I was referring was GBRE's potential liability to ACF, not the Tribe's or OSGC's. GBRE is mentioned throughout my presentation. See Exhibit D to Decator Affidavit. I knew GBRE had signed the Agreements, although I had not given copies to either the Tribe or OSGC. As CFO of OSGC, I knew OSGC would need to know that GBRE could potentially face a liability claim by ACF since OSGC is an indirect owner of GBRE. However, the Agreements only became effective when financing was fully in place, which had not happened as of August, 2013, so any GBRE liability was only a potentiality at that point. I was not referring to OSGC by my reference to "liability to partners" in my presentation.

7. In paragraph 17 of his Affidavit, Attorney Decator states that during the negotiations of the Agreements, Kevin Cornelius and I represented to him that Kevin Cornelius "had authority to enter into the Agreements on behalf of the Tribe, OSGC and GBRE" and that

the Agreements were "with the Tribe and OSGC." That is not true. As I indicated in paragraph 5, above, we told Attorney Decator that Mr. Cornelius had the authority to enter into an agreement on behalf of OSGC to be a partial guarantor of the loan between WBT and GBRE, and we told him that he had authority to enter into the Agreements on behalf of GBRE. I never told him that Mr. Cornelius had any authority to bind the Tribe to the Agreements nor that the Agreements were with the Tribe and OSGC. Nor did Kevin Cornelius ever make such a representation in my presence.

8. In paragraph 18 of his Affidavit, Attorney Decator represents that Kevin Cornelius, Attorney Kavan and I negotiated a waiver of sovereign immunity provision in the Agreements. That is also not true. I had no discussions with Attorney Decator about anything in the Agreements being a waiver of sovereign immunity. GBRE does not have sovereign immunity because it is a limited liability company that was incorporated under Delaware state law. There would have been no reason to discuss a waiver of sovereign immunity provision in the Agreements when neither the Tribe nor OSGC were to be parties to those Agreements. Nor did Attorney Kavan or Mr. Cornelius ever make such a representation in my presence.

9. Attorney Decator also indicates in paragraph 18 of his Affidavit that Mr. Cornelius and I negotiated terms for a choice of law provision in the Agreements. That is likewise not true. I had no discussions with Attorney Decator about a choice of law provision in the Agreements. That was something we left to Attorney Kavan as the attorney for GBRE to negotiate in the interest of GBRE. Nor did Mr. Cornelius ever have any negotiations with Eric Decator about a choice of law provision in my presence.

10. In paragraph 19 of his Affidavit, Attorney Decator states that Mr. Cornelius, Attorney Kavan and I represented to him that "the tribe and OSGC approved and agreed to be bound by the terms of the Agreements, including the waiver of sovereign immunity, and were in

support of the Project.” With the exception of the portion “and were in support of the Project,” the rest of the quoted provision is untrue. I never sought the Tribe’s or OSGC’s approval of the Agreements before they were signed and never gave them copies of the Agreements after they were signed. I did not represent that the Tribe and OSGC had agreed to be bound by the Agreements. I did represent that both the Tribe and OSGC were in support of the Project during the early portion of the Spring of 2013. However, the Tribe voted not to support the Project in May, 2013 if it was to be proposed to be on reservation land. While we continued to negotiate the Agreements on behalf of GBRE thereafter with locations off reservation land, by August 2013 I told ACF that the Tribe and OSGC were no longer in support of the Project.

11. In fact, the presentation I made to the OSGC Board in August, 2013 was to try to rekindle its support for the Project. In a parallel attempt to gain the OSGC Board’s support, ACF wrote a letter to OSGC asking for its support and stated:

[ACF is] writing to you to request your support of the Waste to Energy Project (the “Project”) on which **we are partnering with your subsidiary, Green Bay Renewable Energy (“GBRE”).**

See August 14, 2013 letter attached as Exhibit B (emphasis added). There is no mention of OSGC or the Tribe “partnering” on the Project, only GBRE.

12. As a further attempt to rekindle support for the Project, I traveled to California in the summer of 2013 to view a prototype machine. Brandon Stevens, a Tribe Business Committee member, and Tsyosha?aht Delgado, a member of the OSGC Board, also attended. The Tribe was receiving many questions from Tribal members about the Project, so Mr. Stevens and Ms. Delgado attended simply to collect information to answer such questions. Never in my presence did they, and I did not, state that the Tribe or OSGC was a party to the Agreements or that either had waived its sovereign immunity, as Mr. Galich states and implies in paragraph 20 of his Affidavit. Nor did Mr. William Cornelius make such a statement in my presence.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.

Dated this 13th day of August, 2014.

Bruce A. King
Bruce A. King

WHD/10596672.1



April 26, 2013

Kevin Cornelius, CEO
Bruce King, CFO
Green Bay Renewable Energy, LLC
P.O. Box 257
Oneida, WI 54155

Dear Kevin and Bruce:

Wisconsin Bank & Trust is pleased to inform you a financing package for Green Bay Renewable Energy, LLC has been approved subject to various terms and conditions.

If you are interested in proceeding please counter-sign the letter and return it to us. This commitment will expire on May 3rd, 2013.

Sincerely,

Craig D. Aderhold
Regional President-North

Enclosure



Acceptance:	
	
Kevin Cornelius, CEO Green Bay Renewable Energy, LLC	Date
	
Bruce King, CFO Green Bay Renewable Energy, LLC	Date

Exhibit A



WISCONSIN
BANK & TRUST

4-26-13

Borrower:	Green Bay Renewable Energy, LLC (GBRE)
Type:	90% DOI guaranteed term loan, 10% unguaranteed portion to be participated to Oneida Energy Corp.
Amount:	\$21,777,777
Purpose:	Fund start-up of energy plant
Term/Amortization:	21 years / 20 years (one year multi-advance, interest only, payable monthly)
Estimated Monthly Payment:	1 year interest only then monthly P&I in the amount of \$144,568
Interest Rate:	<ul style="list-style-type: none"> • ½ loan – Prime + 1.0% variable, with floor of 5.0%. • ½ loan - fixed at 5 year Chicago Federal Home Loan Bank + 4.0% for six years (currently 5.04%) then reset every five years thereafter.
Prepayment Penalty:	Flat 5.0% for first five years then 5%, 4%, 3%, 2%, 1% annually declining thereafter if prepaid by another lender.
Collateral:	<ul style="list-style-type: none"> • 90% guaranteed – 1st lien of equipment being financed, all business assets, assignment of master lease. • 10% unguaranteed – unsecured.
Guarantors:	<ul style="list-style-type: none"> • 90% guaranteed – unlimited, unsecured guarantee of Oneida Seven Gen Corp., Oneida Energy Corp., Oneida Blocker Corp. Guarantee of ACF Leasing, LLC secured by and limited to an assignment of the master lease, equipment, buy-back agreement and 49% of GBRE NOI cash flows. • 10% unguaranteed – no guarantees.
Closing Costs:	<ul style="list-style-type: none"> • \$392,000 DOI guarantee fee. • \$108,889 Wisconsin Bank & Trust servicing fee. • All other closing costs including legal fees, engineering fees, feasibility study, appraisal and recording fees are the responsibility of the borrower.

Principal and interest payments.

Other:	<ul style="list-style-type: none"> • Satisfactory Bank Engineer marketing review of feedstock agreements in Cheboygan & Monona and off take LOI's prior to funding. • Satisfactory Bank Engineer and Bank Counsel's review of Master Lease & O&M Lease. • Satisfactory Bank Engineer review of financial feasibility study & technical feasibility studies. • Receipt of Bank Engineer's errors and omissions policy. • Proof/verification of equity injection of \$3,323,333. • ACF Equipment to provide long-term warranty to GBRE related to the GCF units, with a guarantee that these units will meet certain minimum output and efficiency targets. The guarantee is to be backed by a commercial letter of credit from Chase or similar security equal to one year of payment due under the lease agreement. Wisconsin Bank & Trust to be named co-beneficiary with the borrower. • Bank Engineer to ensure equipment installation and construction is completed correctly. • Disbursements on note subject to Bank Engineer inspection of construction progress prior to funding. • Escrow of repair and maintenance of liquifaction machines (\$5.3MM over 5 years with monthly payments starting 1/1/2014) to be held with WBT. • One year of principal and interest payments to be held in an escrow account at WBT. • Satisfactory Bank Engineer review of air/environmental reports. • Payment and collateral subordination of \$870M note and \$4,899M capital lease. Payments to begin no earlier than 6/1/15 based on a 7 year amortization with an interest rate no higher than 6.00% and subject to Bank written approval (GBRE must be "stabilized"). GBRE is allowed to pay both the note and capital lease off or down with receipt of 1603 Federal Grant funds. • Commitment letter from Oneida Energy Corp. to purchase unguaranteed portion of the loan. • Subject to DOI approval. • Subject to satisfactory Borrower's and Bank's attorney opinion. • All GBRE deposit accounts to be held at WBT.
Covenants:	<ul style="list-style-type: none"> • Annual Audited financial statements of Oneida Seven Gen Corp., and Subsidiaries within 120 days of year end. • Annual year-end Audits for GBRE within 120 days of year end. • Monthly company prepared financials of GBRE within 45 days of month end. • Borrower to provide financial covenant compliance certificate annually. Ratios to be monitored annually. • GBRE financial covenants to be measured annually: <ul style="list-style-type: none"> -Current Ratio > 1.20:1.0 -Max Debt/Effective Capital 5.0:1.0 at FYE 12/31/13, 4.0:1 at 12/31/14, 3.0:1 at 12/31/15 & thereafter. -Debt Service Coverage* > 1.35:1 measured at year end starting 12/31/14 -Min Effective Capital \$5.5MM as of 12/31/13 to step up \$ 1MM annually thereafter. -Distributions limited to taxes starting 12/31/13 and annually thereafter. • OSGC Covenants to be measured annually: <ul style="list-style-type: none"> -Debt Service Coverage > 1.20:1 <p>*Debt Service Coverage for GBRE is defined as:</p> <p><u>Net Income + Depreciation/amortization + Interest - Distributions</u> PYCMLTD + Interest Expense + Equipment Maintenance Reserve Escrow Payments</p>



Generation Clean Fuels

Comprehensive Renewable Solutions

August 14, 2013

Board of Directors
Oneida Seven Generations Corporation
P.O. Box 257
Oneida, WI 54155

RE: Waste to Energy Project

Ladies and Gentlemen:

I am writing to you to request your support of the Waste to Energy Project (the "Project") on which we are partnering with your subsidiary, Green Bay Renewable Energy, LLC ("GBRE"). As you know, you and we have devoted substantial amounts of time, effort and money to developing the Project. We understand that you have devoted in excess of \$5.8 million to the Project. We have also devoted thousands of hours and over \$3.0 million to the Project. Now that the Project is about to be financed, it would be a horrible waste of all of those hours and dollars to abandon it at this point.

I know that Bruce King has provided you with an analysis of the benefits and costs of proceeding with the Project as compared to shutting it down. I am confident that you will agree that the benefits of the Project far outweigh the minimal costs of proceeding. The benefits which Bruce has told you about are focused exclusively on the economics of the Project. As you consider the Project, you should also keep in mind the substantial environmental benefits of the Project, including:

- The Project will produce in excess of 7.5 million gallons per year of clean, low sulfur fuel, without using any catalysts or harmful chemicals and without generating any significant greenhouse gases in the production process.
- The Project will reduce the Tribe's current carbon footprint.
- The transportation fuel and oils produced by the Project have low sulfur content (4 ppm) and high cetane levels that can easily be blended with higher pollutant content fuel products.
- The Project employs proprietary technology that eliminates 99% of harmful pollutants found in greenhouse gases (GHG). This technology can be integrated with other systems such as generators to lower the footprint of GHG emissions.
- The Project is mobile. The site where operations occur is not dependent on any one location.

Over the past 18 months, we have worked diligently with Kevin Cornelius, Bruce King and your lawyers and advisors to structure and develop the Project and to obtain financing for it. We have appreciated all of the time, effort and great ideas that your team has provided for these activities. Because of the close working relationship which we have developed with your team, we have Made many concessions, which have increased your potential benefit and reduced (if not

Generation Clean Fuels | 630 Davis Street, Evanston, IL 60201

Phone: (847) 868-8580

Facsimile: (847) 868-8579

Exhibit B



Generation Clean Fuels

Comprehensive Renewable Solutions

eliminated) your risks with respect to the Project. These include:

- Leasing the equipment for the Project to you at a substantial discount to its market price.
- Agreeing to defer almost half of the Project cost owed to us for as long as 9 years.
- Lending GBRE \$870,000 to fund half of the required debt service reserve fund.
- Guaranteeing the entire amount of the loan. In addition, I am personally guaranteeing \$3.0 million of the loan.
- Providing OSGC with a royalty of 11% of gross revenues off the top.
- Providing OSGC with a \$250,000 development fee at Closing.
- Depositing \$2.2 million in cash as additional collateral for the loan.

We need to know as soon as possible whether you plan to complete the Project. We have many other customers who would like to acquire equipment from us. We have been deferring these customers because of our commitment to you. ~~However, if you do not tell us by August 23,~~ 2013, that you are planning to complete the Project, we will need to divert our assets and attention to servicing our other customers. At that point, even if you decided to complete the Project, we would need to reconsider whether we would still be willing to do the Project on the same basis (including all of the concessions outlined above).

We hope to hear from you soon and look forward to a long and mutually beneficial relationship.

Sincerely yours,

Louis Stern
Chief Executive Officer

cc: Bruce King
Craig Aderhold
Joseph Kavan, Esq.

KUTAK ROCK LLP

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COUNTY DEPARTMENT, LAW DIVISION

ACF LEASING, LLC, ACF SERVICES,
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GREEN BAY RENEWABLE ENERGY,
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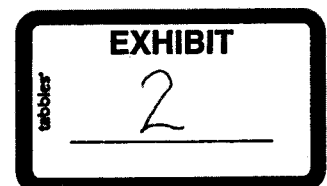
Defendants.

AFFIDAVIT OF JOSEPH O. KAVAN

Joseph O. Kavan states under oath and on personal knowledge:

1. I am a partner in the law firm of Kutak Rock LLP. I graduated from Creighton University School of Law in 1982 and from the Pacific Coast Graduate School of Banking, University of Washington in 1994. I am admitted to the State Bar of Nebraska and the U.S. Tax Court. My practice involves representing clients with regard to all aspects of corporate and real estate finance, corporate structuring and project financing development, which also includes rendering advice to owners, developers, investors and banks with regard to energy facilities. A short summary of my educational and professional background is attached hereto as Exhibit A.

2. I represented Green Bay Renewable Energy, LLC ("GBRE") in connection with the negotiations of a Master Lease Agreement and an Operation and Maintenance Agreement (the "Agreements") with ACF Leasing, LLC and ACF Services, LLC, respectively (collectively "ACF"). My contacts with GBRE were Kevin Cornelius, GBRE's president, and Bruce King,



KUTAK ROCK LLP

GBRE's vice president and treasurer. My negotiations with regard to the Agreements were primarily with Attorney Eric Decator on behalf of ACF. I have reviewed Attorney Decator's affidavit and disagree with many of the statements and representations he attributes to me.

3. In paragraph 11 of his Affidavit, Attorney Decator refers to me as "Joseph Kavan, attorney for OSGC...." I was not the attorney for OSGC with regard to negotiations of the Agreements. It is correct that I advised him that the Agreements would need approval by in-house counsel and the board, but I was at all times referring to GBRE's in-house counsel and its board. I did not tell him that OSGC's in-house counsel and OSGC's board would need to approve GBRE entering into the Agreements. Because I was not representing OSGC in connection with the Agreements, I did not know whether approval would have been required from OSGC's board before GBRE could enter into the Agreements. I never represented to Attorney Decator or to anyone else at ACF that I was representing either the Oneida Tribe of Indians of Wisconsin (the "Tribe") or OSGC or had any authority to speak on their behalves. I would never have done so because I had not been retained by either such entity to represent them in connection with the Agreements between GBRE and ACF.

4. In paragraph 17 of his affidavit, Attorney Decator states:

Throughout the negotiation of the Agreements for the Project, Kevin Cornelius and Bruce King represented to [Attorney Decator] that Kevin Cornelius had authority to enter into the Agreements on behalf of the Tribe, OSGC and GBRE. Kevin Cornelius and Bruce King repeatedly referred to the Agreements as one with the Tribe and OSGC.

As indicated above, I represented GBRE in connection with the negotiation of the Agreements. In my presence, Kevin Cornelius and Bruce King never stated that they were representing the Tribe or OSGC in connection with the Agreements nor that they had the authority to enter into the Agreements on behalf of the Tribe or OSGC. Had I heard them make such statements, I

KUTAK ROCK LLP

would have corrected them because neither the Tribe nor OSGC were parties to the Agreements.

The Agreements were negotiated to be exclusively between GBRE and ACF and both Agreements had a merger and integration clause making it abundantly clear that the only two parties to the Agreements were GBRE and ACF as signatories to the Agreements.

5. In paragraph 18 of his Affidavit, Attorney Decator refers to "the waiver of the sovereign immunity and the choice of law provisions contained within the agreements..." and indicates that such "significant clauses" were "negotiated" by Attorney Decator, Messrs. Cornelius and King and me. There is no sovereign immunity waiver clause in the Agreements. While there is a choice of law provision in both Agreements, I had no discussions with Attorney Decator that such clause should, or even could, be interpreted as a waiver of sovereign immunity provision. We never negotiated an agreement whereby the standard, boilerplate choice of forum provision would also serve as a waiver of sovereign immunity. Nothing in the choice of forum clause waives either party's rights to assert any defense to any claim brought by one party against the other in the chosen forum, but particularly such an important defense as sovereign immunity. Moreover, it would make no sense for any negotiations to have taken place concerning waiver of sovereign immunity since there was no sovereign entity signing the Agreements. GBRE is a Delaware limited liability company and, as such, it has no sovereign immunity. The Tribe and OSGC were not signatories of the Agreements and, accordingly, their sovereign immunity was not even an issue.

6. In paragraph 18 of his Affidavit, Attorney Decator also states that I "represented to [Attorney Decator] that the waiver of sovereign immunity applied to the Tribe and OSGC and that Kevin Cornelius had authority, when he signed the Agreements, to waive sovereign immunity on behalf of both the Tribe and OSGC." As indicated in the preceding paragraph, sovereign immunity was not even a topic discussed between me and Attorney Decator. I did not

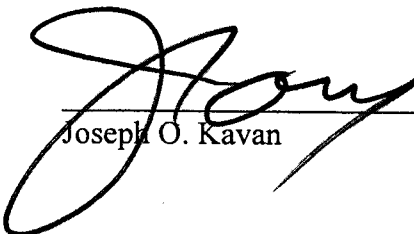
KUTAK ROCK LLP

make the representation quoted above nor did Kevin Cornelius or Bruce King ever make such a representation in my presence during my negotiations with Attorney Decator.

KUTAK ROCK LLP

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.

Dated this 15th day of August, 2014.



Joseph O. Kavan

WHD/10594495.1



Joseph O. Kavan

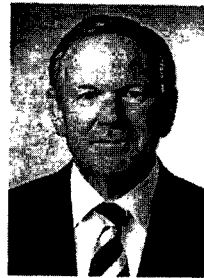
Partner

Omaha

(402) 231-8808

(402) 346-1148 Fax

Joseph.Kavan@KutakRock.com



Mr. Kavan represents private and public companies, investment banks and financial institutions in corporate, finance and taxation matters, including mergers and acquisitions, debt financings, participation and syndications, real estate syndications and corporate debt and equity finance. His practice involves providing representation and advice concerning all aspects of corporate and real estate finance, corporate structuring and project finance and development. Mr. Kavan's practice also involves rendering advice to developers, investors, bankers and sponsors involved in energy facilities, telecommunications, real estate, agriculture and financial institutions.

- Representing financial institutions in the sale and purchase of syndicated financial securities and instruments.
- Assisting clients in the structure and syndication of securities and debentures.
- Representing lenders and borrowers in large loan transactions including syndicated offerings.
- Representing merchant banking clients in the structure, financing and acquisition of targeted entities.
- Providing representation to developers and capital providers for the development of energy facilities.
- Assisting large corporations with implementing merger and acquisition strategies.
- Assisting syndicators and sponsors of real estate transactions with the issuance of securities and Section 1031 TIC transactions.
- Assisting investment bankers with acquiring public companies, raising capital for the acquisitions and developing tax structures for the transactions and assisting public financial institutions with acquiring various financial and non-financial institutions.
- Structuring mergers preserving net operating losses.
- Designing trust-preferred and other capital instruments for financial institutions.
- Serving as general counsel to a national financial institution experienced in regulatory capital and negotiations with financial regulators.

EDUCATION

J.D., Creighton University
School of Law, 1982

University of Washington,
Pacific Coast Graduate
School of Banking, 1994

B.A., Creighton University,
1979

BAR ADMISSIONS

Nebraska, 1982

COURT ADMISSIONS

U.S. Tax Court

RELATED PRACTICES

Derivatives and Investment
Products

P3s -- Public-Private
Partnerships

Acquisitions and
Dispositions

Commercial Lending

Construction and
Development

Workouts and Distressed
Assets

REITs-related Corporate
and Securities Issues

Private Equity and Hedge
Transactions

Business and Corporate
Corporate and Securities

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

ACF LEASING, LLC, ACF SERVICES,
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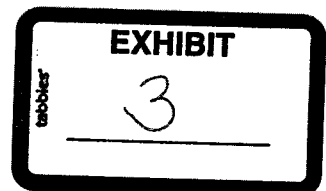
Defendants.

AFFIDAVIT OF KEVIN CORNELIUS

Kevin Cornelius states under oath and on personal knowledge:

1. I am an adult resident of the State of North Carolina. From January, 2012 through August, 2013, I was the President of Green Bay Renewable Energy, LLC ("GBRE"). I was also the Chief Executive Officer ("CEO") of the Oneida Seven Generations Corporation ("OSGC"). While I was one of over sixteen thousand members of the Oneida Tribe of Indians of Wisconsin ("Tribe"), I held no official position with the Tribe and had no authority to speak on behalf of the Tribe. As a member of the Tribe, I can be likened to a citizen of the State of Wisconsin, who could no more speak on behalf of, or bind, the State of Wisconsin than could I speak on behalf of, or bind, the Tribe.

2. I met Michael Galich and Eric Decator of ACF Leasing, LLC and ACF Services, LLC (collectively "ACF") in August, 2012. I had several meetings with Mr. Galich and Attorney Decator in connection with a potential project to convert plastic waste into oil products



and to generate energy (the "Project"). Many of my discussions with Mr. Galich and Attorney Decator also included Bruce King, who was a vice president and the treasurer of GBRE and the Chief Financial Officer ("CFO") of OSGC. Like me, while Mr. King was a member of the Tribe, he was not in any position of authority with the Tribe and had no authority to speak on behalf of, or to bind, the Tribe to any agreements.

3. When I first met Mr. Galich and Attorney Decator, I explained that I was a member of the Tribe and that I was the CEO of OSGC and the president of GBRE. I explained that both the Tribe and OSGC were sovereign entities but that GBRE was not. I explained that the Tribe was the owner of OSGC and that OSGC had an indirect ownership interest in GBRE so that both the Tribe and OSGC were interested in the Project. However, I never represented that the Tribe or OSGC would be parties to any contracts or otherwise be direct participants in the Project between GBRE and ACF if one were ever agreed upon. Nor did Mr. King make any such representation in my presence. I never represented to either Mr. Galich or Attorney Decator that I had the authority to waive sovereign immunity on behalf of the Tribe, because I had no such authority. Only the Tribe can waive its sovereign immunity, and there is a specific mechanism for doing so that must be followed. I never approached the Business Committee for the Tribe with a request that it waive sovereign immunity because the Tribe was never a direct participant in the Project.

4. During our discussions with Mr. Galich and Attorney Decator, Bruce King and I explained to them that the Bureau of Indian Affairs ("BIA") would need to guarantee the loan on behalf of GBRE to finance the project expressly because the Tribe was not backing the Project and OSGC did not have sufficient collateral to guarantee GBRE's loan. The loan document from the Wisconsin Bank & Trust ("WBT") indicated that the borrower was not the Tribe but rather GBRE, and that 90 percent was to be a "DOI Guarantee Term Loan." See Exhibit A attached

hereto. "DOI" stands for the Department of the Interior, which includes the BIA. Exhibit A is the WBT letter for financing the Project referred to by Mr. Galich in paragraphs 10 and 13 of his Affidavit.

5. During the Spring of 2013, Attorney Joseph Kavan from Kutak Rock LLP represented GBRE in negotiations that led to a Master Lease Agreement and an Operation and Maintenance Agreement (collectively "Agreements") between GBRE and ACF. The negotiations were primarily between Attorneys Kavan and Decator; however, Bruce King and I also participated in such negotiations on occasion. Because OSGC was going to be a partial guarantor of the WBT loan to GBRE for the Project, I did tell Attorney Decator that I needed OSGC's board's approval to enter into an agreement on behalf of OSGC to be a partial guarantor of the loan. I did not, however, tell him that I needed OSGC's board's approval to enter into the Agreements with ACF because OSGC was not going to be a party to those Agreements.

6. In paragraph 17 of his Affidavit, Attorney Decator states that during the negotiations of the Agreements, Bruce King and I represented to him that I "had authority to enter into the Agreements on behalf of the Tribe, OSGC and GBRE" and that the Agreements were "with the Tribe and OSGC." That is not true. As I indicated in the preceding paragraph, I told Attorney Decator that I had the authority to enter into an agreement on behalf of OSGC to be a partial guarantor of the loan between WBT and GBRE, and I told him that I had authority to enter into the Agreements on behalf GBRE. I never told him that I had any authority to bind the Tribe to the Agreements nor that the Agreements were with the Tribe and OSGC. Nor did Bruce King ever make such a representation in my presence.

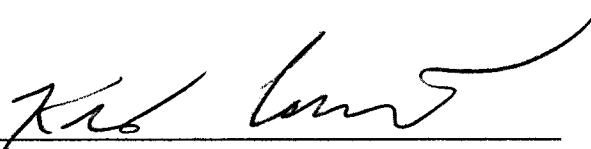
7. In paragraph 18 of his Affidavit, Attorney Decator represents that Bruce King, Attorney Kavan and I negotiated a waiver of sovereign immunity provision in the Agreements. That is simply not true. I had no discussions with Attorney Decator about anything in the

Agreements being a waiver of sovereign immunity. GBRE does not have sovereign immunity because it is a limited liability company that was incorporated under Delaware state law. In contrast, the Tribe is a federally recognized sovereign entity organized under federal law, and OSGC is a sovereign entity created by Tribal law, which entitles both to sovereign immunity. There would have been no reason to discuss a waiver of sovereign immunity provision in the Agreements when neither the Tribe nor OSGC were to be parties to those Agreements. Nor did Attorney Kavan ever make such a representation in my presence, and I know that he had no authority to make such a representation outside my presence because he was not representing the Tribe or OSGC in connection with the Agreements.

8. Attorney Decator also indicates in paragraph 18 of his Affidavit that Bruce King and I negotiated terms for a choice of law provision in the Agreements. That is likewise not true. I had no discussions with Attorney Decator about a choice of law provision in the Agreements. That was something I left to Attorney Kavan as the attorney for GBRE to negotiate in the interest of GBRE. Nor did Bruce King ever have any negotiations with Eric Decator about a choice of law provision in my presence.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.

Dated this 14 day of August, 2014.



Kevin Cornelius

WHD/10596126.1



April 26, 2013

Kevin Cornelius, CEO
Bruce King, CFO
Green Bay Renewable Energy, LLC
P.O. Box 257
Oneida, WI 54155

Dear Kevin and Bruce:

Wisconsin Bank & Trust is pleased to inform you a financing package for Green Bay Renewable Energy, LLC has been approved subject to various terms and conditions.

If you are interested in proceeding please counter-sign the letter and return it to us. This commitment will expire on May 3rd, 2013.

Sincerely,

Craig D. Aderhold
Regional President-North

Enclosure



Acceptance:	
	
Kevin Cornelius, CEO Green Bay Renewable Energy, LLC	Date
	
Bruce King, CFO Green Bay Renewable Energy, LLC	Date

Exhibit A



WISCONSIN
BANK & TRUST

4-26-13

Borrower:	Green Bay Renewable Energy, LLC (GBRE)
Type:	90% DOI guaranteed term loan, 10% unguaranteed portion to be participated to Oneida Energy Corp.
Amount:	\$21,777,777
Purpose:	Fund start-up of energy plant
Term/Amortization:	21 years / 20 years (one year multi-advance. interest only, payable monthly)
Estimated Monthly Payment:	1 year interest only then monthly P&I in the amount of \$144,568
Interest Rate:	<ul style="list-style-type: none"> • ½ loan – Prime + 1.0% variable, with floor of 5.0%. • ½ loan - fixed at 5 year Chicago Federal Home Loan Bank + 4.0% for six years (currently 5.04%) then reset every five years thereafter.
Prepayment Penalty:	Flat 5.0% for first five years then 5%, 4%, 3%, 2%, 1% annually declining thereafter if prepaid by another lender.
Collateral:	<ul style="list-style-type: none"> • 90% guaranteed – 1st lien of equipment being financed, all business assets, assignment of master lease. • 10% unguaranteed – unsecured.
Guarantors:	<ul style="list-style-type: none"> • 90% guaranteed – unlimited, unsecured guarantee of Oneida Seven Gen Corp., Oneida Energy Corp., Oneida Blocker Corp. Guarantee of ACF Leasing, LLC secured by and limited to an assignment of the master lease, equipment, buy-back agreement and 49% of GBRE NOI cash flows. • 10% unguaranteed – no guarantees.
Closing Costs:	<ul style="list-style-type: none"> • \$392,000 DOI guarantee fee. • \$108,889 Wisconsin Bank & Trust servicing fee. • All other closing costs including legal fees, engineering fees, feasibility study, appraisal and recording fees are the responsibility of the borrower.

principal and
interest
payments.

Other:	<ul style="list-style-type: none">• Satisfactory Bank Engineer marketing review of feedstock agreements in Cheboygan & Monona and off take LOI's prior to funding.• Satisfactory Bank Engineer and Bank Counsel's review of Master Lease & O&M Lease.• Satisfactory Bank Engineer review of financial feasibility study & technical feasibility studies.• Receipt of Bank Engineer's errors and omissions policy.• Proof/verification of equity injection of \$3,323,333.• ACF Equipment to provide long-term warranty to GBRE related to the GCF units, with a guarantee that these units will meet certain minimum output and efficiency targets. The guarantee is to be backed by a commercial letter of credit from Chase or similar security equal to one year of payment due under the lease agreement. Wisconsin Bank & Trust to be named co-beneficiary with the borrower.• Bank Engineer to ensure equipment installation and construction is completed correctly.• Disbursements on note subject to Bank Engineer inspection of construction progress prior to funding.• Escrow of repair and maintenance of liquifaction machines (\$5.3MM over 5 years with monthly payments starting 1/1/2014) to be held with WBT.• One year of principal and interest payments to be held in an escrow account at WBT.• Satisfactory Bank Engineer review of air/environmental reports.• Payment and collateral subordination of \$870M note and \$4,899M capital lease. Payments to begin no earlier than 6/1/15 based on a 7 year amortization with an interest rate no higher than 6.00% and subject to Bank written approval (GBRE must be "stabilized"). GBRE is allowed to pay both the note and capital lease off or down with receipt of 1603 Federal Grant funds.• Commitment letter from Oneida Energy Corp. to purchase unguaranteed portion of the loan.• Subject to DOI approval.• Subject to satisfactory Borrower's and Bank's attorney opinion.• All GBRE deposit accounts to be held at WBT.
Covenants:	<ul style="list-style-type: none">• Annual Audited financial statements of Oneida Seven Gen Corp., and Subsidiaries within 120 days of year end.• Annual year-end Audits for GBRE within 120 days of year end.• Monthly company prepared financials of GBRE within 45 days of month end.• Borrower to provide financial covenant compliance certificate annually. Ratios to be monitored annually.• GBRE financial covenants to be measured annually:<ul style="list-style-type: none">-Current Ratio > 1.20:1.0-Max Debt/Effective Capital 5.0:1.0 at FYE 12/31/13, 4.0:1 at 12/31/14, 3.0:1 at 12/31/15 & thereafter.-Debt Service Coverage* > 1.35:1 measured at year end starting 12/31/14-Min Effective Capital \$5.5MM as of 12/31/13 to step up \$ 1MM annually thereafter.-Distributions limited to taxes starting 12/31/13 and annually thereafter.• OSGC Covenants to be measured annually:<ul style="list-style-type: none">-Debt Service Coverage > 1.20:1 <p>*Debt Service Coverage for GBRE is defined as:</p> <p><u>Net Income + Depreciation/amortization + Interest - Distributions</u> PYCMLTD + Interest Expense + Equipment Maintenance Reserve Escrow Payments</p>