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.	)	

NOTICE OF FILING

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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 **The Oneida Tribe of Indians of Wisconsin's and Oneida Seven Generations Corporation's Reply Brief in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction**, a copy of which is hereby served upon you.

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

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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

THE ONEIDA TRIBE OF INDIANS OF WISCONSIN'S AND ONEIDA SEVEN GENERATIONS CORPORATION'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

I. ACF[1] MAY NOT USE PAROL EVIDENCE TO CONTRADICT UNAMBIGUOUS CONTRACT PROVISIONS.

ACF submitted the Affidavits of Messrs. Galich and Decator in an attempt to repudiate the unambiguous language of the Lease and O&M Agreement (the "Agreements").[2] "In Illinois, a written contract is presumed to include all material terms agreed upon by the parties, and any prior negotiations or representations are merged into that agreement; extrinsic evidence, parol or otherwise, of antecedent understandings and negotiations is generally inadmissible to alter, vary, or contradict the written instrument." *K's Merch. Mart, Inc. v. Northgate Ltd. P'ship*, 359 Ill. App. 3d 1137, 1143 (4th Dist. 2005). "'If [a contract] imports on its face to be a complete expression of the whole agreement,...it is to be presumed that the parties introduced into it every material item and term, and parol evidence cannot be admitted to add another term to the agreement....'" *Ringgold Capital IV, LLC v. Finley*, 2013 IL App (1st) 121702, ¶ 19.

The Agreements unambiguously provide that only GBRE is a party to the Agreements, and the Agreements have integration clauses. Compl., Ex. A at p. 1, p. 13 ¶ 14(i) & p. 14; Ex. B at p.1, p. 14 ¶ 21 & p. 15. The Agreements do not identify the Tribe or OSGC as being contracting parties. ACF may not use parol evidence to contradict the Agreements.

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[1] The shorthand references used in the Tribe's and OSGC's Initial Brief will be used herein.

[2] The alleged facts included in the Galich and Decator Affidavits are disputed. *See* Affidavits of Messrs. King, Cornelius and Kavan submitted herewith.

II. THE TRIBE AND OSGC HAVE NOT WAIVED THEIR SOVEREIGN IMMUNITY.

A. There Has Been No Unequivocal Waiver Of Immunity.

For waiver of tribal sovereign immunity, no distinction is made between governmental and commercial activities or whether the activities occur on or off the reservation.[3] *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754-760 (1998). A waiver of sovereign immunity may not be implied but must be 'unequivocally expressed.' *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978); *Altheimer & Gray v. Sioux Mfg. Corp.,* 983 F.2d 803, 812 (7th Cir. 1993), superceded by statute on other grounds as stated in, *GasPlus, LLC v. U.S. Dep't of the Interior*, 510 F. Supp. 2d 18, 32 (D.D.C. 2007).[4]

ACF does not dispute that the requirements of the Tribe's Sovereign Immunity Ordinance were not met. It argues instead that compliance with the Tribe's ordinance is not required, relying on *Bates Associates, LLC v. 132 Associates, LLC*, 799 N.W.2d 177 (Mich. Ct. App. 2010), and *Smith v. Hopland Band of Pomo Indians,* 115 Cal Rptr. 2d 455 (Ct. App. 2002). ACF Br., p. 12. First, the weight of authority requires adherence to the tribal law setting forth who has the authority to waive sovereign immunity and in what manner. *See* Initial Br., 9-13. Second,

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[3] Relying on *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2036 n. 8 (2014) ACF argues that even if the Tribe and OSGC are immune from suit for the contract claims, the tort claims should not be dismissed. ACF cites to a footnote in which the Supreme Court indicates, in dicta, that it has never addressed whether there could be "special justification" that would allow the Court to depart from the rule of *stare decisis* in the tribal sovereign immunity context, such as a situation involving a tort victim "who has not chosen to deal with a tribe" and had no alternative relief. *Id.* Importantly, there is no "special exception" to the binding precedent of *Kiowa, supra*; therefore, this Court may not, as a matter of law, abrogate the Tribe's and OSGC's sovereign immunity for ACF's tort claims. Moreover, ACF chose to contract with GBRE knowing that its upstream owners were the Tribe and OSGC and, therefore, it is not a tort victim who never chose to deal with a tribal entity with sovereign immunity, as described in *Bay Mills*.

[4] Significantly, ACF has not disputed that OSGC is a subordinate economic entity of the Tribe that enjoys sovereign immunity. *See* Initial Br., pp. 5-9. ACF argues only waiver.

the cases relied on by ACF are inapposite. In *Bates Assocs.*, the tribe was a party to the contract, the contracts were signed by the tribe's CFO and the contracts both contained provisions expressly waiving the tribe's immunity. *Bates Assocs.*, 799 N.W.2d at 179. In *Smith*, the tribe was a party to the contract, the tribal chairperson signed the contract and the tribal council had unanimously voted to authorize the tribal chairperson to negotiate and execute the contract. *Smith,* 115 Cal. Rptr. 2d at 457-58.[5] In contrast here, the Tribe and OSGC are not parties to the Agreements. There was no resolution or vote of the Tribe or OSGC authorizing Mr. Cornelius to sign the Agreements on behalf of the Tribe or OSGC, much less resolutions authorizing a waiver of their tribal sovereign immunity. Hoeft Aff. ¶¶ 23-28; Keluche Aff. ¶ 9. The Tribe's Sovereign Immunity Ordinance is publicly available on line, as are all Business Committee Agendas and Minutes. Hoeft Aff. ¶ 24. Messrs. Cornelius and King held no elected or other position with the Tribe. Cornelius Aff. ¶ 1; King Aff. ¶ 1. While Messrs. Cornelius and King held positions with OSGC, the Agreements are signed by Mr. Cornelius in his capacity as an officer of GBRE only. Compl., Exs. A and B.

ACF asserts that Messrs. Cornelius and King repeatedly told them that they spoke on behalf of the Tribe and OSGC. Even if true, which it is not, *see* Cornelius, Kavan and King Affidavits, ACF has cited no case in which a court concluded that a tribe or its subordinate economic entity waived sovereign immunity based on oral representations supposedly made by officers of a state-incorporated indirect subsidiary when the subsidiary entered into a contract

[5] ACF fails to acknowledge a significant factual difference that distinguishes every sovereign immunity case cited in its brief: unlike here, either the tribe or its subordinate economic entity, were parties to the agreements in ACF's cases. *See C & L Enters., Inc. v. Citizen Band of Potawatomi Indian Tribe of Okla.,* 532 U.S. 411, 411 (2001); *Kiowa Tribe of Okla.*, 523 U.S. at 751; *Altheimer & Gray,* 983 F.2d at 806; *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs., Inc.*, 86 F.3d 656, 657-58 (7th Cir. 1996); *Stifel, Nicolaus & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 980 F. Supp. 2d 1078 (W.D. Wis. 2013); *Bates Assocs.* 799 N.W.2d at 183-84; *Smith 115 Cal. Rptr. 2d at 457-58*; *StoreVisions, Inc. v. Omaha Tribe of Neb.*, 795 N.W.2d 271, 275 (Neb. 2011).

containing a standard forum selection clause, *See* Part II.B., *infra*. Such a ruling would violate the Supreme Court requirement that waiver be unequivocally expressed and not implied. *C & L Enters.*, 532 U.S. at 418.

B. The Forum Selection Clause In The Agreements Does Not Waive Sovereign Immunity.

ACF asserts that the forum selection clause in the Agreements waived sovereign immunity. There would be no reason for it to do so since GBRE is the only party to the Agreements, and it has no sovereign immunity. However, even assuming that the Tribe or OSGC was a party to the Agreements, the forum selection clause does not waive their sovereign immunity. ACF relies on three cases that held only that an agreement's arbitration clause constituted a waiver of sovereign immunity. *See C&L Enters.*, 532 U.S. at 412 (arbitration clause that also provided that "arbitral awards may be reduced to judgment"); *Altheimer & Gray,* 983 F.2d at 812 (arbitration clause with an express provision that the tribe and tribal entity would '"waive all sovereign immunity in regards to all contractual disputes'"); and *Sokaogon Gaming,* 86 F.2d at 659 (arbitration clause with a provision that "judgment may be entered upon [the arbitration award].") None of those cases involved a simple forum selection clause with no express waiver of sovereign immunity. That distinction is legally definitive.

In *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort,* No. 06-CV-01596 MS, 2007 WL 2701995 (D. Colo. Sept. 12, 2007), *rev'd on other grounds*, 629 F.3d 1173 (10th Cir. 2010), the district court analyzed the difference between arbitration clauses and forum selection clauses for sovereign immunity waiver purposes. The court explained that, because no one can force a tribe to arbitrate, an agreement to arbitrate with the arbitration award being reduced to an enforceable judgment is an agreement to be sued and, thus, a sovereign immunity waiver. However, since a tribe cannot prevent a party from suing it, a forum selection

clause is merely a designation of where a tribe can be sued and not whether a tribe can be sued. For that reason, a mere forum selection clause is not a waiver of sovereign immunity.

> Here, the language of the parties' agreement is that "the sole and exclusive venue for any and all disputes involving...this Agreement shall be the state and federal courts located within the state of Colorado." . . .
>
> Notably, the parties' agreement here speaks only to *where* a suit may be brought, but it does not expressly or impliedly address *whether* a suit may be brought. Unlike cases such as *C&L* [specifying arbitration], the Tribe here did not expressly agree to submit any dispute for adjudication; it merely agreed as to where such adjudication would take place, if an adjudication were to occur.

Breakthrough, 2007 WL 2701995, at *3 and *4 (emphasis in original). The forum selection clause in the Agreements merely specifies Illinois as the venue for a dispute. Compl., Ex. A, ¶ 14(h); Ex. B, ¶ 15. It says nothing about agreeing to be sued or waiver of sovereign immunity. Accordingly, even if the Tribe and OSGC were bound by the Agreements, those Agreements do not waive their sovereign immunity.

C. Alter Ego And Piercing The Corporate Veil Theories Are Not Applicable.

ACF next claims that GBRE is the "alter ego" of OSGC and the Tribe, such that it may "pierce the corporate veil" and bind OSGC and the Tribe to the forum selection clause. ACF Br., pp. 10-11. Tellingly, none of the cases ACF relied on involve tribal sovereign immunity.[6] There is no Supreme Court precedent extending alter ego and piercing the corporate veil principles to the tribal sovereign immunity context. As a matter of federal Indian law, state law alter ego and piercing the corporate veil theories are inapplicable. *The Affiliated Tribes of Fort Berthold*

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[6] *See, e.g., Old Orchard Urban Ltd. P'ship v. Harry Rosen, Inc.*, 389 Ill. App. 3d 58, 69 (1st Dist. 2009); *Westmeyer v. Flynn*, 382 Ill. App. 3d 952, 958 (1st Dist. 2008); *Wellman v. Dow Chem. Co.*, No. 05-280-SLR, 2007 WL 842084, at *2 (D. Del. March 20, 2007); *Geyer v. Ingersoll Publ'ns Co.*, 621 A.2d 784, 793 (Del. Ch. 1992).

Reservation v. World Eng'g, 476 U.S. 877, 890 (1986); *see also United States ex rel. Morgan Bldgs. & Spas, Inc. v. Iowa Tribe of Okla.*, No. CIV-09-730-M, 2011 WL 308889, at * 3 (W.D. Okla. Jan. 26, 2011) (alter ego analysis inapplicable to tribal sovereign immunity context).[7]

Even if ACF's alter ego or piercing the corporate theories were applicable, ACF has not made out a prima *facie case*. In *Mason v. Network of Wilmington, Inc.*, No. CIV.A.19434 NC, 2005 WL 1653954, at *3 (Del. Ch. 2005),[8] the Court listed the alter ego factors, such as under capitalization, insolvency, whether the dominant shareholder siphoned corporate funds and whether corporate formalities were kept. However, piercing the corporate veil based on alter ego in the LLC context is a developing area and courts and commentators have noted that the factors for proving alter ego, particularly the corporate formalities factor, must be analyzed differently for LLCs because many corporate formalities do not apply. *Kaycee Land & Livestock v. Flahive*, 46 P.3d 323, 328 (Wyo. 2002) ("The LLC's operation is intended to be much more flexible than a corporation's."). Furthermore, '"[p]iercing the corporate veil under the alter ego theory [also] requires that the corporate structure cause fraud or similar injustice. Effectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud.'" *Mason*, 2005 WL 1653954, at * 3.

ACF argues that Messrs. Cornelius and King were officers of both OSGC and GBRE, used the same address as OSGC and used their OSGC email to communicate with them.[9] Under

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[7] There is no authority for piercing the corporate veil of a state created corporation to reach the assets of a sovereign nation, *i.e.* the Tribe. The Tribe is not a corporation, it is a sovereign nation. If piercing the corporate veil of a state chartered corporation to get to a nation's assets were allowed, the United States would be liable for the debts of virtually every bankrupt state corporation.

[8] Both parties rely on the Delaware piercing the corporate veil standards.

[9] ACF argues, with no legal support, that because OSGC is the economic development arm of the Tribe, if it pierces the corporate veil to OSGC, it also reaches the Tribe. OSGC has a variety of assets, (footnote continued)

similar circumstances, the *Mason* court refused to pierce the corporate veil concluding that, "[b]eing the sole shareholder of two different legal entities, housed in the same office building and possessing the same phone number at separate (and not sequential) times does not constitute a sham that 'exist[s] for no other purpose than as a vehicle for fraud.'" *Id.* at *4. *See also eCommerce Industries, Inc. v. MWA Intelligence, Inc.,* No. CV 7471-VCP, 2013 WL 5621678, at *28 (Del. Ch. Sept. 30, 2013). ACF presented no facts to support a finding that GBRE existed "for no other purpose than as a vehicle for fraud." *Wallace ex rel. Cencom Cable Income Partners II, Inc. v. Wood,* 752 A.2d 1175, 1184 (Del Ch. 1999). ACF even agreed to take a 49% membership interest in GBRE as collateral for its loan, which is conclusive proof that ACF was aware that GBRE was responsible for the Project and existed for a purpose other than fraud. Compl., Ex. A at I-5.[10]

ACF was aware *before* it signed the Agreements that the borrower on the BIA-guaranteed loan for the Project was GBRE, not the Tribe or OSGC, a fact ACF failed to disclose to the Court in its brief.[11] Compl., Ex. A at I-3; Cornelius Aff. Ex. A. To obtain financing, the bank

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has created many state-incorporated entities and exists to diversify the income of the Tribe. Hoeft Aff. ¶ 14-21. Even if Delaware alter ego law were applicable to the Tribe and OSGC, which it is not as a matter of federal law, there is no evidence suggesting that OSGC is a sham entity that exists for no purpose other than fraud.

[10] OSGC is the sole owner of Oneida Energy, Inc. ("OEI"), a Wisconsin corporation, which is the sole owner of Oneida Energy Blocker Corporation ("OEB"), a Delaware corporation. OEB is the sole member and owner of GBRE, a Delaware LLC. Keluche Aff. ¶5. ACF would need to pierce through all of these entities, using the law of the state of incorporation for each, in order to reach the Tribe or OSGC. ACF has not attempted to do so.

[11] ACF claims that the Tribe would have to be the borrower on the loan, based on the testimony of Mr. Keluche. ACF Br., p. 3. However, Mr. Keluche acknowledged that he was not certain who could be the borrower on a BIA-guaranteed loan (ACF Br., Ex. 7 at Keluche Dep. Tr., 47, lns. 9-14), and the relevant federal regulations prove that GBRE could be the borrower. 25 C.F.R. § 103.25(a)(2) (state incorporated entity majority owned by tribal entity could be borrower). The bank commitment letter and Agreements also identify GBRE as the borrower. This is one example of many in which ACF makes misleading factual arguments in an effort to create factual disputes where none exist.

required guarantees from ACF, OSGC, OEI and OEB. Cornelius Aff. Ex. A. Had ACF wanted OSGC and the Tribe to be bound by the Agreements, like the bank it should have required that they be parties to the Agreements. In fact, however, in its August 13, 2013 letter to OSGC, ACF asks OSGC to "support the Waste to Energy Project on which *we are partnering with your subsidiary ... GBRE.*" Galich, Ex. B (emphasis added). The undisputed facts demonstrate that ACF was aware when it signed the Agreements that GBRE was the entity responsible for the Project. ACF's attempted reliance on inadmissible parol evidence to contradict the unambiguous language of the Agreements and pierce GBRE's corporate veil is legally impermissible, *see* Part I, *supra*.

D. State Law Apparent/Implied Authority Is Inapplicable.

Finally, ACF asserts that Kevin Cornelius was the "apparent agent" of OSGC and the Tribe and, therefore, bound the Tribe and OSGC to the Agreements and waived their sovereign immunity. ACF Br., pp. 13-14. The Supreme Court has never applied state law agency principles in the tribal sovereign immunity context. While ACF cites to two state court cases that applied agency law, the cases are considered the "minority view." *MM&A Prods., LLC v. Yavapai-Apache Nation*, 316 P.3d 1248, 1253 (Ariz. Ct. App. 2014). The majority view has refused to apply state agency law in the tribal sovereign immunity context because tribal sovereign immunity is a matter of federal law that may not be diminished by the state law. *Id.* at 1252-53; *see also Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 918–19 (6th Cir. 2009); *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 688 (8th Cir. 2011); *World Touch Gaming, Inc. v. Massena Mgmt., LLC*, 117 F. Supp. 2d 271, 276 (N.D.N.Y. 2000); *Dilliner v. Seneca–Cayuga Tribe*, 258 P.3d 516, 520 (Okla. 2011); *Chance v. Coquille Indian Tribe*, 963 P.2d 638, 640–42 (Or. 1998) (rejecting apparent authority argument and holding that, even if contract's language waiving immunity was express, contract not valid because the

signing official lacked authority under tribal law to waive immunity); *Calvello v. Yankton Sioux Tribe*, 1998 S.D. 107, ¶ 12, 584 N.W.2d 108 (S.D.1998) (without clear expression of waiver by tribal council, acquiescence of tribal officials cannot waive immunity). Under federal law, sovereign immunity "cannot be waived by officials" in a way that "subject[s] the [sovereign] to suit in any court in the discretion of its responsible officers." *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 513 (1940). This is true even if the officials make affirmative misrepresentations. *See Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1295 (10th Cir. 2008) ("misrepresentations of the Tribe's officials or employees cannot affect its immunity from suit").

Even if state agency law were applicable, none of the cases cited by ACF support its position. In every case, the question was whether the entity that was expressly a party to the agreement could be bound by the agreement when signed by the individual with apparent authority. Here, neither the Tribe nor OSGC is a party to the Agreements, only GBRE is. The apparent authority cases cited by ACF are legally inapposite.

Moreover, agency law requires that the apparent authority arise from the "principal's manifestations," and "cannot be established [solely] by the agent's acts, declarations, or conduct." *StoreVisions,* 795 N.W.2d at 279. *See also Schoenberger v. Chicago Transit Authority*, 84 Ill. App. 3d 1132, 1136 (1st Dist. 1980). The principal must make "explicit statements" and act in a way that induces a reasonable person to believe that the agent has authority to act on the principal's behalf. *StoreVisions,* 795 N.W.2d at 279. Thus, the disputed oral representations by Messrs. Cornelius, King and Kavan concerning their authority to bind the Tribe and OSGC and waive their immunity would be insufficient to establish apparent authority. *Id.* The only other facts offered by ACF are: a) one presentation made to the Tribe's Business

Committee concerning the Project technology in January 2013 before the Agreements were signed; b) OSGC's agreement to guarantee the bank loan for the Project; and c) one presentation made to the Business Committee concerning the Project and two demonstration plant site visits made ***after*** the Agreements were signed. *See* Decator Aff. ¶ 10; Galich Aff. ¶¶ 8, 12, 16 and 19-20. Absent from ACF's affidavits, however, are any facts demonstrating that the Tribe's Business Committee or OSGC's board made "explicit statements" that would lead ACF to believe that Mr. Cornelius was authorized to negotiate and execute the Agreements on *their* behalf and to waive *their* immunity at any of these meetings.[12]

Instead, the evidence proves conclusively that the procedure for obtaining a valid waiver of the Tribe's or OSGC's sovereign immunity, *i.e.*, a motion passed or resolution adopted in accordance with the Sovereign Immunity Ordinance, was not followed. *See* Hoeft Aff. ¶¶ 23-28; Keluche Aff. ¶¶ 8-9; ACF Br., Ex. 6 (Hoeft Dep., p. 59, ln. 1 – p. 64, ln. 9; ACF Br., Ex. 7 (Keluche Dep., p. 24, ln. 21 – p. 25, ln. 23 and p. 35, ln. 2 – p. 41, ln. 24). Simply because the Tribe and OSGC may have wanted to have some knowledge of the Project and the technology does not support an inference that they authorized Mr. Cornelius to negotiate and enter into the Agreements on their behalf or waive their sovereign immunity.[13]

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[12] ACF claims that it reasonably relied on oral representations of Messrs. Cornelius, King and Kavan, that they were waiving OSGC's and the Tribe's sovereign immunity. Both Messrs. Decator and Galich are attorneys. Decator Aff. ¶ 1; Galich Aff. ¶ 1. They could not "reasonably" rely on any such alleged allegations, as a matter of law. None of the three held an elected position with the Tribe, a fact that could easily have been discovered by going online, *see* https://oneida-nsn.gov/Templates/OneColumn.aspx?id=102. Messrs. Cornelius and King were each one of 16,000 Tribal members. They could no more orally waive the Tribe's sovereign immunity than a citizen of Wisconsin could waive the State's sovereign immunity. Any "reasonable" attorney would know that.

[13] Regular reporting to a parent corporation's board on what a down-stream subsidiary is doing is neither unusual nor grounds for holding the parent financially responsible for the LLC's contractual obligations. Furthermore, the loan guarantee was a commitment to the bank, not a commitment to ACF. If agreement by a parent corporation to guarantee a bank loan of one of its single asset subsidiaries would operate to bind the (footnote continued)

CONCLUSION

ACF tries to create a factual dispute to avoid dismissal of the Tribe and OSGC, but, at best, ACF has created a question of fact as to what Messrs. Cornelius, King and Kavan told them. However, those disputes of fact are irrelevant because ACF's allegations, even if true, are not sufficient to establish an unequivocal waiver of sovereign immunity by the Tribe and OSGC. *Native Am. Distrib.*, 546 F.3d at 1295; *U.S. Fid. & Guar. Co.*, 309 U.S. at 513. For the reasons set forth herein and in the Tribe's and OSGC's Initial Brief, the Complaint against them should be dismissed with prejudice.

Dated this 28th day of August, 2014.

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parent to all the subsidiary's contractual obligations, no parent would ever guarantee a subsidiary's bank loans, which is a customary practice in the corporate context.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **The Oneida Tribe of Indians of Wisconsin's and Oneida Seven Generations Corporation's Reply Brief in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction** was served upon:

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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.

Pamela Carrington