

In The Matter Of:
ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

REPORT OF PROCEEDINGS
October 8, 2014

Bistany Reporting Service
100 North LaSalle Street
Suite 1600
Chicago, Illinois 60602
e-mail: info@bistanyreporting.com

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) ss.

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

5 ACF LEASING, LLC; ACF)
6 SERVICES, LLC; and GENERATION)
7 CLEAN FUELS, LLC,)
8 Plaintiffs,)

9 vs.) No. 14 L 2768

10 GREEN BAY RENEWABLE ENERGY,)
11 LLC; ONEIDA SEVEN GENERATIONS)
12 CORPORATION; and THE ONEIDA)
13 TRIBE OF INDIANS OF)
14 WISCONSIN,)
15 Defendants.)

16 REPORT OF PROCEEDINGS at the hearing
17 of the above-entitled case before the HONORABLE
18 MARGARET ANN BRENNAN, Judge of said Court, on
19 October 8, 2014, at 12 p.m.
20
21
22
23
24

1 A P P E A R A N C E S:

2 SANCHEZ DANIELS & HOFFMAN, LLP
3 BY MR. GERALD M. DOMBROWSKI
4 333 West Wacker Drive, Suite 500
5 Chicago, Illinois 60606
6 (312) 641-1555
7 gdombrowski@sanchezdh.com

8 On behalf of the Plaintiffs;

9 REINHART BOERNER VAN DEUREN, S.C.
10 BY MR. GUY R. TEMPLE
11 1000 North Water Street, Suite 1700
12 Milwaukee, Wisconsin 53202-6650
13 (414) 298-8121
14 gtemple@reinhardt.com

15 On behalf of the Defendant Green Bay
16 Renewable Energy, LLC;

17 WHYTE HIRSCHBOECK DUDEK, S.C.
18 BY MR. THOMAS M. PYPYER
19 33 East Main Street, Suite 300
20 Madison, Wisconsin 53703-4655
21 (608) 255-4440
22 tpyper@whdlaw.com

23 and

24 SWANSON, MARTIN & BELL, LLP
BY MR. THOMAS J. VERTICCHIO
330 North Wabash, Suite 3300
Chicago, Illinois 60611
(312) 923-8271
tverticchio@smbtrials.com

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

CSR License No. 084-003278.

1 THE COURT: Okay. Why don't we begin with
2 the motions concerning sovereign immunity. I think
3 that's the easiest way to start here.

4 MR. DOMBROWSKI: Morning, your Honor.
5 Jerry Dombrowski for the plaintiffs.

6 THE COURT: Okay.

7 MR. PYPER: Tom Pyper for the Oneida Tribe
8 and Oneida Seven Generations Corporation.

9 THE COURT: I don't know if I disclosed
10 this earlier to all of you. Although I have not
11 spoken with her in any way, shape or form about this,
12 I do have a friend of mine who is an administrative
13 assistant for the tribal council up in Presque Isle.
14 I don't know if that -- I haven't talked to her in
15 months. Actually, we grew up next to each other.
16 We still talk to each other. It's just we've been
17 so busy, we honestly have not spoken to each other
18 in months. It just happens. I don't know if --
19 she's in Presque Isle and she works for the council
20 up there, Northern Wisconsin.

21 MR. DOMBROWSKI: I'm okay with that.

22 THE COURT: Okay. I didn't think it would
23 be a problem.

24 MR. PYPER: No, it probably would not be --

1 THE COURT: I know Ojibwa would be near
2 the Hayward area. I'm trying to think.

3 MR. PYPHER: There's Bad River. The Bad
4 River tribe is up there.

5 THE COURT: That might be it. It's the
6 council -- it's several tribes. She does a lot in
7 Wisconsin.

8 MR. PYPHER: It could be GLIFWC, which is
9 the -- I never know what the acronym is.

10 THE COURT: She's Boulder Junction,
11 Presque Isle and up, but she's been all throughout
12 Wisconsin dealing with various issues that are
13 affecting a number of --

14 MR. PYPHER: I'll bet she's with GLIFWC.

15 THE COURT: Okay. Well, see, and I knew
16 so little that you can see it really isn't going
17 to have an impact. Okay. So let's begin with the
18 motion to dismiss.

19 MR. PYPHER: Thank you, your Honor.
20 I think that the material operative facts are really
21 pretty straightforward and not much in dispute. The
22 Oneida tribe is a federally registered Indian tribe
23 and Oneida Seven Gens is a tribally chartered
24 corporation. The tribe is a governmental agency.

**ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.**

Page 5

1 It has a whole variety of services it provides
2 to its over 16,000 members, housing, elderly care,
3 everything typical that a government would do. In
4 order to diversify from its gaming operations, it
5 created Oneida Seven Generations Corporation under
6 tribal charter law, and it is an entity that manages
7 over 13 individual businesses and has created other
8 entities so as to keep its business activities
9 separate from the tribe; although if it generates
10 more profits than it needs for its operating
11 expenses, some of those profits will spill over
12 into the tribe. But it has its own assets, its
13 own businesses that are separate and distinct from
14 the tribes.

15 It created Oneida Energy to
16 start diversifying into -- to have corporations
17 separate from itself to start diversifying into
18 the energy development business. And Oneida Energy
19 then in turn created Oneida Blocker, which then
20 created Green Bay Renewable Corporation, and Green
21 Bay Renewable is not a tribally chartered entity.
22 It's a Delaware LLC.

23 Green Bay Renewable had as its
24 president Kevin Cornelius from January 2012 through

1 August 2013, which is really the distinct period of
2 time that's applicable to the case. Mr. Cornelius
3 also was the CEO of Oneida Seven Generations. While
4 Mr. Cornelius was a member of the tribe, he was one
5 of over 16,000 members of the tribe. He held no
6 official position with the tribe at any time material
7 to this case. Bruce King was the vice president and
8 treasurer of Green Bay Renewable. He also was the
9 CFO of Oneida Seven Gens. Just like Mr. Cornelius,
10 he was a member of the tribe but he held no official
11 position at any time with the tribal entity itself.

12 Mr. King and Mr. Cornelius started
13 talking with the principals of ACF about going into
14 the energy development business, which is the reason
15 that GBRE was created, and it was a plastic waste
16 to oil with also an energy generation component
17 with it through a pyrolysis analysis. And they
18 negotiated with ACF about how they would structure
19 it, who would get what money. And in January, in
20 fact, ACF principals came up and made a presentation
21 to the business committee of the tribe and to OSG's
22 board to give them a general description of how the
23 technology would work that was being negotiated
24 between GBRE and ACF.

REPORT OF PROCEEDINGS
October 8, 2014

Page 7

1 No official action took place
2 at those meetings. No official action was requested
3 to be taken by either the business committee of the
4 tribe or OSGC. It was an informational presentation.
5 The tribe is -- as a governmental agency it has a
6 legislative branch and the legislative branch is the
7 general tribal council. The general tribal council
8 is made up of every member of voting age of the
9 tribe. So we're talking about thousands of people
10 on that legislative branch of the general tribal
11 council.

12 Between January and May there
13 were some dissatisfactions starting to boil under
14 with regard to whether this was an appropriate type
15 of an activity to be taking place on tribal land.
16 There were some cultural push-backs about it related
17 to questions as to whether this would create an
18 unacceptable level of air pollution.

19 So in early May, May 5, there was a
20 meeting of the general tribal council where there was
21 a vote taken that this process if it were in fact --
22 became a real project between GBRE and ACF would not
23 take place on tribal land. It was voted it could not
24 take place on tribal land. As a result, on

1 May 24 the operative agreements were executed;
2 one was a master lease, the other was an operation
3 and maintenance agreement. Kevin Cornelius signed
4 those on behalf of GBRE. He did not sign on behalf
5 of the tribe. He did not sign on behalf of OSGC.
6 The project was then designated to take place in a
7 location in Monona, Wisconsin and in a place in
8 Sheboygan, Michigan off reservation property.

9 Nonetheless, there was also some
10 still dissatisfaction starting to even boil over
11 farther, and that became known to the ACF entities.
12 On August 13 of 2013 the ACF entities wrote a letter
13 to OSGC saying that it was asking for OSGC's support
14 for the project, and in that letter the ACF entity
15 said we want your support for the project with which
16 we are partnering with GBRE. Did not say it was
17 a project with OSGC, certainly did not say it was
18 a project with the tribe. It was strictly we are
19 partnering with GBRE.

20 Eventually in December there was
21 another meeting of the general tribal council and
22 because of issues unrelated to this project, there
23 was a vote to dissolve OSGC. When that happened,
24 then there was some concern about the funding

**ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.**

Page 9

1 or the funder of the GBRE project. There was no
2 vote taken to dissolve GBRE and GBRE has not been
3 dissolved. It is still a corporate entity -- or LLC
4 under Delaware law. The operative agreements said
5 they would not become effective unless and until GBRE
6 obtained its funding for the project because that's
7 where the capital was going to come from. This is
8 \$21 million worth of capitalization for this project.
9 It was to be capitalized or funded by Wisconsin
10 Bank & Trust. When WBT heard that -- and, excuse me.
11 It was funded by WBT, but it had to be guaranteed by
12 the Bureau of Indian Affairs and WBT had a request
13 in for the guarantee approval for BIA.

14 When WBT heard that OSGC was to be
15 dissolved, it created a lot of uncertainty for WBT.
16 So it withdrew its request to have the BIA guarantee
17 the loan and it wasn't going to make the loan unless
18 that guarantee was in place. So, in fact, the
19 agreements never really became effective because they
20 couldn't become effective until such time as GBRE
21 received its funding. When ACF heard that the OSGC
22 was to be dissolved and the request for guarantee
23 was withdrawn, that's when ACF started the lawsuit.

24 The lawsuit brought claims for breach

1 of contract in a variety of claims, intentional
2 interference claims both with existing contract
3 rights as well as prospective business relationships,
4 and it also brought a claim for unjust enrichment.
5 Those claims are suspect because the operative
6 agreements never really became effective and, quite
7 frankly, I don't understand unjust enrichment because
8 no project ever took place and my clients have never
9 received any benefits from the negotiation.

10 But for purposes of the motion
11 we brought, we are assuming that the contracts
12 are in play here and we brought a motion to dismiss
13 based on the sovereign immunity rights of both of
14 my clients. In order to get around the sovereign
15 immunity issue -- and by the way, in our first brief
16 we argued at length in the Breakthrough Management
17 case all the factors by which OSGC would obtain
18 sovereign rights. I don't think it was ever disputed
19 that the Nation has -- or the tribe has sovereign
20 rights, and in response we didn't get any
21 contradiction to that. So I'm assuming that the
22 only issue here is not whether both my clients have
23 sovereign immunity but, in fact, whether it has been
24 waived.

REPORT OF PROCEEDINGS
October 8, 2014

Page 11

1 In order to claim waiver here
2 there are many theories that have been advanced
3 by the ACF entities. Most of them deal with
4 negotiations and alleged statements that were made
5 by Mr. King, Mr. Cornelius before the contracts were
6 executed as well as their attorney, a senior partner
7 from Kutak Rock out of Omaha, Nebraska. We got
8 declarations from all three, which put into dispute
9 whether they really made those allegations, but we
10 don't think those are material to the motion that we
11 brought.

12 Whether or not they made
13 those statements, whether or not they made any
14 misrepresentations and said yes, we're waiving the
15 sovereign immunity of the tribe at OSGC, although
16 those are disputed, we don't think it matters if
17 they had made those for two very important reasons.
18 No. 1, there's an integration clause in both of these
19 contracts. The integration clause is very specific.
20 It says any prior representations, any negotiations
21 made by anybody are all merged within the contracts
22 themselves and cannot be used to argue a position
23 inconsistent with what the four corners of the
24 contracts would say. These contracts were signed

1 by one entity and one entity only, GBRE. So those
2 are barred by the Parol evidence rule and they can't
3 be considered by the Court.

4 The other reason is sovereign
5 immunity is based on federal common law. It is
6 not based on underlying state -- and I'll get into it
7 in a minute -- piercing the corporate veil, apparent
8 authority principles. And under the federal common
9 law it is pretty clear both in the Native American
10 Distributing case and the World Touch Gaming case we
11 cited that statements made by alleged representatives
12 of a sovereign do not impact whether the sovereign
13 has, in fact, waived sovereign immunity. And both
14 cases stand for that position, and the reason is
15 really clear.

16 If all it took was for a contracting
17 party that was not paid to sue and then be able to
18 say, well, a representative of the sovereign made
19 these statements, said they were waiving sovereign
20 immunity and that factual dispute put into question
21 whether sovereign immunity had been waived, that
22 would require the sovereign to go through a trial
23 and that process alone is an infringement on the
24 sovereign rights of the sovereignty. So the case

1 law is very clear. Waiver cannot be implied.
2 It must be unequivocally expressed. In addition --
3 and that's the Santa Clara Pueblo, pretty standard
4 case. Also, when there is a process that is clear
5 and publicly available and everybody can know what
6 it is, in order for a sovereign to say we will waive
7 sovereign immunity if this process is followed, that
8 process must be followed.

9 And here the sovereign, the
10 tribe has Ordinance 14.6 and it provides three
11 ways in which they can waive sovereign immunity; by
12 resolution passed upon motion of the general tribal
13 council, by resolution of the business committee
14 and for Oneida Seven Gens by a resolution passed by
15 the board but then only waiving Oneida Seven Gens'
16 sovereign immunity, not the tribal sovereign immunity
17 and that's detailed in the ordinance itself. And
18 it's undisputed here that none of those three things
19 took place.

20 ACF knew it was dealing with GBRE,
21 as its August 13 letter states. All it had to do was
22 ask to have a waiver signed if that's what it wanted.
23 All it had to do was ask for Oneida Seven Gens and
24 the tribe to sign the contracts. If it really

1 believed it was negotiating with them, they would
2 be bound by it, but they failed to do so. So now
3 ACF relies on two principal theories to pierce the
4 corporate veil, to pierce GBRE's corporate veil,
5 to get through Oneida Blocker, to get through Oneida
6 Energy, to get to Seven Gens and bind Seven Gens
7 and then again to pierce the corporate veil of Seven
8 Gens to get to the tribe.

9 First of all, the case law is
10 we believe clear that with regard to piercing the
11 corporate veil, that has never been done. That would
12 in essence make -- if I were to make representations
13 on behalf of the State of Wisconsin and my business
14 entity went belly up and I had not been properly
15 capitalized, they could allege that they could
16 pierce my corporate veil and get to the assets
17 of the sovereign.

18 Piercing the corporate veil has
19 never been, as far as I know, applied in a federal
20 common law situation of sovereignty, and there were
21 no cases cited by ACF in the briefs where it has
22 ever been applied. They were all typical corporate
23 piercing. Under the Tower Investors case, an
24 Illinois appellate court case, 2007, the Court

1 said that when you're dealing in a contractual
2 relationship situation, there's even a heightened,
3 more heightened standard for piercing the corporate
4 veil because the party has chosen to contract with
5 a corporation. And choosing to contract with that
6 corporation doesn't then allow them to turn around
7 and say, well, I want to pierce and get to another
8 party. It's more frequently applied in a
9 noncontractual position where there has been a tort
10 of some kind and they want to pierce to get through
11 the person, the corporate entity. But even if
12 piercing the corporate veil did apply here, there
13 haven't been allegations, nor any factual showing
14 that that would be appropriate here.

15 Under Illinois law the entity at
16 issue whose veil is sought to be pierced must really
17 be a sham entity. It must really -- the party needs
18 to show fraud, that it was only created as a fraud
19 to allow the principal, or the parent corporation to
20 conduct the parent corporation's activities through
21 the fraudulent sham of this corporate entity. It has
22 to be shown undervaluation -- or undercapitalization
23 and that they're really doing the business of the
24 corporate parent rather than their own, and that's

1 just not the situation here.

2 GBRE was going to be adequately
3 financed -- or capitalized by \$21 million and if
4 it wasn't, there would be no project. It was in
5 the business of doing this and it would have to be
6 recognized in that business for WBT to loan the money
7 and for BIA to guarantee the money. At all stages
8 throughout this the ACF entities knew they were
9 dealing with a tribal entity in terms of owning GBRE.
10 They know OSG was there and they knew GBRE actually
11 existed. So even if corporate -- piercing the
12 corporate veil applied in any respect, the elements
13 are not present here.

14 The other issue that is raised
15 is the apparent authority issue. Again, the
16 overwhelming majority of cases say apparent authority
17 does not apply in this federal common law area.
18 Now, ACF cited two cases, the Bates case and the
19 Hopland case where they went and did look at apparent
20 authority principals but those cases are factually
21 distinguishable. In both of those cases the actual
22 entity was the signatore on the contract. And
23 the question was, was the principal who signed it
24 on behalf of that entity, did he have authority in

1 that circumstance. Here the sovereign entity never
2 signed this. We don't have that circumstance.

3 So we don't believe apparent
4 authority is applicable at all in a sovereignty
5 situation. But if it did, again, it doesn't apply
6 here because you don't look at the representations
7 of the alleged agent. You don't look at the conduct
8 of the alleged agent. The apparent authority is
9 a top-down projection. It has to be the activities
10 of in this case the tribe or Seven Gens who is giving
11 the impression that the people below them have the
12 authority to do these things. Here we have a tribe
13 who has an ordinance in place as to the only way it
14 can waive sovereign immunity, and that same ordinance
15 applies to OSGC. They've given every appearance that
16 there is nobody below those entities who can waive
17 sovereign immunity.

18 So for ACF principals -- and the
19 two that put in declarations here are attorneys --
20 to say that they reasonably relied on representations
21 of this apparent authority when there's no indication
22 that anybody at the tribe told them there was
23 authority or gave an appearance of authority, they
24 could not make the showing that they would need to

1 on the apparent authority issue.

2 So let's assume, however, that
3 now the corporate rule that my clients are somehow
4 bound to these contracts they didn't sign because
5 of representations of apparent authority or piercing
6 the corporate veil. We don't believe that gets ACF
7 entities anywhere because there's nothing in these
8 contracts that waives sovereign immunity. The only
9 thing in the contract upon which ACF relies is the
10 forum selection clause. The forum selection clause
11 says nothing about sovereign immunity and the only --
12 and there were no cases cited to the Court where
13 it has ever been found that a forum selection clause
14 is a waiver of sovereign immunity.

15 The cases relied upon by ACF is the
16 C&L Enterprises case, which is a US Supreme Court
17 case. In that case it was an arbitration clause,
18 and in the arbitration clause there was an agreement
19 by the sovereign that they would arbitrate and they
20 would be bound by the outcome of the arbitration
21 award. The second case is the Alzheimer & Gray
22 case, the 7th Circuit case. It was an arbitration
23 case that had the same language. On top of that it
24 actually said that the entity was waiving sovereign

REPORT OF PROCEEDINGS
October 8, 2014

Page 19

1 immunity. The third case is the Sokaogon case --
2 Gaming case, Judge Posner's case, where he also found
3 a waiver based on an arbitration clause, exactly
4 similar to C&L Enterprises. That is a very legally
5 significant difference.

6 In the most recent case --
7 well, the Danka Funding case also, that was an
8 earlier case out of New Jersey, said that forum
9 selection clause was definitely not a waiver of
10 sovereign immunity. But most recently there have
11 been addressed in the Breakthrough Management case,
12 Judge Krieger gave I thought a very compelling
13 explanation of what the distinction is. Nobody can
14 make a sovereign entity, in this case my client,
15 the tribe or OSGC arbitrate, whereas anybody can sue
16 a sovereign entity. And when a sovereign entity
17 agrees to arbitrate, they are saying we agree that
18 you can have a forum to have a resolution of our
19 dispute and it's saying we agree that we will be
20 bound by the outcome of that. And that is in fact
21 some of the cases have said -- three relied upon by
22 ACF -- a waiver of sovereign immunity.

23 That is a whether we can be sued
24 issue. A forum selection clause is only a where

1 we can be sued because they can't protect themselves
2 as to whether they can be sued. And they say, well,
3 if you're going to sue us, you can sue us in the
4 State of Illinois, but it doesn't say and we agree
5 you can sue us. And that was Judge Krieger's
6 analysis, and she distilled it down to a whether
7 clause or a where clause. And if it's a where
8 clause, forum selection, that's not a waiver. That's
9 not agreeing to be sued. A whether clause is in fact
10 that. And when that was taken up on appeal, the
11 court of appeals embraced that analysis but it wasn't
12 an issue directly in front of them. So this is the
13 district court, Judge Krieger.

14 So we don't think even if they
15 get to the contract, that there's anything in that
16 contract that waives sovereign immunity. There
17 wouldn't have been any reason for there to be a
18 sovereign immunity waiver in the contract because
19 it was with GBRE, a Delaware LLC, which doesn't have
20 sovereign immunity. That handles the breach of
21 contract claim.

22 The tort claims, just very briefly,
23 the only allegation that sovereign immunity should
24 not apply to the tort claims is based upon the Bay

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 21

1 Mills case out of 2014, US Supreme court case,
2 in footnote 8. And in that case the Court was not
3 asked to hold on it but said there we never really
4 addressed the issue as to if there is an injured
5 plaintiff who has never chosen to deal with a tribal
6 entity and has damages whether there are "special
7 justifications" that would say that sovereign
8 immunity should not bar such a claim in that case.

9 If, in fact, that were an area to
10 be developed somewhere in the future, and no case
11 as I understand it has done that since the Bay Mills
12 case, there are not special justification issues
13 here. This isn't a situation where a person walks
14 into a casino owned by a sovereign and part of the
15 building falls on the person and they never really
16 chose to deal with the sovereign and now they're
17 injured and the sovereign raises sovereign immunity.
18 This is an issue where ACF knew from day one that
19 GBRE was a subsidiary of a tribally chartered
20 corporation which was owned by a tribal governmental
21 agency.

22 They chose to enter into
23 this structure. They knew full well about the
24 sovereigns and could have suggested that they all

1 sign these agreements and they did not. If special
2 justification were ever sometime applied in a case
3 so as to be precedent, that special justification as
4 articulated by the Supreme Court in Bay Mills just
5 doesn't exist here.

6 So we believe that there isn't
7 any waiver of sovereign immunity, there's nothing
8 to be shown, and we would ask that the case against
9 my client be dismissed.

10 MR. DOMBROWSKI: Thank you, Judge.
11 Mr. Pyper did give a nice recitation of the facts,
12 but 75 percent of what Mr. Pyper has stated are
13 closing arguments at trial that should be done in
14 this courtroom. Judge, first, it is their burden
15 right now, 2-619 motion to show that there's no
16 issue of material fact regarding sovereign immunity.
17 Judge, there's a whole host of factual issues that
18 cannot be decided on motion.

19 Everything is intertwined here.
20 This is a very complex case. We have dueling
21 affidavits, the other side claiming that, well,
22 there was no sovereign immunity, even though we have
23 clear clauses that I'm going to talk about. These
24 facts are all intertwined with the subject matter

REPORT OF PROCEEDINGS
October 8, 2014

Page 23

1 of jurisdiction here and there's no possible way
2 I submit that this court can grant their motion and
3 cut loose OSGC and the Oneida tribe because of this
4 circumstance. These facts are this case. These
5 facts are trial issues that cannot be decided here.
6 They have not met their burden in that regard, Judge.

7 Before we talk about the
8 Solargenix case we first must state, Judge, is
9 sovereign immunity really available for OSGC and
10 the tribe. The Bay Mills case, not only footnote 8
11 but throughout the case, seems to cast significant
12 doubt whether in this particular case where you have
13 a breach of contract and three tort victims whether
14 sovereign immunity actually applies. The Bay Mills
15 court this year took great pains to state if you're
16 a tort victim and you have no other remedy, we're not
17 deciding that. We're not saying there is sovereign
18 immunity and cast significant doubt on it. And if
19 you go, delve into the facts of the Bay Mills case,
20 that was the State of Michigan stating to a tribe
21 in Michigan you are operating an illegal casino.
22 Instead of going to other avenues, such as injunction
23 or suing the individuals who set up the illegal
24 casino or pursuing them criminally, they went

1 straight to sue.

2 Here, Judge, if you cut loose on
3 this motion where there's an abundance of questions
4 of fact, cut loose OSGC and the tribe, we are left
5 with GBRE only, a shell created for the particular
6 purpose created by the tribe, created by OSGC to
7 engage in energy projects. We would be a victim
8 without a remedy.

9 Moving forward, Judge, if you do
10 believe sovereign immunity is available to OSGC,
11 we must go to the specific wording of the choice
12 of law of venues provisions that both sides agreed
13 to. Both sides had attorneys. Both sides came to
14 Evanston, Illinois where we are based, negotiated
15 these contracts. And this has nothing to do with
16 Parol evidence, Judge. We're just responding to
17 their 2-619 motion. We have to bring in these facts.

18 It says in bold and capital letters
19 in the contract signed by Kevin Cornelius, OSGC's
20 CEO, "This agreement shall be deemed to be made in
21 Illinois and shall be governed by and construed in
22 accordance with Illinois law. Lessee and lessor" --
23 that's all of us -- "agree that all legal actions
24 in connection with this agreement shall take place

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 25

1 in federal or state courts situated in Cook County,
2 Illinois." That's why we're here, Judge. That's
3 why we filed suit.

4 The operation and maintenance
5 agreement, paragraph 15 specifically states,
6 "Any disputes pertaining to this agreement shall
7 be determined exclusively in a court of competent
8 jurisdiction in the County of Cook, State of
9 Illinois." Any disputes, Judge. That means
10 breach of contract. That means intentional torts.
11 We are in the right courtroom. We have the right
12 defendants.

13 Not only did OSGC, GBRE and
14 the tribe breach the contracts, but separately and
15 distinctly OSGC and the tribe committed an abundance
16 of torts which we have laid out in our very long
17 complaint. They couldn't be more clear. And as to
18 Mr. Pyper's argument, well, these choice of law and
19 choice of venue provisions don't mention sovereign
20 immunity, the Supreme Court says you don't have to.
21 And if you look at the Supreme Court decisions and
22 the 7th Circuit decisions, those are arbitration
23 decisions stating you must arbitrate.

24 We're not even saying that. We're

1 saying you have a fair shot in Cook County, Illinois.
2 Bring your facts to the table. We will try this case
3 in Cook County. And they agreed to that, Judge.
4 Both sides agreed to it. Both sides had attorneys.
5 Both sides negotiated this contract for months and
6 months. You don't need to mention the words
7 sovereign immunity to waive sovereign immunity.
8 Those aren't my words. Those in essence are the
9 words of the US Supreme Court. If you look to the
10 pleadings and the affidavits, Judge, again, there's
11 no way that this motion, this particular subject
12 matter motion can be granted. We haven't even been
13 to discovery yet, Judge. There's more facts coming.

14 As to the Solargenix case,
15 which came out August 1, 2014, Judge, emanating
16 from this division within this courthouse, two
17 Spanish defendants asserted that you can't bring me
18 to Cook County because I didn't sign the contract.
19 This is what the tribe and OSGC are saying. Well,
20 I didn't sign this contract. How can you possibly
21 bring me here. Well, the Solargenix court said,
22 yes, even though you didn't sign the contract,
23 even though you're over 4,000 miles away, you must
24 come to Cook County, Illinois and defend this case

REPORT OF PROCEEDINGS
October 8, 2014

Page 27

1 because that's what your subsidiary agreed to.

2 The Solargenix wording is quite
3 similar to our wording. They mention disputes.
4 They mention Cook County. They mention competent
5 court of jurisdiction. The Court says and the
6 7th Circuit said in Hugel, H-u-g-e-l, that you can't
7 ask someone who is closely related to the action step
8 back and say I didn't sign that, you can't bring me
9 to Cook County.

10 Now, in the Hugel case, which
11 was decided in 1990, the 7th Circuit affirmed it,
12 the plaintiff was complaining about the choice of
13 law and the choice of venue. In that case they said,
14 no, you must go to England. So the plaintiff there
15 had to go 2,000 miles away. All we're stating is
16 that the Wisconsin border from this courthouse is
17 about 57 miles. There's nothing unfair about these
18 choice of law provisions. They agreed to them and
19 you'll notice, Judge, they never really mentioned
20 whether they thought they were improper form or
21 whether they were unfair to the Wisconsin defendants
22 because they're clear. You cannot argue that with
23 a straight face.

24 Also, Judge, the other question,

1 OSGC and the tribe are so closely related to
2 the contract, as they were in Solargenix, that
3 they had to be expected to be bound by this choice
4 of law provision. They -- we're not talking about
5 individuals who are coming to the table who are
6 only GBRE people. We have the CEO of OSGC, who's
7 also a tribal member. We have the CFO of OSGC,
8 who's also a tribal member. And our joint venture
9 agreement, which we attached to one of our
10 affidavits, that was initially, Judge, with OSGC.
11 GBRE wasn't even mentioned in the joint venture
12 agreement, and actually Solargenix also had a joint
13 venture agreement.

14 Now, that wasn't -- initially,
15 Judge, as our affidavits state, we were dealing
16 with the tribe from day one. We were dealing with
17 OSGC from day one. GBRE wasn't even in the picture
18 when we started this whole thing. It came in later.
19 Why would we make presentations before the Oneida
20 tribe up in Green Bay if we didn't know they were
21 closely related to this contract. Why would we write
22 a letter to OSGC's board of directors if we didn't
23 know and if they didn't know that they were closely
24 related to this contract. At the bare minimum --

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 29

1 they've admitted this -- OSGC and the tribe would
2 have been third-party beneficiaries of this contract.
3 And the purpose of GBRE is to make money. We don't
4 create corporations in the United States for charity.
5 This was an LLC to make OSGC money. OSGC is there
6 to make the tribe money. And God love them, they're
7 practicing free enterprise, but you can't back off of
8 a contract after your CEO signs and say, well, you
9 know, that's not us. That's just him acting on his
10 own.

11 We've talked about in our brief
12 and Mr. Pyper's talked about the corporate veil. We
13 don't have to prove that the corporate veil has been
14 pierced here. I think we've shown enough through our
15 affidavits and even through their affidavits that
16 the corporate veil has been pierced, Judge. And
17 if we just concentrate on their affidavits and what
18 they attached to their affidavits, there is a loan
19 document from the Wisconsin Bank & Trust regarding
20 this particular project. We're talking big money
21 here. They're agreeing to fund the project because
22 OSGC has requested it and OSGC is mentioned three
23 times within that document. And this is just
24 one document that OSGC has attached to one of

1 their affidavits.

2 OSGC is mentioned three times.

3 If they're not a part of this deal, why are they
4 mentioned in the covenants, why are they mentioned
5 for financing, why is their board of directors at all
6 involved. We have an email that we attached from
7 Kevin Cornelius stating to our people, well, I've
8 got four of the five board of directors onboard of
9 OSGC. They're onboard. He didn't need them all.
10 He wanted them all for the financing of the project.
11 And the project is -- it's an integral part, the
12 financing. Obviously you can't complete a project
13 if you don't have financing.

14 And Mr. Pyper pointed out our
15 August 2013 letter to the OSGC board. We are asking
16 the board to support the completion of the project --
17 those are our words -- and we're directing it to
18 OSGC. If we take what Mr. Pyper and his briefs are
19 stating, that it was just GBRE, well, why is OSGC and
20 the tribe so involved with this project if it's just
21 the GBRE project. We know we have business committee
22 members from the tribe who go to California -- it's
23 in our affidavits -- to look at our machinery. Why
24 is someone from the business committee of the Oneida

REPORT OF PROCEEDINGS
October 8, 2014

Page 31

1 tribe looking at our machines that are going to be
2 used in the GBRE project if they're not intricately
3 involved in this project.

4 Moving forward, Judge, I think
5 with their affidavits too, I think we have some
6 key admissions here. Now, Mr. Pyper wants to have
7 it both ways as far as the Bay Mills decision is
8 concerned. He at once states, well, they knew --
9 the ACF guys knew they were dealing with the tribe
10 but his briefs say another thing. His briefs say,
11 well, you weren't dealing with the tribe. So which
12 is it, are we dealing with the tribe as they state
13 or as Mr. Pyper states today, well, you should have
14 known you were dealing with the tribe. However, you
15 weren't really dealing with the tribe; therefore,
16 Bay Mills doesn't apply. Which is it?

17 Finally, Judge, the issue that
18 we've pled in our complaint -- and we really all
19 have to go back to the complaint. We've got all
20 these facts and affidavits dueling against each
21 other. We can go back to the complaint and I think
22 defeat their motion. We know that the tribe
23 was intricately and intimately involved with this
24 project because it was their vote in December of

1 2013, as Mr. Pyper referred to, that dissolved OSGC
2 and then destroyed the project. If the tribe and
3 OSGC are completely separate from this project,
4 why did the tribe's own vote destroy the project.
5 It just doesn't make any sense at all. Common sense
6 and the facts state that this was a tribal project.
7 This was an OSGC project. This was a GBRE project.
8 You cannot separate these three entities.

9 There's also the issue, Judge,
10 of fundamental fairness. This is my last comment.
11 It is not unfair to these three entities that we
12 are suing to try their case in Cook County. They
13 agreed to it through their subsidiary. The
14 Solargenix case absolutely rules. The Hugel
15 case rules.

16 As you pointed out and as some
17 of the litigants pointed out in the arbitration case
18 three cases before us, words have meaning, especially
19 when you have -- you're well represented by smart
20 lawyers on both sides. They negotiate every part
21 of that contract and included in that contract were
22 the choice of law and the choice of venue provisions.
23 We don't need to state you waive sovereign immunity.
24 And their internal machinations at the tribe as far

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 33

1 as ordinances, they don't matter according to the
2 US Supreme Court, according to the 7th Circuit.
3 That doesn't matter. If they did it wrong in some
4 fashion at the Oneida tribe or at OSGC and maybe
5 didn't go through certain steps or the Robert's rules
6 of procedures, it doesn't matter. They're in this.
7 They're in this case. If they are let out of this
8 case, it's fundamentally unfair.

9 And, Judge, with the Solargenix
10 and Hugel cases, I don't think you can let them out.
11 So I'd just ask that you deny their motion.

12 MR. PYPER: Your Honor, just very
13 briefly. I didn't say that ACF was dealing with
14 the tribe. I said they knew where the tribe was.
15 They knew the structure. They could have dealt
16 with the tribe. They never did deal with the tribe.
17 And why would the business committee and OSGC be
18 interested, because this is one of their
19 subsidiaries. Just because a parent would like to
20 know what a subsidiary is doing doesn't somehow then
21 implicate them to be bound by any contract that their
22 subsidiary signed.

23 Counsel said both sides agreed
24 to this, both sides agree. Mr. Cornelius signed

1 on behalf of GBRE. He agreed to it. And the
2 factual disputes here are simply not material given
3 the integration clause and given the common law where
4 individual statements by representatives have no
5 bearing on waiver of sovereign immunity issues.

6 The last thing I want to touch
7 on is the Solargenix case. I don't understand how
8 that plays any role in this case at this stage. It
9 certainly does on personal jurisdiction. That's a
10 personal jurisdiction case, has nothing to do with
11 the subject matter jurisdiction, nor with sovereign
12 immunity. There was no sovereign at issue in that
13 case. But what counsel didn't point out was this --
14 it was -- the Court ruled that the Spanish parents
15 were sufficiently on notice that they could be
16 brought into the State of Illinois.

17 Well, of course they were. They
18 signed a letter of adhesion. A letter of adhesion
19 means you can stick parts of the contract at issue
20 in the fight. We agreed to those provisions. In
21 fact, the Court -- and this was in the personal
22 jurisdiction note -- the letter of adhesion said
23 that the Spanish parents "accepted and consented
24 to be bound by and comply with" provisions of the

REPORT OF PROCEEDINGS
October 8, 2014

Page 35

1 underlying contract that was in dispute. And what
2 they said was but we didn't specify we'd be bound
3 by the forum selection clause. The Court said,
4 well, that's not enough to get you out because the
5 forum selection clause is embedded in every single
6 provision of the contract because it says if there's
7 a dispute in what was then a cooperation agreement,
8 if there's a dispute with regard to anything in
9 here, the forum selection clause applies. So when
10 you said in your letter of adhesion you agreed to be
11 bound by and comply with provisions that are now in
12 dispute, you also bought into the forum selection
13 clause.

14 All that is is the where provision,
15 using Judge Krieger's analysis, where a dispute can
16 be brought. It has nothing to do with whether it can
17 or whether somebody can consent to the dispute. So
18 the Solargenix case is a personal injury case. It's
19 not a subject matter jurisdiction case, your Honor.

20 MR. DOMBROWSKI: Can I say one thing
21 about the Solargenix case? Judge, only one of those
22 Spanish defendants signed that letter of adhesion.
23 The second one did not. Both were not signatories
24 to the contract. And as to the second Spanish

1 defendant that didn't even sign the letter of
2 adhesion, the Court said you're coming along too.
3 You're coming along to Cook County.

4 THE COURT: All right. Thank you,
5 Counsel. It's been a very interesting argument.
6 Where I come back to with regards to the tribe and
7 OSGC is, as counsel stated, there's no dispute that
8 these two entities, that sovereign immunity would
9 apply to them. It's whether or not there's been a
10 waiver of that. And where that comes down on a 619,
11 I'm looking at the competing affidavits which does
12 allow the Court here to make a determination based
13 on those affidavits, there has -- everything I've
14 seen says it has to be a knowing waiver, not an
15 implied, not that just because our subsidiary entered
16 into contracts or things like that.

17 I do not find that there's been
18 a knowing waiver. And, therefore, under sovereign
19 immunity, I believe that this case cannot go forward
20 as to Oneida Seven Generations Corporation,
21 The Oneida Tribe of Indians of Wisconsin.

22 MR. PYPER: Thank you, your Honor.

23 THE COURT: We're up to --

24 MR. TEMPLE: GBRE's motion, your Honor.

1 THE COURT: Yes.

2 MR. TEMPLE: Your Honor, the issues are
3 far similar for our motion. Counsel for Oneida and
4 OSG laid out the facts nicely, so I won't reiterate
5 all those facts. But simply put, as they stated,
6 this is a commercial partnership that did not come
7 to fruition. GBRE is a signatory to both the master
8 lease and the maintenance agreement, which are
9 attached to the complaint.

10 Assuming the factual allegations
11 of the complaint to be true, we also have to look
12 to the fact in that master lease, which is attached
13 to the complaint, becomes a part of the pleading.
14 And the most important fact of that is there's a
15 condition precedent contained in the very first
16 paragraph of the master lease that says that
17 the contract doesn't become effective until GBRE
18 takes certain action.

19 The plain language of that
20 contingency is clear, and I quote, "The agreement
21 shall not become effective until such time as
22 lessee," lessee being defined as the plaintiff --
23 excuse me, as GBRE -- "has notified lessor," the
24 plaintiff, "in writing that lessee has entered into

1 financing arrangements with Wisconsin Bank &
2 Trust Company on such terms and conditions as are
3 reasonably acceptable to lessee."

4 The language is very specific.

5 There's no allegation in the complaint that
6 that notification in writing regarding financing
7 arrangements ever took place. We would argue that
8 the failure to allege sufficient facts, that that
9 condition was met, plaintiffs' claim No. 1 for breach
10 of contract against GBRE, also Claim 3 for promissory
11 estoppel and -- because GBRE's obligations to the
12 plaintiffs, contractual or otherwise, were clearly
13 subject to that condition. And, finally, Claim 5 for
14 unjust enrichment should also be dismissed because
15 the claim's either barred by the existence of a valid
16 contract here, all but an unenforceable one against
17 GBRE, or at the very least the plaintiffs have not
18 pled sufficient facts to establish either the unjust
19 retention of a benefit or really any benefit at all
20 that was conveyed to GBRE as a part of the
21 negotiation of these contracts.

22 Looking at the condition precedent,
23 your Honor, to establish a claim for breach of
24 contract, they've got to establish the existence

1 of a valid, enforceable contract. For purposes
2 of this motion, GBRE is not denying the existence
3 of the contract. As you heard from counsel a moment
4 ago at great length, these contracts were negotiated
5 heavily by both sides. Both sides were represented
6 by counsel. There's no question that they had a
7 meeting of the minds. They entered into contracts.

8 For purposes of our motion we're
9 not denying the existence of a valid contract.
10 There's a second step to that. And under *Carollo v.*
11 *Irwin*, where a contract contains a condition
12 precedent, the contract's not enforceable against
13 one party as far as their obligations are concerned
14 until the condition is performed or the contingency
15 occurs. So in this case we have a valid contract.
16 Part of that contract is a contingency, a condition
17 precedent. There's no obligation that can be
18 enforced against GBRE until that condition is met.

19 Now, plaintiffs haven't pled facts
20 that establish that that condition was met. They
21 want to point to the allegation they've made that
22 there was a commitment from Wisconsin Bank & Trust
23 for financing. That glosses over the full language
24 of that condition precedent. The contingency

1 language of paragraph 1 doesn't just say that
2 GBRE has to enter into financing arrangements. In
3 fact, there's three elements of that, that they
4 entered into financing arrangements, that those were
5 reasonably acceptable to GBRE, but most importantly
6 that they notified ACF in writing of those
7 arrangements.

8 Now, going further and looking at
9 the maintenance agreement, the second of these two
10 contracts -- and I note that in the response brief
11 the plaintiffs brought up the commencement date
12 and the maintenance agreement -- the maintenance
13 agreement commences upon commencement of the master
14 lease. And the Schedule 1 of the master lease says
15 that it commences when the loan proceeds are
16 disbursed -- or, excuse me, when the loan proceeds
17 are received by GBRE.

18 So there's really two dates here.
19 The first is the effective date of the contract
20 when the notification in writing occurs. The second
21 is the receipt of the actual loan proceeds which
22 causes the lease to commence and then also triggers
23 the second contract, which is the maintenance
24 and operation agreement. In this case there's no

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 41

1 allegation that GBRE ever provided that notification
2 in writing.

3 Now, plaintiffs want you to accept
4 that their allegation that WBT agreed to provide
5 financing is sufficient to fulfill that contingency.
6 But as counsel noted earlier, words have meaning.
7 For whatever reason as these parties negotiated at
8 great length these contracts, both represented by
9 counsel, they reserved to GBRE the discretion to
10 provide notification in writing when the financing
11 commitment was reasonably acceptable to them. The
12 parties decided that the requirement of written
13 notice was important. We're not talking about
14 a condition that's buried in this contract, your
15 Honor. We're talking about paragraph 1 on the first
16 page of the master lease, notification in writing
17 of financing arrangements that were reasonably
18 acceptable to GBRE.

19 Because there are no facts pled
20 to establish that that notification ever occurred
21 and that that contingency was met, we'd argue that
22 they failed to state the breach of contract claim and
23 it must be dismissed.

24 With regard to promissory estoppel,

1 obviously under the case law to establish promissory
2 estoppel you've got to argue a promise that's
3 unambiguous in its terms, reasonably foreseeable
4 reliance on the promise to the parties' detriment.
5 First, we've argued that the existence of a valid
6 contract in this case bars the claim for promissory
7 estoppel. Promissory estoppel is available in the
8 absence of a contract. Plaintiffs' counsel in their
9 response brief notes that, well, we've made an
10 argument that there's an unenforceable contractual
11 obligation here so, therefore, they should be allowed
12 to bring their promissory estoppel claim.

13 Again, for purposes of this motion
14 we're not arguing there's no valid contract here.
15 We're arguing that as a result of that condition in
16 that contract, there's no enforceable promise against
17 GBRE. On the other hand, as they would argue,
18 anytime you have a condition in a contract that's not
19 met, it opens the doors to any number of equitable
20 claims.

21 So the parties at great length here,
22 represented by counsel, negotiate a contract in which
23 it reserves to GBRE the notification in writing,
24 reserves that condition there for the contract to be

REPORT OF PROCEEDINGS
October 8, 2014

Page 43

1 effective and enforceable and then somehow because
2 that condition is not met, GBRE is still held to
3 every other promise in that contract under an
4 equitable theory. Your Honor, we would argue that
5 that's not the purpose of promissory estoppel, and
6 certainly the failure of a condition precedent does
7 not suddenly open the floodgates to equitable claims.
8 But even if there is not a valid contract in this
9 case, you still have a condition promise. Promissory
10 estoppel, they have to show reasonable reliance.

11 Your Honor, looking here to
12 In Re Midway Airlines, which we've cited in our
13 brief, you cannot reasonably rely on a condition
14 promise. Whether it's in the contract or not, GBRE's
15 promises are clearly conditioned on this notification
16 in writing requirement. The parties negotiated that
17 at length. It's in writing, you know. It states
18 that that is the condition there.

19 Plaintiffs must show that they had
20 some sort of reasonable reliance on GBRE's promises.
21 And I'll note in their pleading, the reliance that
22 they allege is actually reliance on, and I quote,
23 "contractual promises," that's at paragraph 56, and
24 that they reasonably relied on the -- capital A --

1 Agreements in paragraph 58. So they don't even hide
2 the fact that the promises that they're relying on
3 are those that are laid out in the contract, the
4 contract that contains a clear condition.

5 So even if they argued that their
6 promissory estoppel claim can be brought because
7 there's no valid contract, you still have promises
8 that they claim to be relying on that are subject
9 to a condition. Their reliance is unreasonable as
10 a matter of law because it's a conditional promise.
11 It's not a definite, unambiguous promise. In this
12 case GBRE said we're going to do all of these things,
13 we're going to take necessary steps to carry out this
14 contract. But paragraph 1, page 1, this is not
15 effective until such time as we notify you in writing
16 that we have a financing commitment that's reasonably
17 acceptable to us. For that reason, because that
18 reliance is unreasonable as a matter of law, we'd
19 argue that the claim for promissory estoppel must
20 also be dismissed.

21 Finally, as far as unjust enrichment
22 goes, your Honor, there are no facts alleged either
23 to the conveyance of any kind of benefit, nor
24 the unjust nature of the retention of such benefit.

1 Counsel in their response has argued that, they've
2 alleged proprietary and exclusive information. But
3 there's no allegation as to how GBRE would use that
4 information, how they have used that information,
5 no allegation as to how GBRE has benefited from that
6 information, no allegation as to how the information
7 benefited any other project that GBRE is using.

8 Plaintiffs' conclusory claim
9 that they shared information that has some enormous
10 benefit without any supporting facts simply doesn't
11 establish the conveyance of a benefit there to
12 support unjust enrichment. But even so, even if
13 there were a benefit conveyed there by the sharing
14 of information in the negotiation of a contract,
15 they fail to allege any facts that would support
16 the unjust enrichment of that benefit.

17 In this case the parties
18 at arm's length represented by counsel traveling
19 down to Evanston, Illinois, as plaintiffs' counsel
20 noted, negotiated this, shared information, visited
21 facilities all with the understanding that this
22 was a contract which on the first page in the
23 first paragraph contained the condition to its
24 effectiveness and its enforceability. For them

1 to now argue that the sharing of that information
2 is part of that negotiation, such retention was
3 unjust, ignores all the other language that was
4 negotiated in the contract. To simply say because
5 this contract didn't work out, it's unjust for you
6 to keep anything we told you and that you owe us
7 for all of that disregards all the language of the
8 contract.

9 For example, if the plaintiffs
10 had wanted to create some sort of protections for
11 themselves on the conveyance of proprietary exclusive
12 information, they could have worked that into the
13 contract. They could have negotiated those terms
14 in, understanding that it was a conditional promise.
15 Perhaps this doesn't come to fruition, perhaps the
16 financing commitment isn't provided, perhaps GBRE
17 doesn't find it reasonably acceptable, what is our
18 protection for this information that we've shared.
19 Nothing like that is incorporated into the agreement.
20 There's no protections in that case there. And as
21 both sides articulated earlier, this is a fully
22 integrated agreement so any assurances that might
23 have been made outside of the agreement are not
24 incorporated therein.

REPORT OF PROCEEDINGS
October 8, 2014

Page 47

1 For those reasons, your Honor,
2 we would ask that the Court dismiss Counts I, III and
3 V of plaintiffs' complaint.

4 MR. DOMBROWSKI: Judge, obviously this is
5 a 2-615 motion. We have to go back to the specific
6 wording of the complaint, which I don't think counsel
7 really has done. He's thrown in in his brief a bunch
8 of things that were not within the body of the
9 complaint.

10 Regardless, we plead on page 6
11 of the complaint several paragraphs regarding
12 funding, regarding a guarantee of loan, regarding
13 the loan being approved. We also specifically
14 plead 43 paragraphs regarding the specifics of the
15 contract, and obviously we have attached A and B
16 to our complaint, which is incorporated within the
17 complaint. Illinois does not require you to go
18 forth every paragraph of every contract in a breach
19 of contract action and lay out those contracts. A
20 breach of contract action if that were such would be
21 40 pages.

22 So, Judge, here we specifically
23 plead that every -- all conditions precedent
24 were met. We detailed the funding. We attached

1 the complaint. As to Count I, it's properly
2 pled. Also paragraphs 1 through 43 go into Count I,
3 so all of that detail goes into Count I. We have
4 specifically pled. We've put them on notice. They
5 should be required to answer it.

6 Judge, as to the promissory
7 estoppel, this again is pleading in the alternative.
8 We not only refer to the complaint in our promissory
9 estoppel, which is Count III, but we also -- counsel
10 didn't read this part. "ACF and ACF Services relied
11 on GBRE's contractual promises and/or all promises
12 to proceed with the project." Now, if they're
13 willing to say this is a valid contract, we might
14 have another issue on promissory estoppel. But
15 Illinois law is clear we can plead it even if
16 there's a breach of contract action.

17 Same goes for unjust enrichment,
18 which is Count V. We specifically state in Count V
19 how they're unjustly enriched not only within the
20 body of Count V but the paragraphs 1 through 43,
21 which specifically state this is our exclusive
22 technology, oral and written presentations to the
23 tribe, to OSGC. It is exclusive. It is proprietary.
24 They were unjustly enriched because of the knowledge

1 they gained from us before they walked away. So,
2 Judge, I'd ask that you deny his motion in its
3 entirety.

4 MR. TEMPLE: Your Honor, with respect
5 to the allegations about the facts, again, I would
6 point back to the very specific condition on the
7 first page of the master lease. As counsel noted,
8 it's attached to the complaint. That becomes part of
9 the complaint. Yes, that is the focus of our motion,
10 is that particular element and the fact that there's
11 no other facts pled in the complaint that support
12 the fulfillment of that condition.

13 I understand counsel's point that
14 we need not go through every single paragraph of
15 the lease to determine whether, you know, every
16 single aspect of that is pled, but in this case they
17 pled a breach of the contract generally for us not
18 continuing through with the project. And I can point
19 to the language right here, but specifically they've
20 said that we have breached by abandoning and refusing
21 to implement the master lease and maintenance
22 agreements.

23 There's a clear condition on the
24 first page that says it's not effective unless that

1 contingency is met. That is a fact necessary to show
2 that we've somehow abandoned this contract. To argue
3 that we abandoned/refused to implement the contract
4 when there's a clear condition that says we don't
5 continue with this unless A, B and C happens and
6 they haven't pled A, B and C, I would argue that
7 that is the facts required to be pled under Illinois
8 law in this case.

9 As far as the other two claims go,
10 again, as far as promissory estoppel is concerned,
11 they have not pled any sort of reasonable reliance.
12 Given the fact that this is a condition promise, I
13 have not heard any arguments from plaintiffs' counsel
14 that they believe there was an unconditional promise
15 made. And unjust enrichment, there are no
16 allegations under the count for unjust enrichment
17 as to what that benefit was but, more importantly,
18 where's the injustice? And looking at the case law,
19 and this is the Galvan v. Northwestern Memorial
20 Hospital case that we cited, "A cause of action for
21 unjust enrichment must allege the defendant retained
22 a benefit to the plaintiffs' detriment in violation
23 of the fundamental principles of justice, equity
24 and good conscious."

REPORT OF PROCEEDINGS
October 8, 2014

Page 51

1 All the plaintiffs have alleged
2 is that information was shared in the negotiation
3 of a contract that contained a condition to
4 enforceability and effectiveness and that somehow
5 the retention of that information was unjust. Again,
6 in this case any party that is negotiating a contract
7 with a condition in it must now be aware under
8 plaintiffs' theory that they are at risk of an
9 equitable claim for unjust enrichment if they
10 don't carry through with this contract. There's
11 no allegation here of any bad faith by GBRE. Any
12 failure by GBRE to take the necessary steps to ensure
13 the condition was fulfilled.

14 And, finally, with regards to
15 plaintiffs' comment that they have generally and
16 conclusory pled that all conditions were met, they
17 simply pled that all conditions precedent to the
18 contract were met by ACF Leasing or ACF Services.
19 We've not argued that they failed to meet any
20 condition. We've argued that there's a general
21 condition to the effectiveness of the contract.
22 They've made no argument that that was fulfilled.
23 This was not something that they could fulfill.
24 The parties in negotiating this clearly reserved to

1 GBRE the discretion to provide that notification that
2 would then trigger the effectiveness of the contract.
3 For that reason, your Honor, I'd ask that the three
4 counts be dismissed.

5 THE COURT: Well, I did have an
6 opportunity, of course, to go through the briefs
7 and read through the complaint and everything. And
8 based upon your arguments, first of all, as to the
9 breach of contract, we're at a pleading stage.
10 You're asking plaintiff at this point in time to
11 plead evidentiary facts, not just sufficient facts
12 to state a cause of action. Therefore, the breach of
13 contract count will go forward.

14 As to the promissory estoppel, it is
15 being pled in the alternative, but I do find that
16 it's lacking because if you look at your paragraphs,
17 you start at 55, and in your own argument you said
18 we have pled numerous facts to support the cause of
19 action in 1 through 43. Those are never even alleged
20 or realleged in your Count III as to promissory
21 estoppel on that. So it is dismissed with leave
22 to replead within 28 days, and I find a similar
23 need to plead your unjust enrichment claim more
24 clearly as to Green Bay Renewable Energy as well.

ACF LEASING, LLC, et al., vs.
GREEN BAY RENEWABLE ENERGY, LLC, et al.

Page 53

1 Therefore, Counts III and V are dismissed with leave
2 to replead within 28 days.

3 Given the fact that defendant is
4 to answer the breach of contract, but you're going
5 to have to respond to that, I'm going to put it all
6 in the same schedule. So with plaintiff repleading
7 III and V, 28 days would put you at November 5th,
8 I believe, yes. So we'll have the defendant answer
9 or otherwise plead as to III and V and answer
10 Count I by December 3rd.

11 Let's give a future status date.
12 Let me just write this down. Okay. Let's get back,
13 how's December 10th? Let's do it at 9:30. I think
14 we should be able to do that, okay?

15 MR. DOMBROWSKI: Thank you.

16 MR. TEMPLE: Thanks, your Honor.

17 THE COURT: Have a good day.

18 WHICH WERE ALL THE PROCEEDINGS
19 HAD OR OFFERED AT SAID HEARING
20 OF THE ABOVE-ENTITLED CAUSE.

21

22

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS.

3

4 I, MARY MASLOWSKI, CSR, do hereby
5 certify that I reported in shorthand the proceedings
6 had at the hearing aforesaid, and that the foregoing
7 is a true, complete and accurate transcript of the
8 proceedings at said hearing as appears from the
9 stenographic notes so taken and transcribed on the
10 9th day of October, 2014.

11

12

13

14

Certified Shorthand Reporter

15

16

17

18

19

20

21

22

23

24

<p>§</p>	<p>19:11;21:4 adequately (1) 16:2</p>	<p>20:23;38:5;39:21; 41:1,4;45:3,5,6;51:11 allegations (5)</p>	<p>25:22;32:17 area (3) 4:2;16:17;21:9</p>	<p>away (3) 26:23;27:15;49:1</p>
<p>\$21 (2) 9:8;16:3</p>	<p>adhesion (3) 35:10,22;36:2</p>	<p>11:9;15:13;37:10; 49:5;50:16 allege (5)</p>	<p>argue (11) 11:22;27:22;38:7; 41:21;42:2,17;43:4; 44:19;46:1;50:2,6</p>	<p style="text-align: center;">B</p>
<p style="text-align: center;">A</p>	<p>administrative (1) 3:12</p>	<p>14:15;38:8;43:22; 45:15;50:21 alleged (8)</p>	<p>argued (6) 10:16;42:5;44:5; 45:1;51:19,20</p>	<p>back (8) 27:8;29:7;31:19,21; 36:6;47:5;49:6;53:12</p>
<p>abandoned (1) 50:2</p>	<p>admissions (1) 31:6</p>	<p>44:22;45:2;51:1;52:19 allow (3)</p>	<p>arguing (2) 42:14,15</p>	<p>Bad (3) 4:3,3;51:11</p>
<p>abandoned/refused (1) 50:3</p>	<p>admitted (1) 29:1</p>	<p>15:6,19;36:12 allowed (1)</p>	<p>argument (5) 25:18;36:5;42:10; 51:22;52:17</p>	<p>Bank (4) 9:10;29:19;38:1; 39:22</p>
<p>abandoning (1) 49:20</p>	<p>advanced (1) 11:2</p>	<p>42:11 alone (1)</p>	<p>arguments (3) 22:13;50:13;52:8</p>	<p>bar (1) 21:8</p>
<p>able (2) 12:17;53:14</p>	<p>Affairs (1) 9:12</p>	<p>12:23 along (2)</p>	<p>arm's (1) 45:18</p>	<p>bare (1) 28:24</p>
<p>ABOVE-ENTITLED (1) 53:20</p>	<p>affecting (1) 4:13</p>	<p>36:2,3 alternative (2)</p>	<p>around (2) 10:14;15:6</p>	<p>barred (2) 12:2;38:15</p>
<p>absence (1) 42:8</p>	<p>affidavits (14) 22:21;26:10;28:10, 15;29:15,15,17,18; 30:1,23,31:5,20;36:11, 13</p>	<p>48:7;52:15 Alzheimer (1)</p>	<p>arrangements (6) 38:1,7;40:2,4,7; 41:17</p>	<p>based (8) 10:13;12:5,6;19:3; 20:24;24:14;36:12; 52:8</p>
<p>absolutely (1) 32:14</p>	<p>affirmed (1) 27:11</p>	<p>18:21 Although (3)</p>	<p>articulated (2) 22:4;46:21</p>	<p>Bates (1) 16:18</p>
<p>abundance (2) 24:3;25:15</p>	<p>again (9) 14:7;16:15;17:5; 26:10;42:13;48:7;49:5; 50:10;51:5</p>	<p>3:10;5:9;11:15 American (1)</p>	<p>aspect (1) 49:16</p>	<p>Bay (14) 5:20,21,23;6:8; 20:24;21:11;22:4; 23:10,14,19;28:20; 31:7,16;52:24</p>
<p>accept (1) 41:3</p>	<p>against (7) 22:8;31:20;38:10,16; 39:12,18;42:16</p>	<p>12:9 analysis (4)</p>	<p>asserted (1) 26:17</p>	<p>became (4) 7:22;8:11;9:19;10:6</p>
<p>acceptable (6) 38:3;40:5;41:11,18; 44:17;46:17</p>	<p>age (1) 7:8</p>	<p>6:17;20:6,11;35:15 and/or (1)</p>	<p>assets (2) 5:12;14:16</p>	<p>become (4) 9:5,20;37:17,21</p>
<p>accordance (1) 24:22</p>	<p>agency (3) 4:24;7:5;21:21</p>	<p>48:11 apparent (9)</p>	<p>assistant (1) 3:13</p>	<p>becomes (2) 37:13;49:8</p>
<p>according (2) 33:1,2</p>	<p>agent (2) 17:7,8</p>	<p>12:7;16:15,16,19; 17:3,8,21;18:1,5 appeal (1)</p>	<p>assume (1) 18:2</p>	<p>begin (2) 3:1;4:17</p>
<p>ACF (29) 6:13,18,20,24;7:22; 8:11,12,14;9:21,23; 11:3;13:20;14:3,21; 16:8,18;17:18;18:6,9, 15;19:22;21:18;31:9; 33:13;40:6;48:10,10; 51:18,18</p>	<p>ago (1) 39:4</p>	<p>20:10 appeals (1)</p>	<p>assuming (3) 10:11,21;37:10</p>	<p>behalf (5) 8:4,4,5;14:13;16:24</p>
<p>acronym (1) 4:9</p>	<p>agree (5) 19:17,19;20:4;24:23; 33:24</p>	<p>20:11 appearance (2)</p>	<p>assurances (1) 46:22</p>	<p>belly (1) 14:14</p>
<p>acting (1) 29:9</p>	<p>agreed (9) 24:12;26:3,4;27:1, 18;32:13;33:23;35:10; 41:4</p>	<p>17:15,23 appellate (1)</p>	<p>attached (9) 28:9;29:18,24;30:6; 37:9,12;47:15,24;49:8</p>	<p>below (2) 17:11,16</p>
<p>action (10) 7:1,2;27:7;37:18; 47:19,20;48:16;50:20; 52:12,19</p>	<p>agreeing (2) 20:9;29:21</p>	<p>14:24 applicable (2)</p>	<p>attorney (1) 11:6</p>	<p>beneficiaries (1) 29:2</p>
<p>actions (1) 24:23</p>	<p>agreement (19) 8:3;18:18;24:20,24; 25:5,6;28:9,12,13; 35:7;37:8,20;40:9,12, 13,24;46:19,22,23</p>	<p>6:2;17:4 applied (5)</p>	<p>attorneys (3) 17:19;24:13;26:4</p>	<p>benefit (10) 38:19,19;44:23,24; 45:10,11,13,16;50:17, 22</p>
<p>activities (3) 5:8;15:20;17:9</p>	<p>agreements (7) 8:1;9:4,19;10:6; 22:1;44:1;49:22</p>	<p>14:19,22;15:8;16:12; 22:2 applies (3)</p>	<p>authority (13) 12:8;16:15,16,20,24; 17:4,8,12,21,23,23; 18:1,5</p>	<p>benefited (2) 45:5,7</p>
<p>activity (1) 7:15</p>	<p>agrees (1) 19:17</p>	<p>7:14;15:14 approval (1)</p>	<p>available (4) 13:5;23:9;24:10; 42:7</p>	<p>benefits (1) 10:9</p>
<p>actual (2) 16:21;40:21</p>	<p>air (1) 7:18</p>	<p>9:13 approved (1)</p>	<p>avenues (1) 23:22</p>	<p>bet (1) 4:14</p>
<p>Actually (6) 3:15;16:10;18:24; 23:14;28:12;43:22</p>	<p>Airlines (1) 43:12</p>	<p>47:13 arbitrate (4)</p>	<p>award (1) 18:21</p>	<p>BIA (3) 9:13,16;16:7</p>
<p>addition (1) 13:2</p>	<p>allegation (9)</p>	<p>25:23 arbitration (7)</p>	<p>aware (1) 51:7</p>	<p>big (1) 29:20</p>
<p>addressed (2)</p>		<p>18:17,18,20,22;19:3;</p>		<p>bind (1)</p>

<p>14:6 Blocker (2) 5:19;14:5 board (7) 6:22;13:15;28:22; 30:5,8,15,16 body (2) 47:8;48:20 boil (2) 7:13;8:10 bold (1) 24:18 border (1) 27:16 both (23) 10:2,13,22;11:18; 12:9,13;16:21;24:12, 13,13;26:4,4,5;31:7; 32:20;33:23,24;35:23; 37:7;39:5,5;41:8;46:21 bought (1) 35:12 Boulder (1) 4:10 bound (8) 14:2;18:4,20;19:20; 28:3;33:21;35:2,11 branch (3) 7:6,6,10 breach (15) 9:24;20:20;23:13; 25:10,14;38:9,23; 41:22;47:18,20;48:16; 49:17;52:9,12;53:4 breached (1) 49:20 Breakthrough (2) 10:16;19:11 brief (6) 10:15;29:11;40:10; 42:9;43:13;47:7 briefly (2) 20:22;33:13 briefs (5) 14:21;30:18;31:10, 10;52:6 bring (6) 24:17;26:2,17,21; 27:8;42:12 brought (8) 9:24;10:4,11,12; 11:11;35:16;40:11; 44:6 Bruce (1) 6:7 building (1) 21:15 bunch (1) 47:7 burden (2) 22:14;23:6 Bureau (1) 9:12</p>	<p>buried (1) 41:14 business (14) 5:8,18;6:14,21;7:3; 10:3;13:13;14:13; 15:23;16:5,6;30:21,24; 33:17 businesses (2) 5:7,13 busy (1) 3:17</p> <p style="text-align: center;">C</p> <p>C&L (2) 18:16;19:4 California (1) 30:22 came (4) 6:20;24:13;26:15; 28:18 can (26) 4:16;13:5,11;17:14, 16;19:13,15,18,23; 20:1,2,3,5;23:2;26:12, 20;31:21;33:10;35:15, 16,17,20;39:17;44:6; 48:15;49:18 capital (3) 9:7;24:18;43:24 capitalization (1) 9:8 capitalized (3) 9:9;14:15;16:3 care (1) 5:2 Carollo (1) 39:10 carry (2) 44:13;51:10 case (73) 6:2,7;10:17;12:10, 10,24;13:4;14:9,23,24; 16:18,19;17:10;18:16, 17,17,21,22,22,23; 19:1,1,2,2,6,7,8,11,14; 21:1,1,2,8,10,12;22:2, 8,20;23:4,8,10,11,12, 19;26:2,14,24;27:10, 13;32:12,14,15,17; 33:7,8;35:18,18,19,21; 36:19;39:15;40:24; 42:1,6;43:9;44:12; 45:17;46:20;49:16; 50:8,18,20;51:6 cases (11) 12:14;14:21;16:16, 18,20,21;18:12,15; 19:21;32:18;33:10 casino (3) 21:14;23:21,24 cast (2) 23:11,18</p>	<p>cause (4) 50:20;52:12,18; 53:20 causes (1) 40:22 CEO (4) 6:3;24:20;28:6;29:8 certain (2) 33:5;37:18 certainly (2) 8:17;43:6 CFO (2) 6:9;28:7 charity (1) 29:4 charter (1) 5:6 chartered (3) 4:23;5:21;21:19 choice (9) 24:11;25:18,19; 27:12,13,18;28:3; 32:22,22 choosing (1) 15:5 chose (2) 21:16,22 chosen (2) 15:4;21:5 Circuit (5) 18:22;25:22;27:6,11; 33:2 circumstance (3) 17:1,2;23:4 cited (6) 12:11;14:21;16:18; 18:12;43:12;50:20 claim (17) 10:4;11:1,20;21; 21:8;38:9,10,13,23; 41:22;42:6,12;44:6,8, 19;45:8;51:9;52:23 claiming (1) 22:21 claims (9) 9:24;10:1,2,5;20:22, 24;42:20;43:7;50:9 claim's (1) 38:15 Clara (1) 13:3 clause (18) 11:18,19;18:10,10, 13,17,18;19:3,9,24; 20:7,7,8,9;35:3,5,9,13 clauses (1) 22:23 clear (13) 12:9,15;13:1,4; 14:10;22:23;25:17; 27:22;37:20;44:4; 48:15;49:23;50:4 clearly (4)</p>	<p>38:12;43:15;51:24; 52:24 client (2) 19:14;22:9 clients (4) 10:8,14,22;18:3 closely (4) 27:7;28:1,21,23 closing (1) 22:13 coming (4) 26:13;28:5;36:2,3 commence (1) 40:22 commencement (2) 40:11,13 commences (2) 40:13,15 comment (2) 32:10;51:15 commercial (1) 37:6 commitment (4) 39:22;41:11;44:16; 46:16 committed (1) 25:15 committee (6) 6:21;7:3;13:13; 30:21,24;33:17 common (5) 12:5,8;14:20;16:17; 32:5 Company (1) 38:2 compelling (1) 19:12 competent (2) 25:7;27:4 competing (1) 36:11 complaining (1) 27:12 complaint (20) 25:17;31:18,19,21; 37:9,11,13;38:5;47:3,6, 9,11,16,17;48:1,8;49:8, 9,11;52:7 complete (1) 30:12 completely (1) 32:3 completion (1) 30:16 complex (1) 22:20 comply (1) 35:11 component (1) 6:16 concentrate (1) 29:17 concern (1)</p>	<p>8:24 concerned (3) 31:8;39:13;50:10 concerning (1) 3:2 conclusory (2) 45:8;51:16 condition (32) 37:15;38:9,13,22; 39:11,14,16,18,20,24; 41:14;42:15,18,24; 43:2,6,9,13,18;44:4,9; 45:23;49:6,12,23;50:4, 12;51:3,7,13,20,21 conditional (2) 44:10;46:14 conditioned (1) 43:15 conditions (4) 38:2;47:23;51:16,17 conduct (2) 15:20;17:7 connection (1) 24:24 conscious (1) 50:24 consent (1) 35:17 considered (1) 12:3 construed (1) 24:21 contained (3) 37:15;45:23;51:3 contains (2) 39:11;44:4 contingency (7) 37:20;39:14,16,24; 41:5,21;50:1 continue (1) 50:5 continuing (1) 49:18 contract (80) 10:1,2;15:4,5;16:22; 18:9;20:15,16,18,21; 23:13;24:19;25:10; 26:5,18,20,22;28:2,21, 24;29:2,8;32:21,21; 33:21;35:1,6,24;37:17; 38:10,16,24;39:1,3,9, 11,15,16;40:19,23; 41:14,22;42:6,8,14,16, 18,22,24;43:3,8,14; 44:3,4,7,14;45:14,22; 46:4,5,8,13;47:15,18, 19,20;48:13,16;49:17; 50:2,3;51:3,6,10,18,21; 52:2,9,13;53:4 contracting (1) 12:16 contracts (18) 10:11;11:5,19,21,24,</p>
---	--	---	---	---

<p>24;13:24;18:4,8;24:15; 25:14;36:16;38:21; 39:4,7;40:10;41:8; 47:19 contract's (1) 39:12 contractual (5) 15:1;38:12;42:10; 43:23;48:11 contradiction (1) 10:21 conveyance (3) 44:23;45:11;46:11 conveyed (2) 38:20;45:13 Cook (10) 25:1,8;26:1,3,18,24; 27:4,9;32:12;36:3 cooperation (1) 35:7 Cornelius (10) 5:24;6:2,4,9,12;8:3; 11:5;24:19;30:7;33:24 corners (1) 11:23 corporate (21) 9:3;12:7;14:4,4,7,11, 16,18,22;15:3,11,12, 21,24;16:11,12;18:3,6; 29:12,13,16 Corporation (9) 3:8;4:24;5:5,20;15:5, 6,19;21:20;36:20 corporations (2) 5:16;29:4 corporation's (1) 15:20 council (9) 3:13,19;4:6;7:7,7,11, 20;8:21;13:13 Counsel (17) 33:23;36:5,7;37:3; 39:3,6;41:6,9;42:8,22; 45:1,18,19;47:6;48:9; 49:7;50:13 counsel's (1) 49:13 Count (11) 48:1,2,3,9,18,18,20; 50:16;52:13,20;53:10 Counts (3) 47:2;52:4;53:1 County (10) 25:1,8;26:1,3,18,24; 27:4,9;32:12;36:3 course (1) 52:6 COURT (37) 3:1,6,9,22;4:1,5,10, 15;12:3;14:24,24; 18:12,16;20:11,13; 21:1,2;22:4;23:2,15; 25:7,20,21;26:9,21;</p>	<p>27:5,5;33:2;35:3;36:2, 4,12,23;37:1;47:2; 52:5;53:17 courthouse (2) 26:16;27:16 courtroom (2) 22:14;25:11 courts (1) 25:1 covenants (1) 30:4 create (3) 7:17;29:4;46:10 created (11) 5:5,7,15,19,20;6:15; 9:15;15:18;24:5,6,6 criminally (1) 23:24 cultural (1) 7:16 cut (3) 23:3;24:2,4</p>	<p>31:22 defend (1) 26:24 defendant (4) 36:1;50:21;53:3,8 defendants (4) 25:12;26:17;27:21; 35:22 defined (1) 37:22 definite (1) 44:11 definitely (1) 19:9 Delaware (3) 5:22;9:4;20:19 delve (1) 23:19 deny (2) 33:11;49:2 denying (2) 39:2,9 description (1) 6:22 designated (1) 8:6 destroy (1) 32:4 destroyed (1) 32:2 detail (1) 48:3 detailed (2) 13:17;47:24 determination (1) 36:12 determine (1) 49:15 determined (1) 25:7 detriment (2) 42:4;50:22 developed (1) 21:10 development (2) 5:18;6:14 difference (1) 19:5 directing (1) 30:17 directly (1) 20:12 directors (3) 28:22;30:5,8 disbursed (1) 40:16 disclosed (1) 3:9 discovery (1) 26:13 discretion (2) 41:9;52:1 dismiss (3)</p>	<p>4:18;10:12;47:2 dismissed (7) 22:9;38:14;41:23; 44:20;52:4,21;53:1 dispute (11) 4:21;11:8;12:20; 19:19;35:1,7,8,12,15, 17;36:7 disputed (2) 10:18;11:16 disputes (3) 25:6,9;27:3 disregards (1) 46:7 dissatisfaction (1) 8:10 dissatisfactions (1) 7:13 dissolve (2) 8:23;9:2 dissolved (4) 9:3,15,22;32:1 distilled (1) 20:6 distinct (2) 5:13;6:1 distinction (1) 19:13 distinctly (1) 25:15 distinguishable (1) 16:21 Distributing (1) 12:10 district (1) 20:13 diversify (1) 5:4 diversifying (2) 5:16,17 division (1) 26:16 document (3) 29:19,23,24 DOMBROWSKI (7) 3:4,5,21;22:10; 35:20;47:4;53:15 done (4) 14:11;21:11;22:13; 47:7 doors (1) 42:19 doubt (2) 23:12,18 down (4) 20:6;36:10;45:19; 53:12 dueling (2) 22:20;31:20</p>	<p>3:10;19:8;41:6; 46:21 early (1) 7:19 easiest (1) 3:3 effective (10) 9:5,19,20;10:6; 37:17,21;40:19;43:1; 44:15;49:24 effectiveness (4) 45:24;51:4,21;52:2 either (4) 7:3;38:15,18;44:22 elderly (1) 5:2 element (1) 49:10 elements (2) 16:12;40:3 email (1) 30:6 emanating (1) 26:15 embedded (1) 35:5 embraced (1) 20:11 Energy (8) 5:15,18,18;6:14,16; 14:6;24:7;52:24 enforceability (2) 45:24;51:4 enforceable (4) 39:1,12;42:16;43:1 enforced (1) 39:18 engage (1) 24:7 England (1) 27:14 enormous (1) 45:9 enough (2) 29:14;35:4 enriched (2) 48:19,24 enrichment (12) 10:4,7;38:14;44:21; 45:12,16;48:17;50:15, 16,21;51:9;52:23 ensure (1) 51:12 enter (2) 21:22;40:2 entered (4) 36:15;37:24;39:7; 40:4 enterprise (1) 29:7 Enterprises (2) 18:16;19:4 entirety (1)</p>
	D			
	<p>damages (1) 21:6 Danka (1) 19:7 date (3) 40:11,19;53:11 dates (1) 40:18 day (4) 21:18;28:16,17; 53:17 days (3) 52:22;53:2,7 deal (5) 11:3;21:5,16;30:3; 33:16 dealing (12) 4:12;13:20;15:1; 16:9;28:15,16;31:9,11, 12,14,15;33:13 dealt (1) 33:15 December (4) 8:20;31:24;53:10,13 decided (4) 22:18;23:5;27:11; 41:12 deciding (1) 23:17 decision (1) 31:7 decisions (3) 25:21,22,23 declarations (2) 11:8;17:19 deemed (1) 24:20 defeat (1)</p>			
			E	
			<p>earlier (4)</p>	

<p>49:3 entities (10) 5:8;8:11,12;11:3; 16:8;17:16;18:7;32:8, 11;36:8 entity (21) 5:6,21;6:11;8:14; 9:3;12:1,1;14:14; 15:11,15,17,21;16:9, 22,24;17:1;18:24; 19:14,16,16;21:6 equitable (4) 42:19;43:4,7;51:9 equity (1) 50:23 especially (1) 32:18 essence (2) 14:12;26:8 establish (7) 38:18,23,24;39:20; 41:20;42:1;45:11 estoppel (16) 38:11;41:24;42:2,7, 7,12;43:5,10;44:6,19; 48:7,9,14;50:10;52:14, 21 Evanston (2) 24:14;45:19 even (21) 8:10;15:2,11;16:11; 20:14;22:22;25:24; 26:12,22,23;28:11,17; 29:15;36:1;43:8;44:1, 5;45:12,12;48:15; 52:19 Eventually (1) 8:20 everybody (1) 13:5 evidence (2) 12:2;24:16 evidentiary (1) 52:11 exactly (1) 19:3 example (1) 46:9 exclusive (4) 45:2;46:11;48:21,23 exclusively (1) 25:7 excuse (3) 9:10;37:23;40:16 executed (2) 8:1;11:6 exist (1) 22:5 existed (1) 16:11 existence (5) 38:15,24;39:2,9;42:5 existing (1)</p>	<p>10:2 expected (1) 28:3 expenses (1) 5:11 explanation (1) 19:13 expressed (1) 13:2 F face (1) 27:23 facilities (1) 45:21 fact (18) 6:20;7:21;9:18; 10:23;12:13;19:20; 20:9;21:9;22:16;24:4; 37:12,14;40:3;44:2; 49:10;50:1,12;53:3 factors (1) 10:17 facts (26) 4:20;22:11,24;23:4, 5,19;24:17;26:2,13; 31:20;32:6;37:4,5; 38:8,18;39:19;41:19; 44:22;45:10,15;49:5, 11;50:7;52:11,11,18 factual (4) 12:20;15:13;22:17; 37:10 factually (1) 16:20 fail (1) 45:15 failed (3) 14:2;41:22;51:19 failure (3) 38:8;43:6;51:12 fair (1) 26:1 fairness (1) 32:10 faith (1) 51:11 falls (1) 21:15 far (8) 14:19;31:7;32:24; 37:3;39:13;44:21;50:9, 10 farther (1) 8:11 fashion (1) 33:4 federal (5) 12:5,8;14:19;16:17; 25:1 federally (1) 4:22</p>	<p>filed (1) 25:3 Finally (4) 31:17;38:13;44:21; 51:14 financed (1) 16:3 financing (14) 30:5,10,12,13;38:1, 6;39:23;40:2,4;41:5, 10,17;44:16;46:16 find (4) 36:17;46:17;52:15, 22 first (13) 10:15;14:9;22:14; 23:8;37:15;40:19; 41:15;42:5;45:22,23; 49:7,24;52:8 five (1) 30:8 floodgates (1) 43:7 focus (1) 49:9 followed (2) 13:7,8 footnote (2) 21:2;23:10 foreseeable (1) 42:3 form (2) 3:11;27:20 forth (1) 47:18 forum (11) 18:10,10,13;19:8,18, 24;20:8;35:3,5,9,12 forward (4) 24:9;31:4;36:19; 52:13 found (2) 18:13;19:2 four (2) 11:23;30:8 frankly (1) 10:7 fraud (2) 15:18,18 fraudulent (1) 15:21 free (1) 29:7 frequently (1) 15:8 friend (1) 3:12 front (1) 20:12 fruition (2) 37:7;46:15 fulfill (2) 41:5;51:23</p>	<p>fulfilled (2) 51:13,22 fulfillment (1) 49:12 full (2) 21:23;39:23 fully (1) 46:21 fund (1) 29:21 fundamental (2) 32:10;50:23 fundamentally (1) 33:8 funded (2) 9:9,11 funder (1) 9:1 funding (6) 8:24;9:6,21;19:7; 47:12,24 further (1) 40:8 future (2) 21:10;53:11 G gained (1) 49:1 Galvan (1) 50:19 gaming (3) 5:4;12:10;19:2 gave (2) 17:23;19:12 GBRE (53) 6:15,24;7:22;8:4,16, 19;9:1,2,2,5,20;12:1; 13:20;16:2,9,10;20:19; 21:19;24:5;25:13;28:6, 11,17;29:3;30:19,21; 31:2;32:7;37:7,17,23; 38:10,17,20;39:2,18; 40:2,5,17;41:1,9,18; 42:17,23;43:2;44:12; 45:3,5,7;46:16;51:11, 12;52:1 GBRE's (6) 14:4;36:24;38:11; 43:14,20;48:11 general (8) 6:22;7:7,7,10,20; 8:21;13:12;51:20 generally (2) 49:17;51:15 generates (1) 5:9 generation (1) 6:16 Generations (4) 3:8;5:5;6:3;36:20 Gens (8)</p>	<p>4:23;6:9;13:14,23; 14:6,6,8;17:10 Gens' (1) 13:15 gets (1) 18:6 given (3) 17:15;50:12;53:3 giving (1) 17:10 GLIFWC (2) 4:8,14 glosses (1) 39:23 God (1) 29:6 goes (3) 44:22;48:3,17 good (2) 50:24;53:17 governed (1) 24:21 government (1) 5:3 governmental (3) 4:24;7:5;21:20 grant (1) 23:2 granted (1) 26:12 Gray (1) 18:21 great (4) 23:15;39:4;41:8; 42:21 Green (6) 5:20,20,23;6:8; 28:20;52:24 grew (1) 3:15 guarantee (6) 9:13,16,18,22;16:7; 47:12 guaranteed (1) 9:11 guys (1) 31:9 H hand (1) 42:17 handles (1) 20:20 happened (1) 8:23 happens (2) 3:18;50:5 Hayward (1) 4:2 heard (5) 9:10,14,21;39:3; 50:13</p>
---	---	--	---	--

<p>HEARING (1) 53:19</p> <p>heavily (1) 39:5</p> <p>heightened (2) 15:2,3</p> <p>held (3) 6:5,10;43:2</p> <p>hide (1) 44:1</p> <p>hold (1) 21:3</p> <p>honestly (1) 3:17</p> <p>Honor (16) 3:4;4:19;33:12; 35:19;36:22,24;37:2; 38:23;41:15;43:4,11; 44:22;47:1;49:4;52:3; 53:16</p> <p>Hopland (1) 16:19</p> <p>Hospital (1) 50:20</p> <p>host (1) 22:17</p> <p>housing (1) 5:2</p> <p>how's (1) 53:13</p> <p>Hugel (4) 27:6,10;32:14;33:10</p> <p>H-u-g-e-l (1) 27:6</p>	<p>implicate (1) 33:21</p> <p>implied (2) 13:1;36:15</p> <p>important (3) 11:17;37:14;41:13</p> <p>importantly (2) 40:5;50:17</p> <p>impression (1) 17:11</p> <p>improper (1) 27:20</p> <p>included (1) 32:21</p> <p>inconsistent (1) 11:23</p> <p>incorporated (3) 46:19,24;47:16</p> <p>Indian (2) 4:22;9:12</p> <p>Indians (1) 36:21</p> <p>indication (1) 17:21</p> <p>individual (1) 5:7</p> <p>individuals (2) 23:23;28:5</p> <p>information (13) 45:2,4,4,6,6,9,14,20; 46:1,12,18;51:2,5</p> <p>informational (1) 7:4</p> <p>infringement (1) 12:23</p> <p>initially (2) 28:10,14</p> <p>injunction (1) 23:22</p> <p>injured (2) 21:4,17</p> <p>injury (1) 35:18</p> <p>injustice (1) 50:18</p> <p>Instead (1) 23:22</p> <p>integral (1) 30:11</p> <p>integrated (1) 46:22</p> <p>integration (2) 11:18,19</p> <p>intentional (2) 10:1;25:10</p> <p>interested (1) 33:18</p> <p>interesting (1) 36:5</p> <p>interference (1) 10:2</p> <p>internal (1) 32:24</p>	<p>intertwined (2) 22:19,24</p> <p>intimately (1) 31:23</p> <p>into (20) 5:12,16,17;6:13; 11:8;12:6,20;21:14,22; 23:19;35:12;36:16; 37:24;39:7;40:2,4; 46:12,19;48:2,3</p> <p>intricately (2) 31:2,23</p> <p>Investors (1) 14:23</p> <p>involved (4) 30:6,20;31:3,23</p> <p>Irwin (1) 39:11</p> <p>Isle (3) 3:13,19;4:11</p> <p>issue (14) 10:15,22;15:16; 16:14,15;18:1;19:24; 20:12;21:4,18;22:16; 31:17;32:9;48:14</p> <p>issues (6) 4:12;8:22;21:12; 22:17;23:5;37:2</p>	<p>Kevin (4) 5:24;8:3;24:19;30:7</p> <p>key (1) 31:6</p> <p>kind (2) 15:10;44:23</p> <p>King (3) 6:7,12;11:5</p> <p>knew (10) 4:15;13:20;16:8,10; 21:18,23;31:8,9;33:14, 15</p> <p>knowing (2) 36:14,18</p> <p>knowledge (1) 48:24</p> <p>known (2) 8:11;31:14</p> <p>Krieger (2) 19:12;20:13</p> <p>Krieger's (2) 20:5;35:15</p> <p>Kutak (1) 11:7</p>	<p>52:21;53:1</p> <p>left (1) 24:4</p> <p>legal (1) 24:23</p> <p>legally (1) 19:4</p> <p>legislative (3) 7:6,6,10</p> <p>length (6) 10:16;39:4;41:8; 42:21;43:17;45:18</p> <p>Lessee (5) 24:22;37:22,22,24; 38:3</p> <p>lessor (2) 24:22;37:23</p> <p>letter (8) 8:12,14;13:21;28:22; 30:15;35:10,22;36:1</p> <p>letters (1) 24:18</p> <p>level (1) 7:18</p> <p>litigants (1) 32:17</p> <p>little (1) 4:16</p> <p>LLC (4) 5:22;9:3;20:19;29:5</p> <p>loan (9) 9:17,17;16:6;29:18; 40:15,16,21;47:12,13</p> <p>location (1) 8:7</p> <p>long (1) 25:16</p> <p>look (8) 16:19;17:6,7;25:21; 26:9;30:23;37:11; 52:16</p> <p>looking (6) 31:1;36:11;38:22; 40:8;43:11;50:18</p> <p>loose (3) 23:3;24:2,4</p> <p>lot (2) 4:6;9:15</p> <p>love (1) 29:6</p>
I		J	L	
<p>ignores (1) 46:3</p> <p>III (6) 47:2;48:9;52:20; 53:1,7,9</p> <p>illegal (2) 23:21,23</p> <p>Illinois (14) 14:24;15:15;20:4; 24:14,21,22;25:2,9; 26:1,24;45:19;47:17; 48:15;50:7</p> <p>immunity (40) 3:2;10:13,15,23; 11:15;12:5,13,20,21; 13:7,11,16,16;17:14, 17;18:8,11,14;19:1,10, 22;20:16,18,20,23; 21:8,17;22:7,16,22; 23:9,14,18;24:10; 25:20;26:7,7;32:23; 36:8,19</p> <p>impact (2) 4:17;12:12</p> <p>implement (2) 49:21;50:3</p>		<p>January (3) 5:24;6:19;7:12</p> <p>Jerry (1) 3:5</p> <p>Jersey (1) 19:8</p> <p>joint (3) 28:8,11,12</p> <p>Judge (33) 19:2,12;20:5,13; 22:10,14,17;23:6,8; 24:2,9,16;25:2,9;26:3, 10,13,15;27:19,24; 28:10,15;29:16;31:4, 17;32:9;33:9;35:15,21; 47:4,22;48:6;49:2</p> <p>Junction (1) 4:10</p> <p>jurisdiction (4) 23:1;25:8;27:5; 35:19</p> <p>justice (1) 50:23</p> <p>justification (3) 21:12;22:2,3</p> <p>justifications (1) 21:7</p>	<p>lacking (1) 52:16</p> <p>laid (3) 25:16;37:4;44:3</p> <p>land (3) 7:15,23,24</p> <p>language (8) 18:23;37:19;38:4; 39:23;40:1;46:3,7; 49:19</p> <p>last (1) 32:10</p> <p>later (1) 28:18</p> <p>law (22) 5:6;9:4;12:5,9;13:1; 14:9,20;15:15;16:17; 24:12,22;25:18;27:13, 18;28:4;32:22;42:1; 44:10,18;48:15;50:8, 18</p> <p>lawsuit (2) 9:23,24</p> <p>lawyers (1) 32:20</p> <p>lay (1) 47:19</p> <p>lease (11) 8:2;37:8,12,16; 40:14,14,22;41:16; 49:7,15,21</p> <p>Leasing (1) 51:18</p> <p>least (1) 38:17</p> <p>leave (2)</p>	<p>litigants (1) 32:17</p> <p>little (1) 4:16</p> <p>LLC (4) 5:22;9:3;20:19;29:5</p> <p>loan (9) 9:17,17;16:6;29:18; 40:15,16,21;47:12,13</p> <p>location (1) 8:7</p> <p>long (1) 25:16</p> <p>look (8) 16:19;17:6,7;25:21; 26:9;30:23;37:11; 52:16</p> <p>looking (6) 31:1;36:11;38:22; 40:8;43:11;50:18</p> <p>loose (3) 23:3;24:2,4</p> <p>lot (2) 4:6;9:15</p> <p>love (1) 29:6</p>
		K		M
		<p>keep (2) 5:8;46:6</p>		<p>machinations (1) 32:24</p> <p>machinery (1) 30:23</p> <p>machines (1) 31:1</p> <p>maintenance (8) 8:3;25:4;37:8;40:9, 12,12,23;49:21</p> <p>majority (1)</p>

<p>16:16 Management (2) 10:16;19:11 manages (1) 5:6 many (1) 11:2 master (9) 8:2;37:7,12,16; 40:13,14;41:16;49:7, 21 material (4) 4:20;6:6;11:10; 22:16 matter (8) 22:24;26:12;33:1,3, 6;35:19;44:10,18 matters (1) 11:16 May (4) 7:12,19,19;8:1 maybe (1) 33:4 meaning (2) 32:18;41:6 means (2) 25:9,10 meet (1) 51:19 meeting (3) 7:20;8:21;39:7 meetings (1) 7:2 member (5) 6:4,10;7:8;28:7,8 members (3) 5:2;6:5;30:22 Memorial (1) 50:19 mention (5) 25:19;26:6;27:3,4,4 mentioned (6) 27:19;28:11;29:22; 30:2,4,4 merged (1) 11:21 met (11) 23:6;38:9;39:18,20; 41:21;42:19;43:2; 47:24;50:1;51:16,18 Michigan (3) 8:8;23:20,21 Midway (1) 43:12 might (3) 4:5;46:22;48:13 miles (3) 26:23;27:15,17 million (2) 9:8;16:3 Mills (8) 21:1,11;22:4;23:10, 14,19;31:7,16</p>	<p>minds (1) 39:7 mine (1) 3:12 minimum (1) 28:24 minute (1) 12:7 misrepresentations (1) 11:14 moment (1) 39:3 money (7) 6:19;16:6,7;29:3,5,6, 20 Monona (1) 8:7 months (4) 3:15,18;26:5,6 more (7) 5:10;15:3,8;25:17; 26:13;50:17;52:23 Morning (1) 3:4 Most (5) 11:3;19:6,10;37:14; 40:5 motion (22) 4:18;10:10,12;11:10; 13:12;22:15,18;23:2; 24:3,17;26:11,12; 31:22;33:11;36:24; 37:3;39:2,8;42:13; 47:5;49:2,9 motions (1) 3:2 Moving (2) 24:9;31:4 much (1) 4:21 must (14) 13:2,8;15:16,17; 23:8;24:11;25:23; 26:23;27:14;41:23; 43:19;44:19;50:21; 51:7</p>	<p>32:23;49:14;52:23 needs (2) 5:10;15:17 negotiate (2) 32:20;42:22 negotiated (10) 6:18,23;24:14;26:5; 39:4;41:7;43:16;45:20; 46:4,13 negotiating (3) 14:1;51:6,24 negotiation (5) 10:9;38:21;45:14; 46:2;51:2 negotiations (2) 11:4,20 New (1) 19:8 next (1) 3:15 nice (1) 22:11 nicely (1) 37:4 nobody (2) 17:16;19:13 noncontractual (1) 15:9 none (1) 13:18 Nonetheless (1) 8:9 nor (2) 15:13;44:23 Northern (1) 3:20 Northwestern (1) 50:19 note (2) 40:10;43:21 noted (3) 41:6;45:20;49:7 notes (1) 42:9 notice (3) 27:19;41:13;48:4 notification (9) 38:6;40:20;41:1,10, 16,20;42:23;43:15; 52:1 notified (2) 37:23;40:6 notify (1) 44:15 November (1) 53:7 number (2) 4:13;42:19 numerous (1) 52:18</p>	<p>obligation (2) 39:17;42:11 obligations (2) 38:11;39:13 obtain (1) 10:17 obtained (1) 9:6 Obviously (4) 30:12;42:1;47:4,15 occurred (1) 41:20 occurs (2) 39:15;40:20 off (2) 8:8;29:7 OFFERED (1) 53:19 official (4) 6:6,10;7:1,2 oil (1) 6:16 Ojibwa (1) 4:1 Omaha (1) 11:7 onboard (2) 30:8,9 once (1) 31:8 one (16) 6:4;8:2;12:1,1; 21:18;28:9,16,17; 29:24,24;33:18;35:20, 21,23;38:16;39:13 Oneida (22) 3:7,8;4:22,23;5:5,15, 18,19;6:3,9;13:14,15, 23;14:5,5;23:3;28:19; 30:24;33:4;36:20,21; 37:3 only (16) 10:22;12:1;13:15; 15:18;17:13;18:8,11; 19:24;20:23;23:10; 24:5;25:13;28:6;35:21; 48:8,19 open (1) 43:7 opens (1) 42:19 operating (2) 5:10;23:21 operation (3) 8:2;25:4;40:24 operations (1) 5:4 operative (4) 4:20;8:1,9;4;10:5 opportunity (1) 52:6 oral (1) 48:22</p>	<p>order (4) 5:4;10:14;11:1;13:6 Ordinance (4) 13:10,17;17:13,14 ordinances (1) 33:1 OSG (2) 16:10;37:4 OSGC (42) 7:4;8:5,13,17,23; 9:14,21;10:17;11:15; 17:15;19:15;23:3,9; 24:4,6,10;25:13,15; 26:19;28:1,6,7,10,17; 29:1,5,5,22,22,24;30:2, 9,15,18,19;32:1,3,7; 33:4,17;36:7;48:23 OSGC's (3) 8:13;24:19;28:22 OSG's (1) 6:21 otherwise (2) 38:12;53:9 out (16) 11:7;19:8;21:1; 25:16;26:15;30:14; 32:16,17;33:7,10;35:4; 37:4;44:3,13;46:5; 47:19 outcome (2) 18:20;19:20 outside (1) 46:23 over (7) 5:2,7,11;6:5;8:10; 26:23;39:23 overwhelming (1) 16:16 owe (1) 46:6 own (6) 5:12,13;15:24;29:10; 32:4;52:17 owned (2) 21:14,20 owning (1) 16:9</p>
	N			P
	<p>Nation (1) 10:19 Native (1) 12:9 nature (1) 44:24 near (1) 4:1 Nebraska (1) 11:7 necessary (3) 44:13;50:1;51:12 need (6) 17:24;26:6;30:9;</p>			
		O		

replead (2) 52:22;53:2	rules (3) 32:14,15;33:5	shown (3) 15:22;22:8;29:14	3:2;10:13,14,18,19, 23;11:15;12:4,12,12, 13,18,19,21,22,24; 13:6,7,9,11,16,16; 14:17;17:1,14,17;18:8, 11,14,19,24;19:10,14, 16,16,22;20:16,18,20, 23;21:7,14,16,17,17; 22:7,16,22;23:9,14,17; 24:10;25:19;26:7,7; 32:23;36:8,18	53:11 step (2) 27:7;39:10 steps (3) 33:5;44:13;51:12 still (6) 3:16;8:10;9:3;43:2, 9;44:7 straight (2) 24:1;27:23 straightforward (1) 4:21 strictly (1) 8:18 structure (3) 6:18;21:23;33:15 subject (5) 22:24;26:11;35:19; 38:13;44:8 submit (1) 23:2 subsidiaries (1) 33:19 subsidiary (6) 21:19;27:1;32:13; 33:20,22;36:15 suddenly (1) 43:7 sue (6) 12:17;19:15;20:3,3, 5;24:1 sued (4) 19:23;20:1,2,9 sufficient (4) 38:8,18;41:5;52:11 suggested (1) 21:24 suing (2) 23:23;32:12 suit (1) 25:3 support (7) 8:13,15;30:16;45:12, 15;49:11;52:18 supporting (1) 45:10 Supreme (7) 18:16;21:1;22:4; 25:20,21;26:9;33:2 suspect (1) 10:5
repleading (1) 53:6	S	side (1) 22:21	sovereigns (1) 21:24	
representations (5) 11:20;14:12;17:6,20; 18:5	same (4) 17:14;18:23;48:17; 53:6	sides (12) 24:12,13,13;26:4,4, 5;32:20;33:23,24;39:5, 5;46:21	sovereignty (3) 12:24;14:20;17:4	
representative (1) 12:18	Santa (1) 13:3	sign (10) 8:4,5;13:24;18:4; 22:1;26:18,20,22;27:8; 36:1	Spanish (3) 26:17;35:22,24	
representatives (1) 12:11	saying (7) 8:13;19:17,19;23:17; 25:24;26:1,19	signature (1) 16:22	special (4) 21:6,12;22:1,3	
represented (5) 32:19;39:5;41:8; 42:22;45:18	Schedule (2) 40:14;53:6	signatories (1) 35:23	specific (5) 11:19;24:11;38:4; 47:5;49:6	
request (3) 9:12,16,22	second (7) 18:21;35:23,24; 39:10;40:9,20,23	signatory (1) 37:7	specifically (7) 25:5;47:13,22;48:4, 18,21;49:19	
requested (2) 7:2;29:22	seems (1) 23:11	signed (9) 8:3;11:24;13:22; 16:23;17:2;24:19; 33:22,24;35:22	specifics (1) 47:14	
require (2) 12:22;47:17	selection (10) 18:10,10,13;19:9,24; 20:8;35:3,5,9,12	significant (3) 19:5;23:11,18	specify (1) 35:2	
required (2) 48:5;50:7	senior (1) 11:6	signs (1) 29:8	spill (1) 5:11	
requirement (2) 41:12;43:16	sense (2) 32:5,5	similar (4) 19:4;27:3;37:3; 52:22	spoken (2) 3:11,17	
reservation (1) 8:8	separate (5) 5:9,13,17;32:3,8	simply (4) 37:5;45:10;46:4; 51:17	stage (1) 52:9	
reserved (2) 41:9;51:24	separately (1) 25:14	singled (1) 25:1	stages (1) 16:7	
reserves (2) 42:23,24	services (3) 5:1;48:10;51:18	situation (5) 14:20;15:2;16:1; 17:5;21:13	stand (1) 12:14	
resolution (4) 13:12,13,14;19:18	set (1) 23:23	smart (1) 32:19	standard (2) 13:3;15:3	
respect (2) 16:12;49:4	Seven (13) 3:8;4:23;5:5;6:3,9; 13:14,15,23;14:6,6,7; 17:10;36:20	Sokaogon (1) 19:1	start (4) 3:3;5:16,17;52:17	
respond (1) 53:5	several (2) 4:6;47:11	Solargenix (10) 23:8;26:14,21;27:2; 28:2,12;32:14;33:9; 35:18,21	started (3) 6:12;9:23;28:18	
responding (1) 24:16	shall (5) 24:20,21,24;25:6; 37:21	someone (2) 27:7;30:24	starting (2) 7:13;8:10	
response (4) 10:20;40:10;42:9; 45:1	sham (2) 15:17,21	somebody (1) 35:17	state (16) 12:6;14:13;20:4; 23:8,15,20;25:1,8; 28:15;31:12;32:6,23; 41:22;48:18,21;52:12	
result (2) 7:24;42:15	sharing (2) 45:13;46:1	somehow (5) 18:3;33:20;43:1; 50:2;51:4	stated (3) 22:12;36:7;37:5	
retained (1) 50:21	Sheboygan (1) 8:8	someone (2) 27:7;30:24	statements (4) 11:4,13;12:11,19	
retention (4) 38:19;44:24;46:2; 51:5	shell (1) 24:5	somewhere (1) 21:10	states (6) 13:21;25:5;29:4; 31:8,13;43:17	
right (5) 22:15;25:11,11;36:4; 49:19	shot (1) 26:1	sort (3) 43:20;46:10;50:11	stating (5) 23:20;25:23;27:15; 30:7,19	
rights (5) 10:3,13,18,20;12:24	show (5) 15:18;22:15;43:10, 19;50:1	sought (1) 15:16	status (1)	
risk (1) 51:8	showing (2) 15:13;17:24	sovereign (58)		
River (2) 4:3,4				
Robert's (1) 33:5				
Rock (1) 11:7				
rule (2) 12:2;18:3				
				T
				table (2) 26:2;28:5 talk (3) 3:16;22:23;23:7 talked (3) 3:14;29:11,12 talking (6) 6:13;7:9;28:4;29:20; 41:13,15

<p>technology (2) 6:23;48:22 TEMPLE (4) 36:24;37:2;49:4; 53:16 terms (4) 16:9;38:2;42:3; 46:13 Thanks (1) 53:16 theories (2) 11:2;14:3 theory (2) 43:4;51:8 therefore (5) 31:15;36:18;42:11; 52:12;53:1 therein (1) 46:24 third (1) 19:1 third-party (1) 29:2 though (3) 22:22;26:22,23 thought (2) 19:12;27:20 thousands (1) 7:9 three (12) 11:8;13:10,18;19:21; 23:13;29:22;30:2;32:8, 11,18;40:3;52:3 throughout (3) 4:11;16:8;23:11 thrown (1) 47:7 times (2) 29:23;30:2 today (1) 31:13 told (2) 17:22;46:6 Tom (1) 3:7 took (6) 7:1;10:8;12:16; 13:19;23:15;38:7 top (1) 18:23 top-down (1) 17:9 tort (5) 15:9;20:22,24;23:13, 16 torts (2) 25:10,16 Touch (1) 12:10 Tower (1) 14:23 traveling (1) 45:18</p>	<p>treasurer (1) 6:8 trial (3) 12:22;22:13;23:5 tribal (19) 3:13;5:6;6:11;7:7,7, 10,15,20,23,24;8:21; 13:12,16;16:9;21:5,20; 28:7,8;32:6 tribally (3) 4:23;5:21;21:19 Tribe (58) 3:7;4:4,22,22,24;5:9, 12;6:4,5,6,10,21;7:4,5, 9;8:5,18;10:19;11:15; 13:10,24;14:8;17:10, 12,22;19:15;23:3,10, 20;24:4,6;25:14,15; 26:19;28:1,16,20;29:1, 6;30:20,22;31:1,9,11, 12,14,15,22;32:2,24; 33:4,14,14,16,16;36:6, 21;48:23 tribes (2) 4:6;5:14 tribe's (1) 32:4 trigger (1) 52:2 triggers (1) 40:22 true (1) 37:11 Trust (4) 9:10;29:19;38:2; 39:22 try (2) 26:2;32:12 trying (1) 4:2 turn (2) 5:19;15:6 two (9) 11:17;14:3;16:18; 17:19;26:16;36:8;40:9, 18;50:9 type (1) 7:14 typical (2) 5:3;14:22</p>	<p>14:23;15:15;36:18; 39:10;42:1;43:3;50:7, 16;51:7 undercapitalization (1) 15:22 underlying (2) 12:6;35:1 undervaluation (1) 15:22 undisputed (1) 13:18 unenforceable (2) 38:16;42:10 unequivocally (1) 13:2 unfair (4) 27:17,21;32:11;33:8 United (1) 29:4 unjust (17) 10:4,7;38:14,18; 44:21,24;45:12,16; 46:3,5;48:17;50:15,16, 21;51:5,9;52:23 unjustly (2) 48:19,24 unless (4) 9:5,17;49:24;50:5 unreasonable (2) 44:9,18 unrelated (1) 8:22 up (13) 3:13,15,20;4:4,11; 6:20;7:8;14:14;20:10; 23:23;28:20;36:23; 40:11 upon (7) 13:12;18:9,15;19:21; 20:24;40:13;52:8 use (1) 45:3 used (3) 11:22;31:2;45:4 using (2) 35:15;45:7</p>	<p>venue (3) 25:19;27:13;32:22 venues (1) 24:12 vice (1) 6:7 victim (2) 23:16;24:7 victims (1) 23:13 violation (1) 50:22 visited (1) 45:20 vote (5) 7:21;8:23;9:2;31:24; 32:4 voted (1) 7:23 voting (1) 7:8</p>	<p>28:6,8 whose (1) 15:16 willing (1) 48:13 Wisconsin (12) 3:20;4:7,12;8:7;9:9; 14:13;27:16,21;29:19; 36:21;38:1;39:22 withdrawn (1) 9:23 withdrew (1) 9:16 within (8) 11:21;26:16;29:23; 47:8,16;48:19;52:22; 53:2 without (2) 24:8;45:10 wording (4) 24:11;27:2,3;47:6 words (6) 26:6,8,9;30:17; 32:18;41:6 work (2) 6:23;46:5 worked (1) 46:12 works (1) 3:19 World (1) 12:10 worth (1) 9:8 write (2) 28:21;53:12 writing (11) 37:24;38:6;40:6,20; 41:2,10,16;42:23; 43:16,17;44:15 written (2) 41:12;48:22 wrong (1) 33:3 wrote (1) 8:12</p>
		W		
		V	<p>waive (6) 13:6,11;17:14,16; 26:7;32:23 waived (3) 10:24;12:13,21 waiver (13) 11:1;13:1,22;18:14; 19:3,9,22;20:8,18; 22:7;36:10,14,18 waives (2) 18:8;20:16 waiving (4) 11:14;12:19;13:15; 18:24 walked (1) 49:1 walks (1) 21:13 wants (1) 31:6 waste (1) 6:15 way (6) 3:3,11;10:15;17:13; 23:1;26:11 ways (2) 13:11;31:7 WBT (7) 9:10,11,12,14,15; 16:6;41:4 weren't (2) 31:11,15 whereas (1) 19:15 where's (1) 50:18 whole (3) 5:1;22:17;28:18 who's (2)</p>	Y
		U	<p>valid (9) 38:15;39:1,9,15; 42:5,14;43:8;44:7; 48:13 variety (2) 5:1;10:1 various (1) 4:12 veil (15) 12:7;14:4,4,7,11,16, 18;15:4,12,16;16:12; 18:6;29:12,13,16 venture (3) 28:8,11,13</p>	1
		<p>unacceptable (1) 7:18 unambiguous (2) 42:3;44:11 uncertainty (1) 9:15 unconditional (1) 50:14 under (13) 5:5;7:13;9:4;12:8;</p>	<p>valid (9) 38:15;39:1,9,15; 42:5,14;43:8;44:7; 48:13 variety (2) 5:1;10:1 various (1) 4:12 veil (15) 12:7;14:4,4,7,11,16, 18;15:4,12,16;16:12; 18:6;29:12,13,16 venture (3) 28:8,11,13</p>	<p>year (1) 23:15 1 1 (11) 11:18;26:15;38:9; 40:1,14;41:15;44:14, 14;48:2,20;52:19 10th (1) 53:13 13 (3) 5:7;8:12;13:21 14.6 (1)</p>

13:10 15 (1) 25:5 16,000 (2) 5:2;6:5 1990 (1) 27:11	47:10 619 (1) 36:10			
2	7			
2,000 (1) 27:15 2007 (1) 14:24 2012 (1) 5:24 2013 (4) 6:1;8:12;30:15;32:1 2014 (2) 21:1;26:15 24 (1) 8:1 2-615 (1) 47:5 2-619 (2) 22:15;24:17 28 (3) 52:22;53:2,7	75 (1) 22:12 7th (5) 18:22;25:22;27:6,11; 33:2			
3	8			
3 (1) 38:10 3rd (1) 53:10	8 (2) 21:2;23:10			
4	9			
4,000 (1) 26:23 40 (1) 47:21 43 (4) 47:14;48:2,20;52:19	9:30 (1) 53:13			
5				
5 (2) 7:19;38:13 55 (1) 52:17 56 (1) 43:23 57 (1) 27:17 58 (1) 44:1 5th (1) 53:7				
6				
6 (1)				